Enhancing Integrity in Public Procurement

OECD Joint Learning Study on Yemen
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The Republic of Yemen has been a partner of the OECD for several years as part of the MENA-OECD Governance Programme. This programme aims to strengthen the capacity of public officials in Arab countries to design, implement and monitor public governance reforms. Through its subject-specific working groups, the MENA-OECD Governance Programme supports Arab countries in reforming the civil service, preventing corruption and promoting integrity in the public sector, implementing e-government strategies, reducing government-imposed administrative burdens on citizens and businesses, improving public finance management and regulatory quality, and promoting civil society participation in public policy development, among other areas.

In the framework of the MENA-OECD Governance Programme, the Government of Yemen launched an official request to implement an OECD Joint Learning Study (JLS) on “Enhancing Integrity in Public Procurement”. The JLS is an innovative approach to knowledge creation and sharing between countries in the Middle East and North Africa (MENA) and OECD countries; the concept was created by adapting the OECD peer review methodology to developing countries.

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1 For further information on the OECD-MENA Governance Programme, see www.oecd.org/mena/governance.
2 For further information on the OECD Joint Learning Studies, see www.oecd.org/gov/ethics/JLS.
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<td>Central Organization for Control and Auditing</td>
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<td>CSO</td>
<td>Civil society organisation</td>
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<td>HATC</td>
<td>High Authority for Tender Control</td>
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<td>MENA</td>
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<td>SFD</td>
<td>Social Fund for Development</td>
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<td>SNACC</td>
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INTRODUCTION

Concept

The Joint Learning Study employs the OECD’s peer review methodology. A key element of the concept is the involvement of policy experts from both OECD and MENA countries in order to ensure an in-depth policy discussion among peers and the mutuality of exchange between participating countries.

The Joint Learning Study is especially useful in measuring countries’ progress towards integrity and anti-corruption reforms. It builds on the extensive experience gathered during the implementation of the MENA-OECD Governance Programme, especially its Working Group on Civil Service and Integrity. The pilot JLS was conducted with Morocco in 2008.

Objectives

This Joint Learning Study addresses the subject of integrity in public procurement and was specifically requested by the Government of Yemen following the approval of Law 23 of 2007 on Tenders, Bidding and Government Storehouses (“2007 Tender Law”). The JLS will also help Yemen to implement its obligations under the United Nations Convention against Corruption, particularly those under Article 9: “Public Procurement and Management of Public Finances”.

The purpose of the Joint Learning Study on Enhancing Integrity in Public Procurement in Yemen is to examine Yemen’s progress in modernising public procurement, with particular emphasis on fighting corruption and strengthening integrity and transparency. The specific objective is to: provide advice on how to reduce the risk of corruption while ensuring that the public procurement system allows the optimum choices and decisions; and to provide input on how to strengthen integrity and transparency in public procurement to promote confidence, effectiveness and efficiency.

The Study covers the complete public procurement process, from needs assessment through contract award, contract administration, to termination and final payment. The Study considers the procurement system in its national context in order to assess weak and strong points in terms of integrity and transparency, and proposes policies for improvement.

Fighting corruption and strengthening integrity and transparency in public procurement involves examining policies and evidence at three levels:

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3 The JLS on Enhancing Integrity in Public Procurement in Morocco is available at www.oecd.org/gov/ethics/JLS.

• The macro level – the enabling environment including economic, social, cultural and political factors that influence power structures and national institutions in the private and public sectors;

• The institutional level – where planning and implementation of public sector reforms take place in consultation with national stakeholders including Parliament, civil society, the private sector and international development partners;

• The level of national and local organisations – involving individuals working in public procurement, or in functional areas related to fighting corruption and strengthening integrity and transparency.

The Study seeks to provide analysis and suggestions regarding the legislative and regulatory framework underpinning the procurement system, and to assess some aspects of the management and control functions to strengthen the capacities of public and private stakeholders to fight corruption and ensure integrity and transparency in procurement.

Analytical Framework

The analytical framework for the Study is provided by the OECD Principles for Integrity in Public Procurement (“OECD Principles”). The OECD Principles provide policy guidance based on international good practices, agreed by OECD and non-OECD countries, for enhancing integrity throughout the procurement cycle. For more details on the OECD Principles, please see Annex A.

Methodology

The Joint Learning Study was prepared in three principal stages:

• Stage 1 – Preliminary research and stakeholder identification;

• Stage 2 – Fact-finding field mission, supplemented by the OECD questionnaire sent to representatives of the private sector;

• Stage 3 – Discussion and approval of the Study.

The Review Team, which conducted the field fact-finding visit to Sana’a from 11-14 January 2009, was composed of the OECD Secretariat and peer review experts from Canada and the Public Procurement Authority of Turkey – both country experiences specifically requested by the Yemeni Government for the review. The Review Team met with decision makers in several key public institutions involved in public procurement and the fight against corruption: the Ministry of Planning and International Cooperation (MOPIC), the High Tender Board (HTB), the Ministry of Public Works and Highways (MOPWH), the Public Electricity Corporation (PEC), the Supreme National Authority for Combating Corruption (SNACC), the Central Organization for Control and Auditing (COCA) and the Ministry of Finance (MOF). The Review Team also met with representatives from the private sector including the Chamber of Commerce, the Contractors’ Association, several local representatives of the international development partner community and the Social Fund for Development (SFD).

5 OECD, Principles for Integrity in Public Procurement (2009).
The conclusions and recommendations of this Study are based on observable practices in public procurement and fighting corruption in Yemen as determined: by means of the fact-finding interviews; from review of translated Yemeni documents including laws and regulations (such as the Executive Regulations\textsuperscript{6}, translated with the technical contribution of the OECD); and from documents and reports prepared by international development partners in collaboration with MOPIC.

EXECUTIVE SUMMARY

In early 2006, the Government of Yemen – with the support of international development partners – launched a set of ambitious and inter-connected reform measures promoting good governance called the National Reform Agenda (NRA). The President and the Government affirmed that combating corruption was the over-arching priority of these reforms.

A key component of the NRA is decentralising the delivery of services, goods and public works. The ensuing decentralisation of procurement and financial authorities to rural areas offers significant opportunities, such as accelerated delivery of basic services and empowerment of local communities to take ownership of their own development. Successful decentralisation requires broad institutional planning, financing and implementation of effective frameworks. Capacity remains the key constraint and the biggest challenge to responsively delivering services and public goods, especially to isolated, rural areas.

Modernising public procurement and bringing related regulations up to international standards were key objectives of the modernisation agenda. Law 23 of 2007 on “Tenders, Bidding and Government Storehouses” and the accompanying 2009 Executive Regulations are recent examples of the Government pushing ahead with procurement reforms. Law 39 of 2006 on Anti-Corruption and the subsequent establishment of the Supreme National Authority for Combating Corruption (SNACC) are other concrete examples of recent anti-corruption reforms.

The Yemeni Government is preparing a national anti-corruption strategy – concentrating on regulatory, legal and institutional frameworks – to create an enabling environment and foster broad-spectrum efforts to prevent corruption. The SNACC is charged with implementing both the 2006 Anti-Corruption Law – with key provisions on incompatibility rules and whistleblower protection – and the 2006 Financial Disclosure Law, which aims to detect illicit enrichment and enhance trust in government organisations and public employment. In addition, the 2007 Tender Law requires procurement officials to demonstrate the highest ethical standards by complying with a Code of Conduct.

As part of bringing procurement up to international standards, Yemen implemented promising measures to increase transparency throughout the procurement cycle. Enhancing transparency and publishing information that relates to procurement are key concerns identified by the two main procurement regulatory and monitoring institutions: the High Tender Board (HTB), created as part of the implementation of the 2007 Tender Law; and the High Authority for Tender Control (HATC), established by the 2009 Executive Regulations. Therefore, regularly publishing and updating procurement information on public websites – including websites of the HTB and the Ministry of Public Works and Highways (MOPWH) – is an important measure. In addition, the Procurement Management Information System (PMIS) is scheduled to be operational by the end of 2010.

However, Yemen needs to improve access to public information by businesses and citizens. The “Access to Information Law” is still not approved, and channels for facilitating this access are still missing.
For instance, there is no procurement gazette to inform potential tenderers about procurement offers, and the audit reports of the Central Organisation for Control and Auditing (COCA) are not available to the public.

Open tendering is stipulated as the default method for procurement in Yemen. Above defined thresholds – YER 250 million (Yemini riyal) for goods and works, YER 60 million for services – contracting authorities are required to consult with the HTB before launching a tender. Identified weaknesses, even for high-value contracts, are the low quality of tender documents provided by public-sector organisations and the inadequate proposals submitted by bidders. A promising new step to overcome this concern is the production and approval of HTB’s Standard Procurement Manuals and Standard Bidding Documents.

The Government has set up a contractor classification system that establishes categories for contractors based on their past performance. In order to enhance the transparency of the classification system – maintained by the MOPWH – qualification rules need to be standardised and made public.

The MOPWH is also in charge of establishing and maintaining the Government’s blacklist of individuals and firms barred from bidding on government tenders due to unacceptable practices, including fraud and corruption. However, this list is not yet published, and as a result, the procedures for blacklisting a company are not clear.

In order to ensure that public funds are used in public procurement according to the intended purpose, Yemen needs to take further steps to integrate procurement planning in its public finance management system. The Review Team noted limited transparency and weak co-ordination between authorities in setting budgetary envelopes for ministries and public agencies planning procurement activities.

External audit is completed by the Central Organisation for Control and Auditing (COCA), which reports directly to the President, and has jurisdiction over all public entities including local authorities and publicly owned companies. In addition, there is an internal audit function in all line ministries, local authorities and public companies.

Several senior government officials and representatives of the private sector identified strengthening professionalism and expertise in public organisations as the key challenge towards implementing public procurement reforms in Yemen. Key national oversight institutions (including the HTB, HATC, COCA and SNACC) have recognised the importance of attracting and retaining qualified staff and made efforts to invest in capacity building by offering financial incentives, organising study tours and exchanges and providing trainings. Co-operation among these four institutions could be further reinforced through, for instance, rotation job opportunities.

In Yemen, unsatisfied and unsuccessful bidders can seek recourse from contracting authorities, the HTB or the courts depending on which level of authority was involved. The HTB conducts awareness-raising workshops on recourse systems, aimed to overcome the private sector’s concerns about fairness and openness of the system. Furthermore, the 2009 Executive Regulations established the HATC as the supreme review authority for handling complaints submitted by bidders.

The Government of Yemen, and the SNACC in particular, recognised the importance of involving civil society representatives in raising awareness and tackling corruption. However, collaboration between the

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7 USD 1 = YER 211.86 (Bank of Yemen, January 2010).
central Government and public agencies on the one hand, and the private sector and civil society on the other hand, needs to be strengthened in the future. This is in particularly important – both private-sector representatives and government officials who met with the Review Team demonstrated a mistrust of the other side.

The Government of Yemen does not have a clear communication plan, prepared in consultation with main national stakeholders, to disseminate targeted messages on the procurement reforms. Designing and implementing such a plan would be important on a national level to create awareness and understanding of the reforms. In addition, communicating these messages at the international level would give recognition to Yemen’s achievements in moving towards a modern state.

Based on its findings and analyses, the Joint Learning Study (JLS) identified the following proposals for action to enhance integrity and transparency in public procurement in Yemen:

- Strengthen the capacity of the key national oversight institutions;
- Provide greater transparency and accessibility to decisions about public procurement;
- Build a mutually beneficial partnership between government and the private sector;
- Link procurement planning to the national budget and Public Investment Program processes.
I. INTRODUCTION TO THE YEMENI CONTEXT

The Country

The Republic of Yemen, the mythical land of the Queen of Sheba, is a country of 555,000 km² at the south eastern end of the Arabian Peninsula. It is about the same size as France. Only 3% of the land area is arable, resulting in environmental challenges such as limited fresh and potable water supplies and extensive soil erosion caused primarily by over-grazing. On the positive side, there are petroleum fields currently in production – but these resources are limited in size, and production is expected to decline over the short term. According to the World Bank, 70% of government revenues in 2008 came from petroleum and gas; by 2017, this revenue stream will disappear. There is also some mining and export of soft coal and gold, nickel and lead concentrates.

The People

The population of Yemen is estimated at 22 million, with 46% of the population below the age of 14 years. This highlights Yemen’s challenge to deliver education and health to a growing young population in the near term, and the mounting demands for job creation in the longer term. With an annual growth rate of 3.5% (World Bank 2008 estimation) life expectancy at birth is currently 62.9 years (60.9 for males and 64.9 for females). Literacy rates are 70% for males in general and 30% for females (2003 estimation). The average number of years in the formal school system is 11 years for boys and 7 years for girls.

Yemen has a strongly tribal culture. However, equilibrium has existed between tribe and state in Yemen since the modern state was created after the 1962 revolution.

The State

The Republic of Yemen – established on May 22, 1990 – includes 21 governorates, each sub-divided into districts. There are a total of 335 districts in Yemen. The Yemeni legal system is a combination of Islamic law, Turkish law, English Common law, and local tribal custom. The Constitution, however, identifies Islamic law (Shari’a) as the legal basis for Yemeni law.

The Head of State is President Ali Abdallah Salih (since May 22, 1990). The President appoints the Vice President, the Head of the Government (the Prime Minister), the Deputy Prime Ministers and the members of the Shura Council. The President is elected by popular vote to a five-year term; the last Presidential election was held in September 2006.

8 Data provided by the Ministry of Planning and International Cooperation, Government of Yemen.
10 Ibid.
The legislature is composed of the House of Representatives, whose members are elected by popular vote to five-year terms, which consults with the Shura Council. The next legislative election, due to be held in April 2009, has been delayed by two years.

Yemen is one of the poorest countries in the Arab world. Its GDP/capita is about 1,100 USD (2009 estimation\textsuperscript{11}). The GDP is made up of agriculture (12.4%), industry (40.9%) and services (46.7%). The unemployment rate was about 16.5% in 2007, with most jobless coming from the agriculture and herding sector\textsuperscript{12}. Services, construction, industry and commerce employ less than 25% of Yemenis. Major export partners include China, India, Thailand and Japan; import partners are the UAE, China, the United States, Saudi Arabia and Kuwait.

Despite the successful implementation of an ongoing road-building programme at a pace of 900 km/year, much of the rural population continues to live in relative isolation.

Yemen is a country with a limited capacity to benefit widely from communicating and accessing information by means of modern information technologies. There were 2.9 million cell phones in use in 2006, and there are three TV stations and seven radio stations. Only about 40% of the total population has access to electricity (20% in rural areas) and only 0.5% of the population uses the Internet\textsuperscript{13}.

Addressing these infrastructure challenges was identified by the Government of Yemen as major reform area. Modernising its infrastructure will have a direct impact on the amounts spent on public procurement in both absolute terms and percentage of GDP. Thus, enhancing integrity in public procurement is a priority of the Government to avoid corruption, misuse and waste of public funds.

\textsuperscript{11} Data provided by the Ministry of Planning and International Cooperation, Government of Yemen, 2009.

\textsuperscript{12} Ibid.

\textsuperscript{13} Country Brief on Yemen, the World Bank, September 2009.
II. OVERVIEW – PROCUREMENT REFORM IN YEMEN

1. Yemen’s institutional framework for public procurement

This framework includes the following key institutions:

a) Executive
The executive authority of the President as the Head of State is established in the Office of the President. The Prime Minister is responsible for the day-to-day management of government business. The National Government manages a public administration framework that covers 20 governorates down to district level.

b) Legislative
The Parliament is made up of the Shura Council (which is a consultative body and does not legislate) and the House of Representatives. The House of Representatives votes on budgets but has no power to directly modify budget line items. The Public Accounts Committee is responsible for oversight of the management of all public funds. There are very few female elected representatives in the House of Representatives compared to, for instance, Egypt and Lebanon.

c) Judiciary
The Constitution guarantees the independence of the judiciary and specifies Islamic law (Shari’a) as the basis of the legal system. The Supreme Judicial Council (SJC) supervises the administration and functioning of the courts. The President established the Public Funds Court (PFC) in 1996 as a response to rising corruption after unification. Its original broad mandate (which covered bribery, fraud, graft and “damage to the public interest”) was later restricted to crimes by public servants and those that affect public funds. The Public Funds Prosecution (PFP) is the link between COCA and the courts. By law, the PFP does not have the right to indict parliamentarians, governors, ministers and deputy ministers. If two-thirds of the Parliament votes to indict an official, the case will be referred to the Supreme Court.

d) High Authority for Tender Control (HATC)
As part of the implementation of the 2007 Tender Law, the Government established the HATC by Presidential Decree 17 of 2009, published on August 17, as the key public procurement oversight institution. The HATC is the public procurement policy agency, charged with proposing policy to the President and acting as the supreme review authority for complaints submitted by bidders. It is independently financed and reports directly to the President. The Authority is composed of a Chairman and six members appointed by the President to manage the HATC.

e) High Tender Board (HTB)
Also established as part of the implementation of the 2007 Tender Law, HTB is a key public procurement monitoring body and a major government actor in the fight against corruption. The HTB is independently funded and reports directly to the Council of Ministers. The HTB includes a Chair and four members appointed by presidential decree. There is also a Technical Committee, a Procurement Management

Information System (PMIS) Unit and a Financial Management Unit. However, the latter has shifted to the HATC and was replaced by the Management Information System (MIS) Unit. The HTB approves high-value tenders (i.e. above YER 250 million\(^{15}\)), acts as the government’s lead agency in procurement reform and capacity building, produces and updates standard bidding documents and guides, and provides training for procurement specialists throughout the public sector on the 2007 Tender Law and its 2009 Executive Regulations.

\section*{f) Supreme National Authority for Combating Corruption (SNACC)}
SNACC was created by the 2006 Anti-Corruption Law and is independent and financially autonomous. Its mandate includes collaboration with civil society in the fight against corruption, investigating complaints of corruption, working with the media\(^{16}\) on public awareness raising about corruption, and co-operating with COCA to control and accounting for public funds.

\section*{g) Central Organization for Control and Auditing (COCA)}
COCA is the independent supreme audit institution reporting directly to the President of the Republic. COCA is responsible for financial control, performance appraisal, and evaluation of the legal and organisational contexts for all administrative units of the state at both the central and local levels, as well as for public and mixed sector units. COCA prepares periodic reports for various constitutional agencies and an annual report for Parliament presenting audit findings of the State’s final accounts for both public and mixed economic units, annexed units, special and independent funds. COCA also works closely with the judiciary and anti-corruption agencies in public funds prosecutions.

\section*{h) Ministry of Planning and International Cooperation (MOPIC)}
MOPIC is responsible for the preparation and co-ordination of the Public Investment Program (PIP) and the Development Plan for Poverty Reduction 2006-2010 (DPPR). MOPIC is the government’s point of contact with international donors who are supporting reforms and helping to finance the DPPR.

\section*{i) Ministry of Finance (MOF)}
The Ministry of Finance is responsible to Parliament and to Cabinet for: formulating national economic policies, managing and collecting national revenues and distributing the government’s financial resources. Public procurement is a subsidiary function of public financial management.

\section*{j) Line Ministries}
Under the 2007 Tender Law, all Ministers are responsible for approving their ministries’ public tenders. As detailed in the 2009 Executive Regulations, tenders over the ministry’s delegated threshold are sent to the HTB for review and approval. The line ministries’ mandate is to deliver the government’s policies in the form of services, public works and goods by means of the approved procurement process. Each Minister has established Tender Boards to review and approve tenders for public services, works and goods according to the 2007 Tender Law and the 2009 Executive Regulations.

\section*{k) Sub-National Levels of Government}
There are two levels of sub-national government under the Local Authority Law of 2000: the governorates and the districts. Both the governorate and district levels are led by a centrally appointed head and locally

\footnotesize{\(^{15}\) USD 1 = YER 211.86 (Bank of Yemen, January 2010).}

\footnotesize{\(^{16}\) Yemen has many communication and information channels including major television and radio stations and newspapers. The eight most prominent newspapers include: El Thawra (“the Revolution”), 14 October, 26 September, Al-Joumyouriya (“the Republic”), El Mithak (the Pact), El Sahwa (“the Awakening”), El Wahdawi (“the Unionist”) and El Thouwri (“the Revolutionner”).}
elected officials. The chief executive at the governorate level is the Governor; this position was previously appointed by the President, but since 2008 is elected. District Managers are expected to be elected starting in 2010. The first local authority elections took place in 2001 and were repeated in 2006.

1) Civil society
Civil society organisations (CSOs) in Yemen today include non-governmental organisations, community associations and academic think tanks. CSOs are a legacy of local development associations created in North Yemen from the 1980s and the political liberalisation of the early 1990s. Most CSOs are oriented towards service delivery and economic productivity.

m) Private sector
Yemen has traditionally been a difficult place in which to do business, but government reforms have had a positive effect over the past three-five years. The World Bank estimates Yemen’s ranking in this area for 2010 to be 99 out of 183 countries (in 2009, the ranking was 103). Major barriers reported in the World Bank’s Draft Investment Climate Assessment, 2006, included high tax rates, corruption and anti-competitive practices, as well as smuggling and dumping.

n) International development partners and donor countries
Multilateral organisations and OECD donors are the major development partners of Yemen; they provide both project and programme aid. These include the World Bank’s International Development Association (IDA), the Arabic Fund for Development, the UN agencies, Japan, the Saudi Fund, USAID, the EU, and the Netherlands.

2. Political support and national reforms

In May 2006, the World Bank/IMF Joint Staff Assessment of the Poverty Reduction Strategy (PRS) observed limited progress on Yemen’s long-range development goals. These institutions concluded very slow progress in implementing structural reforms was the main cause of this poor performance.

In early 2006, the Government of Yemen responded by launching a set of ambitious and interconnected reform measures – the National Reform Agenda (NRA) – with the support of its international development partners. The objective of this agenda was to improve Yemen’s investment climate and to strengthen democratic institutions. The President and the Government committed publicly that combating corruption was to be the overarching priority of these reforms.

To date, the NRA has achieved the following results:

- The National Anti-Corruption Awareness Campaign carried out by the President’s Office over two months in early 2006 to launch the reform agenda;
- The approval by the President of the Financial Disclosure Law;

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17 USAID, Yemen Corruption Assessment 2006.
• The approval of the Procurement Manual and the Standard Bidding Documents (developed under the supervision of the World Bank), and the implementation of a supporting training programme for procurement specialists;

• The adoption of the Anti-Corruption Law;

• A public campaign to emphasise the independence of the Central Organization for Control and Audit (COCA), implemented by the President’s Office;

• Agreement to submit to international reviews by the Extractive Industries Transparency Initiative (EITI);

• The adoption of the Public Finance Management Reform Strategy in 2006 (a key component is the improvement of the procurement and bidding system);

• The adoption of the new Tender Law in 2007;

• The establishment of new institutions such as the SNACC and the HTB.

The Review Team observed that aspects of Yemen’s procurement reforms are included in all five themes of the National Reform Agenda:

1. Judicial reforms – specifically, aiming to strengthen the perceived and actual independence of judicial authority and making improvements to the functioning of the commercial courts;

2. Political/democratic development – specifically, decentralising service delivery in rural areas and increasing citizen participation, and enhancing media freedom and involvement in public discussion;

3. Civil service reforms – specifically, re-defining the respective roles of the state and civil society (including the private sector) in functions such as public procurement, determining appropriate relative salary levels for public employees, and strategically strengthening public-sector capacity at the central and local government levels;

4. Anti-corruption – specifically, managing the ongoing implementation of the Anti-Corruption Law, the implementation of the 2007 Tender Law, the Public Disclosure Law and the future development of a national anti-corruption strategy;

5. Economic and business-enabling reforms – specifically, strengthening the public financial management function, including public procurement, and implementing investment and trade reforms to foster positive domestic and international perceptions of transparent and reliable procurement systems and practices.

The World Bank has included Yemen among the most active reformers in the MENA region in creating an environment conducive to doing business. Reform efforts focus on financial sector development, governance and anti-corruption, decentralisation, and the general investment climate. Business start-up processes were simplified by eliminating the requirement to obtain a bank account certificate to register a company. The Government has improved access to credit information by removing

the minimum threshold for loans in the database of the public credit registry and by guaranteeing the right of borrowers to view their own credit reports. Implementation of risk-based inspection and installation of an electronic data interchange (EDI) system have reduced the time required to clear goods at customs. Streamlining the process of starting a business, facilitating access to credit information and addressing bottlenecks related to trading across borders are the Government’s priority areas of support to the development of the private sector.

3. Related laws

At the level of the national enabling environment, the proper functioning of the public procurement system is based on the democratic principle of acceptance of the rule of law. The Law 23 (2007) on Tenders, Bidding and Government Storehouses (the “2007 Tender Law”) is strengthened by other laws that focus on fighting corruption and strengthening integrity and transparency:

- Law 8 (1990) on Public Finance;
- Law 39 (1992) establishing COCA;
- Law 4 (2001) on Local Authorities;

4. Regulations and the central policy co-ordination point

USAID and the World Bank have provided technical assistance (by means of international consulting firms) to the HTB to assist in producing draft executive by-laws and regulations needed to operationalise the 2007 Tender Law. This draft was approved by the Council of Ministers in 2009. The approval and introduction of the 2009 Executive Regulations represent a significant step forward in establishing a common, transparent framework for public procurement.

The objectives of the 2009 Executive Regulations are:

- To protect public property and the maintenance of State property and assets;
- To establish and enhance fairness and equity during tendering;
- To promote integrity, transparency, accountability, control and rigor in the application of the Tender Law;
- To support greater efficiency in the public tendering process;
- To guide the supervision and management of the public procurement process; and
- To provide guidance and encouragement to the private sector to develop and strengthen its capacity and performance.

The 2009 Executive Regulations apply to public-sector entities at the national, governorate and local levels of government.

New features of the 2009 Executive Regulations include official definitions and processes, as well as financial ceilings and thresholds. Government officials told the Review Team the view that the 2009 Executive Regulations were helpful in clarifying definitions and official processes in the 2007 Tender Law; uncertainties in the law itself had led to varying interpretations by users. For example, different ministries had informally adopted different criteria for exceptions to competitive bidding. There was also a lack of consistency in requests for changes to bidding documents and the subsequent HTB decisions, and a dearth of officially recognised bidding documentation. Many procurement manuals and guides are
outdated and do not yet comply with the 2007 Tender Law. Several bidders have unfortunately used these old guides and manuals for bid preparation, and their bids have been rejected.

Crown Agents has been preparing standard bidding documents since 2006, and a number of agencies started using these documents before the issuance of Tender Law 23 of 2007. The MOE and the MOPWH have used these standard documents since 2008 for virtually all transactions. According to the HTB, these ministries’ tender documents have improved noticeably as a result. The HTB, in collaboration with relevant agencies, continues to update and streamline standard documents and user guides.

Although some significant implementation steps remain, the introduction and approval of the 2009 Executive Regulations should provide guidance and solutions to many of these concerns.

5. Consultations between the Government and national and international stakeholders

The member countries of the OECD have for some time believed that open and inclusive public engagement is a condition for effective democratic governance21 (for the OECD’s 10 Guiding Principles for Open and Inclusive Policy Making, please see Annex E). This process has been used to enhance transparency and accountability, public participation and awareness raising to build capacity.

**Openness** refers to providing citizens with information and making the policy process accessible and responsive. **Inclusion** means including as wide a variety of citizens’ voices as possible. Ensuring openness and inclusion take considerable time, effort and public money. Governments have also encountered risks. For instance, this approach can delay decision making, special interest groups can “hijack” the process and citizens can become confused about the role of politicians in such a process.

The Government of Yemen established an Inter-Ministerial Committee to manage and oversee its reform programmes, with a Technical Team including officials responsible for the reform focal points in participating ministries. The Committee is also the organiser and catalyst of the Political Forum of Yemen, which seeks to develop new national partners in the reform process and to promote dialogue across government on issues such as a common way of doing business and the division of labour among the ministries. Another key supporter of the procurement reform is the Public Services Committee of Parliament.

The HTB consulted and briefed Members of Parliament (MPs) who are also businessmen on the draft Tender Law. HTB considered that this consultation constituted dialogue with not only MPs but also representatives of the private sector. Furthermore, an international consulting firm supported the establishment and efforts of a working committee of interested parties at the national and sub-national levels. World Bank specialists reviewed and commented on the draft law. Ministries and agencies had the opportunity to comment on both the draft law and the draft regulations when both were discussed at the Council of Ministers before being referred to Parliament for final examination.

The Chairman of the HTB met regularly with Deputy Ministers from involved line ministries who made up a special ministerial committee on the draft executive by-laws. The HTB also consulted with its partner institutions in combating corruption: the HATC, SNACC and COCA. The HTB also worked to engage civil society and the private sector; this will strengthen their capacity to participate in and monitor the process of public procurement in the future.

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The MOPWH is in the process of setting up Supervision Units in all governorates, to facilitate public consultations on the delivery of services (among other functions), as part of the Government’s decentralisation plan. The Resident Engineer in each unit will be responsible for quality and quantity assurance regarding the work of local contractors. The MOPWH will also be engaging Local Councils in discussions about how they can participate effectively in public procurement. The Ministry hopes the councils will provide monitoring information and data on the performance of local contractors.

Finally, international development partners have been involved in strengthening the policy and operational aspects of fighting corruption in public procurement. Quarterly development partner co-ordination meetings – chaired by the World Bank and the UNDP Resident Coordinator – ensure that partners’ actions enhance each other, and MOPIC has established an Aid Harmonization Assistance Unit that further integrate the government’s efforts with development partners. In addition to country-level efforts, there has been substantial progress in co-ordination at the sectoral and thematic levels, where MOPIC maintains a matrix of agreed development partner involvement in governance and anti-corruption initiatives. Furthermore, the development partner community was given the opportunity to provide comments and suggestions on the 2007 Tender Law.

6. **Capacity building – public and private institutions**

The OECD has identified adequate capacity – “the ability of people, organisations and society as a whole to manage their affairs” – as a critical missing factor in many developing countries’ efforts to achieve the Millennium Development Goals (MDGs)\(^{22}\). Sufficient capacity is also key to sound performance and service delivery by country systems, such as procurement – and a necessary foundation for an enabling policy and regulatory environment that includes informative consultations between governments and their citizens.

Country capacity is the key to development performance, economic growth and poverty reduction. It allows both governments and citizens to exercise ownership and leadership in managing a country’s affairs and its future.

The OECD and the UNDP\(^{23}\) encourage countries to focus their capacity-development objectives on the following three analytical levels:

1. **Individual** – typically involving training;
2. **Organisational** – often involving management structures within or between organisations;
3. **Enabling environment** – generally involving the rule of law, an independent supreme audit authority and links to other reforms on public finance management and the public service.

Generally, partner countries take principal responsibility for capacity development; however, financial and technical support from their local development partners is essential.

In Yemen, weak institutional capacity is the biggest challenge to reducing corruption. Ministers and senior officials repeatedly stressed this point during the Review Team’s field mission in Yemen, and it was repeated and re-emphasised by interviews with representatives of the private sector.


The HTB’s 2008 Annual Report to the Council of Ministers includes a reference to the organisation’s ongoing institutional strengthening efforts, focusing on the recruitment process for the Chairman of the Technical Committee, the Secretary General and Heads of the Technical Units. The report also detailed five training workshops delivered during 2008 by the HTB, with the assistance of USAID and Crown Agents, for central government and governorate ministries and agencies. The issue of capacity development will be further discussed later in this study.
III. TRANSPARENCY

1. Principle 1

Provide an adequate degree of transparency throughout the procurement cycle in order to promote fair and equitable treatment of potential suppliers.

Effective public procurement has two principal goals:

i) the use of equitable, fair, open, accountable and transparent processes; and

ii) the cost effective use of public funds.

Meeting each of these aims contributes to achieving the other, each being of equal importance.

An appropriate procurement process, such as the process illustrated in Figure 1, leads to effective procurement. (For further description of the various steps and areas of risks in the procurement process, please see Annex B.)

Figure 1. The Procurement Process

1.1. Public access to information

Ensuring adequate public access to processes and procedures related to the procurement process – such as laws and executive regulations, judicial and administrative decisions, standard bidding documents and clauses, and means and processes by which contracts are defined, awarded and managed – helps governments promote transparency and fairness in their public procurement systems.
Yemen’s 2007 Tender Law brought the potential for a significant increase in openness and transparency across the public sector. However, the Government of Yemen does not publish an official gazette or public procurement bulletins to provide information on advertisements and tender notices. Interested contractors must obtain this information from local newspapers or through direct contacts with the entities that published the tender (according to responses to the OECD questionnaire).

In other countries in the MENA region and beyond, the use of official gazettes to publish public procurement notices is widespread. For example, procurement authorities in Egypt’s General Authority of Government Services post regular editions of a Procurement Bulletin including advice and information for private-sector suppliers and civil-society organisations.

**Remark**

In order to centralise information on advertisements and tender notices for interested contractors, it would be beneficial to develop a Yemeni Procurement Bulletin. This Bulletin could include summaries of upcoming tenders to alert potential bidders, as well as information on recently awarded contracts by ministries, governorates or local authorities.

**Country example**

Turkey’s Public Procurement Law requires the announcement of contracts to promote competition and transparency. A unique feature of the Turkish system is that announcements are published in different places, depending on the estimated value of the contract. While notices of contracts with an estimated value below specified thresholds may be announced via local newspapers or even local notice boards, those above the thresholds are announced in the electronic Public Procurement Bulletin published every weekday. All interested parties may obtain a free subscription to follow the notices.

Individuals wishing to subscribe can fill out a “tenderer record” form and send it to the Public Procurement Authority. The system generates a user code and password for the applicant, which also grants access to the system archives.

The Tender Notice Management System in Turkey is distinguished by the way tender notices are prepared and announced. Notices published electronically, via the Internet, and the system includes intensive preparation, checking and publication stages.
The 2007 Tender Law mandates implementation of a public website, created and maintained by the HTB “for the purposes of communicating its work to the public”. This website is operational and accessible by the public.

An international consulting organisation advised the HTB not to implement an e-procurement system at this time because of capacity and infrastructure constraints — but to instead design and build Yemen’s Procurement Management Information System (PMIS) in line with international good practice. The PMIS should become operational in 2010, and will be a key instrument in increasing transparency. With outside help, the HTB website has become a recognised source for accessing information about standard tender documents, decisions by the HTB and awareness-raising information on the progress of Yemen’s procurement legislation.

Remark

Communication and information technologies present governments in developing countries with opportunities to transform the ways they interact with their constituents, manage their affairs and strengthen transparency. The Government of Yemen can provide critical leadership on the appropriate adoption of these technologies, while acknowledging that such methods can not replace good laws and executive regulations supported by strong management and procurement practices. Technology can only facilitate and support this framework.

The Government has taken a prudent approach by using such technologies to develop the PMIS with a public interface on the Internet. The Government is encouraged to continue the priority implementation of the PMIS and the early activation of the system planned for the first half of 2010.

However, while the HTB maintains records of contracts that were procured through open tendering and valued at more than YER 125 million\textsuperscript{25}, these lists are generally not published or made available to the public\textsuperscript{26}. To date, completed external audit reports are generally neither released to the public nor posted on the COCA website.

1.2. Decentralisation, Poverty Reduction and Procurement

Decentralisation of the delivery of services, goods and public works is a key component of the Government’s 2008-2010 National Agenda for political and democratic development. To move service delivery closer to its target population, the Government has increased the financial thresholds for governorates disposal from YER 150 million to YER 250 million (the same thresholds for the ministers) and has tripled financial thresholds for districts from YER 15 million to YER 50 million. The MOPWH is responsible for delivering government services, goods and public works to citizens down to the district level, the third of four levels of decentralised governance (i.e. national, governorate, district and community).

MOPWH supervisory units are being established in all governorates to provide centers of competence in quality and quantity control for Ministry contracts. Local community councils are associated with these units at the district level to help the MOPWH monitor the performance of local contractors, and to provide input on Ministry projects at the district and governorate levels.

For example, Yemen’s Social Fund for Development (SFD) took on a rural road construction and maintenance programme during 2007 and 2008\textsuperscript{27}. The Yemeni population lives in about 100,000 settlements, most of which are located across difficult, mountainous terrain. Because many of these communities do not have access roads to the network of feeder roads, the SFD added a new category – “village access roads” – to address this constraint to local development in its rural roads programme. Benefits from this work went beyond job creation to construct and maintain the roads, and easier transportation of people and goods to markets, schools and medical clinics. Villagers who participated in the SFD road project have gained basic skills and limited but practical experience in contracting and implementing public works projects.

During 2007, the SFD delivered four training courses to help local private contracting consultants working on community projects use community-based contracting techniques; during the year, 45 rural-roads projects were implemented using this method. In 2008, 900 local community representatives, consultants, engineers and SFD branch accountants participated in eight training programmes on the community-based contracting methodology. SFD’s experiences and lessons are reflected in the 2009 Executive Regulations (Chapter Eleven: Community-Based Contracts). For more information on the SFD’s mandate and achievements, please see Annex D.

The rationale and direction of the Government’s decentralisation initiative is clear and keeps with international good practice:

- accelerate the delivery of basic public services and goods, especially in isolated rural areas; and

\textsuperscript{25} USD 1 = YER 211.86 (Bank of Yemen, January 2010 2009).


empower local communities to take ownership of their own development.

A broad institutional planning, financing and implementation framework including the MOF, MOPIC, the Ministry of Local Governments and MOPWH is in place to co-ordinate and support this activity. COCA will provide audits at the community, district and governorate levels and professional support and guidance to local auditors. SNACC is mandated to inform local communities, the media and CSOs about monitoring and reporting cases of waste and corruption, and to enlist their support in these activities. The MOPWH, HTB and the SDF will provide technical assistance in engineering and procurement, community-level involvement and empowerment, and project monitoring services.

If this framework performs as intended, managers and decision makers at the governorate and district levels will be equipped to better manage and monitor the significant increases in financial responsibility and thereby minimise opportunities for misuse and corruption. Parliament will be fully informed of local disbursements of public money and will have the means to review how public funds are spent and what developmental results are achieved.

The key constraint and the biggest challenge to effectively and responsibly moving public goods and service delivery from the national to the local level is capacity. Time and resources will be required to train procurement specialists and deploy them to the governorates and districts, and to undertake regular audits in a sample of communities and report the results to Parliament. Senior officials view this generally weak capacity – in particular, the risks of delegating increased responsibility to local authorities that do not have the required competence and knowledge – as a greater risk than gaps and inefficiencies in the finance and procurement systems.

**Remark**

While the Government works to strengthen capacity at the sub-national level, some mitigating or control measures can reduce risk at critical points in the decentralised procurement process:

- focus on strengthening capacity and temporary use of seconded specialists and consultants to support the District and Governorate Tender Committees;
- increased co-ordination with radio and newspaper media organisations and selected local communities and CSOs to raise public awareness of upcoming projects and to enlist their help in monitoring community-based contracting, and;
- regular procurement and financial audits of communities and governorates that administer high-value contracts.

MOPIC reach out to countries in the region like Egypt and Turkey, or to bigger countries with considerable experience (such as Indonesia and Ghana) to share experience and lessons in decentralisation and procurement.
1.3. Access to Information Law

Parliament is scheduled to discuss a draft Access to Information Law proposed by the National Information Center (NIC) during its current session. The Council of Ministers approved the draft law in December 2008 and referred it to the Parliament for adoption (Decree no.431/2008). The draft law seeks to establish citizens’ right to information, and to enforce the security and protection of public information. Parliament has referred the draft law to the Information Committee for review and recommendations. The Government aims to enact an Access to Information Law to provide concrete support for Article 13 of the UNCAC, “Participation of Society”, which requests signatories to promote active participation of individuals and groups in civil society and the private sector in fighting corruption by ensuring that the public has effective access to information.

Country example

"While there are a small number of success stories in the Middle East and North Africa (such as Jordan), Arab countries assessed in the Global Integrity Report: 2008 are overwhelmingly behind the rest of the world in providing basic transparency mechanisms for citizens to access government information. When compared to all other regions in the world, the access to information deficit in the Middle East and North Africa is roughly double those countries’ deficit on any other issue assessed by Global Integrity. That staggering transparency gap generates negative spillover effects across government, politics, and public policy in the Middle Eastern and Northern African countries assessed."


2. Principle 2

Maximise transparency in competitive tendering and take precautionary measures to enhance integrity, particularly for exceptions to competitive tendering.

Based on the Review Team’s discussions with government officials and representatives of the private sector, open tendering is the most common method of public procurement in Yemen. One of the general principles in the 2009 Executive Regulations specifies that all purchasing operations shall be subject to an open tender, unless another type of tender can be justified as more appropriate. Exceptions to open tendering include limited tendering and emergency tendering. The 2007 Tender Law prescribes the circumstances in which limited tendering – using lists of pre-qualified suppliers – is acceptable:

- the value of the procurement is below the approved financial threshold;
- only pre-qualified suppliers are eligible to bid;
- the particular sector or area of work includes a small or limited number of competent suppliers, and;
- in cases where two or more open tenders have not resulted in an award.

28 Unofficial translation, Yemen Observer newspaper (Sana’a), 3 February 2009.
Based on discussions with the MOPWH and other agencies, the Review Team estimates that emergency exceptions to open tendering (e.g., natural disasters) account for only 1-3% of total awards (for about 800 Ministry projects), and their value remains less than 1% of the overall project value.

However, the World Bank Public Expenditure Financial Accountability Assessment (PEFA) released in June 2008 concluded that there was insufficient data to assess the proportion of contracts above the threshold of YER 125 million that were carried out using open tendering. In August 2006, the MOF issued a circular requiring public agencies to provide lists of all contract awards, to be published on the Ministry website. The PEFA mission tried in early 2008 to collect this information from the Ministries of Public Works, Agriculture, Education and Health; however, the information it received did not allow PEFA to determine the percentage of awards distributed via open tendering, direct offers or limited tenders.

**Remark**

*While competitive tendering is the norm, advance professional evaluation is required to confirm that it is the most economical and efficient method for each particular tender. For instance, in the case of low-value contracts, works limited to a specific geographic area, or contracts with a high labour component, only national suppliers may be asked to bid (not international suppliers). Under such conditions, there is a clear cost advantage to contracting through limited (national) tendering.*

*However, a number of precautions need to be in place when using non-competitive tendering. These include: clear and consistent rules to govern the decision to make an exception to open tender; specific training for managers and specialists to ensure understanding of such methods; a management framework to define proper authorities and approvals; and adherence to the programme of scheduled regular audits. Furthermore, a demand from Parliament or the responsible Minister is necessary to trigger these decisions, make corrections to the process, and sanction improper procurement. The PEFA mission also discovered that sufficient capacity is required to manage data and to produce timely, useful reports.*

The HATC is responsible for additional control measures for exceptions to open competitive tendering. Such cases are monitored by the MOF, which has the authority to suspend these tenders in case of identified violations. The HTB reviewed two-thirds of the non-competitive tender cases carried out in 2008.

The HTB was established as a key procurement oversight body, especially for high-value contracts above the threshold of YER 250 million. All contracting entities are required to consult the HTB before launching a public tender. The HTB verifies whether the projects are based on real needs assessment, and thoroughly reviews the accuracy and completeness of project documentation (including the justification and economic feasibility), the links between the project and the budget, and the estimated total cost of the project.

The requirement that all projects whose value exceeds the corresponding threshold pass through the HTB for review is a positive step. However, the reality is often that contracting authorities can avoid this threshold by either deliberately bidding below the target amount and amending the contract value upward after award, or by splitting a contract into several smaller pieces.

It is important to note that the 2007 Tender Law prohibits bid splitting. The HACT has responsibility for monitoring and taking action to prevent bid splitting.
IV. GOOD MANAGEMENT

3. Principle 3

Ensure that public funds are used in public procurement according to the purposes intended.

3.1. Design and implementation of the budget

Public procurement – from the initial expenditure planning steps to the final payment of a contract – is an integral component of public financial management. Procurement planning is critical in ensuring value for government expenditures and promoting transparency, as part of Yemen’s Public Investment Plan (PIP), linked to the Medium-Term Expenditure Framework (MTEF). Between 2004 and 2006, actual expenditures for 20 Ministries exceeded the budgets approved by Parliament. Because the evaluation of state revenues from the primary source (petroleum) has followed a conservative approach, the government has no clear policy on how to treat excess revenues. The consequence has been a tendency for significant expenditures over approved budgets; these additional outlays, which represent a significant portion of public expenditures, may not be subjected to a full and rigorous review by Parliament.

Both limited transparency and weak co-ordination among authorities hinder setting budgetary levels in ministries. For example, planned expenditures are not always linked to national plans and performance (i.e. no clear link between the planned expenditures and the objectives of the National Reform Agenda). A common, harmonized approach to government budgetary planning across the public service would be a positive step forward.

Currently, the MOF has established an annual process and timetable for individual ministry budget preparations. The process is co-ordinated by means of MOF Circular Letters giving direction on indicative ceilings and administrative deadlines. Internal ministry committees produce proposed budgets that are approved by the Minister and sent to the Parliamentary Finance Committee for discussion and approval. It is, however, not clear on what criteria these approvals are based.

The 2007 Tender Law does not require the MOF to provide the Ministers of contracting ministries with specific advice or guidance during the preparation of their annual budget proposals, except for the indicative ceilings. Likewise, contracting ministries are not mandated to include a MOF representative in the evaluation of tenders by their Tender Committees; this change came partially in response to complaints from many ministries that the Finance representatives tended to dominate the work of the Tender Committees. However, in recognition of the important overall role of the MOF, there is a stipulation in the 2009 Executive Regulations (Art. 15) that the MOF “monitor the implementation of the financial provisions of the law and these Regulations for tenders and auctions by engaging in all stages of the procurement process”.

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Contracting authorities are responsible for defining their procurement needs and their delivery plans when they launch a procurement. The 2009 Executive Regulations put forward a specific procurement process referring to an approved policy objective or a specific work item in an official work programme. The contracting authority holds the mandate and the approved funds to procure and deliver the requirement. Specialists with the needed competencies and skills investigate the requirement and recommend the appropriate performance criteria to decision makers, who will review and approve these recommendations based on their delegated authorities. These approved criteria accompany the tendering process to the Ministry Tender Board or to the HTB for the eventual contract award. Auditors will refer to this original approved mandate when auditing the proper use of public funds. Any subsequent modification to this document would be prepared by competent specialists and approved by the appropriate authorities; these authorised modifications accompany the original requirements throughout the procurement process and will be securely archived after the termination of the contract. Either the original or the modified requirements are published in public procurement notices regarding public tenders as the contract criteria.

**Remark**

While COCA has the right to review all tender procedures and all documents related to public procurement works, the 2009 Executive Regulations are not clear about whether COCA or internal ministry auditors are to audit the records and files of procuring entities’ technical committees.

It is important these audits take place in order to verify whether the need for the procurement spending was justified – by examining the project’s feasibility study – and whether decisions made by the contracting entities’ technical committees were based on objective, non-biased judgments. Furthermore, making the results of these audits accessible in a public and transparent way will demonstrate the committee’s responsibility and accountability for its decisions.

The 2009 Executive Regulations also set out the responsibilities for procurement authorities in public contracting entities and establish financial and contracting approval ceilings. An important aspect of this measure is the separation of personal responsibility for committing, approving and spending public funds – preventing one person from being authorised to commit, approve and spend public funds is key.

3.2. Poor documentation practices

Many interviewees identified poor quality tender documentation going out to bidders, and poor quality proposals received from the private sector, as a recurrent problem in Yemen. Project descriptions for even some high-value, complex contracts have taken only a few pages. Bid proposals received in the past have often been unclear in terms of the bidder’s proposed approach to delivering the procurement and have included insufficient supporting technical documentation. The HTB is working on revising standard bidding documents and on providing awareness-raising training across the public sector, according to the 2007 Tender Law and the 2009 Executive Regulations, in order to overcome these problems.
More emphasis would need to be put on the quality and appropriateness of procurement tender documentation, which provides the basis for procurement offers submitted by private-sector contractors. The price and quality of the procured service or good will depend on the quality of the tender. Detailed and clear tender documentation would also increase the confidence of contractors in bidding, and would help to prevent future disputes between bidders and procurement entities. Citizens would benefit from better use of public funds and better delivery of services and public goods. Furthermore, it is suggested that HTB identifies the list of required documentation to accompany a proposal in response to a tender. This list of necessary documents could be posted on the HTB website and used as a checklist by procurement experts to properly prepare public tenders in a consistent manner. The checklist could also be a reference for procurement audits.

4. Principle 4

Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.

4.1. Capacities and resources – the diagnostic

The need to strengthen national capacity was identified by several senior government officials and private sector representatives as the key to implementing procurement reforms. Weak capacity at the level of implementing ministries and agencies in the central government, and at local levels, was highlighted as a serious constraint. Interviews with senior officials of government agencies (such as the HTB, the SNACC and COCA), along with the private sector’s responses to the OECD questionnaire, indicate that the general level of procurement professionalism is not generally perceived to be high. These same sources also revealed an ongoing general concern about strengthening capacity, even within these elite public institutions. Furthermore, the 2009 Executive Regulations specifically call for public employees and members of Tendering Committees “to observe – and presumably demonstrate – the highest ethical standards”.

Officials cited improving professional competence at the individual level and management competence at the institutional level as a priority. For example, COCA has made many efforts to build its staff’s capacity through recruiting and training. Exchanges with OECD accounting organisations provide experiences and guidance in improved managerial practices at the institutional and individual levels. Exchanges and study tours at a technical level have taken place, and MOUs have been signed with the Supreme Audit Courts of Morocco and France. Representatives from the Netherlands Supreme Audit Court visited Yemen in 2009 to share experiences and establish professional contacts.

COCA has also taken several important steps to try to strengthen the audit profession in Yemen. COCA provides technical assistance to the local chartered accountants association; it has proposed improvements to the legislation covering public accounts that was brought forward by the parliamentary committee chaired by COCA. COCA promotes and uses accounting standards that comply with international audit standards. COCA contracts with engineers and informatics specialists to assist with specialised audits. Finally, the auditors’ work is based on the External Audit Manual, which provides a standard framework for prioritising risk factors.
The internal audit units of line ministries and agencies are generally considered weak – to provide needed support, COCA assumes some of their normal functions and outputs.

Hiring qualified staff is also a priority for the HTB. The 2008 HTB Annual Report highlights the recruitment of qualified, competent heads of units as a recent success, but also an ongoing need\textsuperscript{29}. The HTB has hired technical specialists for its Technical Unit but needs additional procurement specialists. The HTB is benefiting from technical assistance from the European Commission, UNDP, USAID and the World Bank to provide training assistance on the 2007 Tender Law to public procurement officials in ministries’ Tender Committees and in local authorities.

4.2. Efforts to develop capacity

A major challenge for the Government is retaining qualified employees within the HTB and other key oversight and monitoring agencies, such as the SNACC. Therefore, in late 2009, the Government\textsuperscript{30} gave top priority to developing a Comprehensive Program to Attract Talent into Civil Service, “Top 100”, aiming to draw 75 to 100 talented Yemenis from within Yemen and abroad to senior positions in the government (Deputy Minister, Assistant Minister, Director General levels).

To do so, the Government approved higher salary ranges for specific individuals with needed skills and competencies than for the rest of the public service; it aims to develop and implement (with the support of international expertise) a transparent and competitive process to select these individuals. This initiative is part of a broader public-sector strategy aimed at retaining qualified staff and minimising risks of corruption. To ensure success, it is important that responsible ministers build common understanding and strong support for this approach with colleagues in the Council of Ministers.

In order to strengthen and upgrade capacity in key institutions, the Government is also implementing exchanges and study tours to similar institutions in other countries including Jordan, Syria, Singapore and Indonesia. Local development partners are actively providing technical assistance to Yemen’s oversight institutions. USAID, for example, is supporting training of tender committee members in both central government ministries and local communities. HTB procurement employees have trained in London with Crown Agents.

\textsuperscript{29} Translation of Executive Summary of the Annual Report of the HTB to the Council of Ministers, 2008.

\textsuperscript{30} Top 10 Reform Priorities as presented by the Prime Minister of Yemen in January 2010 include:

1. Comprehensive Program to Attract Talent into Civil Service “Top 100”
2. Urgent Political Solutions to allow Yemeni Labor into Gulf Cooperation Council Countries
3. Implementing First Phase of Lifting of Subsidies without Raising Prices
4. Fast Track Initiative for Oil Exploration
5. Urgent Solutions to Land Problems
6. Re-Involving Presidential Apparatus in Reform Process
8. Enforcing Government Authority and Rule of Law
9. Urgent Solutions to the Water Issues
10. Improving Yemen’s Image Abroad
The Government is also using financial incentives to attract and retain competent people to serve on the committees that supervise works and service delivery. Based on a proposal from the HTB Chairman and the Minister of Finance approved by the Council of Ministers, the Prime Minister can authorise: financial incentives for members of tender committees, special supervision fees for works projects, as well as special fees for the inspection of delivered supplies and for reviewing the outputs of consultancy projects.

Since 2007, the HTB has initiated an outreach and technical training programme targeting agencies with large procurement volumes. In 2008, the HTB began working with smaller agencies as well. Training was also extended to ministries and procurement staff in governorates and districts. In 2008, the total number of trainees exceeded 250.

The HTB is currently working in co-operation with the MOF and the World Bank to develop a more comprehensive, cost-effective public training programme.

The collaboration between COCA and SNACC is an example of a promising partnership in the Yemeni public service. The agencies hold joint meetings, and COCA audits are a primary source of information for SNACC; additionally, the institutions provide rotation job opportunities and second staff members to each other as a way of better integrating practices and sharing knowledge. Both organisations are focusing on capacity building and on outreach to civil society – and both are actively engaged in like-minded networks in the region and beyond to share experiences and lessons at regional and international workshops.

### Remark

As a way to provide managers and staff with new skills, and to keep them interested in remaining in the HATC, HTB, COCA and the SNACC, it is suggested to implement a series of rotating work assignments for high-potential employees among these four organisations. This will allow employees to learn, establish personal networks and keep updated of the latest developments. COCA and SNACC have started such exchanges – this model could be broadened to include the HTB and HATC, and should target both managers and staff.

In addition, joint co-operation protocols could be negotiated among these four public-sector agencies to improve the current positive working relationship and enhance their capacities to detect and fight corruption. The first step to the co-operation protocols should be clarifying and defining the responsibilities and roles of the four agencies. For instance, HTB could continue to provide training and to deliver workshops in co-operation with the MOF and international donors.

### 4.3. Raising awareness

Several senior officials spoke to the Review Team about the importance of communicating simple messages about the need for the reform to specific audiences. They stressed the need to implement an effective and pro-active communications strategy that promotes sustainable reforms, and that clearly defines the reasons why people should change their attitudes and behaviour. For example, consultations and discussions with the Parliamentary Sub-Committee were helpful in gaining support for consideration of the draft 2007 Tender Law, and in ensuring MPs’ understanding and backing. Linkages and complementarities between the draft 2007 Tender Law and other ongoing reform programmes were also carefully explained to the Parliamentarians during these sessions.
The importance and usefulness of sharing such focused, simple messages could extend beyond national audiences. By framing its political commitment to change around its vision of a modern Yemen, the Government can seek additional commitments from development banks and donor countries to invest in physical infrastructure and human capacity. To this end, the Top 10 Reform Priorities identified in late 2009 put particular emphasis on “Improving Yemen’s Image Abroad”. Communicating on recent reforms, such as the public procurement improvements, could attract foreign investment. International businesses considering investments in mining and natural gas, for example, would be better informed about the Government’s commitment to creating a transparent and fair business environment.

Some unease and resistance within senior levels of government and the public service, and across the private sector, will likely result from a decision to announce established procedures and practices. For example, the Government anticipates some challenges to the requirement that all transactions be subject to the new Tender Law, and that competitive tendering officially becomes the norm. The role of MOF officials in the procurement planning process has also changed. While the engagement and active participation of civil society and the private sector as partners in the reform process is a critical step, the Government does not yet have a co-ordinated communication strategy in place to disseminate key messages across the public service and to these important partners.

Country example

_Egypt has identified building awareness among citizens and public servants in the fight against corruption as a priority. An important step in this direction was the creation of the Transparency and Integrity Committee, chaired by the Minister of State for Administrative Development and composed of representatives of civil society, the business community, political parties (including the opposition), the media, academia and government representatives._

_This Committee aims to study the current state of transparency, integrity, and accountability in government agencies and to propose policies and design measures to support transparency, accountability and the prevention of corruption in the public administration._

_The Committee is considering the following intervention areas to control corruption, establish trust between citizens and the government, and strengthen partnerships:_

- the possibility of establishing an Ombudsman’s Office to deal with citizens’ complaints towards the administration;
- implementing policies to mainstream anti-corruption efforts in the Public Administration Reforms by ensuring civil servants’ compliance with the existing code of conduct and improving their work conditions (salaries, social security, etc.);
- conducting a study of the framework that governs Egyptians’ values towards issues of transparency and integrity (published in 2009);
- introducing awareness-raising activities for journalists to help them deal with and analyse corruption incidents.

Remark

_It is suggested that Yemen consult with stakeholders to develop a national communications plan that identifies:_
1. a small number of key messages – the need for reform, the benefits of transparent and fair procurement, and the roles of the national stakeholders in public procurement;
2. the target audiences for these messages – ministers, MPs, key contracting ministries, governorates and local authorities, the private sector, the media and civil society; and
3. a delivery plan for the messages – for example: ministerial speeches, management presentations/open discussions with staff, and private sector/civil society workshops.

There is currently no legislation in Yemen concerning public access to information. Consistent, clear guidance on what kind of information the government would need to collect, maintain and make available is also absent. As a result, the Review Team heard about cases of public servants who did not know that they should not distribute commercially sensitive information, such details from bidders’ proposals. In some cases, public servants did not even know what “commercially sensitive information” meant and why this information should be protected.

It is not evident that all key participants in the procurement process are fully aware of the changes being implemented by the 2007 Tender Law and the 2009 Executive Regulations, and their implications on practices and procedures throughout the procurement cycle. In the absence of an overall national communication strategy, making information on the law and the regulations available on websites (such as the HATC, the HTB, SNACC and COCA sites) is useful in providing information and guidance.

Finally, the Office of the Ombudsman within SNACC, established under Anti-Corruption Law 35 of 2006, receives grievances and complaints. While SNACC considers the media a useful, direct source of information concerning complaints and challenges, the accuracy of the information received is carefully verified to ensure its credibility. SNACC also ensures legal protection and anonymity for citizens who submit complaints. SNACC might consider organising country visits and gathering information and good practice on how to improve the efficiency of its Ombudsman Office.
V. PREVENTION OF MISCONDUCT, COMPLIANCE AND MONITORING

5. Principle 5

*Put mechanisms in place to prevent risks to integrity in public procurement.*

5.1. General framework for combating corruption in Yemen

Enhancing integrity in public procurement requires a solid enabling environment and broad-spectrum national efforts to tackle corruption. The planned “General Framework for a National Anti-Corruption Strategy” includes four areas of focus:

1) Establishing and implementing an appropriate regulatory environment that would support the fight against corruption:

   • Continue to strengthen the capacity and structures of COCA audit units, including updating their executive regulations.

   • Work to develop the professional human resource capacities in key areas of the public service, such as implementing performance-based employee evaluations and in merit-based promotions, and drafting a Code of Conduct for Civil Servants.

   • Provide training on information management systems, and on financial and accounting systems.

   • Introduce electronic digital database management across government.

   • Undertake an evaluation of current practices for protecting government assets and property.

2) Developing a legal framework and reinforcing sanctions:

   • Prepare a legal assessment framework to investigate the capacity to identify areas of risk and vulnerability, and to propose appropriate sanctions that criminalise irregularities highlighted in the 2007 Tender Law.

   • Reinforce capacity building for senior public servants in the judiciary, COCA and other agencies and functions concerned with protecting public funds and preventing corruption.

   • Emphasise the importance of using accepted standards and technical specifications for procurement in order to realise social and economic benefits.

   • Develop and promote the use of control mechanisms such as audits and internal controls to fight corruption.

3) Promoting and implementing collaboration among institutions concerned with the protection of public funds, such as:
4) Publicising completed corruption cases and the resulting government or court actions as part of the General Framework’s Communication Strategy.

An OECD questionnaire was prepared and sent to interested private-sector representatives following the mission. The private sector’s written replies detailed their views of several major obstacles to combating corruption in Yemen:

- The absence of a coherent, legitimate National Plan for change and reform;
- The need for stronger, more effective public institutions to implement real reforms;
- The need to work more effectively with media agencies, which are too diverse and controlled by a small group of owners;
- The need for a public “watch dog” programme;
- The need for an anti-corruption enforcement agency in addition to the current monitoring and reporting agency, SNACC (which regularly reports to Parliament).

These issues could form an initial agenda for discussions between the government and the private sector on to both identify problems and obstacles, and also devise elements of possible solutions.

It is interesting to note that, while the Review Team recommends that the judiciary become an ally in the anti-corruption fight, several senior public servants questioned the value of assuming the judiciary would play this role. Several Yemenis believe that judges need to demonstrate greater commitment and diligence to hear corruption cases – and especially to impose sanctions against senior officials or politicians when they are proven guilty. The senior officials recommended that the judiciary sign a Code of Conduct to publicly commit to respecting and implementing the law.

5.2. Incompatibility rules, codes of conduct and public disclosure

Yemeni politicians and senior officials are expected to conform to various legal requirements. For example, the Constitution forbids holding simultaneous offices while an elected member of Parliament or
a local council. Even the President and the Prime Minister are disallowed by the Constitution to hold any other public office at the same time, or to engage in commercial or financial business while in office.31

This Constitutional obligation has been incorporated in two laws enacted in 2006 in Yemen: the Anti-Corruption Law that established the SNACC and the Financial Disclosure law.

The Anti-Corruption Law requires the Government to “Promote transparency in public posts and prevent conflict of interest between public posts and employees; after-service regulations should be made to regulate or prevent employees from having personal advantages from practicing professional private activities directly related to the posts they used to do or supervise during service”.

The enactment of the 2006 Financial Disclosure Law aims to “enhance trust in government organizations and staff through controlling and punishing illicit enrichment.” Individuals identified on a list of the highest accountable officers for public finances and procurement, including the President of the Republic, are required to submit completed disclosure statements every two years or at the request of the responsible authority, SNACC.

It is of utmost importance to ensure that SNACC has the necessary capacities to ensure full implementation of these two laws. Proper implementation and uniform application of sanctions in every case of non-compliance is the only way to prevent and manage conflict-of-interest situations in the Yemeni public service.

The SNACC is responsible for applying conflict-of-interest and financial disclosures. Its administrative section sends out disclosure forms to SNACC members, MPs, Cabinet Ministers and managers in ministries, agencies and state companies. To date, SNACC has collected a huge number of completed returns. Following the April 2009 legislative elections, additional forms were sent out to the new MPs.

The Review Team asked interviewees whether people or the technical system presented the greater corruption risk; a senior public servant replied that the key is application of the law by competent, principled employees. Operators of the procurement system must possess both professional competence and integrity – this is more important to delivering sound public procurement than good laws and regulations. In addition to technical and managerial skills that can be acquired through training, employees working in procurement are obliged to follow the Code of Conduct laid out in the 2007 Tender Law. Complying with this Code ensures that they demonstrate the highest ethical standards.

Representatives of the Yemeni private sector could consider implementing codes of conduct as well. Such codes already exist in many companies located in OECD countries. They set the criteria and rules with which employees must comply; for example, they provide guidance for situations such as offering public servants gifts or invitations to social events. Implementing such codes in Yemen could demonstrate the private sector’s determination to promote business integrity.

5.3. Standardisation and the use of new tools and technologies

The production and promotion of the HTB’s new *standard procurement manuals and Standard Bidding Documents*, approved by the Cabinet in April 2006, has commenced professional guidance and tools. In July 2009, “train-the-trainers” workshops to support the widespread, consistent implementation of these new tools were launched for 60 trainers from line ministries. Carefully vetted consultants could

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provide short-term assessments and technical assistance while training and recruitment of full-time specialists is implemented.

Senior MOF officials noted that line ministries and agencies have serious capacity problems related to procurement planning as a component of the government’s fiscal framework. The MOF produced **standardised manuals, guides and training** for staff across the government under the previous procurement law; creating standard documentation and raising awareness about the use of standard documents across the government is now the responsibility of the HTB. With the implementation of the PMIS, Standard Bidding Documents (SBDs) and government contracting practices – such as bid openings, contract award procedures, and government payment practices – will be available on the HTB website. Links to the websites of the multilateral development banks (e.g. the World Bank) will give procurement specialists and the private sector direct access to authoritative sources of harmonized documents and practices.

**Country example**

In Turkey, preparing standard tender documents figures among the duties of the Public Procurement Authority, as stated in the Public Procurement Law, Article 53. In accordance with the article, contracting entities in Turkey use standard tender documents based on the procurement type and procedure, as well as the type of contract.

Standard tender documents include administrative specifications and draft contracts with limited information to be filled in by the contracting entities, as well as “standard forms” for receiving, opening and evaluating tenders. As a whole, they greatly facilitate clarity, precision and confidentiality from the point of both contracting entities and tenderers.

**6. Principle 6**

**Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.**

Under the 2007 Tender Law, the responsibility for ensuring transparency and integrity during the contract management phase lies with contracting authorities, such as line ministries – not with the HTB. Regular and effective consultations between these authorities and the private sector are essential to strengthen transparency and improve the efficiency of the procurement process.

One of the objectives of the 2009 Executive Regulations is to encourage and support greater capacity and improved performance in the procurement marketplace by the Yemeni private sector. Yet, both private sector representatives and government officials who met with the Review Team demonstrated a mistrust of the other side. This suspicion stems from different perceptions of government actions. For example, the public and private sectors have conflicting views about the consultation process on the draft Tender Law and whether or not the private sector’s comments were considered. These two key stakeholders in public procurement in Yemen must find a way to discuss and debate issues in a respectful and open environment.
In Canada, the Minister for International Cooperation and her senior staff – including the Director General (DG) of the Contracting Management Division (CMD) of the Canadian International Development Agency (CIDA) – are invited to the annual Development Days conference of Canadian private-sector and CSO associations. The Minister is also a regular guest at meetings of Chambers of Commerce and business associations to discuss contracting practices, answer questions, and outline future business opportunities and upcoming government tenders.

The DG of CMD is Co-Chair of a CIDA/business-association working group that meets about twice a year to discuss common concerns and issues related to the government/private-sector relationship.

The Minister is invited to regularly brief the Public Accounts Committee of Parliament on government procurement in the context of the development assistance programme (for which she is accountable). The Committee also asks the Minister to respond to comments and observations by the Auditor-General of Canada on the Government’s procurement practices and the value for money obtained by the Canadian aid programme.

6.1. Regular consultations with private-sector representatives

The ministers and senior public officials with whom the Review Team met believe that the consultation process is useful and necessary for engaging civil society and the private sector in policy and operational discussions. Including other public ministries and agencies and international development partners is also important.

The private sector representatives also benefit from such consultations, and the opportunity to offer suggestions and comments to the government. For example, they raised concerns about the unequal treatment of international and national procurement tenders – contracting authorities retain 5% of the performance bond of international projects for “maintenance costs”, but 15% of the value of national projects – in this context. Furthermore, the Government increased the period of validity of these bonds from 90 days to 150 days without consulting private sector beforehand.

The enactment of the 2009 Executive Regulations provide a solution: the “amount of the performance guarantee shall be fixed at not less than 10% of the value of public works contracts, and less than 15% of the supplies and other services contracts” (Article 127). Bidders can choose to submit a bank guarantee to the HTB for the same amount.

The private sector representatives also questioned the requirement under the 2007 Tender Law that when their bids were more than 10% above the cost estimate included in the tender by the contracting authority, the tender has to be cancelled. Often the estimated costs are based on two- or three-year-old data, which is no longer accurate.

According to the Tender Law (Article 24-b), a tender may be cancelled after the tender envelopes are opened if the Head of the Agency determines that:

- the bids are associated with unacceptable reservations; or
• the tender committee determines that the lowest bid is more that 10% above the estimated market value.

As provided in the law, all bidders are notified in writing of the cancellation and the reason.

It is also interesting to note that the HTB approved many bids where the value exceeded the estimated cost by more than 20%, many of which were large rural roads projects for which there were few bidders.

The issue of the consultation process on the draft Tender Law was raised not only by representatives of the private sector – i.e. the Chamber of Commerce – but also by some public officials. The HTB believes that there are elements in both the private and the public sectors that would propose different ways to implement the 2007 Tender Law. Any major change, like a new procurement law, causes resistance and unease; therefore, explaining the new law and its executive regulations is an area of focus for the HTB’s ongoing public awareness workshops for the public and private sectors.

6.2. The contractor classification system

The Government has set up a contractor classification system which establishes categories for bidders. The system, maintained by the MOPWH, will classify contractors on the basis of past performance – including input materials used as compared to tender criteria, quality of design as compared to needs to be addressed, and execution of past projects (i.e. timeliness of delivery).

Contractors are asked to provide documentation to obtain a Classification Certificate. Responses to the OECD questionnaire confirmed that many documents are required for the classification, and some are difficult to acquire. Requested documents include: a current list of the company’s staff, information on projects completed over the past five years, a bank statement to prove financial capabilities, a copy of previous payments received for completed projects, a detailed list of company equipment (type, model, custom statements), and the Commercial Register. Moreover, private sector contractors complain they often need to pay extra amounts to keep the process for acquiring these documents moving. It appears a major downside of the overall classification process is that it takes long time to complete.

During the interviews, private-sector representatives expressed their willingness to work with the government to redefine the contractor classification system. Among their main concerns were a perceived lack of transparency in the process and non-objective classification criteria. The MOPWH provided the Review Team with a clarification and supplementary explanation of the contractor classification system. The Ministry first prepared a draft resolution to regulate the classification and

### Remark

It is suggested that Ministers (e.g. Ministers of Finance, Public Works and Highways, Local Authorities) and senior officials (e.g. the Chairman of the HATC, the Chairman of the HTB, the Chairman of COCA, and the Chairman of SNACC) consider seeking out ongoing opportunities to engage and exchange not only with the private sector and CSOs but also with parliamentarians and the media.

Critical issues for discussion and agreement should include: the respective roles of the government and the private sector in public procurement; and who should represent the private sector for official consultations on policy and operational issues.
registration process in collaboration with other involved ministries. Cabinet Resolution 419 of 2008 was aimed at contractor classification and registration regulations, while Cabinet Resolution 420 of 2008 focused on the classification and registration of engineering companies. These resolutions include annexes that define the minimum capacities required for firms to be classified. According to the Ministry, a classification certificate is issued to applicants within 14 days only if the required documents are provided. Fees associated with issuing these certificates are defined in Cabinet Resolution 283 of 2001.

The MOPWH informed the Review Team that the following stakeholders and ministries were also involved in the discussions and preparations of the draft resolutions: the Ministry of Agriculture, the Ministry of Water and the Environment, the General Water and Sanitation Corporation, the Yemeni Contractors’ Association, the Engineering Professionals’ Association and a “group of experienced engineers” under the co-ordination of the High Tender Board.

The Ministry also emphasised that any unsatisfied contractor has the right to complain to its senior management about Ministry employees who do not comply with these resolutions. To facilitate easy access to this information, the Ministry has posted this information on its website.

6.3. Blacklisting

The MOPWH is responsible for the establishment and maintenance of the Government’s blacklist of individuals and firms that are barred from bidding on government tenders because of unacceptable practices, including fraud and corruption. There are no names on the list yet, but several companies and people are being considered. The Blacklist Committee includes the HTB and representatives of the Chamber of Commerce, the Professional Contractors’ Association and several line ministries. In their written responses to the OECD questionnaire, the private sector representatives were supportive of keeping a fair and open public list.

6.4. Late payments

In many countries, late payment is a risk that generates additional costs to the private sector and even liquidity problems for small and medium enterprises. The vast majority of the questionnaire responses confirm that this is an area of concern for the private sector in Yemen. As in other countries, the MOF is responsible for harmonizing the flow of public revenues to provide contracting agencies with the resources they need for their procurements. The MOF currently advances funds to ministries to make payments against large contracts (typically in construction) every quarter. By comparison, the MOF releases funds for public service staff wages and benefits on a monthly basis. This timeframe of quarterly payments might require further consideration. It is important to note that the Executive Regulations provide for a fine on any procurement entity which is consistently late or which unreasonably delays a large payment to suppliers. The MOF has no direct funding relationship with contractors or suppliers.

Interviewees also raised concerns about the Tender Law allowing guarantees from local banks but not foreign banks, a particular problem with high-value projects. Again, the enacted Executive Regulations may bring a solution. It requires that each bid enclose a lump-sum bid bond valued at not less than 2% and not more than 3% of the estimated cost. Bank guarantees are from a licensed bank and are issued by the Central Bank. The guarantee shall be free from any conditions and valid for no less than 30 days from the tender expiry date, and shall be under the name of the bidder’s representative. Local banks confirm guarantees presented from foreign banks (Article 122).
7. Principle 7

Provide specific mechanisms to monitor public procurement, as well as to detect misconduct and apply sanctions accordingly.

It is important that managers and procurement specialists, as well as auditors, be aware of the steps of the procurement process and the potential risk areas at each stage. (For more details, please see the Procurement Process: Areas of Risks table in Annex B.)

In Yemen, the Government has two competent, independent institutions with mandates to monitor and report on misconduct and corrupt acts in procurement: COCA and SNACC. These institutions are linked to international bodies and to similar institutions in other countries with which to exchange experiences and good practice.

Legal protection of so-called whistle-blowers is guaranteed under Section Two: Community Participation of the 2006 Anti-Corruption Law. Article (27), which states: “the Authority (i.e. the SNACC) will secure legal protection for reporters and witnesses, and its constitution will define procedures for their protection”.

When SNACC receives information indirectly by mail or directly in person, it records and then investigates the incidents and charges. A completed investigation file is passed to public prosecutors. If the case is judged to be strong enough, a public suit is launched in the competent court. The identity of those who may end up being investigated is protected under the law until the court issues a final judgment. According to private sector responses to the OECD questionnaire, however, there may be serious flaws in the implementation of this law relating to the protection of “reporters or witnesses”.

During 2008, SNACC received 305 corruption complaints, of which 91 (30%) were investigated and five referred to the Attorney General Office’s for prosecution. A recent diagnostic review of the legal and regulatory framework for combating corruption in Yemen revealed that existing laws need to be further refined to make it easier to prosecute high ranking officials accused of wrongdoing. In response, in late 2008 the authorities announced plans to introduce legal changes to allow speedier prosecution of accused officials. Another sign of turnaround and increased public confidence: the SNACC announced that the number of cases received in January 2009 alone was equal to the total number of cases received in 2008.\footnote{World Bank, 
_Yemen Economic Update, Spring – 2009._}
VI. ACCOUNTABILITY AND CONTROLS

8. Principle 8

Establish a clear chain of responsibility, together with effective control mechanisms.

8.1. External audits

COCA, which reports directly to the President of the Republic, has external audit jurisdiction over all public entities including local authorities and companies for which the Government has more than 50% ownership\(^{33}\). In addition to its legal requirement to submit audit reports to Parliament, COCA also produces a newsletter and manages a website by which it shares information on its work and related laws and regulations with a wider audience. In accordance with the Finance Law, audited financial statements are submitted to Parliament within three months of receiving the final consolidated appropriations accounts from the MOF, which, in turn, are to be submitted to COCA within six months of the end of the fiscal year\(^{34}\). The audited financial statements and audit reports are submitted to the President and to Parliament. The financial statements are submitted to the Auditor General by July 31 each year.

When an external auditor prepares an audit report, the findings are discussed and agreed between the auditor and the head of the public entity. Within 30 days, COCA submits a formal letter to the head of the contracting entity outlining the findings and recommending corrective actions. The law holds the head of the contracting entity responsible for carrying out the corrective measures and allows the head 30 days to respond to the letter and to indicate acceptance of the responsibility to implement the corrective measures. When contracting entities fail to respond, COCA auditors meet with the head of the contracting entity to investigate the lack of follow-up action. If unreasonable refusal to implement persists, the President of COCA forwards a file describing the situation and a recommendation to the President of the Republic. COCA officials report that this approach has been effective in ensuring complete and timely implementation of recommended measures.

COCA submits its annual audit report by February of each year, and quarterly audit reports, to Parliament\(^{35}\). The intent is to inform the budget debate and the related questioning of public officials. The Committee for the Review of Audit Reports and Financial Accounts is made up of members of the Financial Committee, representatives of political parties, and the heads of other committees.


\(^{34}\) The fiscal year is from January 1 to December 31.

Country example

In Egypt, financial and procurement authorities have developed a common tool for financial and procurement transactions. Based on executive regulations, the written framework determines managers’ and specialists’ authority levels for financial decisions based on their position. For example, the framework indicates top values of competitive and directed contracts that can be approved by a Director General; above this level, the contract has to be approved by a Deputy Minister. This framework provides a clear, consistent level of approved authority across the organisations. The same kind of tool can be developed at the governorate and local authority levels.

Remark

It is suggested that the Ministry of Finance, in collaboration with the HTB and the Ministries of Public Works and Highways, and Local Authorities – and in collaboration with COCA and SNACC – draft and distribute useful financial management tools to financial and procurement entities. The 2009 Executive Regulations have already defined the relevant financial ceilings and thresholds for ministers and for different procurement methods.

8.2. Internal audits

In addition to external controls and audits, there is an internal audit function in all line ministries, local authorities and public companies. Internal audits are carried out by two separate organisations: the General Directorate for Internal Audit in the Ministry of Finance, and line ministry Inspectorate Directorates. In addition, there is an Inspector and Comptroller within the Finance Division of each line ministry to focus on pre-audit and compliance checks.

9. Principle 9

Handle complaints from suppliers in a fair and timely manner.

A credible, transparent complaint and challenge mechanism is a key factor in encouraging active and genuine competition among suppliers. Without this assurance, many firms would not bid on government tenders. However, for any complaints process to work as it is intended, those making complaints or challenges need to be informed about the process and how to make legitimate, evidence-based complaints. In Yemen, unsatisfied and unsuccessful bidders can seek recourse from contracting authorities, the HTB or the courts – depending on which level of authority was involved.

The 2009 Executive Regulations and the 2007 Tender Law recognise that providing bidders with timely access to credible and transparent complaint review mechanisms supports both the reality and the perception of fairness and transparency in the tendering process. In general, complaints relate to the award of a contract as a result of a tendering evaluation process, but they can also address alleged

36 ibid, p. 59.
corruption during the tendering or the contract implementation phases. The established complaint and challenge system in central ministries and agencies involves two levels of recourse: the contracting entity as the initial level of review, and the HATC as the final administrative review level under the Tender Law. In the MOPWH, contracts involving development partners or foreigners include clauses outlining this option.

The Government included a complaint-mechanism provision in both the 2007 Tender Law and the 2009 Executive Regulations. Nevertheless, both interviews with the Review Team and written responses to the OECD questionnaire indicated a high degree of scepticism regarding the fairness and openness of this system. The HTB and HATC are distributing new guides on the complaint mechanism (as part of the ongoing rollout of awareness-raising workshops) in an effort to alleviate this difference of opinion.

Bidders have recourse with the appropriate court or other authorised body (such as the Yemeni Institute of Arbitration) if they are not satisfied with the decision by the HTB or if the decision is unreasonably delayed. The competent court or body will be asked to consider the complaint and act accordingly. In the case of requests to cancel or review contract award decisions, the HATC suspends ongoing tender procedures to allow for review of the complaint. An independent team of competent assessors reviews the bid documents and re-evaluates the tenders, and sends its final report and recommendations to the HATC. If the HATC validates the complaint, the award decision is cancelled and the bids are re-evaluated. If the complaint is not supported, the HATC informs the contracting agency which sends a reply to the plaintiff – and the award decision is confirmed.

In cases of alleged corruption, the HATC alerts both COCA and SNACC, and SNACC is asked to take the lead in the investigation. The law sets out criteria that determine whether a complaint can be lodged. Both the HTB and the SNACC have ongoing programmes to raise awareness of the complaint system across the private sector. Decisions about complaints filed are currently posted on the HATC, HTB and SNACC websites.

10. Principle 10

Empower civil society organisations, the media and the wider public to scrutinise public procurement.

The Review Team believes that the government, civil society, the private sector, Parliament and the media can play specific, complementary and constructive roles in setting and managing policy for the public procurement system:

a) **Government** is responsible to citizens for an effective legal and regulatory framework, clear and effective policies, establishment and good management of public sector institutions, administration of related financial and human resources, and presenting results and showing how they were achieved. The government could provide added benefits by raising awareness of procurement issues among civil society and the private sector become, and developing the capacity to best support citizens’ interests in value for money and quality service delivery via public procurement.

b) **Civil society** is an important representative of citizens, and its active engagement could provide the government with advice and feedback regarding legislation and policies – and the operations of the public procurement marketplace. Civil society could act as a “watchdog” or public monitor of government on behalf of all citizens.
c) The private sector is a key stakeholder – as both a client of government procurement and a supplier of needed goods, services and public works. The private sector can therefore provide a special perspective and very important input to the government. The private sector could also be an active, informed advocate of transparent procurement.

d) Parliament could benefit from having full information about consultations and collaboration among government, civil society and the private sector in order to fulfil its oversight function to ensure both a sound public-sector administration and the prudent spending of public funds.

e) The media can play a key role in helping CSO and private-sector stakeholders to understand and agree on the purpose and critical issues of consultations with the government, and informing the general public in an accurate and unbiased way of results and next steps.

The SNACC has identified the need to collaborate with civil society in investigating and gathering evidence on corruption allegations, in addition to raising awareness on corruption issues. SNACC officials told the Review Team that this partnership would increase their success in investigations. To this end, SNACC has prepared an awareness-raising campaign with interested CSOs across Yemen to discuss involving civil society in the SNACC National Anti-Corruption Strategy.

SNACC has already implemented several effective consultations with civil society:

- There have been five meetings with local leaders to introduce SNACC and to explore their views on the role of civil society in combating corruption;
- SNACC is a member of the Transparency International Council and is active in discussions concerning the extractive industry; and
- SNACC has started its own CSO liaison committee as a means of encouraging civil society to become more active and effective in the fight against corruption.

Furthermore, SNACC underlined the importance of strengthening the capacity of NGOs and the private sector to contribute to fighting corruption in Yemen. SNACC actively supports the local Transparency International Council and is active in anti-corruption activities in the extractive industries sector. In SNACC’s view, most CSOs are not as active and effective as they could be and need increased capacity become the most effective anti-corruption partners.

**Remark**

_Lebanon has established a National Network for the Right of Access to Information and Whistleblower Protection composed of public servants from national-level ministries, parliamentarians, representatives of CSOs and the American Bar Association. The network helped draft laws addressing access to information and whistleblower protection._

_It is suggested that the Yemeni Government support the formation of a similar non-governmental forum of public servants/elected officials/civil society representatives that could address broad issues of transparency and public governance, including access to information and compliance with laws and regulations._
VII. PROPOSALS FOR ACTION

Proposal N° 1: Strengthen the capacity of the key national oversight institutions.

Define and implement a procurement capacity strengthening strategy that focuses on key Yemeni institutions at the national level, particularly the High Authority for Tender Control (HATC), the High Tender Board (HTB), the Central Organisation for Control and Auditing (COCA) and the Supreme National Authority for Combating Corruption (SNACC).

A country’s ability to plan and manage reforms to its public administration is an essential element of country-owned development and sovereignty. The procurement function of national and sub-national governments converts financial resources into the services, works and goods that deliver development results such as modernised infrastructure and improved education and health.

1.1. Focus on central institutions

It is recommended that the Government focus capacity-building resources on the central oversight bodies relating to public procurement – the HATC, the HTB, SNACC and COCA – and on key central ministries, such as the MOF and the MOPWH. These central oversight and procurement entities will then be better prepared to carry out their mandates, including monitoring procurement operations and training involved staff in other ministries and sub-national entities at the governorate and local levels. For example, the HTB has been working on capacity building and training with large ministries since 2007. In 2008, this work was expanded to target 250 trainees in smaller agencies and amongst governorate staff. These efforts should be pursued and further expanded.

1.2. Carry out periodic assessments to measure improvements

Assessing the quality and the performance of procurement systems is essential in identifying areas where adjustments or further measures are needed. For example, the OECD/DAC Task Force on Procurement developed an evaluation methodology which the HTB used in 2007 to benchmark the capacity and quality of Yemen’s public procurement system against international standards.

Conducting assessments periodically, after the implementation of capacity building support, would help the Government of Yemen to monitor progress in its procurement reforms. These assessments should be planned and implemented in close co-operation with other governmental stakeholders such as MOPIC, MOPWH and MOF, with the involvement of CSOs, the media, Parliament, the private sector and international donors.

1.3. Ensure, in particular, the effectiveness of the High Authority for Tender Control

The role and functions of the HATC are articulated in the 2007 Tender Law and the 2009 Executive Regulations. Since its establishment in 2009, the HATC has been responsible for public procurement policy and serves as the final public administrative authority for complaints. The HATC is the key public service actor in initiating and implementing change and earning the government the trust and confidence of Yemen’s citizens.
Of the four priority institutions for which focused capacity strengthening is recommended, the HATC is the most critical from the perspectives of leadership and of communicating directly with citizens about procurement reform and the need to fight corruption. The HATC must be capable of assuring the key link to other initiatives and reforms across the public sector – especially at the political and sub-national government levels in the rural areas of Yemen, where the Government is working to improve the delivery of both services and infrastructure, and build confidence in the central government.

Proposal N° 2 Increase transparency and accessibility to decisions about public procurement.

Improve access to relevant, reliable information as a means to support the development of an open, modern public administration.

An open government allows the private sector, CSOs and society at large to obtain relevant, easy-to-understand information. These stakeholders can also readily access services and conduct transactions with the government. Similarly, they can take part in the government decision-making process by providing informed opinions and suggestions concerning public policy. Access to information is a basic pre-condition for high-quality, inclusive public policy making and informed public scrutiny.

2.1. Law on Access to Information

The eventual implementation of the Access to Information Law and the further development of the HTB’s PMIS represent important steps towards strengthened access to information in Yemen. However, these actions alone will not be sufficient. The quality of the procurement information provided for suppliers and citizens is critical – unreliable or incorrect information fosters suspicion and lack of trust. The data management and statistical capacity of the procurement function were identified as areas of weakness in procurement assessment, and strengthening these areas would be addressed in the procurement capacity development plan (mentioned under Proposal 1). CSOs, the media and parliamentarians in other countries such as Lebanon have been effective advocates and policy collaborators in advancing access-to-information legislation and holding the government accountable for delivering goods and services through procurement. The media should also be encouraged to support the sharing of information with the general public and to facilitate public debate.

2.2. Archives, indexes and registers

Both specialised researchers and ordinary citizens require indexes and registers to identify and retrieve the information they need, grouped and organised in formats that are easy to understand and logical. Access to annual reports on the websites of oversight bodies such as COCA and HTB, performance and compliance data from large procurement entities like the MOPWH, and proceedings of the Public Accounts Committee of Parliament are important tools for examining past government actions.

Publishing plans and strategies, legislative timetables, forthcoming projects and upcoming public tenders and planned public consultations on websites and other accessible locations provides stakeholders with the means to prepare for and effectively participate in government policy making. Launching and regularly publishing a bulletin of public procurement awards could present information on advertisements and tender notices to interested contractors in a structured manner. Likewise, it would be beneficial to continuously support the development of the PMIS as a valuable information tool for monitoring, control and reporting.
2.3. Means of improving transparency

Distributing information on the Internet or websites is not the only way to increase access. Making greater use of existing means of communications – radio, newspapers, television, posters and especially community meetings led by trusted village community representatives – might have a great impact on improving transparency.

Especially in rural areas, the four central institutions – HATC, HTB, COCA and SNACC – will need to find innovative ways to reach citizens, for example by successfully explaining to local community representatives what the government is doing and why it is necessary, and by providing key messages to local elders and leaders to pass on to their communities. Approaching communities (including those in rural areas) with a small number of key messages – including the need for reforms, the benefits of transparent and fair procurement, and the roles of different stakeholders in procurement – should be a key aspect of the national communications plan recommended under section 4.3 of this report.

Including local communities in monitoring public procurement through a community-based contracting methodology can enhance integrity in public procurement at the local level. Thus, the Government’s awareness-raising campaign on procurement reform should also target local communities.

Proposal N° 3: Build a mutually beneficial partnership between Government and the private sector.

Invite representatives of the private sector to discuss with Government the establishment of a national partnership forum as a means to: (i) strengthen public-sector policy making and management of public procurement; and (ii) improve the competitiveness and capacity of the private sector.

The experience of OECD countries shows that well-performing public institutions regularly engage with stakeholders. They discuss and agree on mutually acceptable objectives, and each side agrees to keep the other informed on the implementation of these goals. In Yemen, the private sector and the Government actually have complementary interests and perspectives concerning the implementation of the 2007 Tender Law and the 2009 Executive Regulations.

3.1. Build on joint interests

An open and transparent environment in which competitive tendering, professional and unbiased evaluation of tenders and collaborative, transparent implementation of contracts are the rule and not the exception will benefit both the public and private sectors. The Government is accountable to citizens for public procurement policies and management, while private businesses are responsible to shareholders for winning bids and earning profits. Taxpayers benefit when the Government manages their money in a professional, fair way to promote the public interest and when private-sector bids are competitive and contracts are implemented in a transparent, cost-effective manner.

3.2. Organise regular consultations

Organising regular consultations on the public procurement system would be beneficial to improve the effectiveness of the system and build trust by filling the information gaps between the public and private sectors. The Government could be represented by a senior expert, and the private sector could be represented by an association such as the Contractors’ Association, along with other groups such as the Chamber of Commerce.
These consultations could concentrate on: seeking comments and suggestions about new draft legislation and regulations, or new policies the Government is considering; discussing common concerns such as the means to provide information on tenders, stimulate competition and improve transparency in the awarding and management of contracts; etc.

Such a forum could improve trust and communications between public and private partners. It would help the Government to ensure a transparent, reliable public procurement system. The private sector would benefit as a supplier and a customer of the procurement system, seeking fair competition to win business. Finally, citizens would see increased value-for-money for public funds, and receive the best possible services and works.

Proposal N° 4: Link procurement planning to the national budget and Public Investment Program (PIP) processes.

Develop and establish, with stakeholders, a common public-sector approach to budgeting and procurement planning that supports national development and public investment objectives.

In order to sustain and achieve national development objectives, procurement plans at all levels must be specifically identified and managed as a legitimate component of the PIP. For example, OECD countries follow a whole-of-government approach to planning, financing and implementing public investments to facilitate and guide Government efforts to rationalise funding and harmonize objectives and priorities across ministries and agencies.

4.1. Collaboratively build a common approach and a framework for budget and planned expenditures

In many countries, the Minister of Finance distributes an annual guidance note to Ministers with responsibilities for spending and delivering results under an investment programme. The note outlines the common administrative implementation process, financing parameters, and specific objectives for the investment programme. A committee composed of senior government officials is organised under the chairmanship of the Minister of Finance to co-ordinate planning and implementation.

In order to establish a logical, transparent link between expenditures and procurement results – from the Public Investment Program (PIP) down to the level of contracting entities – the Government should consider establishing a national multi-year budget and an estimate of planned expenditures based on the needs of the PIP. Each ministry and contracting entity would be required to use this financial plan as a basis for their own budget targets and in support of their procurement plans. Such a national exercise focused on budget needs and involving ministries and agencies at all levels requires leadership by a high-level official from the Ministry of Finance and should include senior finance and procurement officials from the national, governorate and local levels.

A forum for CSOs and the private sector, chaired by the Minister of Finance, could provide a good opportunity to gain feedback on the draft results of public-sector planning discussions. Sub-group discussions of specific themes or issues would allow CSOs and the private sector to share their views and make recommendations on the draft framework. The Government could also consult such a group to provide input on monitoring and implementation.

4.2. Build an effective working relationship between public finance and procurement officials
Although procurement and public financial-management processes are linked, they are often treated as separate functions, reporting to different managers and using separate authorities. The MOF has a key role in national procurement: ensuring financial control and protecting fixed and current public assets. Officials responsible for budgeting, allocating, procuring and spending should maintain close professional relationships to facilitate understanding, and to speed up both planning and delivery of results. Building and maintaining these relationships is a recognised good practice in OECD countries.

Both public financial management and procurement bodies need a better understanding of the other’s work processes and required competencies, and a practical appreciation of how specialists and managers in both fields can co-operate to help achieve the Government’s policy objectives. This improved relationship will ensure a whole-of-government approach across agencies, and facilitate better use of public funds and improved accountability of the Government to its citizens. Senior managers from each function could attend staff meetings to explain the respective roles, processes and practices, highlighting useful areas of collaboration.
ANNEX A

Recommendation of the OECD on Enhancing Integrity in Public Procurement
Adopted by the Council of the OECD in October 2008

THE COUNCIL,

Having regard to articles 1, 2a), 3 and 5b) of the Convention on the Organisation for Economic Cooperation and Development of 14 December 1960;


Noting that legislation in a number of Member countries also reflects other international legal instruments on public procurement and anti-corruption developed within the framework of the United Nations, the World Trade Organisation or the European Union;

Recognizing that public procurement is a key economic activity of governments that is particularly vulnerable to mismanagement, fraud and corruption;

Recognizing that efforts to enhance good governance and integrity in public procurement contribute to an efficient and effective management of public resources and therefore of tax payer’s money;

Noting that international efforts to support public procurement reforms have in the past mainly focused on the promotion of competitive tendering with a view to ensuring a level playing field in the selection of suppliers;

Recognizing that Member countries share a common interest in preventing risks to integrity throughout the entire public procurement cycle, starting from needs assessment until contract management and payment;

On the proposal of the Public Governance Committee:

I. RECOMMENDS:

(1) That Member countries take appropriate steps to develop and implement an adequate policy framework for enhancing integrity throughout the entire public procurement cycle, from needs assessment to contract management and payment;

(2) That, in developing policies for enhancing integrity in public procurement, Member countries take into account the Principles which are contained in the Annex to this Recommendation of which it forms an integral part;
(3) That Member countries also disseminate the Principles to the private sector, which plays a key role in the delivery of goods and services for the public service.

II. INVITES the Secretary General to disseminate the Principles to non-Member economies and to encourage them to take the Principles into account in the promotion of public governance, aid effectiveness, the fight against international bribery and competition.

III. INSTRUCTS the Public Governance Committee to report to the Council on progress made in implementing this Recommendation within three years of its adoption and regularly thereafter, in consultation with other relevant Committees.

Annex to the OECD Recommendation:
Principles for Enhancing Integrity in Public Procurement

I. Objective and scope

1. The Recommendation provides policy makers with Principles for enhancing integrity throughout the entire public procurement cycle, taking into account international laws, as well as national laws and organizational structures of Member countries.
2. The Recommendation is primarily directed at policy makers in governments at the national level but also offers general guidance for sub-national government and state-owned enterprises.

II. Definitions

Public procurement cycle

3. In the context of the present Recommendation, the public procurement cycle is defined as a sequence of related activities, from needs assessment, to the award stage, up until the contract management and final payment.

Integrity

4. The Recommendation aims to address a variety of risks to integrity in the public procurement cycle. Integrity can be defined as the use of funds, resources, assets, and authority, according to the intended official purposes and in line with public interest. A ‘negative’ approach to define integrity is also useful to determine an effective strategy for preventing ‘integrity violations’ in the field of public procurement. Integrity violations include:

- Corruption including bribery, ‘kickbacks’, nepotism, cronyism and clientelism;
- Fraud and theft of resources, for example through product substitution in the delivery which results in lower quality materials;
- Conflict of interest in the public service and in post-public employment;
- Collusion;
- Abuse and manipulation of information;
Discriminatory treatment in the public procurement process; and

The waste and abuse of organizational resources.

III. Principles

5. The following ten Principles are based on applying good governance elements to enhance integrity in public procurement. These include elements of transparency, good management, prevention of misconduct, as well as accountability and control. An important aspect of integrity in public procurement is an overarching obligation to treat potential suppliers and contractors on an equitable basis.

A. Transparency

Principle 1: Provide an adequate degree of transparency in the entire public procurement cycle in order to promote fair and equitable treatment for potential suppliers.

Governments should provide potential suppliers and contractors with clear and consistent information so that the public procurement process is well understood and applied as equitably as possible. Governments should promote transparency for potential suppliers and other relevant stakeholders, such as oversight institutions, not only regarding the formation of contracts but in the entire public procurement cycle.

Governments should adapt the degree of transparency according to the recipient of information and the stage of the cycle. In particular, governments should protect confidential information to ensure a level playing field for potential suppliers and avoid collusion. They should also ensure that public procurement rules require a degree of transparency that enhances corruption control while not creating red tape to ensure the effectiveness of the system.

Principle 2: Maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.

To ensure sound competitive processes, governments should provide clear rules, and possibly guidance, on the choice of the procurement method and on exceptions to competitive tendering. Although the procurement method could be adapted to the type of procurement concerned, governments should, in all cases, maximise transparency in competitive tendering.

Governments should consider setting up procedures to mitigate possible risks to integrity through enhanced transparency, guidance and control, in particular for exceptions to competitive tendering such as extreme urgency or national security.

B. Good management

Principle 3: Ensure that public funds are used in public procurement according to the purposes intended.

Procurement planning and related expenditures are key to reflecting a long-term and strategic view of government needs. Governments should link public procurement with public financial management systems to foster transparency and accountability as well as improve value for money. Oversight institutions such as internal control and internal audit bodies, supreme audit institutions or...
parliamentary committees should monitor the management of public funds to verify that needs are adequately estimated and public funds are used according to the purposes intended.

**Principle 4: Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.**

Recognising officials who work in the area of public procurement as a profession is critical to enhancing resistance to mismanagement, waste and corruption. Governments should invest in public procurement accordingly and provide adequate incentives to attract highly qualified officials. They should also update officials’ knowledge and skills on a regular basis to reflect regulatory, management and technological evolutions. Public officials should be aware of integrity standards and able to identify potential conflict between their private interests and public duties that could influence public decision-making.

**C. Prevention of misconduct, compliance and monitoring**

**Principle 5: Put mechanisms in place to prevent risks to integrity in public procurement.**

Governments should provide institutional or procedural frameworks that help protect officials in public procurement against undue influence from politicians or higher-level officials. Governments should ensure that the selection and appointment of officials involved in public procurement are based on values and principles, in particular integrity and merit. In addition, they should identify risks to integrity for job positions, activities, or projects that are potentially vulnerable. Governments should prevent these risks through preventative mechanisms that foster a culture of integrity in the public service such as integrity training, asset declarations, as well as the disclosure and management of conflict of interest.

**Principle 6: Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.**

Governments should set clear integrity standards and ensure compliance in the entire procurement cycle, particularly in contract management. Governments should record feedback on experience with individual suppliers to help public officials in making decisions in the future. Potential suppliers should also be encouraged to take voluntary steps to reinforce integrity in their relationship with the government. Governments should maintain a dialogue with suppliers’ organisations to keep up-to-date with market evolutions, reduce information asymmetry and improve value for money, in particular for high-value procurements.

**Principle 7: Provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly.**

Governments should set up mechanisms to track decisions and enable the identification of irregularities and potential corruption in public procurement. Officials in charge of control should be aware of the techniques and actors involved in corruption to facilitate the detection of misconduct in public procurement. In order to facilitate this, governments should also consider establishing procedures for reporting misconduct and for protecting officials from reprisal. Governments should not only define sanctions by law but also provide the means for them to be applied in case of breach in an effective, proportional and timely manner.

**D. Accountability and control**
Principle 8: Establish a clear chain of responsibility together with effective control mechanisms.

Governments should establish a clear chain of responsibility by defining the authority for approval, based on an appropriate segregation of duties, as well as the obligations for internal reporting. In addition, the regularity and thoroughness of controls should be proportionate to the risks involved. Internal and external controls should complement each other and be carefully co-ordinated to avoid gaps or loopholes and ensure that the information produced by controls is as complete and useful as possible.

Principle 9: Handle complaints from potential suppliers in a fair and timely manner.

Governments should ensure that potential suppliers have effective and timely access to review systems of procurement decisions and that these complaints are promptly resolved. To ensure an impartial review, a body with enforcement capacity that is independent of the respective contracting entities should rule on procurement decisions and provide adequate remedies. Governments should also consider establishing alternative dispute settlement mechanisms to reduce the time for solving complaints. Governments should analyse the use of review systems to identify patterns where individual firms could be using reviews to unduly interrupt or influence tenders. This analysis of review systems should also help identify opportunities for management improvement in key areas of public procurement.

Principle 10: Empower civil society organizations, media and the wider public to scrutinize public procurement.

Governments should disclose public information on the key terms of major contracts to civil society organisations, media and the wider public. The reports of oversight institutions should also be made widely available to enhance and support public scrutiny. To complement these traditional accountability mechanisms, governments should consider involving representatives from civil society organisations and the wider public in monitoring high-value or complex procurements that entail significant risks of mismanagement and corruption.

Further reading:
OECD Principles for Integrity in Public Procurement, OECD, 2009
Enhancing Integrity in Public Procurement: A Toolbox, OECD, 2010
Enhancing Integrity in Public Procurement – OECD Joint Learning Study on Morocco, 2008


ANNEX B

The Procurement Process: Areas of Risk

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<tr>
<th>Procurement Stage</th>
<th>Good practice</th>
<th>Risks</th>
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<tr>
<td>1. Identifying the need</td>
<td>Any procurement should start with an identified need. Unless a need has been clearly stated and the desired outcomes clearly defined, the whole procurement process will likely fail. Although potential suppliers might be consulted when formulating a need, they should not be relied upon to define the need or unduly influence it. Only end users can define the need, not third-party suppliers. End users should identify and define their needs, without unnecessary or overly detailed specification. When defining the need, it is important to be clear about required outcomes.</td>
<td>If a need is not clearly defined, or does not accurately reflect requirements, goods will be inappropriately procured, resulting in lost value or services or works that are not fit for their intended purposes, or simply represent an attempt to provide an advantage to a particular company.</td>
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<tr>
<td>2. Writing the specification</td>
<td>Once a need has been clearly identified, specifications can be developed. Clear, concrete specifications, against which all potential suppliers have an equal opportunity to tender, are essential for transparent and best-value procurement. Even when a single supplier is asked to make a proposal, clear, concrete specifications help to ensure that the latter stages of the procurement process (particularly contract management) can be undertaken in an efficient and transparent manner. The specifications should always build on the needs identified in the previous stage and the specific results or outputs required from a supplier. Specifications should be written so that all eligible suppliers can make an acceptable proposal. All potential suppliers should be invited to propose solutions to reach the specification outputs/outcomes. The specification attached to the final contract may remain in output terms or may be more detailed, based on the successful supplier’s tender.</td>
<td>Higher-than-necessary “quality” levels, or unnecessarily rigorous delivery time limits, will increase costs. Appropriate quality levels and delivery schedules should be used for all specifications. Poorly worded, vague specifications will not achieve the required goals; over-specific specifications can exclude some eligible suppliers and favour others.</td>
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<tr>
<td>3. Running a procurement competition</td>
<td>The competition stage is crucial to transparent and effective procurement processes. This stage may involve single sourcing, local competition or full international competition. However, the indiscriminate use of full competitions, irrespective of the value of the contract or the number of available suppliers, can add unnecessary costs to the</td>
<td>A lack of documented rigor and transparency during this stage can lead to opportunities for bribery and corruption, or to collusion of bidders and suppliers to distort the</td>
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procurement process and decrease value. The appropriate level of competition for the particular requirement should be selected. The total cost of acquiring goods, services or works includes expenses relating to advertising and managing competitions. Applying good practices will help to ensure efficiency and transparency in running procurement competitions. Thresholds above and below which competitions will be held, and details of how competitions will be run, should always be published in accessible places. All potential suppliers should be given equal access to information and the same time limits in which to respond. The basis for selection, the evaluation criteria, should be included in the invitation to tender. The evaluation criteria may be based on the least expensive proposal (i.e. price) or on the economically most advantageous (i.e. overall best value). All tenders should be requested by a certain time and date. No tenders should be open before the stated time. Tenders should be opened by at least two people, one of who should not be part of the evaluation team. Key elements of each tender (especially price) should be recorded and verified by the individuals opening the tender. Before and after opening, all tenders should be stored securely. An open dialogue with all potential suppliers should be maintained. This helps ensure compliant tenders yielding the best outcomes for the Government.

4. Assessment of proposals

The assessment and evaluation of tenders should always be based on the evaluation criteria stated in the invitation to tender. Even where single sourcing has been used, it is still important to evaluate the supplier, recording the advantages and any disadvantages they offer. More than one person should undertake the evaluation. The exact number will depend on the complexity of what is being procured. Each member of the evaluation team should individually evaluate the tenders against the evaluation criteria. The evaluation team should then collectively discuss their evaluations and agree to a joint evaluation. The results market.
and key rationale behind the evaluation should be clearly recorded. Each of the evaluation criteria should be assessed independently of the others. For example, if a tender quotes the lowest price, it should be credited with the highest marks on this criterion. Any deficiencies in other parts of the tender should be reflected against the relevant evaluation criteria, not on price. It is unlikely that any proposal will merit top marks in all evaluation categories.

*When calculating overall costs, keep in mind that the purchase price of an acquisition is only one part of the total cost. Other costs to be considered are:*

--The cost of the procurement process;
--The cost of “maintaining” the acquisition (for example, servicing goods or supporting a service);
--Replacing the acquisition (for example, upgrading a good to a newer model, replacing an inefficient service or works provider, or implementing a “design” provided by a service or works provider);
--Disposing of the acquisition (for example, removal and disposal of some goods in an appropriate environmental manner will generate a cost).
--The total of these costs equals the total cost of acquisition, which should be taken into account when measuring best value.

| 5. Clarification | The complexity of this stage is related to the value and importance of what is being procured. Clarification adds value to suppliers' proposals by removing ambiguities. Clarification should be used to ensure a clear understanding of suppliers’ proposals to facilitate effective delivery of the contract. |

| 6. Awarding the contract | Following the final evaluation of tenders, the supplier who is best able to fulfil the requirement is selected. Transparency is maintained by:

--Advising all tendering suppliers and publicly announcing the contract award.
--Offering unsuccessful suppliers the opportunity to be briefed on why their tender was unsuccessful.
--Where single sourcing is used, ensuring that records show why it was used and why the particular supplier was selected.
--Recording all terms agreed during the competition in the contract. The specification attached to the contract should reflect the successful supplier’s solution. |

If contract awards are not based on the evaluation criteria stated in tender documents, or the evaluation of bids is overly subjective or leaves room for manipulation and biased assessments, contracts may be improperly awarded, bribery and corruption may occur, and the award may be subject to challenge.
| 7. Contract management | Proactive and effective contract management by the end user is essential to achieve best value (particularly in services and works contracts). Maintaining an open dialogue with the contractor is key to effective contract management and ensures successful delivery against specifications. While the contract will specify the roles and responsibilities of both the supplier and the client, successful contract management requires flexibility and understanding rather than rigid adherence to contractual clauses. Often, additional value can be obtained by building a sound commercial relationship with a supplier. Suppliers should also ensure that they fulfil their own sub-contractual obligations to their suppliers. Contract managers should, however, still be aware of the avenues open to them if a supplier breaches the contractual agreement. While breaches can often be resolved through a negotiated settlement, contract managers and contractors should be aware of available administrative and legal mechanisms (conflict resolution techniques, formal complaint mechanisms, arbitration, and the courts) to conclude a breach. All aspects of contract management should be documented in a protected file. The contract ends after the final contract audit and once all contractor claims and amounts owed have been settled. |
| 7. Evaluation | Finally, once the goods, services or works have been delivered, it is important to review the whole procurement process – not just the supplier performance, but also the effectiveness of the earlier stages. This review process can provide information for future procurements – developing and specifying needs, supplier selection and contract management. Without evaluation of the procurement process and the supplies procured, improvements to both the process and the supplies cannot be systematically achieved. |
### ANNEX C

#### GLOSSARY

<table>
<thead>
<tr>
<th>Term</th>
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<tr>
<td>Accountability</td>
<td>The obligation to report, explain, or justify something.</td>
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<tr>
<td>Civil society</td>
<td>Individuals and organisations in a society which are independent of the government, including non-governmental organisations (NGOs), labour unions, academic associations, professional clubs, environmental protection NGOs, taxpayer associations and special interest groups (e.g. senior citizens).</td>
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<tr>
<td>Directed tendering</td>
<td>The procurement entity contacts a specific supplier to provide a good or service, without competition.</td>
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<td>Open tender</td>
<td>Bidding process that is open to all interested and eligible suppliers.</td>
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<td>Public procurement cycle</td>
<td>The process by which government departments or agencies obtain goods or services from the private sector, including a sequence of related activities from needs identification to final audit and closeout of the contract.</td>
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<td>Restricted tendering</td>
<td>A limited number of suppliers are invited by the procurement entity to tender.</td>
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<tr>
<td>Risk-based approach</td>
<td>Identifying potential weaknesses that, individually or together, could impact the integrity of the procurement process, and implementing mitigating actions and controls to counter them.</td>
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<td>Stakeholders</td>
<td>Persons, groups or organisations that have an interest and a role to play in a process (e.g. public procurement stakeholders include government ministries and bodies at the national and sub-national levels, the private sector, CSOs, the media, parliamentarians and international donors).</td>
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<tr>
<td>Transparency</td>
<td>The relative ease in accessing information on a government’s legal, administrative and operations contexts. In the case of procurement: the specific means and processes by which procurements are defined, awarded and managed.</td>
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The Social Development Fund — a Case Study of Results at the Local Level

At the suggestion of the Deputy Prime Minister, the Review Team visited the offices of the Social Fund for Development (SFD), as an example of a Center of Excellence for public engagement in the fight against corruption and public procurement. Established in 1997, the SFD is funded by the MOF and international development partners to provide service in three areas:

1) Community Development to increase local access to basic social and economic infrastructure;
2) Capacity Development to build the capacity of communities, local contractors and government agencies;
3) Small and Micro-enterprise Development to provide micro-finance services to provide financial and other support to small entrepreneurs.

The SFD is currently implementing its work programme for 2004-2010 with committed funding of USD 960 million for 7700 projects. The SFD reports to Parliament via the MOF as part of the national budget process. COCA audits the SFD in accordance with the 2007 Tender Law. The SFD operates at the local level up through the district level, the lowest level of intervention of the MOPWH. The SFD’s approach to community-based contracting uses on-the-job-training to promote the principles of sound contracting: transparency, cost efficiency and fairness.

The SFD specifically emphasises fighting corruption and stopping its corrosive effects on development – which local communities experience on a daily basis: fewer available funds, services and works that are not suitable for a rural context or are of sub-standard quality, etc. Its training is geared towards local contracts committees and small local contractors. Local officials publicly post tenders, implemented by communities through the community contracting mechanism, on public buildings such as mosques to promote transparency and accountability to the community. It has been observed that women in communities often volunteer to monitor implementation of contracts and, according to SFD officials, perform well in this function.

The SFD provides communities with technical advice in preparing tenders and in monitoring results. These trained and engaged communities provide a ready social infrastructure to complement the implementation of larger MOPWH projects.

Sources:
http://www.sfd-yemen.org/
ANNEX E

Guiding Principles for Open and Inclusive Policy Making

OECD countries recognise that open and inclusive policy making increases government accountability, broadens citizens’ influence on decisions and builds civic capacity. At the same time, it improves the evidence base for policy making, reduces implementation costs and taps wider networks for innovation in policy making and service delivery.

These Guiding Principles are designed to help governments strengthen open and inclusive policy making as a means to improving their policy performance and service delivery.

1. Commitment: Leadership and strong commitment to open and inclusive policy making is needed at all levels – politicians, senior managers and public officials.

2. Rights: Citizens’ rights to information, consultation and public participation in policy making and service delivery must be firmly grounded in law or policy. Government obligations to respond to citizens must be clearly stated. Independent oversight arrangements are essential to enforcing these rights.

3. Clarity: Objectives for, and limits to, information, consultation and public participation should be well defined from the outset. The roles and responsibilities of all parties must be clear. Government information should be complete, objective, reliable, relevant, easy to find and understand.

4. Time: Public engagement should be undertaken as early in the policy process as possible to allow a greater range of solutions and to raise the chances of successful implementation. Adequate time must be available for consultation and participation to be effective.

5. Inclusion: All citizens should have equal opportunities and multiple channels to access information, be consulted and participate. Every reasonable effort should be made to engage with as wide a variety of people as possible.

6. Resources: Adequate financial, human and technical resources are needed for effective public information, consultation and participation. Government officials must have access to appropriate skills, guidance and training as well as an organisational culture that supports both traditional and online tools.

7. Co-ordination: Initiatives to inform, consult and engage civil society should be coordinated within and across levels of government to ensure policy coherence, avoid duplication and reduce the risk of “consultation fatigue.” Co-ordination efforts should not stifle initiative and innovation but should leverage the power of knowledge networks and communities of practice within and beyond government.

8. Accountability: Governments have an obligation to inform participants how they use inputs received through public consultation and participation. Measures to ensure that the policy-making process is open, transparent and amenable to external scrutiny can help increase accountability
of, and trust in, government.

9. Evaluation: Governments need to evaluate their own performance. To do so effectively will require efforts to build the demand, capacity, culture and tools for evaluating public participation.

10. Active citizenship: Societies benefit from dynamic civil society, and governments can facilitate access to information, encourage participation, raise awareness, strengthen citizens’ civic education and skills, as well as to support capacity-building among civil society organisations. Governments need to explore new roles to effectively support autonomous problem-solving by citizens, CSOs and businesses.

Source: OECD Studies on Public Engagement, Focus on Citizens: Public Management for Better Policy and Services, 2009

Further reading:
Citizens as Partners: Information, Consultation and Public Participation in Policy-making, OECD, 2001
Engaging Citizens in policy-making, OECD, 2001
Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-making, OECD, 2001
ANNEX F

The Yemeni National Reform Agenda

The NRA sets specific objectives to be monitored, implemented and followed up within a fixed time frame:
1. Catalyse economic growth to achieve higher, more sustainable growth rates and to contribute to combating unemployment and reducing poverty.
2. Improve efficiency and effectiveness of government administrative bodies; enhance transparency and accountability at the level of both central and local authorities.
3. Broaden opportunities for political, economic and social participation by civil society organisations, including enhancing the role of local authorities in rural development.
4. Expand development co-operation with international development partners.

1. **Judicial reforms** focused on expanding the autonomy of judicial authority and improving the commercial court system.

2. **Economic, financial and business-enabling environment reforms** focused on PFM, investment and trade reforms, land registration, ODA reforms and Yemen’s regional integration, EITI implementation.

3. **Anti-corruption activities** focused on implementation of anti-corruption legislation, public procurement law, public disclosure law, development of a national anti-corruption strategy, and ICD of SNACC, COCA, etc.

4. **Civil service reforms** focused on re-defining the roles and functions of the state, completion of biometric identity system, and implementation of wage strategy and “State and Institutional Building”.

5. **Political reforms and democratic development** focused on electoral reforms, national parliamentary elections, decentralisation, human rights, women’s empowerment and media and press freedom.

5 KEY THEMES OF NATIONAL REFORMS

2nd Generation 2008-2010 (30 months)
Top 10 Reform Priorities
as presented by the Prime Minister of Yemen in January 2010

Comprehensive Program to Attract Talent into Civil Service “Top 100”
Urgent Political Solutions to allow Yemeni Labor into Gulf Cooperation Council Countries
Implementing First Phase of Lifting of Subsidies without Raising Prices
Fast Track Initiative for Oil Exploration
Urgent Solutions to Land Problems
Re-Involving Presidential Apparatus in Reform Process
A “Positive” Action Plan for Aden
Enforcing Government Authority and Rule of Law
Urgent Solutions to Water Issues
Improving Yemen’s Image Abroad
**ANNEX G**

Public procurement as a percentage of GDP in select OECD countries (2006)

*Source: Government at a Glance OECD, 2009*