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**TRANSPARENCY IN GOVERNMENT PROCUREMENT: THE BENEFITS OF EFFICIENT
GOVERNANCE AND ORIENTATIONS FOR ACHIEVING IT**

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TRANSPARENCY IN GOVERNMENT PROCUREMENT: THE BENEFITS OF EFFICIENT GOVERNANCE AND ORIENTATIONS FOR ACHIEVING IT

Executive Summary

This paper presents an analysis of the benefits of transparency in government procurement and of policy orientations for achieving them in practice, based on a review of economic studies addressing the issue and on a survey of relevant approaches adopted by selected OECD countries. It thus aims to deepen understanding of efficient governance approaches to transparency in government procurement.

Part I of the document highlights the benefits that can accrue to nations through the adoption of more transparent and efficient procurement procedures, while recognising the costs of establishing them. The analysis also includes a description of some of the costs involved in not having such procedures in place.

Transparent procurement procedures can contribute to a more efficient allocation of resources through increased competition, higher quality procurement and budgetary savings for governments and thus for taxpayers. They can also help attract more investment by lowering risk. Objective and transparent procedures can in addition help enhance the efficiency of local suppliers as they compete for public contracts, thereby improving trade prospects by making these suppliers more competitive exporters. Other benefits can be achieved through adoption of a common approach agreed multilaterally in this area, including further enhanced competition through reduced suppliers' cost for access to the relevant information. Finally, transparent procurement procedures can help limit bribery and corruption, which are particularly rampant in the procurement field.

E-procurement provides a good example of the benefits that accompany improvements in transparency and procedural efficiency. Procurement becomes more transparent, more open to dialogue with suppliers and more efficient than any present system. More specifically e-procurement can lead to substantial cost and administrative savings, wider market access, and enhanced accountability. At the same time, developing and implementing e-procurement systems can also entail some costs. For this reason, particular attention should be paid through capacity building and technical assistance in order to help the less technologically advanced countries establishing their own e-procurement systems. In addition, the considerable technology gap currently existing in the trading environment calls for flexibility, in that improvement of transparency and procurement procedures should be applicable in either a non-automated or technology-based environment.

Part II of the paper presents selected country practices and approaches to transparency in government procurement, draws common lines as well as variations and highlights observed successes and limitations. Issues covered are strongly inspired from the structure of the discussions in the WTO Working Group on Transparency in Government Procurement. The paper describes considerations about the public entities subject to transparency provisions, thresholds used in national procurement regulations, the role of monitoring authorities or criteria for opting between different procurement methods. It also includes salient country examples with respect to the provision of information on applicable laws and regulations, procurement opportunities, tendering procedures, or qualification and evaluation criteria. Finally, it provides an overview of procedural guarantees, like minimum time periods for submission of bids or available domestic appeal procedures and possibilities of recourse for bidders.

Introduction

1. This study aims to deepen understanding of the benefits of transparency in government procurement and of policy orientations for achieving them in practice. It does so by reviewing available literature on the benefits of transparent procurement systems and by discussing selected country practices and approaches in order to highlight their successes and limitations. The paper does not specifically address what could be the desired elements of a possible Agreement on Transparency in Government Procurement at the WTO.

2. Part I of the study highlights the benefits that can accrue to nations through the adoption of more transparent and efficient procurement procedures, including through adoption of a common approach agreed multilaterally, while recognising the costs of establishing them. It also provides a description of some of the costs involved in not having such procedures in place. Consideration is then given to the role of transparent procurement in underpinning integrity; and finally to the case of electronic procurement.

3. Part II follows up this discussion by surveying relevant approaches to transparency in government procurement adopted by certain countries. The information included here has been drawn from the reviews of certain Member countries conducted in the framework of the OECD program on Regulatory Reform, the Individual Action Plans of APEC countries, available literature and information provided by Member countries directly to the Secretariat.

I. BENEFITS OF OPEN AND TRANSPARENT GOVERNMENT PROCUREMENT SYSTEMS

A. Background

4. Despite recent world-wide trends toward the privatisation of public enterprises and some government activities, the public sector in most countries continues to perform a fundamental role in the economy. Total government expenditure is estimated to represent 14-20 percent of a country's gross domestic product; government spending on tradable goods and services is estimated at more than US \$2,000 billion annually¹. Against the background of the structural changes that governments have recently been experiencing through decentralisation and outsourcing of their activities and the steady expansion of social services, the total amount of public procurement as a percentage of GNP is likely to increase or at least remain the same in years to come. Consequently, open access to procurement markets is an issue of increasing importance in international economic relations due to their commercial significance as well as the implications of procurement policies for government attitudes in general toward the economy.

5. Nevertheless, public procurement practices are often felt not to contribute to competitive access, but rather to serve vested interests and, in the international context, to represent non-tariff barriers. The costs of such inefficient and often uneconomic procurement are borne partly by producers (who do not receive economic rewards on the basis of their efficiency) and partly by the public sector (which receives sub-optimal value for money).

¹ Total government expenditure (tradable and non-tradable) is over \$5,000 billion annually. For details see OECD, 2002 (a).

6. A growing awareness of the trade-restrictive effects of discriminatory and non-transparent procurement policies resulted in a first effort to bring government procurement under internationally agreed trade rules in the WTO Tokyo Round. As a result, the first plurilateral Agreement on Government Procurement (GPA), also called the GATT Government Procurement Code, entered into force in 1981 and was amended in 1987. The GPA was extensively revised in the Uruguay Round of negotiations, and a new Agreement, which remains of a plurilateral nature, took effect on 1 January 1996.²

7. The WTO reports that in 1990-1994 the GPA applied annually to a total value of contracts of around US \$30 billion. It also reports that the value of procurement that is opened up to international competition is estimated to have increased by ten times under the revised GPA.

8. Even though the GPA is essentially a market access agreement because it has improved opportunities for foreign suppliers to enter markets, the bulk of the text of the Agreement is concerned with various aspects of procurement proceedings. The Agreement provides for a framework of common procurement procedures, transparency at all stages of the procurement process and the opportunity for aggrieved private bidders to challenge procurement decisions and obtain redress in a timely fashion in the event of inconsistencies with the rules of the Agreement. This reflects the recognition that to give meaning to the provisions on market access it is also necessary to ensure that the procurement systems are transparent, fair, objective and accountable.³

9. In addition to this plurilateral Agreement, WTO Members have also been exploring a multilateral agreement on transparency in government procurement. A Working Group on Transparency in Government Procurement, established after the 1996 WTO Ministerial meeting in Singapore, has been gathering information on national practices and was charged with developing elements of an agreement on transparency in government procurement.

10. At the Ministerial meeting in Doha, WTO Members agreed that “negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations...Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers.” This highlights the benefits to national economies expected to accrue from transparent public procurement procedures, irrespective of other factors that may impinge on market access. WTO Members also stressed the importance of enhanced technical assistance and capacity building in this area and the need to take into account participants' development priorities.

B. Benefits of transparency in government procurement

11. The conduct of government procurement involves a sequence of procedural steps that provide opportunities at different levels for transparency and open decision-making. These procedural steps are related to the initial announcement and dissemination of information about a tender; the definition and dissemination of criteria for prospective bidders; the establishment of timelines and guidelines for preparation and submission of bids; information about the type of award procedure being used; the

² Parties to the GPA comprise Austria, Belgium, Canada, Denmark, European Communities, Finland, France, Germany, Greece, Hong Kong China, Iceland, Ireland, Israel, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Netherlands with respect to Aruba, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, United Kingdom, and the United States.

³ Sahaydachny and Don Wallace, 1999.

definition and dissemination of criteria used to evaluate the quality and competitiveness of a given bid; and the availability of avenues for challenging given awards.⁴

1. *Economic benefits*

12. Transparent government procurement systems engender benefits not only for domestic and foreign suppliers, but also ultimately for the governments themselves and their citizens. Clear information on the various steps involved in the procurement process can enable potential suppliers to make informed decisions about whether to bid and how to improve the relevance of their bids by better addressing the government's needs and priorities. Moreover, when governments provide feedback on the outcome of an award, this can help bidders to prepare better bids in the future.

13. Transparent procurement procedures can contribute to a more efficient allocation of resources through increased competition and budgetary savings for governments. Indeed, procurement systems that lack transparency spawn local markets characterised by limited competition, dominant providers and an absence of "best-in-class" suppliers. Costs of goods and services are artificially high and incentives for providers to innovate are non-existent. As a result local markets never thrive.

14. Conversely, as companies (domestic and foreign) develop confidence in participating in procurement practices, the number of bidders expands, yielding stronger competition. Such increase in competition can bring costs down, improve quality and delivery terms, facilitate innovative approaches to production and improve after sales services and maintenance.

15. For governments, such efficiencies can directly translate into acquisition of goods and services of better quality and at lower prices to meet national needs. This will enable governments to provide more social services, economic and social infrastructure and other public goods to their citizens. It can furthermore help reducing taxes on the public, which aids development. Box 1 presents some examples of cost-savings achieved through transparent procurement procedures.

16. Ensuring transparency of government procurement systems also has ramifications beyond the government procurement sector, and can provide a solid foundation for sustained economic growth and development.

17. By lowering risk, transparent procurement procedures can in fact help attract more investment, and encourage partnership with local companies, which could also underpin future home-driven growth. Considering that the bulk of FDI flows remains confined to developed countries, these developments can be particularly significant for developing and emerging economies. Indeed, a transparent government procurement system allows competing enterprises to assess more clearly the costs and benefits for them of particular transactions. They can make more realistic economic investment decisions where public procurement rules are in line with good commercial practice and public accountability requirements. By contrast, risk adverse foreign investors distrust opaque procurement systems, which can discourage capital investment (including joint ventures) for local production of goods and services.

⁴ OECD, 2003.

Box 1. Examples of cost-savings under transparent procurement systems

- Through the strengthening of transparency and procurement procedures, by e.g. eliminating any tender specifications that favour a particular tender, Guatemala's Ministry of Health reports savings of 43 percent in the purchasing of medicines⁵;
- The Colombian Ministry of Defence reports generating 47 percent savings in the procurement of military goods through improvement of transparency and procurement procedures⁶;
- Nicaragua had been spending about 17 percent of the health budget on pharmaceuticals. High drug expenditure had resulted from a lack of pricing and drug information and non-transparent procurement procedures. With the establishment of a transparent procurement agency, accompanied by the effective implementation of an essential drug list, the government was able to control drug costs significantly. Within one year, thanks to these measures, the government had reduced its pharmaceutical budget from \$21 million to \$13 million from 1992-1993⁷;
- In Pakistan, an open and transparent bidding process has resulted in savings of more than Rs 187 million (US \$3.1m) for the Karachi Water and Sewerage Board⁸;
- After introducing transparent procurement procedures in the energy sector, Bangladesh was able to reduce electricity prices at less than US \$0.03 a kilowatt-hour, roughly half the price of directly negotiated deals in Indonesia⁹.

18. Transparency in procurement practices may in addition help enhance the efficiency of domestic suppliers as they compete for public contracts. Such gains in efficiency can improve trade prospects by making these suppliers more competitive exporters. On the other hand, inefficient suppliers to governments, in addition to providing poor value for the national governments, are also unlikely to be competitive internationally. Thus, the strengthened global economy resulting from transparent procurement procedures has positive effects not only to exporters that gain access to procurement markets, but also to domestic suppliers as they become more efficient and competitive.

19. Other benefits of improved transparency in public procurement involve establishing a market-launching base for small and medium enterprises (SMEs), which often lack knowledge on the extent of information on public sector opportunities. SMEs are the engine of economic growth in most countries, accounting for over 65 percent of turnover generated by the private sector in the EU¹⁰ and for nearly 50

⁵ USAID, 1999.

⁶ USAID, 1999.

⁷ Cohen, "The LAC Pharmaceutical Region."

⁸ Transparency International, 2002.

⁹ Lovei and McKechine, 2000.

¹⁰ EC, 1996.

percent of APEC economies' total GDP and 35 percent of exports¹¹. Obstacles to SMEs growth cause economies to languish, especially in developing and transition economies.

20. In addition to the above, a further dimension of benefits can be realised through adoption of a common approach in this area agreed internationally. In fact, countries have increasingly been adopting transparency mechanisms shaped at the international level. Several countries, in particular transition and developing economies addressing government procurement issues for the first time, have been strongly influenced by the *Model Law on Procurement of Goods, Construction and Services* adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1993 and 1994. Many countries have in addition adopted transparency provisions agreed at the bilateral or regional level.¹² Furthermore, countries that borrow from the World Bank or other development banks are typically required to follow guidelines on government procurement in order to ensure accountability in the use of funds; typically specific transparency rules on borrowing countries aim to make sure that generally accepted procurement practices are followed.

21. As noted earlier, efforts have also been underway for many years in the GATT/WTO to bring government procurement under internationally agreed trade rules. This resulted in the plurilateral GPA, which includes provisions aimed at enhancing transparency in conducting government procurement. In addition, consideration is now being given at the WTO to beginning negotiations on a multilateral agreement on transparency in government procurement.

22. For domestic as well as foreign economic actors, it is apparent that the benefits of transparency in government procurement can be significantly increased when a common rather than unilateral approach is possible, particularly if it can be agreed multilaterally. Competition and predictability are enhanced more broadly, as suppliers' cost for access to information on rules and tender opportunities is reduced. A common approach agreed multilaterally would in addition ease the burden on a country's administrative and human resources by limiting the occasions on which different procurement procedures would be necessary and improving overall efficiency.

2. *Transparent procedures can enhance confidence in the procurement system and integrity*

23. There are several other related benefits derived from more open procurement policies. Indeed, transparent and predictable procedures are a vital element of good economic governance. They help build public confidence in the management of government affairs. For example, confidence in the procurement system can be ensured through consistency in describing applicable criteria and following the criteria for award of contracts. In addition, providing feedback on the outcome of the award of a contract establishes confidence that the criteria have been applied as described.

24. Confidence and predictability in the government procurement system can improve taxpayers' support as they become aware that practices are "above board" and that governments are getting the best deal for their money.

25. More importantly, transparent procurement systems can provide an important tool to combat corruption in government procurement, which is generally believed as one area where corruption is particularly rampant. While transparent procedures are not sufficient in themselves to eliminate corruption,

¹¹ APEC, 1999.

¹² See OECD, 2002 (b).

an effective system of monitoring, procedural checks and proportional penalties can render perpetration of fraud and corruption more difficult.¹³

26. In this context, the OECD Anti-Bribery Convention that entered into force in 1999 should be mentioned. The countries that sign¹⁴ the Convention agree to make it a crime in their country to bribe foreign officials in order to get business or an undue business advantage. The Convention goes very far to protect international public procurement from corruption. It covers bribes not only to persons who have a public office, but also to anyone who performs a service for the government or who works in a public enterprise.

27. Among the many negative aspects of bribery and corruption is the significant economic cost that they exact, as shown by studies of individual cases of corruption in public procurement. These procurement-related scandals are not limited to large-scale construction projects. Consumption goods are also candidates for payoffs since it may be difficult to find out whether they were actually delivered.¹⁵

28. At a more general level, researchers have argued that corruption slows economic growth through several channels (see for example Kaufmann, 1997; and Tanzi, 1998). Businessmen interpret bribery as a sort of tax that diminishes their investment incentives. Such tax is of a particularly detrimental nature, given the need for secrecy and the uncertainty that the bribe-taker will fulfil his part of the deal. Talent is in addition misallocated, since high pay off in bribery-related jobs attract people who otherwise would accept more economically productive occupations.

29. Poor technological decisions are also taken by corrupt officials, who tend to favour complex and expensive capital-intensive projects that facilitate skimming large sums. Thus, a large infrastructure or defence contract may be favoured over the construction of several health clinics or primary schools. Public safety can in addition be endangered by sub-standard construction and products.

30. Furthermore, corrupt activities frequently require a substantial investment of time by entrepreneurs and officials involved. Negotiating and ensuring secrecy (as well as looking-out against the risk of non-delivery of the promised signatures) are time-intensive activities, which come at the expense of productive ones. Box 2 presents a brief review of available empirical literature on the effects of corruption on economic growth.

¹³ See La Maza and Cambor, 1999.

¹⁴ To date, the Convention has been signed by the 30 OECD Members plus Argentina, Brazil, Chile, Bulgaria, and Slovenia. The complete text of the Convention can be obtained from the OECD homepage at: <http://www.oecd.org/EN/document/0,,EN-document-88-3-no-6-7198-0,00.html>.

¹⁵ For some examples of these studies, see Rose-Ackerman, 1998; Tanzi and Davoodi, 1997; Nakata, 1978; Gray, 1979; and Wade, 1982.

Box 2. Empirical studies on the effects of corruption on economic growth

Statistical evidence showing the deleterious effects of corruption on the economy is mounting. Mauro (1997), covering 67 countries and data from 1960-85, finds that corruption is negatively linked to domestic investment and, as a consequence, to economic growth. The study shows that a corrupt country is likely to achieve aggregate investment levels of almost 5 percent less than a relatively uncorrupt country and to lose about half a percentage point of gross domestic product growth per year.

There is also evidence that corruption slows inward foreign direct investment. Wei (1997)—utilising econometric analysis to examine the impact of corruption upon FDI in East Asia—shows that if a corrupt country could reduce its corruption to the level of a relatively uncorrupt one, the effect on attracting FDI would be the same as reducing its marginal corporate tax rate by more than 20 percentage points. According to the study's findings, the same pattern also holds in other regions. This research suggests that nations that offer significant tax incentives to attract multinational firms to locate in their countries could attract as much or even more FDI without any tax incentives if they could control domestic corruption.

Corruption may in addition distort the composition and size of government expenditures. The study by Mauro finds that corruption may affect the composition of public investment towards projects that lend themselves easily to manipulations by public officials to get bribes. The study shows that this happens at the expense of less “manipulatable” public projects, such as health care and education. The author stresses that of particular relevance to developing countries is the possibility that corruption might reduce the effectiveness of aid flows through the diversion of funds. Since aid is fungible, it may ultimately help support unproductive government expenditures. This is partly why donor countries often focus on issues of good governance and, where governance is judged to be particularly poor, some donors have reduced their assistance.

Using econometric techniques, Tanzi and Davoodi (1997) show that corruption distorts the entire decision-making process connected with public investment projects and reduces economic growth through several channels. First, corruption can reduce growth by increasing public investment while reducing its quality and productivity. This happens e.g. as the enterprise, in order to recover the cost of the bribe and in collaboration with the corrupt official, reduces its project costs by skimping on the quality of the work done and on the materials used, thus delivering an inferior product¹⁶. Second, since corruption and bribery are more effectively related to new investments, corruption can reduce growth by reducing the quality of existing infrastructure, e.g. by providing disincentives for adequate expenditure on operation and maintenance (see also Klitgaard, 1990, for this point). A deteriorating infrastructure increases the cost of doing business for both the government and the private sector (e.g. congestion, delays, break-down of machinery, etc.) and thus leads to lower output and growth. Furthermore, corruption can reduce growth by lowering government revenue needed to finance productive spending.

To illustrate the findings of the Tanzi and Davoodi study, an increase in corruption in a relatively uncorrupt country would increase the public expenditure/GDP ratio by 1.6 percentage points, and reduce the government revenue/GDP ratio by 10 percentage points.

¹⁶ This has happened often in road building where the thickness of the base of the road may be much reduced. It has also occurred in the construction of bridges and buildings that in certain cases have collapsed causing loss of lives and economic costs. See Tanzi and Davoodi, 1997.

3. *Capacity and technical constraints*

31. Notwithstanding the benefits described above, it should be stressed that some of the reforms needed cannot be implemented at no cost, but require resources to build capacity and initiate long-term change. Indeed, resources are required to change the institutional set-up (e.g. the cost of making legislative changes and training the necessary staff) and to maintain procedural requirements to ensure transparency and due process. Nevertheless, it should also be pointed out that these costs may be more than compensated by the benefits noted earlier.

32. The resources for achieving and enhancing comprehensive technical progress are often limited in developing countries. For this reason, a concerted effort in technical assistance and capacity building is needed to support national reform efforts and to help countries at lower levels of development in taking practical steps to enhance transparency of their procurement policies and practices. Box 3 lists specific examples of the types of assistance that might be envisaged.

Box 3. Types of assistance that might be envisaged for developing countries in the area of transparency in government procurement

Development of national legislation and procedures

- Legal advice on, and assistance in, drawing up national legislation;
- Analysis of, and guidance on, administrative and policy options;
- Assistance in drawing up procedures for publication;
- Establishment and implementation of bid challenge systems;
- Practical steps to make procurement more user-friendly, such as developing standard forms for tender notices and fill-in bid forms, as well as developing a common procurement vocabulary.

Training

- For those who have to implement, use or enforce new legislation, procedures and/or practices;
- For the judiciary;
- To develop training programmes in, for example, business schools or colleges of public administration in beneficiary countries;
- For purchasers and suppliers;
- Exchange of officers.

Institution building

- Administrative cooperation to enhance institution building and the exchange of information.

Access to information by suppliers

- Workshops, seminars and the development of user guides, including Internet Web sites, search engines and databases, to provide information on opportunities for doing business with governments at home and abroad, and to facilitate access to that information. Such assistance could particularly benefit small and medium-sized enterprises, by increasing their confidence and effectiveness in entering procurement markets at home and abroad.

Source: ITC (2001).

C. The case of electronic procurement

33. In many countries, present public procurement information systems are technologically obsolete, cumbersome and not adequate to serve governments and suppliers' needs. Current procurement systems, particularly in developing and transition economies, are based on the use of traditional means of communication and administrative practices – for the most part a paper-based system of notification, dissemination and tendering.

34. Today, procurement rules and procedures can benefit from the opportunities offered by the advances in information technology. This could lead in the short term to the introduction of electronic notification of tender and dissemination of information to suppliers. In the medium term, an “electronic marketplace” can be developed where suppliers list in electronic catalogues their products and prices, and procuring entities compare prices and conditions and order electronically the best value item for their needs¹⁷.

35. The importance of e-procurement has been recognised in the WTO Working Group on Transparency in Government Procurement. On-going discussions in this forum are considering the possibility of using IT tools to disseminate information as an alternative to more traditional methods of communication.

1. Benefits¹⁸

36. E-procurement techniques provide a good example of the benefits that accompany improvements in transparency and procedural efficiency. They enable public procurement to become more transparent, more open to dialogue with suppliers and more efficient.

37. More specifically, a variety of benefits can be realised. First, e-procurement can lead to substantial cost and administrative savings from increased transparency and efficiency (see Box 4). Easier cost comparison among bidders through e.g. electronic catalogues promotes lowest-bidder acceptance, reducing costs and facilitating suppliers' quality control. Reduced use of paper, postage, printing, and copying can also help save significant amounts of money. In addition, expensive warehousing costs (i.e. staff and space) can be avoided with e-procurement through just-in-time procurement. Technology in fact enables procurement to take place more often, with rapid or even overnight delivery, which is more cost-efficient and effective.¹⁹

38. In addition, easier management of purchasing and costs can be achieved, since the details of procurement decisions will be on the computer at the manager's fingertips, enabling a faster and more efficient examination of total expenditures than when filed away in paper form. Moreover, e-procurement facilitates statistical reporting and reduces costs for transparency requirements in this area.

¹⁷ La Maza and Cambor, 1999.

¹⁸ The remaining of this section draws, primarily, on Segal and Taylor, 2001.

¹⁹ The argument has also been made, however, that the speed/cost gain may not always be substantial, given that, for example, even with e-procurement one must observe deadlines similar to those used in traditional bidding procedures or that printing out documents also takes time. In this connection, it has been argued that e-procurement may be most suitable for transactions of simple, frequently traded bulk goods/services, and less suitable for more complex transactions involving e.g. large amounts of technical data.

39. Furthermore, costs may be reduced through bulk or “warehouse” purchasing. Indeed, a promising benefit of e-procurement comes with collaboration among government procurement agencies (across city, provincial, or even state lines), so that governments may purchase goods jointly, improving their ability to negotiate lower prices from suppliers. Similarly to consumer warehouse clubs, as quantity increases, per-unit cost decreases.

Box 4. Examples of benefits from e-procurement

Electronic tendering in Canada

Canada began using an electronic tendering service in 1992/93. Its current Government Electronic Tendering Service (GETS) has been in place since 1997. The number of participating agencies has increased due to the inclusion of the MASH Sector (Municipalities, Academic Institutions, Social Services and Hospitals) under Canada's Agreement on Internal Trade. In 2001, participating agencies advertised over 40,000 opportunities on GETS.

The government has realized extensive operational savings through the outsourcing of the advertising and distribution functions. For Public Works and Government Services Canada (PWGSC), the central purchasing agency for the federal government, these savings amounted to about Canadian \$1.5 million (more than US \$960,000) a year in photocopying and courier charges, Canadian \$2 million a year in newspaper advertising and Canadian \$1 million in the service start-up costs.

Source: Information provided by the Canadian authorities.

E-procurement in Brazil

Brazil introduced its e-procurement portal, Comprasnet, in 2000. While before the introduction of the system procurement tenders typically took more than four months, online auctions can now take just 20 days and facilitate the participation of SMEs.

Comprasnet has already brought about significant savings for Brazil. In 2001, Brazil's federal government saved 4 percent on the purchase of goods and services thanks to the use of e-procurement channels for 20 percent of its supply needs. The government spent 14.2bn reais (US \$3.6bn) on procurement, of which 2.8bn reais corresponded to purchases over Comprasnet, for savings of 560mn reais.

Source: Business News Americas, 2002.

Chile's Government Procurement E-System

The Chilean Public Procurement Information E-System was established in 1999, as part of the government's recognition of the potential benefits associated with the development of the information technology. Chile's experience with e-procurement has made business opportunities with the Chilean Government more transparent, reduced firms' transaction costs, increased opportunities for feedback and cooperation between firms and public agencies, and sharply reduced opportunities for corruption.

Between October 7, 1999 and February 15, 2000, 454 suppliers (in 75 different business areas) and 16 public agencies were registered in the e-system. The growing number of requests posted for bidding in the first five months demonstrated confidence in the new procurement system, and due to the initial success, in January 2000 the authorities called for further development to expand its electronic commerce capacity. Regarding operating costs, savings of the order of 10-15 percent were possible through the establishment and use of databases. Such databases enabled potential suppliers throughout the world to have access to invitations to tender.

Source: Orrego, Osorio, and Mardones, 2000; and WTO, 2001.

40. Second, benefits from e-procurement may accrue from increased competition—through wider market participation and access. Procurement is usually announced in official or technical journals, thereby reducing the number of potential bidders. On the other hand, the Internet can reach a much wider audience, thus increasing competition and further decreasing costs. SMEs could be the prime beneficiaries of wider market participation given their current lack of knowledge of information on procurement opportunities. In addition, the Internet is always open. Suppliers can have access to government bid information at their convenience, increasing the reach of the government to new suppliers. Greater access can lead to further competition between suppliers, reducing costs even further.

41. Finally, benefits may also be realised through enhanced accountability. Conducting business online allows government agencies to show constituents more easily how their taxpayer money is spent. Such increase in transparency can encourage government accountability for cost overruns and waste.

2. *Costs and other factors to consider*

42. E-procurement can also entail economic costs (see Box 5 for examples of some estimates of these costs). Up-front investment may be needed in new infrastructure, such as new hardware and/or software, to start e-procurement. Staff may need training on new equipment and processes to ensure efficiency. Resources may in addition be needed to build acceptance and awareness of the new system. This is not only the case for the government agencies that will be making purchases electronically, but also the suppliers at the other end of the process.

43. Significant resources may moreover be required to safeguard e-procurement and e-business. Privacy policies need to be put in place before implementation of e-procurement systems. OECD has created tools aimed as guides in establishing privacy policy statements.²⁰ Other organisations, such as the Electronic Frontier Foundation, also assist in writing policies.

44. Technological advance can also have a deleterious effect on transparency where notices and other information related to tenders may be available only for a limited period of time. E-procurement systems need to take these considerations into account and ensure that the relevant information is kept on-line throughout the procurement process.

45. It should be stressed that e-procurement could benefit relatively more SMEs and firms in developing countries, since these firms may have more difficulty on their own in obtaining and providing relevant information; nevertheless there may be relatively significant infrastructure costs to ensure their access to the necessary electronic equipment and networks. For this reason, particular attention should be paid through capacity building and technical assistance in order to help the less technologically advanced countries establishing their own e-procurement systems.

46. Lastly, given the significant technology gap that currently exists in the trading environment, improvement of transparency and procurement procedures should be applicable in either a non-automated or technology-based environment. These can serve in both cases to promote efficiency, with the main difference being the degree of change that is attained.

²⁰. See <http://cs3-hq.oecd.org/scripts/pwv3/pwhome.htm>.

Box 5. Examples of costs associated with e-procurement

The cost of establishing and operating e-procurement in Canada

The cost of the initial development and ongoing operation of GETS has been minimal because the Government of Canada has contracted out the service. The operator of GETS recovers its costs by charging user-fees. Since 1992, the Canadian Government has paid a total of approximately Canadian \$750,000 (approximately US \$480,000) over the 10-year period for costs associated with the operation of GETS. These costs are related to some construction of procurement documents, reimbursements for costs associated with cancelled tenders and costs for the development of an electronic version of the Government Business Opportunities.

Source: Information provided by the Canadian authorities.

The cost of establishing e-procurement in Chile

The initial development of Chile's Government Procurement E-System (including study and preparation) cost US \$300,000. Thereafter, US \$200,000 had been invested in actually building the system which included the hardware and license of the software. The system had been developed by the private sector on the basis of an invitation to tender by the Chilean Government.

Source: WTO, 2001.

II. COUNTRY APPROACHES TO TRANSPARENCY IN GOVERNMENT PROCUREMENT

47. The benefits of pursuing transparency in government procurement seem to be generally acknowledged in OECD and non-OECD countries alike, as shown by prevailing national practices, longstanding or recently introduced, documented in the following section. Policies to ensure transparency and predictability are increasingly a common feature of national regulatory frameworks for government procurement and this irrespective of whether the country is a party to the WTO Government Procurement Agreement, intends or not to accede to it in the future, or has otherwise undertaken commitments on foreign access to its domestic procurement market.

48. Reforms in the regulation of government procurement (including regulation introduced for the first time) have been a widespread phenomenon in OECD and non-OECD countries in recent years. They have been driven both by domestic policy considerations, such as achieving the best value for taxpayers' money, pursuing effective delivery of public services, preventing corruption and supporting national industrial development; and by international liberalisation endeavors aimed at ensuring trading partners access to domestic procurement markets, as in the context of free trade or other regional co-operation agreements²¹. In developing and transition economies significant momentum was also provided by the

²¹ Special mention should be made of the liberalisation of government procurement markets in the context of APEC, on the basis of the APEC Non-binding Principles on Government Procurement.

requirement of international development institutions for adequate public procurement laws and practices in borrowing countries.

49. Despite apparently unrelated objectives, it generally appears that domestically and internationally driven reforms are mutually supportive. Resulting procurement regimes may follow different paths in accordance with prevailing legal and administrative traditions (internal administrative circulars directing the actions of procurement officers in common law countries; formal rules for many European countries and the United States, as well as for countries previously using central planning systems). However, they present a number of common general principles, including principles with respect to transparency. This is due to a large extent to the influence international models, such as the UNCITRAL Model Law, World Bank guidelines or bilateral and regional agreements exert on domestic regulatory frameworks (see above, paragraph 20)

50. Models for good practice such as the UNCITRAL Model Law or the APEC Non-binding principles have already achieved a lot in inspiring efficiency-enhancing reforms and policies around the world. Yet, a WTO Agreement on Transparency in Government Procurement would undoubtedly provide increased momentum for such policies and could help them spread further. The adoption of such an agreement could also serve as a basis for useful cross-fertilization of ideas and a standing forum for testing improvements. The analysis below seeks to exemplify the proposed principles in the WTO draft agreement and better understand their implications.

51. In surveying the approaches adopted by different countries to achieving openness and transparency in government procurement, this part follows closely the structure of the discussions in the WTO. Following the 1996 WTO Ministerial meeting in Singapore, the WTO Working Group on Transparency in Government Procurement was charged with conducting a study of Members' practices relating to transparency in government procurement; and based on this study, developing elements for a multilateral agreement on transparency in government procurement. By the Seattle WTO Ministerial, the Working Group had explored most of the substantial issues with respect to transparency in government procurement and agreed to the general structure of a draft agreement. Following that meeting a consolidated text bringing together the various proposals made by WTO Members was prepared by the Chair. The structure of that text represents today the state of thinking with respect to a possible future agreement to be negotiated and has been used as a model for the Section that follows. With respect to substance, however, discussions in the WTO are still ongoing. In order to avoid prejudging possible outcomes, the present analysis has kept clear of any prescriptive statements about the reviewed national practices and approaches.

A. Scope of government procurement

1. Entities subject to transparency provisions

52. In order to define the transactions that would fall under the scope of national procurement regulation, countries identify among other things the entities covered by the procurement provisions. Although procurement by central and sub-central government departments and municipal authorities is clearly subject to public procurement rules in most countries, entities carrying out government functions but legally separate from the traditional state or *a fortiori* state-owned companies engaged in commercial type activities may be a less straightforward case. Many countries provide a relatively large coverage of public procurement provisions but do not subject all covered entities to the same procurement rules and this holds also for transparency provisions.

53. Regulations related to open and transparent government procurement procedures in OECD and non-OECD countries generally cover authorities at the federal, sub-federal, local and municipal level. In federal or decentralised systems transparency provisions may be set at the central level or at the sub-central level if sub-central entities have independent procurement authority. This is the case in the United States, where States and municipalities conduct procurement on the basis of their own laws and regulations, but follow similar procedural safeguards to the ones set at the federal level. In some cases, the central government may seek internal agreements with the sub-central levels in order to ensure that they abide by the principles of transparency, due process or non-discrimination²². For instance, in Canada the Agreement on Internal Trade sets out a framework for public procurement by federal, provincial and territorial governments, as well as municipalities and their organisations, school boards and publicly funded academic, health and social service entities.

54. The criteria used to determine the applicability of public procurement provisions to entities that operate at the margin of core governmental functions often relate on the one hand to the operating environment and on the other hand to the objectives. For instance, whether a country subjects public utilities and state enterprises to public procurement laws depends on whether these enterprises enjoy monopolistic positions or operate in a competitive environment. Increasingly, public undertakings, including utilities such as water, energy, telecommunications and transport, come also under the scope of public procurement laws (such as in the new Czech procurement law), although they may be subject to a special regulatory framework (like in the European Union). However, as soon as the concerned economic activities become subject to competition, such as through the privatisation of the incumbent public operator, or the opening of the sector to private service providers, the tendency is to move again related procurements out of the scope of public procurement laws. The new regulatory framework for public procurement proposed by the European Commission (but not yet adopted) excludes telecommunications from the provisions which used to apply to it as a result of liberalisation and effective competition in the sector within the European Union.

Box 6. Government Procurement in the EU

For government procurement covered by EU directives, the objectives of those directives are binding on Members States, although national authorities may choose the forms and methods for transposition into national law. Procurement not falling under the scope of EU Directives (i.e. below the thresholds) is in any case subject to the rules contained in the EC Treaty and to the principles established by the case law of the EC Court of Justice. These include non-discrimination on grounds of nationality, free movement of goods, freedom to provide services, freedom of establishment, transparency, mutual recognition and proportionality.

55. The pursuance of public policy objectives, whether or not combined with financial control by the State or public entities may also be a defining criterion, even if the enterprise has legal personality under private law. For instance, in Chinese Taipei the new Government Procurement Law, which covers departments and agencies in the central government, sub-central provincial governments and county governments, also applies to the public enterprises owned by these governments. In EU countries coverage

²² Recent OECD work on the quantification of the size of government procurement markets in OECD countries shows the relative importance of procurement by sub-central governments which often exceed procurement by central governments. See “*Government Procurement: A Synthesis*” TD/TC/WP(2001)17/FINAL

extends to private law enterprises with minimum of 50% state or public utility ownership or which are financed at a minimum of 50% by the state or a public utility.

56. Within reviewed national regulations outright exclusions from transparency requirements do not usually relate to the level or type of the procuring entities but rather to the type of the procurement, or the procurement method used (restricted or single-source procurements -see below). There is a widespread exclusion of procurements in the defence sector, which may follow a distinct regulatory framework (although in some countries, like France, this framework is quite similar to the framework applied to civil procurement), or not be subject to a legally enforceable framework at all (this does not preclude the consistent application of administrative principles to guide the contracting authorities, like in the case of the United Kingdom). Some countries maintain exclusions with respect to sensitive sectors, like the agricultural sector in Turkey.

2. *Thresholds*

57. However, most frequently the determination of procurements subject to transparency requirements is based on the value of the procurement. Publication requirements (as well as other procedural guarantees) do not apply to procurements below a certain threshold. The rationale for excluding low-value procurement from transparency requirements is on the one hand that the cost of observing those requirements would be disproportionate to the value of the procurement; on the other hand, where requirements are driven by international liberalisation endeavours, thresholds are used to focus procedural guarantees on procurement likely to interest foreign suppliers. However, some countries, such as France, report that accountability concerns often lead authorities to apply transparency formalities to below-threshold procurements. Seeking an appropriate balance between cost-efficiency and the pursuance of integrity and accountability objectives has led a number of countries to develop new procurement methods, such as purchase cards, applicable to low-value (below-threshold) procurement (see Section B on Procurement Methods).

58. Thresholds may be determined in the national Public Procurement Act (as in EU countries) or be updated at regular intervals in the Budget Law (like in Hungary). They often differ for goods, services and works and are usually higher for local authorities. For instance, in accordance with the French Public Procurement Code (which also illustrates the practice in the other EU countries) below-threshold procurement is up to €90,000, while procurement which should be published in the OJEC is from €130,000 for government departments and from €200,000 for local authorities. In Canada, the general federal government procurement policy is to follow transparency requirements for all contracts above \$25,000. Thresholds applied by provincial and territorial government, municipalities and publicly-funded organisations vary from province to province and among territories and municipalities.

59. Some reviewed OECD countries have reported problems with practices of procuring entities aimed at evading transparency obligations through breaking down prospective procurements to bring them below the prescribed thresholds. More recent procurement regulations (including laws in Hungary, Greece, France and other EU countries) have introduced explicit provisions against such practices. However, failure to publish all above threshold procurements may also be due to the ambiguity of related rules, which offer significant scope for unintentional breaches²³. Regulation elaborated at the international (regional or multilateral) level generally needs to be made more explicit at the national level, including through appropriate guidance and interpretation. The clarification of “grey” areas in procurement rules, so

²³ The 1996 EuroStrategy Consultants report on the European Procurement regime noted that the poor publication record (approximately 14% of entities expected to be publishing tenders) was to a certain extent due to a misunderstanding of entity coverage or aggregation rules.

as to remedy both unintentional breaches and the impossibility to police deliberate non-compliance, has been a strong motivation behind recent reforms in many OECD countries.

3. *Local authorities*

60. Implementation of public procurement provisions by local and municipal authorities may be provided in the procurement Act itself, or in a separate piece of legislation. In the United Kingdom, the Local Government Act requires procuring local authorities to abide by the same principles as government authorities, under the supervision of the Department of Transport, Local Government and Regions (DTLR). However, the record of compliance to transparency, predictability and due process principles is not always high at the local level and has often given rise to complaints, such as in Mexico, Hungary, Italy, or the Czech Republic, to cite only a few OECD countries. The main factors affecting poor compliance by local authorities seem to be the insufficient awareness of procurement provisions by concerned staff in local governments²⁴, the lack of sufficient resources in terms of knowledge, time and money, and the lack of overall monitoring resulting in incorrect implementation and increases in transaction costs. At the local level, procurement is often conducted by non-specialised staff, ranging from schoolteachers to health centre managers to small community mayors, at the margin of their main activities and responsibilities. The complexity of applicable provisions may make it difficult for contracting authorities that lack specialised staff to understand them well and implement them correctly and cost-efficiently. In Italy the Antitrust Authority has recommended codification in the public procurement field as a means for remedying to compliance problems at the local level.

61. Most importantly, many OECD countries have organised training activities in order to improve the performance of procuring entities at the local level. The Italian authorities have undertaken actions to promote co-operation between municipalities in dealing with public procurement, and to provide training to local authorities for a better understanding of rules. In former transition economies, like Hungary or the Czech Republic, training activities have been undertaken with the financial support of the World Bank or the European Commission. The Czech national programme undertook to train 10 000 officials in districts and municipalities, particularly bearing in mind the extended scope of action of municipal authorities under the decentralisation process.

62. In some of the countries reviewed, such as Finland, the government has encouraged local entities to pool together their procurement so as to enable them to finance specialised procurement staff and obtain better prices from quantity discount (“contract bundling”). Finnish local authorities may associate and appoint a special body in charge of all procurement by associated entities, answerable to these entities and subject to the same transparency and due process rules as them (see also following section). Although pooling and contract bundling may have some adverse effects on the capacity of small businesses to perform contracts, this need not necessarily be so. For instance, while the 1994 Federal Acquisition Streamlining Act of the United States encourages more generally contract bundling by federal agencies, the effects of bundling on SMEs are monitored by the US Small Business Administration (SBA), which can advocate break-outs to procuring entities on the basis of its statutory authority.

63. Despite the fact that the costs of publicising procurement opportunities at the local level may appear more important in relative terms, local authorities often find that these are compensated by cost

²⁴ The Hungarian Public Procurement Council observed in 1998 that “*budget entities lack the trained staff needed for a professional management of public procurement. This is particularly relevant in the case of local governments and smaller budgetary institutions*” (see OECD 2000b). In the period between 1998 and 2000, most of the infringement procedures launched by the European Commission concerning public procurement in Italy concerned local administrations.

savings obtained through enhanced competition among potential suppliers. Public procurement reforms²⁵ by the municipality of Buenos Aires in Argentina focussed on suppressing closed procurement methods, expanding public advertising of upcoming procurement opportunities and establishing and using a database of reference prices. In the first full year of operation cost savings reached 47% on food services to metropolitan hospitals, 37% on food services to public schools, 45% on garbage collection and public lighting maintenance and 60% on contracts to run communal kitchens, amounting to a total of US\$200 million saved.

4. *Special purchasing entities*

64. The problem of scarce capacity among smaller procuring entities is often addressed through the appointment of special purchasing entities staffed with specialised, qualified personnel or of monitoring entities in charge of ensuring the overall quality of procurement by the different procuring entities within the government. Public procurement may thus be undertaken directly by the procuring entities themselves, with or without the supervision of a central monitoring body, or by a central entity on behalf of the entities that need the procured goods, works or services. In Korea a specific government body, the Public Procurement Service -PPS- (previously Supply Administration of the Republic of Korea -SAROK-), is responsible for part of the procurement of central and sub-central entities of the government, including state organisations, local autonomous entities and educational committees. In addition to these entities, for which PPS is responsible under the Korean procurement legislation and which account for 71.5% of its procurement activities, it undertakes procurement on behalf of “voluntary” clients, such as investment institutions and others. Procurement conducted by PPS accounts for around 25 to 30% of total government procurement. The remaining procurement, including procurement of state-owned enterprises and of some central and sub-central entities of the government, is handled directly by the procuring entities.

65. Government procurement in Greece is under the responsibility of the Ministry of Environment and Public Works for works, of the Ministry of Development for supplies, and of the Ministry of National Economy for services. Public works of national importance, such as highways, airports and major ports, irrigation, sewage and flood-protection systems, and public supplies corresponding to the needs of the various Ministries are thus handled in a centralised manner. All other works or supplies are managed at the prefectural or municipal level. The three Ministries have also a monitoring role for the overall coherence of procurement activities and the compliance with procedural requirements, including transparency.

66. In Canada, the federal government’s largest purchasing organisation, Public Works and Government Services Canada (PWGSC), is mandated to buy goods for most federal departments above specific thresholds, while individual departments have authority to buy goods up to a value of \$5,000 directly and to buy most services themselves. In Poland the Office of Public Procurement is responsible for preparing draft regulations on public procurement, approving the choice of procurement methods, publishing the tenders and monitoring the performance of the public procurement system.

5. *Monitoring entities*

67. Monitoring entities are often used for ensuring policy coherence and procedural efficiency in countries where procurement is not handled by a central purchasing entity but lies in the hands of each department or agency. These entities usually perform regulatory monitoring, including advocacy for

²⁵ The reform took place in 1996, prompted by the observation that prices on municipal contracts were as much as 30% higher than those in the commercial market. For further details see “*Buenos Aires, Argentina: opening up procurement at the municipal level*”, ITC 2000, p.58.

desirable reforms of the regulatory framework, as well as financial audits of procurement undertaken by supervised authorities. In the United Kingdom, where each government department or agency is responsible for its own procurement, supervision and co-ordination for the overall coherence of procurement activities and the compliance with procedural requirements is ensured by the Office for Government Commerce (OGC), an Office of HM Treasury. The OGC is also responsible for handling cases of infringements of EC rules brought by the European Commission against the UK government. The UK government's procurement policy requests contracting authorities to "obtain value for money", by requiring competition among potential suppliers. The performance of departments in implementing this policy is subject to audit by the National Audit Office.

68. The Superior Council for State Contracts and Acquisitions (CONSUCODE) in Peru, a decentralised public organism attached to the Prime Minister's Office, not only supervises the enforcement of the existing legal framework related to government procurement, but uses the acquired information to recommend modifications and new provisions in this area. In 2002 CONSUCODE engaged in extensive consultations with the public and private sector with a view to identify appropriate ways for improving the State Contract and Purchases Law. In Hungary the enforcement of national procurement provisions by procuring entities is monitored by the Public Procurement Council, an independent agency under the supervision of the Parliament.

69. In Mexico the Ministry of Comptroller and Administrative Development establishes the technical standards applicable to public procurement and oversees procurement procedures. In Canada procurement by over 100 federal departments, agencies and Crown Corporations engaging in procurement activities is subject to policies and regulations set by the Treasury Board Secretariat, which is the federal department in charge of setting up federal government procurement policies and regulations. The main policy objective pursued by the Treasury Board Secretariat is to ensure procurement standing the test of public scrutiny, allowing access, encouraging competition and reflecting fairness. Some countries have also promoted a closer monitoring of procurement, in particular in the field of public works. In Italy an independent body, the *Autorità per la Vigilanza sui Lavori Pubblici* (Authority on Public Works), was created to monitor the proper implementation of national and Community rules in public works. The Authority is specifically charged with supervising the application of rules in the field of public contracts of works, signalling to the national Audit Court the relevant cases and any major disfunctioning, and making proposals for adaptations in the legislation.

B. Procurement methods

70. In the countries reviewed public procurement mainly takes place through different types of tendering. Within this process procuring entities draw up a detailed description ("specification") of the product or the service that they require and invite firms to submit written bids setting out the price and other terms on which they can supply the product or service. The contract is then awarded to the firm offering the best price or the best combination of price, quality and other factors. Such formal tendering is generally characterised by the absence of discussions between the procuring entity and the bidders. The three main types of tendering²⁶ are: open (or unlimited) procurement, selective procurement (restricted to pre-selected categories of suppliers, invited to bid) and limited (or negotiated) procurement, including individual, sole-source, single-source or direct tendering. In addition to formal tendering procedures, countries also use "informal" methods, such as requests for proposals and requests for quotations (where procuring entities seek detailed technical and cost proposals, on the basis of which they hold negotiations with prospective providers) or novel methods of procurement, such as purchase cards or electronic

²⁶ As terms expressing similar types of tendering may vary significantly among different national regulations, the Secretariat has used the corresponding terms of the WTO GPA.

catalogues, brought forward by the increasing use by national administrations of information and communication technologies. Some countries, like Turkey, also provide for the possibility of procurement awards without competition, but subject such awards to a specific authorisation by the Council of Ministers. It generally appears that procuring entities tend to use more formal award procedures for goods and works than for services, which often call for wider margins for judgement from procurement officers.

1. *Criteria for selecting procurement methods*

71. Most procurement laws in reviewed countries define criteria that procuring entities must follow to choose among the different tendering procedures in each specific case. The UNCITRAL Model Law and a number of national regulations inspired by it express a preference for the use of formal tendering; some even express a preference for open tendering above restricted tendering. Such preferences are based on the perception that open procedures maximise competition, economy and efficiency, ensure fairness and prevent corruption and maladministration. Some countries, like Mexico, specify the percentage value of acquisitions, leasing, services and public works that should be done through public tendering (80 per cent of the total value according to the Mexican Law of Acquisitions and Public Works). Others, like Poland, explicitly state that “*the preferred procedure for conducting public procurement is unlimited tendering*” (1994 Polish Public Procurement Act). However, flexibility in the choice of procedures is often introduced in parallel so as to allow seeking technological and innovative solutions from interested firms and conducting discussions with responding sources to better tailor the goods or services sought (see, for instance, the US Federal Acquisition Regulations). Whichever the method finally selected, a clear formulation of the criteria for selecting the appropriate procedure is critical for transparency purposes: as has been seen in past procurement laws in OECD countries, ambiguities in the specified conditions may leave room for arbitrariness and raise concerns about the integrity of the process. Several of the recent reforms of public procurement regulations in OECD countries (such as in Greece, Hungary, Italy or Turkey) were undertaken among other things to improve the clarity and predictability of these criteria.

72. In a number of reviewed countries regulations provide that the default procedure for conducting public procurement should be open tendering, unless specified conditions prevail that make other types of tendering warranted. In Italy, negotiated tenders are only allowed under strict specific conditions for procurement of goods and services above 50,000 euros. Under that threshold, the new 2003 financial law prohibits the use of negotiated procedures under any circumstances. In Hungary restricted tenders (tenders by invitation) can take place only if, due to the particular nature of the procurement, there are few bidders likely to qualify²⁷. Tenders can be directly negotiated only if open and/or restricted procedures have been used and were unsuccessful, or if, due to its particular nature, the procurement can only be carried out by a single specific contractor. In Malaysia procuring entities that wish to use selective tendering or direct negotiations need to present a motivated request to the Ministry of Finance for approval.

73. In other countries the type of procedure is defined according to the value of the procurement. In Poland single-source procurement is allowed for a value up to 3 000€ and simplified procedures may be applied for values between 3 000 and 30 000€. The application of procedures other than open tendering for procurement beyond 200 000€ further requires the permission of the Chairman of the Office of Public Procurement. The Czech law requires that public procurement of goods and services in excess of CZK 5 million (CZK 20 million in the case of real estate) be put up for open tenders.

74. It appears that in most OECD countries open procedures represent more than half of the tenders by public entities. In Korea the Supply Administration has estimated that 52% of the government

²⁷ There have to be at least five qualified bidders, based on a list drawn up upon an open competition and published by the Public Procurement Council every year.

procurement contracts it managed in 1998 were awarded through open tendering procedures in which foreign firms could participate, although the share of contracts awarded to foreign companies was much lower. Most of the other remaining contracts were awarded following selected or single tendering, including a large share reserved for domestic small-and-medium enterprises (SMEs). In Hungary, between 1995 and 1998 open tenders represented between 69.5% and 62%, tenders by invitation 6% and negotiated tenders between 24.5% and 33% (in 1998).

2. *Informal procurement methods*

75. The use of information and communication technologies has in some cases allowed countries to lighten the procurement process without foregoing essential procedural guarantees. One novel method that seems to have given positive results is the use of purchase cards for low-value regular purchases. Purchase cards operate in a similar way to a personal or corporate credit card, enabling card holders to purchase goods and services, by phone, fax, in person or on-line, charging the price of goods/services to the purchasing card and thus eliminating the risks of collusion between suppliers and public entities through personal contact. The British government launched a Government Procurement Card (GPC) Programme in 1997 as a tool to purchase and pay for low value goods and services, efficiently and cost effectively. By 2001 the government reported process cost savings of approximately 56 %, prompt payment in 100% of cases (as opposed to 70% pre-GPC), and a reduction in the time spent resolving invoice queries as end users have more direct control over the process.

76. Information technologies have also been used for enhancing procedural efficiency of traditional procurement methods. In the Philippines a centralised electronic catalogue covering common-use goods, supplies, materials and related services includes a price list to help procuring entities obtain value for money.

C. **Publication of information on national legislation and procedures**

77. All countries reviewed publish government procurement legislation in their Official Gazette, as well as in corresponding online media, where such media exist, exactly as they do for national legislation in other policy areas. All countries do not however extend publication requirements to lower level regulations or measures having the effect of law, such as Ministerial Orders, administrative guidance or internal rules and procedures. This may create problems for businesses that wish to participate in the procurement process and which need to have a comprehensive picture of the regulatory framework applicable to the process.

78. This observation has increasingly led to the issuance of dedicated publications, compiling all relevant aspects of the laws and regulations that govern government procurement practices. They often take the form of paper publications available free of charge in the offices of major procuring entities and of monitoring authorities. Although publications in paper form are less convenient for updating, they allow governments to convey all relevant information to groups that do not yet have access to information technologies, such as some small and medium enterprises in certain countries.

79. The offer of online compilations complements advantageously paper publications and allows responsible administrations to keep up to date the regulatory framework applicable to their procurements. For instance, in Canada all relevant laws and regulations that govern federal government procurement are available from the Department of Justice (www.canada.justice.gc.ca) and federal government contracting policy is directly accessible at Canada's Treasury Board Secretariat site (www.tbs-sct.gc.ca). The creation of Internet sites dedicated to government procurement laws and regulations has further offered concerned administrations the opportunity to develop online platforms for publicising procurement opportunities and

relevant technical documentation (see below). Internet sites offering this dual function include the Mexican COMPRANET site (www.compranet.gob.mx), the Korean Public Procurement Service site (www.pps.go.kr), the Polish Public Procurement Office site (www.uzp.gov.pl), or the European e-procurement site (<http://simap.eu.int>).

D. Information on procurement opportunities, tendering and qualification procedures

80. As noted above, reviewed countries generally provide for the obligation to publish procurement opportunities for procurement exceeding specified threshold values. Several countries have taken particular steps to improve access to information in order to enhance the business opportunities of domestic suppliers, in particular SMEs. They subsequently noticed that better access to information has resulted in an increase in the average number of bids received per tender and to enhanced opportunities for procuring authorities to obtain value for money. New Zealand has established an Industrial Supplies Office (ISO) to improve information flows between government buyers and domestic industry about government purchasing requirements and relevant competitive industry capabilities. Government departments notify to ISO all intended procurement of goods and services above NZ\$50,000, while Crown entities and local bodies are actively encouraged by the government to do the same.

81. Publication may take various forms depending on the type of procurement (and in particular the question whether it is likely to elicit local, national or international interest) and the procuring entity. Conventional publications range from display in the offices of the concerned municipality and publication in local newspapers for procurement of local interest, transmission to the related Chambers of Commerce (in Greece) and publication to the daily and specialised press, or posting to foreign newspapers in case of potential interest at the international level, or if the concerned administration does not expect sufficient offer at the national level (in Hungary). Some countries (like Greece, France or other EU countries) provide that in case of violation of the publication requirements any award contract is null and void. In several countries failure to publish violates general administrative safeguard provisions on freedom of access to information and on equality of treatment. In some countries, such as France, in addition to administrative sanctions failure to publish also expose procuring authorities to penal sanctions for favouritism.

82. Often a single special publication exists for publishing all government procurement tenders. This may be a separate issue of the Official Gazette (in Greece, Korea, Mexico or Turkey). National procuring entities in the European Union are also required to publish tenders over a specified threshold in the Official Journal of the European Communities²⁸. Procurement publications may also take the form of a special bulletin, such as the weekly Public Procurement Bulletin of the Hungarian Public Procurement Council (also available on the Internet), or the Canadian "Government Business Opportunities" (GBO) bulletin. Single special publications for announcing all public tenders exist even in countries where the procurement system is highly decentralised. In Chile, where a single legal framework covering all public entities is awaiting parliamentary approval, the single site www.chilecompra.cl allows all entities to publish their tenders in a centralised manner.

²⁸ In 1998 tenders published at the OJEC by procuring entities in the EU represented 137 billion euros out of 1,054 billion of total public procurement covered by the EC Procurement Directives, that is around 13%. In the same year 13,595 entities in EU countries published in the OJEC a total of 73,688 calls for competition.

1. *Use of information technology*

83. Use of the Internet to disseminate information and facilitate the tendering process is also rapidly gaining ground in the area of government procurement. In the Czech Republic the new public procurement law requires all public tenders and awards to be published on a free-of-charge website (www.centralni-adresa.cz). The Italian government has set up a specific Internet site (www.acquistinretepa.it) which provides a virtual catalogue of all tenders of goods and services by the public administration. The site is managed by Consip Spa on the basis of a concession established by law. Procurement opportunities falling under the scope of EC Directives can be consulted free of charge and in all eleven official languages on the TED (Tenders Electronic Daily) EC Official Journal website at <http://ted.eur-op.eu.int>. In Korea the procurement site offers a summary in English attached to the public tender for the delivery of products, services and works that are covered by the WTO Agreement on Government Procurement (GPA). In Canada, information on federal procurement can be accessed through “Contracts Canada” (www.contractscanada.gc.ca), a database of registered suppliers offering detailed information about buying opportunities and bidding procedures. The Government Electronic Tendering Service (GETS) is currently contracted out to “MERX” (www.MERX.cebra.com), a privately owned internationally accessible electronic tendering service. MERX allows government and other purchasing organisations to advertise contract opportunities. Subscribers can request bid documents for a fee established on a cost-recovery basis, and can also view which other companies have requested bid documents for a particular tendering opportunity.

84. Interactive service in e-procurement systems is not yet widespread. A model system in this regard is the Mexican COMPRANET system. Created in 1996 to provide information on available procurement notices, applicable qualification and evaluation criteria and related technical tendering documentation, it evolved progressively since 1998 into an interactive e-procurement system. Mexican authorities have harnessed the development of electronic signatures, cryptography and international standards in the electronic data transmission into allowing the submission of bids directly through COMPRANET. Increasingly participating agencies will be able to carry out all the necessary follow-up and control of the procurement process through electronic means.

2. *Advance notice on upcoming tenders*

85. In addition to information provided on active tenders and in order to enable potential bidders to receive advance notice and prepare for upcoming tenders, several countries publish their annual acquisitions program. Procuring entities sometimes also publish general notices giving information about their intended procurement, in addition to, and in advance of, specific advertisements intended to elicit responses from interested firms. In Mexico the “Annual Acquisitions Program of Goods, Services and Public Works” approved by the Ministry of Finance and Public Credit and incorporating the prospective procurement requirements of Ministries and other federal entities is posted on COMPRANET. In the Philippines each government agency is required to prepare and regularly update an Agency Procurement Management Plan (APMP), including information on the time schedule and the budget allocated for each procurement, the procurement methods envisaged and whether the procurement process will be outsourced. Procuring authorities subject to the requirements of EU procurement regulations must prepare an annual indicative notice of total procurement by product area, that they envisage awarding during the subsequent 12 months. The annual indicative list and any tender whose estimated value exceeds specific thresholds must be published in the Official Journal of the European Communities. An additional publication may take place in national media: for instance, in Greece procurement needs handled by the Ministry of Development are registered once a year to the Single Program for Government Procurement and made available online (www.gge.gr).

3. *Qualification and evaluation criteria*

86. Procurement regulations in reviewed countries generally require procurement notices and other procurement documentation to indicate which of the permitted tendering procedures is chosen (open, restricted or negotiated, although frequently negotiated procedures are not covered by publication requirements). They further require them to specify objective qualification criteria (requirements relating to the suppliers or service providers that would qualify to participate in the tendering process) and evaluation criteria (all specifications, including technical requirements, relating to the goods or services to be procured, as well as any factors other than the price considered in the evaluation of the bids), including in some cases the relative importance of each factor in the award decision (for instance in the United States).

87. Criteria for awarding the procurement are not limited to economic considerations. A general move away from a strict lowest-price criterion to more complex and comprehensive overall-quality criteria was initiated to take account of the specific needs of services procurement and gradually generalised to all types of procurement. In Hungary the procuring authorities can either prefer the least expensive bid or the most favourable bid as a whole, in which case the relative weight of the criteria must have been specified and published. In EU countries criteria for identifying the most favourable bid include the cost of use, or operation, of the supplied product, its technical value, its aesthetic and functional qualities, the delay for performing the contract, the potential pay-offs, and the quality of after-sales services and of technical assistance. Additional criteria for deciding between bids include a preference for environmentally friendly products and for bidders with certified quality assurance systems. In Denmark for instance eco-labelling and eco-auditing (use of environmental management standards, such as ISO 14000 or EMAS, for the purpose of qualifying suppliers or service providers) are widely used. Criteria may also specify preferences for domestic suppliers or grant an advantage to supplies with a specified domestic content (such as in Hungary, or in Korea), or introduce social objectives, such as supporting SMEs and promoting social cohesion through preferences to disadvantaged social groups or geographical regions. These criteria are generally publicised so as to allow potential bidders to be aware of them. With respect to the technical specifications, regulations may encourage the use of recognised technical standards in defining specifications, as, for example in the United States where the government recommends avoiding the unnecessary use of government-unique technical specifications and more generally prohibits the use of restrictive specifications where they are not needed to meet the procuring entity's legitimate needs. In Malaysia tender specifications should not be tailored to particular brands or products and violation of this rule is ground for complaint, which prospective bidders can lodge with the procuring entity within 14 days from the advertisement for local tenders and 28 days from the advertisement for international tenders.

88. Non-economic criteria allow to better tailor procurement to the needs of the procuring entity. However, being inherently less objective than the lowest-price criterion, they call for stronger procedural guarantees of transparency and clarity. Some of the problems encountered by OECD countries in the past mainly related to criteria that lacked clarity and allowed for varying interpretations by the authorities in charge of the procurement. This in turn greatly reduced the predictability of the process and has even on occasion given rise to allegations of corruption. Furthermore, such situations of uncertainty left room for the successful bidder to seek renegotiation of the value of the contract following its award, thus seriously inflating the overall costs of the procurement for public entities. It also indirectly encouraged less competitive suppliers to put forward underrated bids in order to win the contract, knowing that re-evaluation of the costs was easy to obtain.

89. Countries like Greece, Hungary, Italy, Spain or Turkey introduced wide-ranging reforms to their procurement regulation in order to remedy to these problems. The current Italian regulation limits the possibility to increase the value of contracts without a new tender. In Greece the adequacy of specifications has been progressively improved through the increasing use of internationally harmonised technical standards, while particular attention has been paid to avoiding design-oriented standards mirroring specific

suppliers. Furthermore, recent amendments of the regulatory framework aimed at tightening the procedures for drafting pre-selection and award criteria, attributing and making publicly available a coefficient for each criterion and clearly disconnecting the technical assessment from the economic assessment. In the area of public works, new provisions introduced arithmetical formulas for discarding particularly low-priced bids that would not be justified by the use of innovative cost-effective technologies and limited the possibility to reconsider the cost of the project in the absence of additional works that could not have been foreseen. In Spain, a set of tighter rules has been introduced to better protect contracting authorities against requests by contractors for additional payments due to unexpected cost overruns on top of the agreed terms spelled out in the contract.

E. Time periods

90. Minimum periods for the bidding process are aimed at ensuring opportunities for effective participation by all interested parties. Time periods allowed for bidders to submit responsive bids may vary according to the type of procurement. In general, longer time periods are allowed for works procurement, in order to enable bidders to devise the appropriate technical solutions corresponding to the specifications by the procuring entity. Time periods may go from 10 days (in the old Turkish procurement law) to 40 days in the amended Turkish law, or 52 days if the tender is announced internationally. Most other OECD countries provide for time periods between 36 and 52 days.

F. Decisions on qualification and on contract awards

91. Procurement regulations in OECD countries generally provide for the publication of the outcome of tendering. In some countries, like Hungary, this requirement covers not only tenders that have been published but also negotiated tenders for which there is no obligation of prior publication. The content of the publication of procurement decisions varies from country to country. In Korea the results of the tender are published in the Official Gazette. In the Philippines the award decision and its rationale are posted in a centralised Electronic Bulletin Board. In Poland additional information on the qualification decision and on the awarded contract has also to be provided, taking into account commercial secrecy considerations. In Hungary the contents of public procurement contracts are not publicised and it is relatively difficult to obtain related information otherwise than through the initial tender announcement. In the Czech Republic contract awards must be published in the Commercial Bulletin. The contracting authority must notify all applicants of its decision, including the information on the selected applicant and its bid. Applicants can request to view the report on the assessment of bids, and excluded bidders may also request that the contracting authority states the reasons for its decision to exclude them.

92. Procedural guarantees for transparency at this end of the procurement process include the definition of appropriate processes and of maximum deadlines for the provision of feedback to unsuccessful bidders. In Hungary the procuring authority must take a decision promptly and the outcome made public within thirty days from the opening of the tender, or sixty days in case of construction projects. This deadline can be extended for an additional thirty days if the inviting authority can duly justify its impossibility to respect the deadline. Unsuccessful bidders have the right to be informed of the reasons for their exclusion within another fifteen days. In Mexico decisions on contract awards are announced in public meetings in which all bidders can freely participate. In Ireland the Forum on Public Procurement has approved a practice on debriefing of suppliers, which provides for common access to information and a common debriefing policy while ensuring the full respect of the confidential nature of information made available to procuring entities by suppliers. Debriefing of tenderers on request is provided in several countries under their Acts on freedom of access to public information (for instance the New Zealand Official Information Act).

G. Domestic review procedures

93. The availability of efficient domestic review procedures for ensuring the respect of transparency rules and procedural guarantees is paramount in introducing accountability in the procurement process. Such review procedures exist in varying degrees in all reviewed countries. They may take the form of recourse to the entity responsible for the procurement or the authority that supervises it; of action brought to an entity specifically created to hear complaints about the procurement process; or of recourse to the domestic courts, whether specifically in charge of procurement issues or more generally competent for administrative matters.

94. Complaints may be introduced directly to the procuring entities in the Czech Republic, where such complaints are heard at first instance by the procuring authority. In the United Kingdom, appeals related to the publication and conduct of the procurement exercise, the exclusion of a candidate or the award of the procurement contract may be made to the head of the procuring authority. In the European Union a Pilot Project on public procurement was launched at the end of 1998 to promote co-operation between national procurement authorities so as to seek rapid and informal solutions to problems encountered by suppliers in getting access to public contracts. The main objective is to identify methods to obtain reliable and speedy informal solutions to market access problems with respect to public procurement in the various national markets. Another objective is to promote the exchange of information between participating countries and to identify any areas of improvements for EU rules.

95. A number of countries give the possibility of recourse to the authority that directly supervises the procuring entities, or to a supervisory body with wider competency, usually the Competition Office or the Accounting Office. In Mexico challenges to the procurement process may be brought to the Ministry responsible for overseeing procurement procedures (the Ministry of the Comptroller and Administrative Development). In Greece appeals related to the publication and running of the tender, the exclusion of a bidder or the award of the procurement contract have to be lodged as a first instance with the authority that supervises the procuring entity, in most cases the Minister in charge (for instance appeals against public works tenders organised by the local authorities can be lodged with the Minister of Public Works). In the area of public works aggrieved parties can also address to the Body of Inspectors of Public Works, which are responsible for undertaking regular monitoring, as well as random inspections of the award, implementation and final delivery of public works. If the appeal is accepted the procedure has to resume at the point of the violation.

96. In the Czech Republic complaints can also be brought with suspensive effect to the Czech Office for the Protection of Economic Competition (COEC), which is charged with supervising compliance with the procurement act. The decisions of the COEC can be appealed to the Chairman of the Office, still with a suspensive effect. In the United States disappointed bidders may protest award of a contract to the General Accounting Office. Bid protest decisions on the GAO are then made publicly available on the GAO website.

97. Entities specifically created to hear complaints about the procurement process include the Danish Complaints Board for Public Procurement, or the Hungarian Public Procurement Committee, which is a body independent both from the government and from the Public Procurement Council (the authority monitoring the enforcement of public procurement regulation). The new draft Turkish law establishes a dispute settlement procedure with the Office for Public Procurement, a body responsible for receiving complaints. In Japan, the Government Procurement Review Board reviews complaints concerning specific cases of procurement by the central government and other central government-related entities (including public corporations, but not local bodies) filed by persons or firms participating in that procurement or qualified to do so. The acceptance to review a complaint is publicly announced so as to allow attendance of

participants with interests in the procurement subject to the complaint. Procuring entities are required to follow the recommendations drawn by the Board as a result of its review.

98. Judicial appeals to the procurement process are usually the last recourse for unsuccessful bidders and often are only available if other recourse means have failed. In Canada appeals are dealt by a quasi-judicial independent review body, the Canadian International Trade Tribunal (CITT), in charge of federal procurement matters. This special body allows determinations to be made expeditiously and is inexpensive to plaintiffs. In most other countries procurement appeals are introduced to the general administrative courts. Court proceedings are hampered in a number of OECD countries by the delays commonly observed in such proceedings, which can be as long as one and a half or two years, to five years in case of appeal to a superior court. Interim suspension measures may or may not be available but even in cases where they are the court may decide not to grant them because of the public interest to the speedy completion of the procurement. This means that by the time a court decision is issued the procurement may even be completed. In this case the only available option is to ask for compensation. The possibility to obtain damages may also vary from country to country.

99. In the United Kingdom complaints can be brought to the courts if the appeal to the head of the procuring entity did not lead to a satisfactory outcome. Courts cannot order interim suspension measures if the contract is already awarded. In this case relief can be obtained in the form of damages, including damages for lost profits. In the Czech Republic the decisions of the Chairman of the COEC can be appealed to the High Court, but without any suspensive effect. In Greece appeals can be lodged with the Council of State for procurement by the State or by public undertakings, while procurement by private undertakings under state ownership or funding is subject to the jurisdiction of civil courts. Courts are generally reluctant to order interim suspension of the procurement procedure because of the public interest to have the procurement carried out. In Turkey appeals are currently brought directly to the courts.

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