

**PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE
PUBLIC GOVERNANCE COMMITTEE**

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Draft Recommendation of the Council on Public Procurement

This document presents the version of the upcoming draft Recommendation of the Council on Public Procurement for public consultation purposes.

The public consultation is planned to take place between 18th of August and 30th of September 2014.

The draft Recommendation of the Council on Public Procurement will replace the Recommendation on Enhancing Integrity in Public Procurement [C(2008)105].

For further information, please contact Paulo Magina (Paulo.MAGINA@oecd.org; tel. +33 (0) 1 45 24 84 43).

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FOR PUBLIC CONSULTATION

DRAFT RECOMMENDATION OF THE COUNCIL ON PUBLIC PROCUREMENT

THE COUNCIL,

HAVING REGARD to articles 1, 2 a), 3 and 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council for Improving the Quality of Government Regulation [C(95)21/FINAL], the DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement [DCD/DAC(96)11/FINAL], the Recommendation of the Council on Improving Ethical Conduct in the Public Service including Principles for Managing Ethics in the Public Service [C(98)70], the Recommendation of the Council on Improving the Environmental Performance of Public Procurement [C(2002)3], the Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Sector [C(2003)107], the Recommendation of the Council on OECD Guidelines on Corporate Governance of State-Owned Enterprises [C(2005)47], the Guiding Principles for Regulatory Quality and Performance [C(2005)52 and CORR1], the OECD Best Practices for Budget Transparency, the Recommendation of the Council on Principles for Private Sector Participation in Infrastructure [C(2007)23/FINAL], the Policy Framework for Investment [Annex, C(2006)68], the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [C(2010)16], the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions [C(2009)159/REV1/FINAL], the OECD Guidelines for Multinational Enterprises [C/MIN(2011)11/FINAL], the Recommendation of the Council on Regulatory Policy and Governance [C(2012)37], the Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships [C(2012)86], the Recommendation of the Council on Fighting Bid Rigging in Public Procurement [C(2012)115], the Recommendation of the Council on Effective Public Investment Across Levels of Government [C(2014)32], and the Recommendation of the Council on Digital Government Strategies [C(2014)88] [STILL BEING PROCESSED BY SGE];

HAVING REGARD to the growing interest in the governance of public procurement to achieve efficiency and economy, and to foster secondary public policy objectives, since the adoption of the Recommendation of the Council on Enhancing Integrity in Public Procurement [C(2008)105], which this Recommendation replaces;

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

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

RECOGNISING that efforts to enhance good governance and integrity in public procurement contribute to an efficient and effective management of public resources and therefore of taxpayer's money;

RECOGNISING that Members and non-Members adhering to this Recommendation (hereafter the "Adherents") share a common interest in improving economy and efficiency and in preventing risks to integrity throughout the entire public procurement cycle, starting from needs assessment until contract management and payment;

CONSIDERING that the 2013 report *Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008* monitored the implementation of the Recommendation of the Council on Enhancing Integrity in Public Procurement [C(2008)105] and identified key challenges faced by countries to improve public procurement systems and areas for improvement [C(2012)98 and C(2012)98/CORR1];

On the proposal of the Public Governance Committee

I. AGREES that, for the purpose of the present Recommendation, the following definitions are used:

- **E-procurement** refers to the replacement of paper-based procedures with digital technology-based communications and processing throughout the procurement process;
- **Integrity** refers to the use of funds, resources, assets and authority, according to the intended official purposes and in line with public interest;
- **Public procurement cycle** refers to the sequence of related activities, from needs assessment, to the award stage, through contract management and final payment;
- **Secondary policy objective** refers to any of a variety of objectives such as green growth, the development of small and medium-sized enterprises, innovation or standards for responsible business conduct. Governments increasingly use procurement as a policy lever to support such objectives, in addition to the primary objectives of public procurement: delivering goods and services necessary to accomplish government mission in a timely, economical and efficient manner.

II. RECOMMENDS that Adherents ensure an adequate degree of transparency of the public procurement system in all stages of the procurement cycle.

To this end, Adherents should:

- i) **Promote fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency in each phase of the public procurement cycle**, while taking into account the legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, as well as the need to avoid information that can be used by interested suppliers to distort competition in the procurement process. Additionally, transparency should be ensured in subcontracting by the supplier chosen for a procurement contract.

- ii) **Allow free access, through an online portal, for all stakeholders (including potential suppliers, civil society and the general public), to public procurement information** notably related to the procurement system (e.g. laws, regulations and policies), the specific procurements (e.g. procurement plans, calls for tender, award announcements), and the performance of the procurement system (e.g. benchmarks, monitoring results). Published data should be meaningful for stakeholder uses.
- iii) **Ensure visibility of the flow of public funds, from the beginning of the budgeting process to the payment of the expenditure** to allow (i) stakeholders to understand government priorities and spending, and (ii) policy makers to organise procurement strategically.

III. RECOMMENDS that Adherents facilitate access to procurement opportunities for potential competitors of all sizes.

To this end, Adherents should:

- i) **Have in place coherent and stable institutional, regulatory and legal frameworks**, which are essential to increase private sector participation in doing business with the public sector and are key starting points to assure sustainable and efficient public procurement systems. These frameworks should:
 - 1. be as clear and simple as possible;
 - 2. avoid including requirements which overlap with other legislation or regulation; and
 - 3. treat bidders, including foreign suppliers, in a non-discriminatory manner taking into account the Adherent's commitments under international agreements (e.g., the World Trade Organization's Agreement on Government Procurement, the European Union Procurement Directives).
- i) **Deliver clear and integrated tender documentation, standardised where possible and proportionate to the need.** Specific tender opportunities should be designed so as to encourage broad participation from potential competitors of all sizes. This requires providing clear guidance to inform buyers' expectations (including specifications and contract as well as payment terms) and binding information about evaluation and award criteria and their weights (whether they are focused specifically on price, include elements of price/quality ratio or support secondary policy objectives). The extent and complexity of information required in tender documentation and the time allotted for suppliers to respond should be proportionate to the size and complexity of the procurement, taking into account any exigent circumstances such as emergency procurement.
- ii) **Use competitive tendering and limit the use of exceptions and single-source procurement.** Competitive procedures should be the standard method for conducting procurement as a means of driving efficiencies, fighting corruption and ensuring competitive outcomes. If exceptional circumstances justify limitations to competitive tendering and the use of single-source procurement such exceptions should be limited, pre-defined and should require appropriate justification when employed, subject to adequate oversight taking into account the increased risk of corruption, including by foreign suppliers.

IV. RECOMMENDS that Adherents balance the use of the public procurement system to pursue secondary policy objectives with the need to provide effective and efficient public services delivery.

To this end, Adherents should:

- i) **Evaluate and sequence the use of the public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities**, focusing on efficiency and on achieving value for money when integrating and implementing secondary policy objectives.
- ii) **Develop a vision for the integration of secondary policy objectives in public procurement systems**. Such vision (which would require appropriate planning, baseline analysis and target outcomes) should be used as the basis for the development of action plans or guidelines for implementation
- iii) **Employ appropriate impact assessment methodology to measure the effectiveness of procurement in achieving secondary policy objectives**. The results of the use of the public procurement system to support secondary policy objectives should be measured according to appropriate milestones to provide policy makers with necessary information regarding the benefits and costs of such use. Effectiveness should be measured both at the level of individual procurements, and against policy objective target outcomes. Additionally, the aggregate effect of pursuing secondary policy objectives on the procurement system should be periodically assessed to address potential objective overload.

V. **RECOMMENDS** that Adherents realise transparent and effective stakeholder participation.

To this end, Adherents should:

- i) **Structure the public procurement system and its institutional frameworks to become service oriented**. Adherents should evaluate existing processes and institutions to identify functional overlap, inefficient silos and other causes of waste. A more service-oriented public procurement system should then be built around efficient and effective procurement processes and flows to reduce administrative red tape and costs, for example through shared back-office services.
- ii) **Engage in transparent and regular dialogues with suppliers and business associations to present public procurement objectives and to assure a correct understanding of markets and their expectations**. Effective communication should be conducted to provide potential vendors with a better understanding of the country's needs, and government buyers with information to develop more realistic and effective tender documents by better understanding market capabilities. Such interactions should be subject to due fairness, transparency and integrity safeguards, which vary depending on whether an active procurement process is ongoing. Such interactions should also be adapted to ensure that foreign companies participating in tenders receive transparent and effective communications.
- iii) **Develop and follow a standard process when formulating changes to the procurement system and policies**. Such standard process should promote public consultations, invite the comments of the private sector and civil society, ensure the publication of the results of the consultation phase and explain the options taken.
- iv) **Provide opportunities for direct involvement of relevant stakeholders** (including private sector organisations, civil society, the media and the public at large) in procurement with a view to increase transparency and integrity while assuring an adequate level of scrutiny.

VI. **RECOMMENDS** that Adherents improve the public procurement system by harnessing the use of digital technologies and state-of-the-art techniques throughout the procurement cycle.

To this end, Adherents should:

- i) **Employ recent digital technology developments that allow integrated e-procurement solutions covering the whole procurement cycle.** Information and communication technologies should be used in public procurement to ensure transparency, access to public tenders, increasing competition, simplifying processes and integrating public procurement and public finances information.
- ii) **Guarantee that e-procurement tools are modular, flexible, scalable and secure** in order to assure business continuity, privacy and integrity, provide fair treatment and protect sensitive data, while supplying the core capabilities and functions that allow business innovation. E-procurement tools should be simple to use and appropriate to their purpose; excessively complicated systems could create implementation risks and challenges for some suppliers.
- iii) **Expand the use of state-of-the-art procurement tools through the development and use of tools to streamline procurement procedures, reduce duplication and achieve greater value for money** (e.g. central purchasing bodies, framework agreements, electronic reverse auctions, joint procurements and contracts with options). Application of such tools across jurisdictions at sub-national levels could further drive efficiency.

VII. RECOMMENDS that Adherents develop a procurement workforce with the capacity to continually deliver value for money efficiently and effectively.

To this end, Adherents should:

- i) **Ensure that procurement officials meet high professional standards for knowledge, practical implementation and integrity by providing a dedicated and regularly updated set of tools** (e.g. sufficient staff in terms of numbers and skills, recognition of public procurement as a specific profession, certification and regular trainings, integrity standards for public procurement officials and the existence of a unit or team analysing public procurement information and monitoring the performance of the public procurement system).
- ii) **Employ attractive, competitive and merit-based career paths for procurement officials**, through the provision of clear means of advancement and the promotion of national and international good practices in career development to enhance the performance of the procurement workforce.
- iii) **Promote collaborative approaches with knowledge centres such as universities, think tanks or policy centres to improve skills and competences of the procurement workforce.** The expertise and pedagogical experience of knowledge centres should be enlisted as a valuable means of expanding procurement knowledge and upholding a two-way channel between theory and practice, capable of boosting application of innovation to public procurement systems.

VIII. RECOMMENDS that Adherents drive performance improvements through evaluation of the effectiveness of the public procurement system at all levels of government, from individual procurements to the system as a whole.

To this end, Adherents should:

- i) **Assess periodically and consistently the results of the procurement process.** Public procurement systems should collect consistent, up-to-date and reliable information and use data on prior procurements, particularly regarding price and overall costs, in structuring new needs

assessments, as they provide a valuable source of insight and could guide future procurement decisions.

- ii) **Develop baseline and context indicators to measure performance, effectiveness and savings of the public procurement system** to make sure that proposed objectives are achieved and strategic decision making process is adequate.

IX. RECOMMENDS that Adherents preserve the integrity of the public procurement system through general standards and procurement-specific safeguards.

To this end, Adherents should:

- i) **Require high standards of integrity for all stakeholders in the procurement cycle** (e.g. standards embodied in integrity frameworks or codes of conduct applicable to civil servants on topics such as conflicts of interest, disclosure of information or professional behaviour) that could be expanded beyond public-sector employees (e.g. through private-sector integrity pacts) .
- ii) **Implement general public sector integrity tools and tailor them to the specific risks of the procurement cycle** (e.g. the heightened risks involved in public-private interaction and fiduciary responsibility in public procurement).
- iii) **Develop integrity training programmes for the procurement workforce, both public and private** to raise awareness about integrity risks, such as corruption, fraud, collusion and discrimination, develop knowledge on ways to counter these risks and foster a culture of integrity to prevent corruption.
- iv) **Develop requirements for internal controls, ethics and compliance measures and programs for suppliers.** Such programs should also require supply-chain transparency to fight corruption in subcontracts, and integrity training requirements for supplier personnel.

X. RECOMMENDS that Adherents integrate risk mapping and mitigation throughout the public procurement cycle.

To this end, Adherents should:

- i) **Develop risk assessment tools to identify threats to the proper function of the procurement system.** Where possible, tools should be developed to identify risks of all sorts – from potential mistakes in the performance of administrative tasks through deliberate transgressions – and bring them to the attention of relevant personnel, providing an intervention point where prevention or mitigation is possible.
- ii) **Publicise risk management strategies and raise awareness and knowledge of the procurement workforce and other stakeholders about the risk management strategies, their implementation plans and measures set up to deal with the identified risks.**

XI. RECOMMENDS that Adherents apply oversight and control mechanisms throughout the public procurement cycle, including appropriate complaint and sanctions processes.

To this end, Adherents should:

- i) **Establish clear lines for oversight of the public procurement cycle** to ensure that the chains of responsibility are clear, that oversight mechanisms are in place and that the delegated levels of

authority for approval of spending and approval of key procurement milestones is well defined. Rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition.

- ii) **Develop a system of effective and enforceable sanctions** in proportion to the degree of wrongdoing to provide adequate deterrence without creating undue fear of consequences or risk-aversion in the procurement workforce.
- iii) **Handle complaints in a fair, timely and transparent way** through the establishment of effective courses of action for challenging procurement decisions to correct defects, prevent wrong-doing and build confidence of bidders, including foreign competitors, in the integrity and fairness of the procurement system. Additional key aspects of an effective complaints system are dedicated and independent review and adequate redress.
- iv) **Ensure that internal controls - including financial controls, internal audit and management controls - are coordinated and integrated** to ensure:
 - 1. the monitoring of the performance of the procurement system;
 - 2. the reliable reporting and compliance with laws and regulations as well as clear channels for reporting credible suspicions of breaches of those laws and regulations to the competent authorities, without fear of reprisals, and
 - 3. the consistent application of procurement laws , regulations and policies; a reduction of duplication and adequate oversight in accordance with national choices.

XII. RECOMMENDS that Adherents incorporate procurement planning processes in overall budget planning, priorities and implementation.

To this end, Adherents should:

- i) **Rationalise public procurement spending by combining procurement processes with public finance management** to develop a better understanding of the spending dedicated to public procurement, including the administrative costs involved, and use this information to improve procurement management, reduce duplication, and deliver goods and services more efficiently. Budget commitments should be issued in a manner that discourages fragmentation and is conducive to the use of efficient procurement techniques.
- ii) **Allow multi-year budgeting and financing to optimise the design and planning of the whole procurement cycle.** Flexibility, through multi-year financing options – when justified and with proper oversight – should be provided to prevent purchasing decisions that do not properly allocate risks or achieve efficiency due to strict budget regulation and inefficient allocation
- iii) **Apply public procurement principles consistently across the spectrum of public services delivery, including public works, public-private partnerships and concessions.** When delivering services under a wide array of arrangements with private-sector partners, Adherents should ensure as much consistency as possible among the frameworks and institutions that govern public services delivery to foster efficiency for the government and predictability for private-sector partners.

XIII. INVITES the Secretary-General to disseminate this Recommendation.

XIV. **INVITES** Adherents to disseminate this Recommendation at all levels of government, and to consider the implementation of this Recommendation in other relevant contexts, such as procurement by state-owned enterprises or procurement conducted under aid arrangements.

XV. **INVITES** non-Adherents to take account of and adhere to this Recommendation.

XVI. **INSTRUCTS** the Public Governance Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter, in consultation with other relevant OECD Committees.