

Directorate for Public Governance
and Territorial Development



OECD RECOMMENDATION OF THE COUNCIL ON PUBLIC PROCUREMENT

The OECD Public Governance Committee

The mandate of the Public Governance Committee is to assist members and non-members in building and strengthening capacity for designing, implementing and assessing adaptive, innovative, anticipatory and citizen-focused public policies, institutions and services. In particular, the Committee's work is directed toward helping countries strengthen their capacity to govern by improving policy-making systems and the performance of public institutions. The Committee's work on public procurement is supported by staff within the Public Sector Integrity Division of the Public Governance and Territorial Development Directorate (GOV).

GOV's unique emphasis on institutional design and policy implementation supports mutual learning and diffusion of best practices in different societal and market conditions. This work supports countries as they build better government systems and implement policies at all levels of governments to support sustainable, inclusive growth and the further development of citizens' trust in government.

The OECD GOV Mission Statement

Our mission is to help governments at all levels design and implement strategic, evidence-based and innovative policies to strengthen public governance, respond effectively to diverse and disruptive economic, social and environmental challenges and deliver on government's commitments to citizens.

Foreword

Public procurement is a crucial pillar of strategic governance and services delivery for governments. Because of the sheer volume of spending it represents, well governed public procurement can and must play a major role in fostering public sector efficiency and establishing citizens' trust. Well-designed public procurement systems also contribute to achieving pressing policy goals such as environmental protection, innovation, job creation and the development of small and medium enterprises.

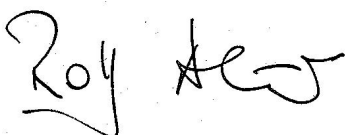
This Recommendation of the Council on Public Procurement ensures the strategic and holistic use of public procurement. It provides a 21st-century reference for modernising procurement systems and can be applied across all levels of government and state owned enterprises. It addresses the entire procurement cycle while integrating public procurement with other elements of strategic governance such as budgeting, financial management and additional forms of services delivery.

The Recommendation:

- supports the proper allocation of public resources by using public procurement as a strategic tool;
- yields returns through greater efficiency in public spending: a 1% saving represents 43 billion EUR per year in OECD countries;
- mitigates risks such as those of inefficiency and corruption often prevalent in major infrastructure and other complex procurement projects.

The Recommendation builds upon the foundational principles of the 2008 OECD Recommendation on Enhancing Integrity in Public Procurement, expanding them to reflect the critical role governance of public procurement must play in achieving efficiency and advancing public policy objectives.

This OECD Council Recommendation represents the collective knowledge, insight and political will of OECD Member countries as they seek to transform public procurement into a strategic tool for good governance. By helping governments to better meet their policy objectives, well-governed public procurement contributes directly to greater public trust, enhanced well-being and more prosperous and inclusive societies.



Rolf Alter

Director, Public Governance and Territorial Development Directorate



Recommendation of the Council on Public Procurement

THE COUNCIL,

HAVING REGARD to Article 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 Policy Framework for Investment [C(2006)68], the Recommendation of the Council on Principles for Private Sector Participation in Infrastructure [C(2007)23/FINAL], 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 Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [C(2010)16], the 2011 update of 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], the Recommendation of the Council on Budgetary Governance [C(2015)1];

HAVING REGARD to the growing interest in the governance of public procurement to achieve efficiency and economy, and to foster secondary 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 the efficient and effective public procurement of goods, services and works is vital to the core purposes of government, including infrastructure investment and the delivery of essential services to citizens;

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 public procurement cycle, starting from needs assessment until payment and contract management;

CONSIDERING that the Report by the Public Governance Committee on the implementation of the Recommendation of the Council on Enhancing Integrity in Public Procurement [C(2008)105] 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 in co-operation with the Competition Committee and the Working Group on Bribery in International Business Transactions, and in consultation with other competent OECD committees:

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

- **E-procurement** refers to the integration of digital technologies in the replacement or redesign of paper-based procedures throughout the procurement process;
- Integrity refers to the use of funds, resources, assets and authority, according to the intended official purposes and in a manner that is well informed, aligned with the public interest, and aligned with broader principles of good governance;
- Primary procurement objective refers to delivering goods and services necessary to accomplish government mission in a timely, economical and efficient manner;
- Public procurement refers to the process of identifying what is needed; determining who the best person or organisation is to supply this need; and ensuring what is needed is delivered to the right place, at the right time, for the best price and that all this is done in a fair and open manner;
- Public procurement cycle refers to the sequence of related activities, from needs assessment, through competition and award, to payment and contract management, as well as any subsequent monitoring or auditing;
- Secondary policy objectives refers to any of a variety of objectives such as sustainable green growth, the development of small and medium-sized enterprises, innovation, standards for responsible business conduct or broader industrial policy objectives, which governments increasingly pursue through use of procurement as a policy lever, in addition to the primary procurement objective.

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, suppliers should be required to provide appropriate transparency in subcontracting relationships.

ii) Allow free access, through an online portal, for all stakeholders, including potential domestic and foreign suppliers, civil society and the general public, to public procurement information notably related to the public procurement system (e.g. institutional frameworks, laws and regulations), the specific procurements (e.g. procurement forecasts, calls for tender, award announcements), and the performance of the public 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 throughout the public procurement cycle to allow (i) stakeholders to understand government priorities and spending, and (ii) policy makers to organise procurement strategically.

III. **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. Standards embodied in integrity frameworks or codes of conduct applicable to public-sector employees (such as on managing conflict of interest, disclosure of information or other standards of professional behaviour) could be expanded (e.g. through integrity pacts).

ii) Implement general public sector integrity tools and tailor them to the specific risks of the procurement cycle as necessary (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, compliance measures and anti-corruption programmes for suppliers, including appropriate monitoring. Public procurement contracts should contain "no corruption" warranties and measures should be implemented to verify the truthfulness of suppliers' warranties that they have not and will not engage in corruption in connection with the contract. Such programmes should also require appropriate supply-chain transparency to fight corruption in subcontracts, and integrity training requirements for supplier personnel.

IV. 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, legal and regulatory frameworks**, which are essential to increase 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 duplicate or conflict with other legislation or regulation; and
- 3) treat bidders, including foreign suppliers, in a fair, transparent and equitable manner, taking into account Adherents' international commitments (e.g., the Agreement on Government Procurement within the framework of the World Trade Organization, the European Union Procurement Directives, and bilateral or multilateral trade agreements).

ii) **Deliver clear and integrated tender documentation, standardised where possible and proportionate to the need**, to ensure that:

- 1) specific tender opportunities are designed so as to encourage broad participation from potential competitors, including new entrants and small and medium enterprises. 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); and
- 2) the extent and complexity of information required in tender documentation and the time allotted for suppliers to respond is proportionate to the size and complexity of the procurement, taking into account any exigent circumstances such as emergency procurement.

iii) **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, obtaining fair and reasonable pricing 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.

V. RECOMMENDS that Adherents recognise that any use of the public procurement system to pursue secondary policy objectives should be **balanced** against the primary procurement objective.

To this end, Adherents should:

i) **Evaluate the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities**, balancing the potential benefits against the need to achieve value for money. Both the capacity of the procurement workforce to support secondary policy objectives and the burden associated with monitoring progress in promoting such objectives should be considered.

ii) **Develop an appropriate strategy for the integration of secondary policy objectives in public procurement systems**. For secondary policy objectives that will be supported by public procurement, appropriate planning, baseline analysis, risk assessment and target outcomes should be established 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 any 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 public procurement system should be periodically assessed to address potential objective overload.

VI. RECOMMENDS that Adherents foster transparent and effective stakeholder participation.

To this end, Adherents should:

i) **Develop and follow a standard process when formulating changes to the public procurement system**. 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 chosen, all in a transparent manner.

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**. 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 specifications 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 information.

iii) **Provide opportunities for direct involvement of relevant external stakeholders** in the procurement system with a view to increase transparency and integrity while assuring an adequate level of scrutiny, provided that confidentiality, equal treatment and other legal obligations in the procurement process are maintained.

VII. RECOMMENDS that Adherents develop processes to drive **efficiency** throughout the public procurement cycle in satisfying the needs of the government and its citizens.

To this end, Adherents should:

i) Streamline the public procurement system and its institutional frameworks.

Adherents should evaluate existing processes and institutions to identify functional overlap, inefficient silos and other causes of waste. Where possible, a more service-oriented public procurement system should then be built around efficient and effective procurement processes and workflows to reduce administrative red tape and costs, for example through shared services.

ii) Implement sound technical processes to satisfy customer needs efficiently.

Adherents should take steps to ensure that procurement outcomes meet the needs of customers, for instance by developing appropriate technical specifications, identifying appropriate award criteria, ensuring adequate technical expertise among proposal evaluators, and ensuring adequate resources and expertise are available for contract management following the award of a contract.

iii) Develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money,

including centralised purchasing, framework agreements, e-catalogues, dynamic purchasing, e-auctions, joint procurements and contracts with options. Application of such tools across sub-national levels of government, where appropriate and feasible, could further drive efficiency.

VIII. RECOMMENDS that Adherents improve the public procurement system by harnessing the use of digital technologies to support appropriate **e-procurement** innovation throughout the procurement cycle.

To this end, Adherents should:

i) Employ recent digital technology developments that allow integrated e-procurement solutions covering the public procurement cycle.

Information and communication technologies should be used in public procurement to ensure transparency and access to public tenders, increasing competition, simplifying processes for contract award and management, driving cost savings and integrating public procurement and public finance information.

ii) Pursue state-of-the-art e-procurement tools that 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, and consistent across procurement agencies, to the extent possible; excessively complicated systems could create implementation risks and challenges for new entrants or small and medium enterprises.

IX. 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, for example, 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) Provide attractive, competitive and merit-based career options for procurement officials, through the provision of clear means of advancement, protection from political interference in the procurement process 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.

X. RECOMMENDS that Adherents drive performance improvements through **evaluation** of the effectiveness of the public procurement system from individual procurements to the system as a whole, at all levels of government where feasible and appropriate.

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 indicators to measure performance, effectiveness and savings of the public procurement system for benchmarking and to support strategic policy making on public procurement.

XI. RECOMMENDS that Adherents integrate **risk** management strategies for mapping, detection and mitigation throughout the public procurement cycle.

To this end, Adherents should:

i) Develop risk assessment tools to identify and address threats to the proper function of the public procurement system. Where possible, tools should be developed to identify risks of all sorts – including potential mistakes in the performance of administrative tasks and 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, for instance, systems of red flags or whistleblower programmes, 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.

XII. RECOMMENDS that Adherents apply oversight and control mechanisms to support **accountability** 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 for government and private-sector procurement participants, in proportion to the degree of wrong-doing to provide adequate deterrence without creating undue fear of consequences or risk-aversion in the procurement workforce or supplier community.

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 public 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), and external controls and audits are coordinated, sufficiently resourced and integrated to ensure:

1. the monitoring of the performance of the public 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;
3. the consistent application of procurement laws, regulations and policies;
4. a reduction of duplication and adequate oversight in accordance with national choices; and
5. independent ex-post assessment and, where appropriate, reporting to relevant oversight bodies.

XIII. RECOMMENDS that Adherents support **integration** of public procurement into overall public finance management, budgeting and services delivery processes.

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. This information can be used 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) Encourage multi-year budgeting and financing to optimise the design and planning of the public 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) Harmonise public procurement principles across the spectrum of public services delivery, as appropriate, including for 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.

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

XV. 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.

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

XVII. INSTRUCTS the Public Governance Committee to monitor, in co-operation with the Competition Committee and the Working Group on Bribery in International Business Transactions, and in consultation with other competent OECD committees, the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter.

Notes

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