

**TRANSPARENCY INTERNATIONAL
COMMENTS ON
“DETAILED METHODOLOGY FOR PROCUREMENT COUNTRY SYSTEMS PILOTING PROGRAM”**

Procurement integrity has been a long-standing TI global priority due to the scale of public funds involved, its centrality to effective development and its high vulnerability to corruption. TI recognizes the importance of and has worked to promote transparent and corruption-free procurement systems in countries around the world. The comments in this submission on the proposed procurement country systems pilot program draw on this experience and the views of many TI national chapters and expert advisors. They reflect a common appreciation of the potential benefits of strengthening country systems beyond the scope of projects financed by the Bank. However, as noted in our prior submissions of July 27, 2005 and June 18, 2007 (see attached) and elaborated below, the proposal requires further improvements to achieve its objectives. Moreover, once pilots are carried out, they must be assessed through internal and external mechanisms to determine the effectiveness of the methodology and controls before broadening the pilot phase.

We want to stress the centrality of civil society to the success of the country systems strategy. As a threshold matter, the methodology and the benchmark indicators should ensure access to information and civil society monitoring throughout the process, from pilot assessment through implementation, with attention to capacity-building and the resources necessary for civil society to conduct effective oversight.

Maximizing Transparency:

Publication of information is vital throughout this program, from the development of the methodology, to assessment of equivalence, pilot selection, procurement implementation, project execution, capacity-building, evaluation and, ultimately, in taking the program to scale. Further details are still needed on each of these aspects of the proposal. The Bank must also ensure that the current limited information available online and to civil society is adequate and not merely provide links to country-based information.¹ The “*presumption of transparency*,” called for in the Independent Panel Review conducted by Chairman Volcker (Volcker Report), is urgently needed in this instance.

In our prior submissions, we expressed support for “*the aspiration that countries should effectively implement fair, transparent and corruption-free contracting and called for the Bank to provide capacity-building for this goal. At the same time, we stressed the need to demand compliance with certain benchmarks critical to ensure that corruption is avoided.*” We called for maximum transparency and “*adequate controls and public oversight.*” As elaborated below, we believe the proposal still requires improvement in these areas, in the development of the methodology, its application in the selection process, pilot implementation, capacity-building, external oversight, evaluation and next steps.

Conducting Consultations and Providing for Multi-stakeholder Oversight:

TI has urged full and open consultations with a broad range of stakeholders at every juncture of the proposed process. We appreciate the Bank’s consultations to date and urge that written submissions and how the Bank proposes to take them into account be posted on the Bank’s

¹ For example, CPARs, loan agreements, side letters, contracts under the loans and new tools, such as for risk assessment, and the OECD DAC benchmarking tool results, should be made public.

website. In addition, a robust, predictable and ongoing multi-stakeholder monitoring process should be instituted, including an international expert multi-stakeholder working group and *in-country* working groups where pilots will be initiated. Civil society monitoring should be present throughout the assessment, implementation, and evaluation stages.

Maintaining Bank Oversight:

The Bank must retain those functions that enable it to carry out its fiduciary responsibility that funds be used for the purpose intended. The increased risk inherent in moving to country systems should be addressed by continued and effective Bank controls and oversight. For example, the Bank should maintain discretion to review procurement decisions prior to awarding contracts (prior review), which has been customary practice in International Competitive Bidding (ICB).

Ensuring Adequate Resources:

Substantial resources will need to be mobilized to carry out the pilot program effectively and, ultimately, to take it to scale. Resources are also essential to meet the needs of the majority of countries still seeking to raise procurement standards and build capacity. Resources will also be critical to effective implementation of the Governance and Anti-Corruption Strategy Implementation Plan and to address vulnerabilities identified in the Volcker Report and by Department of Institutional Integrity (INT).

Given the already constrained status of the Bank's procurement function, it is unclear how these demands will be met. Resources for the pilots should not in any way divert support from these existing demands.

Conducting Country Assessments:

The proposal indicates that countries will be assessed based in part on the Country Procurement Assessment Report (CPAR), side letters and the status of implementation of existing action plans or agreed reform initiatives. As a threshold matter, all of these materials should be published along with a consistent detailed methodology for how they will be applied in practice. In addition, input should be sought from civil society, private sector organizations, legislative committees, media and other domestic oversight institutions.

The proposal also notes that selection will be based on public financial management (PFM) systems. There should be an elaboration of what will qualify as an adequate PFM system and a threshold requirement of PFM transparency.

Applying OECD/DAC Benchmarks:

Application of the OECD/DAC benchmark indicators (Annex 3) should take into account the views of external stakeholders as well as those of other donors and the participating country.

At present, the methodology for determining whether a country qualifies for a pilot relegates many vital benchmarks to the category of "*non critical* sub-indicators" or sub-indicators requiring an action plan. Those related to access to information, transparency and reducing corruption—such as public availability of information on budgets, procurement plans, tender and bidding documents, bid evaluation reports, resulting contracts and audits—should be moved to the category of factors considered '*critical*', requiring the highest score. The indicators with scores under 3 should, in all cases, require an action plan to address deficiencies, and they should be monitored closely for progress.

Detailed comments on strengthening the OECD DAC benchmarking tool are included in **Annex A** to this submission.

Determining ‘Equivalence’ with Bank Standards:

A description is needed setting out details on how the Bank will assess ‘equivalence’ with the Bank’s ‘world-class standards, bidding documents and selection procedures.’

We note that the minimum requirements (Annex 4) do not seem to incorporate the Bank’s current fraud and corruption requirements and remedies, such as those in the Procurement Guidelines 1.14. The cursory treatment provided to this issue in benchmark 12(b) is a major concern. Moreover, the ‘equivalence’ system must provide for how the consistency, predictability, and high standards provided by World Bank standard bidding documents will be maintained.

Assigning Responsibility for Assessments:

With regard to benchmarking, the proposal indicates that “the Bank will conduct or vet all assessments in partnerships with other donors and the participating country.” This will help advance the donor harmonization agreed under the *Paris Declaration*. However, the methodology and Annex 2 delegates responsibility to Bank staff and borrowers and, in particular, to Senior Procurement Specialists, to assess compliance with OECD/DAC indicators, equivalence with Bank guidelines and selection of pilots.

In our prior submissions, we urged that such processes “*be transparent, avoid subjectivity and influence and offer assurance that the countries selected provide guarantees of transparency...*” These objectives would be furthered by the participation and oversight of independent external expert advisors, particularly in light of the Bank’s present incentive structure rewarding lending and the value placed on strong working relationships between staff and governments. The views of civil society and other key stakeholders such as the private sector, should be taken into consideration.

Managing Risk:

The proposal indicates that a newly developed ‘project risk analysis tool’ will track risk indicators throughout the life of the project, that risk mitigation measures will be required and they will be tracked for effectiveness. More information, including the views of the Bank’s INT unit, should be provided to external stakeholders on this important new tool and its proposed application.

The Bank’s Detailed Implementation Review (DIR), which has proven to be an effective assessment tool, should be used to determine corruption risks and appropriate mitigation measures in pilots. Training should be required for Bank staff to recognize ‘red flags,’ or indicators of fraud, corruption, and collusion. The Bank should ensure a conducive atmosphere for candid reporting and appropriate incentives to take action.

Selecting Consultants:

The Bank should develop and conduct public consultations on a methodology for selecting consultants under country systems before moving forward in this area.

Promoting Accountability:

Given the prominence of the Loan Agreement, establishing accountability of the government to the Bank, there should be mechanisms to promote government accountability to the public.

Taking the Pilots Forward:

The existing challenges to procurement integrity should be taken fully into account in assessing candidates for country systems pilots and, in particular, before taking the pilots forward. INT findings, DIR's and the Volcker Report underscore the need for attention to creating effective systems in the Bank and in countries to assess, prevent and detect corruption, fraud and collusion.

Before taking the pilots to scale, the Bank should develop methodologies to rigorously assess its experience in the implementation of the country system pilots on the ground, taking into account the results of multi-stakeholder monitoring. This should include DIR-type intensive reviews and broad-based consultations with civil society and other stakeholders on difficulties encountered, potential solutions and their implementation.

TI appreciates this opportunity to comment and looks forward to continued exchanges as this program develops.

December 20, 2007

Annex A

OECD DAC Benchmarking Tool

1. Indicators:

Indicators related to access to information/transparency and reducing corruption are critical to the integrity of the procurement system. The distribution proposed by the Bank in the 3 categories is not strict enough. None of these indicators should be considered non-critical, and as indicated below; some should be upgraded to require a score of 3 and others should require a Capacity Development Plan for timely action and with effective follow up.

Critical Sub-Indicators - score of 3 is mandatory	Critical Sub-Indicators - score of 2 considered if accompanied by a Capacity Development Plan
<i>Indicator 4 – The country has a functional normative/regulatory body</i>	
Sub-indicator 4(d) – The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions	Sub-indicator 4(c) - The body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities
<i>Indicator 5 – Existence of institutional development capacity</i>	
	Sub-indicator 5(b) – The country has systems and procedures for collecting and monitoring national procurement statistics Sub-indicator 5(c) – Capacity to provide training and assistance to government and private sector.
<i>Indicator 6 – The country’s procurement operations and practices are efficient</i>	
Sub-indicator 6(a) – The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities	
<i>Indicator 9 – The country has effective control and audit systems</i>	
Sub-indicator 9(c) – Internal controls provide timely information on compliance to enable management action	Sub-indicator 9(d) – The internal control systems are sufficiently defined to allow performance audits to be conducted
<i>Indicator 10 – Efficiency of appeals mechanism</i>	
	Sub-indicator 10(d) – Decisions are published and made available to all interested parties and public
Sub-indicator 10(e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints	
<i>Indicator 11 – Degree of access to information</i>	
Sub-indicator 11(a) - Information is published and distributed through media with support from information technology when feasible.	
<i>Indicator 12 – The country has ethics and anticorruption measures in place</i>	
Sub-indicator 12(c) – There is evidence of enforcement of laws and penalties for	Sub-indicator 12(e) – Stakeholders (private sector, civil society, and ultimate

fraudulent and corrupt practices.	beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors
	Sub-indicator 12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions

Additional comments on the indicators:

Legislative and regulatory framework

- The assessment of the regulatory framework should extend to an assessment of an independent judiciary, free media, and other institutions necessary to promote procurement integrity.
- There should be legal and regulatory requirements to make procurement information public.

Institutional Framework and Management Capacity

- Budget transparency should be required. The standard set by the IMF Code of Good Practices on Fiscal Transparency should apply and ROSCs should be public.
- Sub-Indicator 5(a) - A system for disseminating procurement information should include criteria ensuring timely, accessible and comprehensive information at no cost. The information should include, at least, the following: the procurement plan, drafts of tender documents for individual contracts in order to receive comments and observations by interested parties or civil society, the official invitation to tender, official tender documents, amendments to tender documents, the award decision including the reasons that substantiate it, the tender evaluation report, results of appeal processes and the resulting contract. Information relating to contract execution, including contract amendments, supervisory bodies' reports and audit reports, should be published.
- Sub-indicator 5(b) Existence and availability of procurement statistics should include statistics on the whole procurement cycle from planning to execution of contracts, and should be available to all stakeholders including civil society.

Integrity and Transparency of the Public Procurement Systems²

- Sub-Indicator 10(e) Complaint bodies must have adequate authority and independence. In addition, the Bank should retain its function of receiving complaints, particularly from contractors and civil society, pursuing them promptly and conditioning disbursements on their appropriate resolution. An analysis of the complaints should be integrated into an assessment of country system success.

² The integrity/transparency component of the OECD/DAC methodology could be strengthened. Transparency International developed a detailed methodology for the evaluation of national procurement systems (Public Contracting Monitoring System – PCMS) with an emphasis on this issue. The Bank might review the PCMS and consider complementing the OECD DAC methodology with some of the indicators included therein.

- Sub-Indicator 12(a) on provisions and actions to address corruption, fraud, conflict of interest, and unethical behavior and 12 (b) on defining responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices need further detailed elaboration.

 - Sub-indicator 12(g) - There should be a Sub-Indicator for anti-bribery codes of conduct and training for the private sector engaged in procurement.
- 2. Action Plan:** All sub-indicators, regardless of their scoring, should be accompanied by action plans that improve performance and which are monitored for timely progress.