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**[FACTI Inbox] FACTI panel submission: public procurement & open contracting**

1 message

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**Karolis Granickas** <kgranickas@open-contracting.org>  
To: info@factipanel.org

Fri, May 8, 2020 at 4:36 AM

Dear FACTI,

thank you for organizing consultation sessions and being open to expert contributions.

Please accept the attached document (.pdf) as a contribution from the Open Contracting Partnership. We urge the FACTI panel to highlight public procurement as a strategic priority. The submission includes the academic evidence behind transparency and open data and a set of specific recommendations within the mandate of the FACTI panel.

We would appreciate it if you acknowledge the receipt of this.

Thank you &amp; regards from Germany, karolis

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\*\*\*Buy fast and buy open. Check out our new resources on best practices for COVID-19 procurement \*\*\*

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The logo for the Open Contracting Partnership, with the word "OPEN" in a large, bold, black font, "CONTRACTING" in a slightly smaller, bold, black font, and "PARTNERSHIP" in the same size as "CONTRACTING". The letter "O" in "OPEN" is a yellow circle.

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 **FACTI submission.pdf**  
148K

# **FACTI submission on recommendations to address corruption in public procurement and on open contracting**

22 April 2020

## **1. Summary**

Governments spend over US\$9.5 trillion on public contracting and procurement every year, a third of all government spending.<sup>1</sup> It is a government's number 1 corruption risk so it is always an important anti-corruption topic. Public procurement is also vital to effective delivery of goods, works and services to citizens and plays a vital role in economic inclusion and a country's business climate. As such, improving the integrity and fairness of public procurement is vital to FACTI's mandate of preventing financial crimes, ending financial opacity, creating a level playing field and mobilizing public resources equitably.

New approaches (including open data, digitization and civic monitoring), mounting evidence of their impact and their widespread endorsement are transforming international best practices. The global guidance and approach to procurement reforms and international norms need updating and FACTI can play an important role in drawing attention to this need.

## **2. The importance of public contracting and procurement in the fight against corruption**

As mentioned, governments spend over \$9.5trillion on public contracting and procurement every year, a third of all government spending.<sup>2</sup> The sheer scale of the market, its general opacity and the opportunities for discretion by officials make it a government's number one vulnerability for corruption and fraud, as the OECD, European Commission and UNODC all

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<sup>1</sup> Kenny, C. November 2014. Publish Government Contracts. Addressing Concerns and Easing Implementation. Center for Global Development, Washington DC.

<http://www.cgdev.org/sites/default/files/publishing-government-contracts-report.pdf>. p. ix.

<sup>2</sup> Kenny, C. November 2014. Publish Government Contracts. Addressing Concerns and Easing Implementation. Center for Global Development, Washington DC.

<http://www.cgdev.org/sites/default/files/publishing-government-contracts-report.pdf>. p. ix.

agree.<sup>3,4,5</sup> Some 57% of foreign bribery cases prosecuted under the OECD Anti-Bribery Convention involved bribes to obtain public contracts.<sup>6</sup>

The losses can be huge: the same road costs almost half as much again in a corrupt country than a better governed one.<sup>7</sup> A study by the EU's Anti-Fraud office, [OLAF](#) showed that direct public loss in public contracts amounted to 18% of the overall project budgets concerned, of which 13% can be attributed to corruption. [Another study](#) suggests the EU loses around EUR 5 billion to corruption in procurement every year.

The [Idiot's Guide to Looting Public Procurement](#) by the Open Contracting Partnership describes many methods by which procurement and contracting can be abused and how, to address key vulnerabilities, public information needs to go beyond the bidding and award stages of contracts to look at how they are planned and how they are delivered.

### **3. Full transparency and openness across the entire chain of public procurement can radically reduce corruption**

There is compelling global evidence that full transparency and openness of the entire chain of public contracting - across planning, tender, award and implementation - can radically reduce corruption. Very importantly, it also encourages competition, innovation and entrepreneurship.

To give some examples:

- The [Prozorro public procurement reforms in Ukraine](#) put transparency, open data and the principle that “everyone sees everything” at the heart of a new procurement system with impressive results. The reforms were a triumph of government, business and civil society working together and the new e-procurement system has led to major savings by government (over US\$1 billion and counting) and significantly increased competition (with thousands of new suppliers now working with government). Over 80% of government contracts are now awarded to small and medium-sized enterprises (SMEs) and perceptions of corruption have been more than halved. Automated red flags and mass civic monitoring and feedback are also embedded in the system, with over 50% of problems flagged being fixed.
- In [Bogotá, Colombia](#), the City's education secretary and the national public procurement ministry worked together to transform the provision of over 700,000 school meals delivered each day, turning it into the highest ranked school meal

<sup>3</sup> <http://www.oecd.org/gov/ethics/public-procurement.htm>.

<sup>4</sup> [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf), p.21

<sup>5</sup> UN Office of Drugs and Crime. 2013. Guidebook on anti-corruption in public procurement and the management of public finances. p.1.

[https://www.unodc.org/documents/corruption/Publications/2013/Guidebook\\_on\\_anti-corruption\\_in\\_public\\_procurement\\_and\\_the\\_management\\_of\\_public\\_finances.pdf](https://www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf)

<sup>6</sup> OECD. December 2014. The OECD Foreign Bribery Report. An Analysis of the Crime of Bribery of Foreign Public Officials. <http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>, p.8.

<sup>7</sup> Kenny, C. March 2010. Publish Construction Contracts and Outcome Details. World Bank Policy Research Working Paper 5247. <http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-5247>, p. 3.

program in the country and breaking up a suspected US\$22 million price-fixing scheme for fruit. Notably, opening up the process has improved competition significantly by increasing the number of providers from 12 to 55 in the first year and adding 14 suppliers that had never done business with the city before.

- [In Paraguay](#), open contracting data helped expose fraud and cronyism in the education sector, leading to a new ministerial team and better rules on value-for-money in basic goods and services. As the quality of the information shared has improved, the percentage of botched and failed tenders has fallen, from adjustments and amendments on 19% of all contracts in 2013 to just 3% in 2016. With consistent community pressure, the allocation of funds for school facilities in the city of Ciudad del Este has improved dramatically. Now, more than 80% of the most needy schools benefit, compared to fewer than 20% in 2015.

Academic research shows that improved openness and transparency is good for public integrity, value for money and competition when it is linked to systemic changes that allow people to use the information.

A 2019 analysis [by academics at Yale, Chicago Booth and MIT Sloan](#) found the publication of open procurement data on the EU's [Open Data Portal](#) format had major social benefits including, the increase in the number of bids received for tenders by 12%; that public officials were more likely to award government contracts to new vendors; and that prices for contracts decreased by 8%.

[A World Bank survey of 34,000 companies in 88 countries](#) found that competition was higher and kickbacks were fewer and smaller in places where transparent procurement, independent complaint procedures and external auditing are in place.

An [EU Horizon 2020 study](#) of more than 3.5 million government contracts across Europe shows that publishing more information about contracts decreases the risk of single bid tenders. This matters because single bid contracts are both a governance risk and are over 7% more expensive. Publishing five more pieces of information about each tender would save Europe up to 3.6 billion Euros.

In Peru, a [study by Columbia University](#) in New York looked at the impact of transparency and monitoring of contracts on the procurement process of infrastructure projects and found that monitoring decreased costs by 50%.

An expert report by the [Center for Global Development](#) details an abundance of evidence of reduced costs, increased competition and better services when contracting is opened up.

Lastly, we note that openness pays huge returns on investment. South Korea's transparent e-procurement system KONEPS saved the public sector US\$1.4 billion in costs.<sup>8</sup> It also saved businesses US\$6.6 billion. Time taken to process bids dropped from 30 hours to just two.

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<sup>8</sup> <http://oecdinsights.org/2015/03/27/transparency-in-public-procurement-moving-away-from-the-abstract/>

#### **4. Importance of anti-corruption in public procurement during the COVID-19 pandemic and its recovery**

We are seeing how important public procurement and contracting are in responding to the COVID-19 pandemic. Governments are struggling with slow, bureaucratic and paper-based processes whilst trying to meet the surge in demand for medicines and protective equipment from their frontline medical professionals. Emergency procedures are being used, which unless transparent and well managed, significantly increase the risk of fraud and mismanagement.

We've also seen [how transparency and open data have met those challenges](#), enabling countries with good open data to provide a single window for all their Covid-19 related contracts to identify, aggregate and analyze the most complete information about their supply chains. [Open contracting data is also helping governments to plan better, publish their stocks and anticipated needs to properly inform the market about future opportunities](#), helping with emergency management. Better, more open and accountable public procurement systems will be central to rebuilding the devastated small business sector as the pandemic subsides.

#### **5. Global Trends**

Pursuing the Single Market, Digital and Public Procurement agendas, the European Commission (EC) and the EU Member States are working to improve procurement data collection and publication. Most of the EU countries already publish some of procurement information, either through so-called [contract registers](#) or open data initiatives (both supported by the EC). However, there are many challenges related to the scope of publication, information standards, formats, equal access, and usability. Many countries (i.e. Finland, Italy, Lithuania, Slovenia, Poland, Portugal) use or have confirmed plans to use [Open Contracting Data Standard](#) to address these challenges. In addition, the newly adopted [TED eForms](#), with the financial assistance and guidance from the EC, are expected to further improve procurement data quality and publication in the next 2-3 years.

Currently, the Directorate-General for Communications Networks, Content and Technology (DG CONNECT) is defining a list of datasets that will mandate governments to publish certain datasets as open data under the [PSI/Open Data Directive](#). In a recent [public letter](#), 80 civil society organizations, companies, universities and individuals made a compelling case as to why publishing procurement data offers considerable benefits.

In addition to the European Commission, multiple international norm-setters recommended the use of open contracting to promote transparency and accountability within public spending, including the European Bank for Reconstruction and Development (that has a separate [open contracting work stream](#)), [World Trade Organization](#), [the World Bank](#), [Organization for Economic Cooperation and Development](#). Importantly, [G7 Biarritz declaration](#) in August 2019 recognized the role of open contracting and open data standards in the fight for a fairer, efficient and transparent public procurement market. It reinforced the [previous recognition](#) of the role of open data in public procurement during G20 in Toronto in 2015.

Open contracting has [become a core part of Open Government Partnership](#) national action plans, several of them led to strong results. OGP pays particular attention to promoting the use of gender-responsive procurement policies and citizen engagement to empower women. There are more than 30 countries that are implementing open contracting, and [multiple impact stories](#), demonstrating the tangible results of publishing procurement information and engaging stakeholders into its use, including from [Afghanistan](#), [Chile](#), [Colombia](#), [Moldova](#), [Nigeria](#), [Paraguay](#), [Ukraine](#), and others.

## **6. Recommendations for the FACTI panel**

The FACTI panel is in the perfect position to articulate the changing global norms and best practices of open data, user-centered design and public and business engagement in public procurement. This could take the shape of a policy recommendation and follow up events with key policy makers diving deeper into both the need to and how to improve the transparency and openness of public procurement. As mentioned above, this is especially pertinent because of the challenges and inefficiency we have seen surrounding emergency procurement during the COVID-19 pandemic.

We propose the following recommendations:

### **1) Recommend public access to information to allow citizens to follow the money behind government spending including the complete public procurement process from planning to implementation in standardized open data**

To adequately address corruption risks in public procurement, UN States Parties should strengthen efforts to increase transparency of their procurement and contracting processes, to introduce or maintain open contracting approaches to ensure full public access to information and to all documents and agreements throughout the lifetime of a contract, from planning to implementation. As mentioned, linking planning to procurement to implementation of contracts is crucial to prevent, detect and punish corruption. Many corrupt schemes may have an apparently acceptable procurement but in reality, the planning stage may have been altered to favour one company or implementation skewed to provide a payoff such that a contract dramatically changes in price (see more information in our [Idiot's Guide to Looting Public Procurement](#)).

As per the [2016 London Anti-Corruption Summit Communiqué](#), paragraph 9: governments should “**ensure public contracts are awarded and managed openly, accountably and fairly, - making public procurement open by default - so that citizens and businesses can have a clear public record of how public money is spent.**” They should “**work with businesses and civil society to ensure accountability and will work towards providing, in a usable and reusable form, shareable and timely open data and documents on public contracting activities**”. It is also particularly important to ensure the “integrity in contracting in sectors that matter for people’s daily lives, and those that are particularly vulnerable to corruption” such as in the medical sector”.

This also corresponds well with the Principles of Article 9 on the UN Convention Against Corruption whilst clarifying and refreshing their intent to link budgets and planning to procurement and spending providing a joined up ability of actors to follow the money. Much

of the guidance and support to governments under the Convention are in need of updating as technology and best practices have moved on.

We also believe that the recommendations of the [UNODC's 2015 Working Group on Articles 9 and 10 of the Convention \(CAC/COSP.WG.4.2015/3\)](#) that public procurement adopt open procedures by default, and from the UNCAC working group on use of information technologies [\(CAC/COSP/WG.4/2016/2\)](#) on the vital role technology and data can be normalized across the Parties to the Convention, including in its review process.

## **2) Support international best practices in publishing information and open data about public contracting**

Consistent with the [G20 Anti-Corruption Open Data Principles](#), we would recommend the adoption of standardized, open data on public procurement such as through the [Open Contracting Data Standard](#). As per the G20 Open Data Principles, open public contracting and procurement data would help prevent corruption “ by ... allowing advanced search, analysis and understanding of public procurement processes, through the increased disclosure of reusable data in machine readable formats around procurement's whole lifecycle, including planning, tendering, award, implementation and evaluation stages”.

The [Open Contracting Data Standard](#) is a free, non-proprietary open data standard for public contracting, already implemented by over 30 governments [around the world](#). It is the only international open standard for the publication of information related to the planning, procurement, and implementation of public contracts and has been endorsed by [major international organizations](#) including the OECD and through the [G7 Biarritz Declaration on Transparency in Public Procurement and the Common Fight Against Corruption](#).

## **3) Support inclusive and collaborative feedback mechanisms throughout the procurement process including civic monitoring**

We would like to see the FACTI panel support a global effort to drive reforms focused on promoting transparency and civic participation in public contracting around the world. Civic oversight needs to be empowered and resourced.

Civil society monitoring is transformational for service delivery, for example, helping to halve the costs of textbooks in the Philippines.<sup>9</sup> [A randomized control study of road works projects in Afghanistan](#) found that new roads were of significantly higher quality and more durable in neighborhoods where the community had monitored the implementation of the project. In Ukraine, publishing open data on its procurement through the modernized e-procurement system Prozorro allowed civil society to build data-driven monitoring tools and processes via its platform Dozorro.org that linked directly to the government's review process.

Civil society has long been calling for more systematic reforms like these such as in the [Clean Contracting Manifesto by TI, Hivos, OCP and others](#).

## **4) Prohibit conflicts of interest and support independent complaint and audit mechanisms**

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<sup>9</sup> [http://www.open-contracting.org/why\\_finance\\_ministers\\_should\\_care\\_about\\_open\\_contracting](http://www.open-contracting.org/why_finance_ministers_should_care_about_open_contracting)



A transparent and enforced conflicts of interest and audit regime will ensure that even in an emergency context, deals will not be compromised.

- For governments to remind, enact and enforce rigorous **conflict of interest provisions** in public procurement,
- to fully support and resource **independent complaint and audit mechanisms**.

#### **5) Recommend to update implementation guidance for States Parties to the UN Convention Against Corruption and the UNCAC review process**

Importantly, there is a need to update the UNODC's guidance (which dates back to 2013), the UNCAC review process, and the UNCITRAL model law on procurement. While this guidance talks a little about data, it will need to address best practice and provide reviewers with better evaluation questions. This would align the process to similar updates that respond to new technologies and evolving developments in procurement and in e-procurement such as in [OECD's Methodology for Assessing Procurement Systems](#) (or MAPS).

It is clear that improving government financial transparency and integrity and supporting inclusion and opportunity are more vital than ever, especially as we respond to the global COVID-19 pandemic and rebuild economies globally, investing in the trillions of dollars of infrastructure and citizens services needed to deliver the Sustainable Development Goals. The FACTI panel can help make sure the crucial role of public contracting and procurement in this is recognised and help change the default in procurement to 'open by design' to help us all get there faster and better as part of its vital mission.

Many thanks.