



A joint initiative of the OECD and the European Union,  
principally financed by the EU

# Principles of public procurement: the basis for good performance

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Istanbul, May 27-30, 2014





# Context: the need for good public administration

- EU accession: emphasis on rule of law, proper governance, well performing institutions
- Public pressure for good use of public funds, transparent and efficient public administration
- Neighbouring countries: similar needs and priorities; advantages for development
- Partly a cross-cutting topic: not covered in a single EU accession or association 'chapter'
- Key aspects: policy making, public service and public administration, public finance management and audit, public procurement <sup>1</sup>





# “Good” public procurement – need to apply good principles

- Multitude of regulatory frameworks
- Common core principles
- Need to explore, explain, agree, apply
- “Keep it simple” – be practical
- The performers – functions, institutions
- “The proof of the pudding is in the eating” – performance is what counts
- “Live as you learn”, and show it
- Learn from experience





# Regulatory frameworks

- EU procurement law
- Government Procurement Agreement
- UNCITRAL model laws 1994, 2011
- Multilateral development bank rules
- National laws
- Other national regulations
- Internal rules of contracting authorities



# EU procurement law

- **Primary** EU law: Treaty on the Functioning of the European Union 2009
- **Secondary** EU law: Directives
  - Public sector: 2014/24/EU
  - Utilities: 2014/25/EU
  - Concessions: 2014/23/EU
  - Defence and security: 2009/81/EC
  - Remedies: 89/665/EEC, 92/13/EEC, 2007/66/EC
- **Case** law (Court of Justice of the EU)
- **'Soft'** law: EC Interpretative Communications
  - On procurement below thresholds
  - On green procurement ...
  - On offset operations ...





# Key features of EU Directives

- Common principles and policies; some more specific, detailed requirements
- Binding on member states, candidates; harmonisation agreed with others
- Needs to be transposed into national law
- Emphasis on cross-border internal market access: publication, non-discrimination
- Focus on award stage; planning, preparation and contract management almost absent





# Key features of GPA

- Non-discrimination: supporting market access, driving market-opening reforms
- Fair and transparent procedures
- Review and enforcement provisions
- Recognised best practice; compatibility
- Minimum standards, focus on essentials
- May require legal & institutional reforms
- Flexible implementation, provisions to help developing countries





# Development bank rules

- Linked to use of proceeds from bank financing
- Opening towards use of national procedures
- Based on needs of large investment projects, not always helpful in other situations
- Bank specific, but harmonisation in progress
- Common, well established and agreed principles
- Comprehensive: objectives, principles, procedures, practices, standard documents
- Full cycle: planning, preparation, tendering and award, project implementation and monitoring







# Common core principles

- **Publication** of contract opportunities and contract awards (transparency)
- **Rules** clear in advance (transparency)
- **Competitive** procedures (economy) – also need for competitive supply market!
- **Variety** of procedures, proportionate to the situation (efficiency)
- Rules on **qualification and evaluation criteria**, specifications (non-discrimination)
- Review and **remedies** (accountability)
- Most **economically advantageous** tender (economy, sustainability)





# What to perform – central public procurement functions

- Policy and primary legislation
- Secondary legislation
- International coordination
- Monitoring and control
- Advice and operational support
- Publication and information
- Professionalisation, capacity building
- Development and coordination
- *Central purchasing*
- *Review, remedies and enforcement*





# What to perform – contracting authorities, economic operators

- Planning and preparation
- Notifications
- Tender evaluation and award
- Contract management
  
- Public sector marketing
- Development of competitiveness
- Tender preparation and submission
- Delivery





# The central performers: institutional set-up

- Large diversity of models
- Avoidance of conflicts of interest
- Core functions usually concentrated
- Supplementary functions sometimes centralised, sometimes not (in separate institutions)
- EU overview in Annex to SIGMA Paper No. 40





# Performance at different levels

- **National Level** - performance of the national public procurement system
- **Contracting Authority Level** - performance of the contracting authorities' operations
- **Contract Management Level** - delivery of the individual contract





# Performance measurement at national level

- Helps understand how policy goals interact and affect overall performance
- Helps improve quality of decision making in public procurement (policy and regulatory reform, institutional development and capacity building)
- Helps set priorities and verify progress
- Provides data for assessment of public expenditure at large





# Performance measurement by contracting authorities

- Helps ensure efficiency and effectiveness of operations
- Identifies strengths and weaknesses in the way procurement is carried out and sets priorities for improvement
- Key element of strategic and operational planning and management of the authority





# Performance measurement by contract managers

- Helps enforce contractual obligations
- Helps ensure that whatever is provided gives value for money
- If benchmarked, allows comparison with other contracts and other contracting authorities
- Identifies strengths and weaknesses in the procurement process
- Provides inputs for improvements at higher levels





# Challenges in performance measurement

- Adequate principles?!
- Adequate indicators?!
- Adequate methods?!
- Adequate goals and objectives?!
- Availability of good data?!
- Analytical and reporting skills?!
- How to define and measure efficiency and effectiveness?!
- Official support, guidance and actions?!





# Principles and indicators

- Needed for doing any performance measurement at all
- Starting point, targets for performance
- Output indicators: costs, savings, efficiency of the procurement system
- Input indicators: procedures used, number of complaints received and resolved
- Process indicators: transparency, non-discrimination, fairness, accountability
- Outcome indicators: user satisfaction, cost and convenience for users, budget effects





# National level performance and measurement

- Public procurement system performance – how and to what extent principles are followed
- Core public procurement principles and corresponding indicators
- Consolidation and analysis of lower level data
- Peer reviews and assessments
- Regulatory impact assessment
- Stakeholder surveys
- External audits





# Contracting authority performance and measurement

- Specific performance targets
- Economic efficiency, effectiveness: costs/benefits, “savings”; project implementation results (quality, quantity, time, cost)
- Procedural efficiency: time, cost, procedures used, participation rate
- Supplier and customer (citizen) relations
- Management information & reporting systems
- Collaborative benchmarking





# Contract performance and measurement

- See SIGMA brief no. 22
- Delivery management
- Relationship management
- Contract administration
- Methods for data collection and analysis
- Performance targets and indicators
- Measurement
- Reporting and action



# Challenges remaining

- What “performance”?!
  - Which principles?
  - Which indicators?
  - Which methods?
  - Which means?!
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- Looking forward to the conference outcome!





# Thank you for your attention!

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