Principles of public procurement: the basis for good performance

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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
“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

• **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?! 

- Looking forward to the conference outcome!
Thank you for your attention!

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