

Principles of public procurement: the basis for good performance

Daniel Ivarsson, OECD/SIGMA

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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 procurement¹





"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



- 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 ...





- 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





- 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





- 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)

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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?!

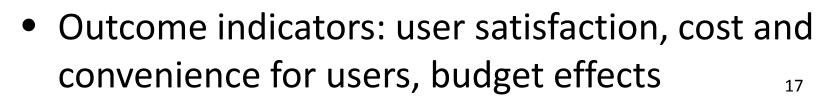


Official support, guidance and actions?!



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, nondiscrimination, fairness, accountability







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





- What "performance"?!
- Which principles?
- Which indicators?
- Which methods?
- Which means?!



Looking forward to the conference outcome!





Daniel Ivarsson Senior Adviser OECD/SIGMA Mob. +33 6 46 13 65 13 daniel.ivarsson@oecd.org

