Procurement Oversight and Monitoring—a means for efficient project implementation and use of the UNCITRAL Model Law

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Model laws
- UNCITRAL Model Law on Public Procurement (2011)
  - Guide to Enactment (2012)
  - Guidance on Procurement Regulations (2013)
  - Glossary (2013)

Legislative guides and recommendations

Model provisions

Explanatory texts
Effective Monitoring and Oversight: Critical Role for Effective Use of the UNCITRAL Model Law

Oversight measures in the Model Law

- Key feature of an effective procurement system
- Involves monitoring and enforcement
  - Reviewing and challenging decisions of the procuring entity
  - Audits
  - Investigations
  - Sanctions mechanisms
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**Oversight as a key element of accountability**

- Procurement involves discretion
- Traditional: centralized systems, prior approvals
- Modern approach: after the fact audit

- Transparency and internal records to allow decisions to be assessed

- Model Law requires up-to-date record
- States appear to create record ex post facto
- Oversight and data-gathering role sub-optimal
- Impact on decision-taking – risk aversion?
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Other reasons why monitoring and oversight are important

- Public confidence in system
- Supplier confidence in system

- Deterrent effect –
  - Procuring entities
  - Suppliers

- Systemic corruption = 20-30% of procurement wasted (World Bank Institute)
- 80% of waste is inefficiency, not corruption (CONSIP study)
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Why do we want challenge procedures?

- UN Convention against Corruption requires effective review mechanism
- Self-policing and self-enforcing law?
- For all breaches, or only intentional ones?

Scope of provisions in the Model Law

- ANY supplier (potential or actual)
- Can challenge ANY decision or action of the procuring entity
- On the basis of non-compliance with rules and procedures
- Chapter VIII of the Model Law
Model Law provisions

- 3 fora:
  - Optional peer review mechanism
  - Independent review body
  - Court procedures
    Supported by “standstill” provisions, rule on documents

- Main aim: corrective action; rapid results
- Broad range of relief (including financial compensation)
- Default rule: suspension, public notice of results

- Issues: too many/too few hearings
- Can review mechanism fulfil its role?
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Key role of transparency

- Supports procurement objectives (accountability, objectivity, competition, value for money, integrity)
- Pre-requisite for accountability
- Vital role in fighting corruption
- Allows objectives to reinforce each other

- Allows civil society to monitor
  - compliance with rules and procedures
  - compliance with the objectives of the system

- Issue: resources for civil society?
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Key role of transparency throughout procurement cycle
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Key role of transparency

- Importance of cooperation among organizations
- Procurement – WTO, EC, SIGMA, World Bank, EBRD, other regional development banks, OSCE, UNCITRAL
- Anti-corruption – UNODC, OSCE, UNCITRAL
- With national agencies and NGOs – e.g. competition authorities
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Data issues – UNCITRAL provisions

- Requirement for record (art 25)
- Disclosure of contents of record (art 25)
- Protection of confidential information (art 24)

- OECD – limited data-gathering in practice
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Issues addressed in the Guide to Enactment

- Audit and investigations

- Sanctions (including debarment)
  - Not in Model Law
  - Additional guidance on suspension and debarment, sanctions procedures – possible new topic?
  - UNCITRAL experience in dispute resolution
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Enforcement – sanctions procedures

- Procurement officials/procuring entity
  - Breach of code of conduct
  - Conflicts of interest
  - Breaches of the rules on advertising and other transparency measures

- “effective, proportionate and dissuasive” sanctions –
  - a baseline requirement of UNCAC
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Collusion

- Limited mention in Model Law
- Suggestions to address through limiting transparency
- An emerging issue for oversight needs
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For more information

Website:
http://www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html

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THANK YOU