Fighting Corruption in Public Procurement

By Jason P. Matechak

As public sector operating budgets in transition and developing country economies continue to grow tighter, national and local government entities are increasingly looking to the private sector to provide goods and services to their constituents. Such goods and services are often acquired through a public procurement process whereby the government entity contracts with a private sector enterprise to furnish a particular good or to provide a particular service for a fee subject to legal terms and conditions contained in a contract. The procurement process by which government entities award such contracts generally involves the following:

- The definition of the procurement requirement;
- An estimated budget;
- The solicitation of proposals; and
- The final award of a contract based on stated evaluation criteria and performance

In many cases, government entities seek private sector providers in order to secure better quality goods and services at a lower overall cost that is to obtain better value for money. At the same time, government entities are looking to streamline the procurement process in order to shorten delivery and performance times as well as reduce administrative costs. However, these objectives cannot generally be met unless contracts are awarded on a truly competitive basis under a system that has clear guidelines incorporating transparency, efficiency, economy, accountability and fairness into the public procurement system as a whole. Because public procurement is one of the key areas where the public sector and the private sector interact financially, it is a prime candidate for corrupt activity, cronyism, and favoritism as well as outright bribery. Hence, public procurement has been targeted by various national, international and multilateral anti-corruption initiatives as an area in need for reform.

In many countries procurement reformers and anti-corruption advocates are rightfully taking a holistic view in approaching procurement reform and anti-corruption initiatives. Such holistic approaches include:

- Devising higher ethical standards for procurement officials;
- Requiring asset disclosure for public officials of a certain rank or in a particular position; and
- Passing of freedom of information laws

In addition, audit and oversight institutions are being strengthened and given more authority. Other initiatives train procurement personnel to achieve higher professional standards. Likewise, administrative and judicial dispute resolution institutions are being created to resolve problems arising out of the solicitation process or contract performance and to address allegations of corruption. Finally, civil society organizations are strengthening their role as non-governmental watchdogs so that the private sector can help police the public procurement system.
by actively reporting on procurement fraud, waste and abuse, and by vigorously asserting contractual rights in appropriate fora.

While initiatives such as these are certainly positive developments, it is important for reformers to consider the specific operational procurement process and the steps needed to develop a new procurement system. Although public procurement processes are fairly complex and can be implemented differently in various jurisdictions, the three main phases of the public procurement process are:

1. Procurement planning and budgeting;
2. Procurement solicitation;

Corruption can arise in various forms in each of these separate phases of the procurement process.

In the procurement planning and budgeting phase, the government entity needs to determine what good or service it would like to buy (the requirement) and how much it would like to spend (the budget). In both of these cases, there are opportunities for corruption. In determining the requirement, reports could be prepared that falsely justify current or future departmental needs, falsely inflate actual needs or falsely report damaged equipment in order to create an excess supply that could be used for corrupt purposes. The procurement requirements could also be written to favor or disfavor particular suppliers. Budgets could be set artificially high so that excess allocations can be stolen or diverted. In addition, programmatic budgets could be devised in such a way that there are overlapping budgetary allocations among separate organizations or departments that could likewise be applied in a corrupt manner.

In the procurement solicitation phase, the main tasks are compiling the request for proposals or tender documents and conducting the evaluation. The evaluation criteria in the request for proposals or tender documents could be drafted to favor a particular supplier or service provider or likewise could be drafted to emphasize weaknesses of a particular competitor. Later during the evaluation of the proposals or tenders, the evaluation criteria could be misapplied or otherwise further defined or amended after proposal or tender receipt. During this phase it is also possible that advance information could be provided to a particular favored supplier. Other techniques such as failing to solicit proposals or tenders from the competitors of a favored supplier, wrongfully restricting the tender pool, soliciting offerors known to be inferior to a favored supplier, simply mis-addressing tender documents, accepting late proposals or rejecting legitimate proposals are techniques that can be utilized to corrupt the procurement process.

Corruption opportunities also abound at the contract award and performance phase of the procurement process. For example, an offeror could propose an unrealistically low offer in the hopes that after the contract is awarded procurement officials will allow amendments to increase costs. Likewise, a firm could offer exceptionally high caliber products or less qualified personnel to meet a particular requirement and then upon contract award substitute inferior
products or personnel. It is also possible to corruptly require subcontractual relationships with favored suppliers. Furthermore, after the evaluation is complete, it is possible to award a contract that materially differs from the terms of the solicitation in terms of specifications, quantity, or delivery schedule. Oversight and reporting requirements may also be minimized and in some cases cost overruns can be corruptly explained away or falsely justified. Finally, supporting documentation could be intentionally lost or destroyed making detection and prosecution of corruption offenses difficult.

Whereas many holistic public procurement reform and anti-corruption activities are effective, considering the operational aspects of a procurement system can provide meaningful insights to public procurement reformers and anti-corruption advocates in order to achieve the above mentioned goals of promoting efficiency, economy, transparency, fairness, and accountability. For example, in the procurement planning phase, budgetary and financial controls should be operationally separate and procurement requirements should be subject to internal and public scrutiny. Likewise, in the proposal solicitation phase, there should be clear guidelines so that both procurement professionals and private sector providers will understand their respective roles and there should be an opportunity for the private sector to challenge the stated requirements and the result of the solicitation evaluation. Finally, in the contract award and performance phase, strict financial controls and audit oversight are needed to protect the integrity of the final phase of the procurement process.

These are but a few ideas as to how to address anti-corruption in the context of procurement reform. Although no public procurement system will likely ever be fully free of all corruption, a system that promotes transparency, efficiency, economy, fairness and accountability will be a system where corrupt activities will be more difficult to conceal and will be easier to punish administratively or criminally. More importantly, such a system will be more effective in providing a mechanism whereby the private sector can provide high quality goods and services at a cost or price deemed to be fair and reasonable by the public sector. Understanding the operational intricacies of the procurement process will help public procurement reformers and anti-corruption advocates contribute to this important endeavor.

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