

Procurement Reform to Mitigate Corruption Risks in Procurement Processes in Nepal: Good Practices and Lessons Learned

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Summary

To mitigate corruption risks in procurement processes in Nepal, comprehensive procurement reform is needed, ranging from legal reforms which take into account all three factors of procurement – cost, time, and quality, to institutional reforms to ensure that monitoring, evaluation and oversight are effective. Incentives, such as reward for ‘good’ behaviour, and at the same time penalties for ‘bad’ behaviour, should be included in the law and specified in contractual arrangements.

The use of technology such as e-procurement (with e-budgeting, e-bidding, and e-payment) will significantly help to prevent corruption, particularly as open e-procurement systems can enable public access to procurement data.

Judicial reforms are also needed for effective commercial dispute resolution and to end widespread impunity and endemic corruption prevalent in procurement processes.

this contracted value is disclosed as open data by governments.¹ In addition, more than half (57%) of all foreign bribery cases are related to public procurement.² Estimates show that 10-25% of any contract’s overall value may be lost due to corruption,³ which denotes its degree of seriousness.

Corruption risks in procurement processes are evident across a range of areas, including, for example, (i) influencing contract award decisions; (ii) diverting the funds meant for delivering goods and services for personal benefit; (iii) access to privileged information; (iv) limiting competition and favouring certain bidders; and (v) influencing the outcome, for example, in a review process of a complaint against an awarding decision.

Evidence has shown that the most common procurement issues in the world have tended to revolve around: (i) high level of impunity for non-compliance; (ii) either no laws and regulations or circumspection of any such that may exist; (iii) political interference and conflict of interest in the procurement process; and (iv) systemic weaknesses including lack of checks and balance. These issues (and red flags associated with them) are evidence across various phases of public procurement, including:

- bid evaluation – where conflict of interest and corruption is seen in the evaluation process through, for

Introduction

Corruption in public procurement is a global problem – both in developed and developing countries. Globally, governments spend a total of approximately US\$13 trillion a year on public procurement, but only about 2.81% of

¹ Open Contracting Partnership <https://www.open-contracting.org/wp-content/uploads/2020/08/OCP2020-Global-Public-Procurement-Spend.pdf>, World Bank <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2018&start=1960>.

² [OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials](#) (OECD, 2014))

³ UNODC, https://www.unodc.org/documents/corruption/Publication/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf

example, familiarity with bidders over time;

- contract award – which could include non-disclosure of accurate cost or pricing data, invoice mark-ups, and lack of access to records on the procurement procedures; and
- contract management/performance – as evident in the abuses of the supplier in performing the contract, particularly quality, time, and price.

Governments need to take prompt and effective action given that the risks of corruption and mismanagement are particularly prevalent in public procurement processes. For example, strategies could include debarment or disqualification of suppliers by public sector agencies (as is evident in Singapore, where the grounds for debarment include, among others, abandonment/termination of contract, withdrawal of tender, use of sub-standard materials, giving false information, bid rigging, etc.).

Weak rule of law and lack of good governance pose a major threat to preventing fraud and corruption.

Corruption Risk Factors in Public Procurement

There are several factors that make procurement susceptible toward higher degrees of corruption (see Table 1); what is noteworthy is that not all variables are under the control of the public procurement authority (e.g., the urgency of a procurement contract is necessarily a function of external influences, as has been demonstrated during the Covid-19 pandemic).

One particular variable that can enable the public procurement process to be more effective, transparent, and accountable is open access to data and information on the

procurement (by virtue of holding to account relevant authorities and firms). The Global

Table 1. Corruption Risk Factors in Public Procurement

Variable	Associated Corruption Risks
Contract size (CS)	Positive; higher CS – higher risk
Complexity (C)	Positive; higher C – higher risk
Discretion (D)	Positive; more D – higher risk
Financial and Operational Control (F&OC)	Negative; lower F&OC – higher risk
Access to information (AI)	Negative; lower AI – higher risk
Urgency (U)	Positive; more U – higher risk

Open Data Index (on procurement rankings) considers several areas that impact how strong procurement processes are by considering the degree of access to open data (including whether it is openly licensed, downloadable at once, publicly available, and free of charge, among others).⁴ Where access to information is limited, corruption risks are increased given the opacity of procurement processes and limitations in monitoring and oversight.

Corruption risks can manifest themselves at all stages of the public procurement process. In the past year amid the COVID-19 pandemic, emergency procurement processes have been initiated by governments to respond to the urgent health crisis in order to quickly minimize and mitigate the negative effects of the crisis. However, given the urgency of the situation, many governments have relaxed safeguards on transparency and oversight of procurement processes in order to achieve speed and flexibility to procure necessary emergency items (e.g., by making the bidding period shorter or relaxed controls around payment and contract delivery inspection). Yet, without sufficient safeguards, many corruption risks emerge; e.g., abuse of emergency procedures such as direct award for non-

⁴ In the Global Open Data Index (Procurement Rankings) for 2019 Nepal was ranked 75th, far below its neighbours such as Pakistan (on 39th), India, and Bangladesh (both

on 44th). (Global Open Data Index 2019 <https://index.okfn.org/dataset/procurement/>)

urgent items, or overuse of inexperienced suppliers, or – as has been evident in Nepal – reliance on a few businesses to procure relevant equipment, vaccines, PPE, ventilators, etc. without going through a proper tendering process.

Good Practices in Procurement Reforms

There have been numerous good practices from around the world that should be considered by the Government of Nepal. These include:

1. E-procurement platforms – these are effective in promoting efficiency in procurement processes, enhancing savings in procurement costs as well as in curtailing mismanagement of resources (estimates in 2019 show that e-procurement platforms yielded annual savings of US\$15 million in Viet Nam and US\$2.7 billion in Thailand). Other examples of effective e-procurement platforms are shown in Figure 1.

Figure 1. E-Procurement Platforms in South Korea and Bangladesh

South Korea ON-line E-Procurement System (KONEPS)

- **Approx. US\$8 billion saved annually through KONEPS** (USD\$6.6 billion for the private sector thanks to the more efficient and online process)
- **5x increase in suppliers' participation** in procurement (from 65,000 in 2002 to 343,512 in 2015)
- **Shorter bid review period** (from ~30 hours to less than 2 hours)

Bangladesh e-government procurement system

- **Saved government budget approx. US\$600M** (FY12-18)
- **Speed up procurement process by 28%** - from 86.7 days (FY12) to 62.2 days (FY19)
- **Lower bid rejection rate** – from 8% (FY12) to only 3% (FY19)

2. New technologies to promote integrity in public procurement – Ukraine's ProZorro is an open-source government e-procurement system that enables access to all relevant information to the general public, and that brings together

government, business, and civil society to monitor public procurement. ProZorro is complemented by Dozorro which is an artificial intelligence system with machine learning algorithms to identify red flags and which finds violations in ProZorro. This enables effective procurement processes.

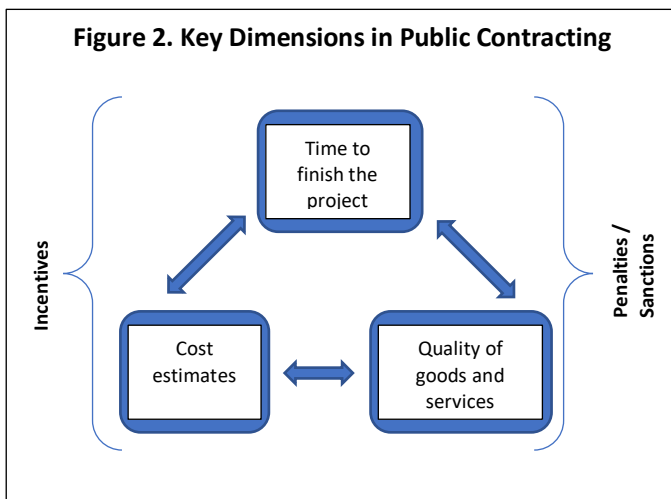
3. Artificial Intelligence (AI) – Dozorro is but one example of how AI is increasingly being used as a promising anticorruption tool in public procurement. AI applications and analytics enable mining large datasets and to detect areas where fraud could occur. In Mexico, AI applications have been pilot tested to identify risk of corruption, tax evasion, or fraud in public procurement. For example, it has built up a Corruption Risk Index using AI and identifying risk in countless buying units in the public procurement sphere.
4. Open data and information for monitoring and accountability of procurement projects – The Infrastructure Transparency Initiative (CoST) is one of the leading global initiatives on improving transparency and accountability in public infrastructure. It has implemented several online platforms across countries to provide live information to promote disclosure, validation, and analysis of data from infrastructure projects. CoST works globally, disclosing and validating data on infrastructure projects so that it is possible to hold to account decision makers involved with the projects. Since much of public procurement takes place in infrastructure projects, the work of CoST has been important in strengthening transparency and integrity in procurement processes.
5. Participatory approach to monitoring, reporting and social accountability of infrastructure projects – For example, in Malaysia, the FixMyStreet platform encourages an inclusive and participatory approach as citizens report infrastructure flaws; and in the Philippines, the

innovative DevelopmentLIVE mobile app allows citizens to report and live-stream mismanagement and faults with SDG-related infrastructure projects in real-time.

The above measures can be adapted across contexts to strengthen the integrity of procurement processes, as part of any procurement reform.

In order to improve the effectiveness of public procurement, many advanced countries also conduct fundamental reviews of their public procurement processes and systems. In the UK, for example, the public procurement regime is set for wide-ranging reforms whereby it will be simplified and information made more accessible to the general public. In addition, over 350 regulations which make up the UK's procurement rules are to be consolidated into a single uniform framework. Among other things, it will also introduce exclusion rules to tackle supplier fraud, taking account of a bidder's past performances. An interesting proposal is to cap the level of damages available to bidders so as to deter speculative claims.

Key Dimensions of Public Contracting



Five key dimensions of public contracting are worth taking into consideration while setting up relevant procurement laws (see Figure 2):

1. The time to finish the project – a key component in any contract since projects have time bounds, and the time taken to

complete the contract determines, in most cases, the initiation of a revenue stream.

2. The cost estimates – traditionally, these have been the primary consideration in determining which bid is successful; yet, focusing entirely on costs could mean that any variation in the financing of the inputs (of which there will be many) will mean a ballooning of the contract costs.
3. The quality of goods and services – in essence, a successful contract will be one that delivers the good or service to the quality standard expected, while keeping costs constant (or ideally, lower) and within the timing specified (or, earlier than planned).
4. The penalties (or sanctions) – while provisions exist in the relevant laws in public procurement around penalties or sanctions for not completing a contract on time, within cost, and to the quality pre-specified, a lack of their enforcement has been a challenge for effective public procurement in Nepal.
5. The incentives – in Nepal there is a lack of incentives for the contractor to deliver a good or service ahead of time, below cost, and also meeting, or exceeding, the quality specifications. This variable (i.e., of incentives) is critical if public procurement is to be effective.

Main Challenges in Nepal

The main challenges in Nepal's procurement processes can be characterized as follows:

1. Nepal needs to improve its e-procurement processes, strengthen its open data systems, and consider investing in its digital infrastructure to leverage the use of Artificial Intelligence and other new technologies. According to the Global Open Data Index in 2019, Nepal's procurement data is not openly licensed, is not in an open or machine-readable format, is not downloadable at once, and is not up to date. Significant investments

need to be made in strengthening open data and improving e-procurement processes.

2. Nepal's procurement law focuses on low bidding (cost concern) rather than on quality. As a result, there have been instances of bidders going up to 30% below the estimated cost in order to win contracts, which then compromises on the delivery and quality of the goods/services.
3. The law has provisions for penalties for non-compliance but these provisions are very weak and rarely enforced. As a result, contractors may not be incentivised to deliver with high quality, low cost, and short amount of time.
4. Misuse of the variation clause in the law (i.e., with respect to cost and time over-run) whereby more time is taken to complete the contract and at higher cost.
5. A culture of impunity regarding corruption cases in Nepal, particularly in procurement.
6. Need for a more granulated procurement law which provides different measures for specific projects and in specific situations (e.g., energy vs. road).
7. Need to develop the capacity of the private sector, e.g., in construction.
8. Companies should be classified not just based on their capital but also on capacity (i.e., capacity to contract).
9. Need for strong incentive structure for behavioural change (penalties/sanctions vs. rewards), including specifying these during the initial cost estimate phase itself.

Conclusion

For public procurement to be effective in contributing to Nepal's development, mitigating corruption risks across all stages of the procurement process is critical.

Corruption risks in public procurement exist at various levels. They are not just confined to the process level where contracting is done, but are also pervasive at the system level where the rules and the roles of institutions are established, down to the individual level where individuals' capacity and conduct can influence the outcomes of procurement processes.

As such, there is a need to review existing procurement laws and institutions and develop strategies to reform existing systems. This includes harnessing the benefits of technology to improve e-procurement systems, strengthen the publication and collection of open data for access to information, and develop innovative platforms and applications for participatory and inclusive monitoring and oversight of procurement activities. Moreover, the provisions of rewards and penalties have to be embedded in the procurement processes with a strong legal and regulatory reinforcement mechanism of these provisions.

It would therefore be critical for Nepal to leverage existing tools and adapt good practices from around the world to its context, so as to promote comprehensive procurement reform, including legal, judicial, and institutional reforms, that would enable public procurement processes to contribute effectively to achieving its development goals.

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