

**A WORK IN PROGRESS:  
IMPLEMENTATION OF THE  
APEC GOVERNMENT PROCUREMENT TRANSPARENCY  
STANDARDS IN  
MEXICO, PERU, VIETNAM, INDONESIA AND THE PHILIPPINES**

## **Project Overview**

Transparency International - USA (TI-USA) initiated a project on the implementation of the APEC Transparency Standards on Government Procurement (APEC Standards) in cooperation with the Center for International Private Enterprise and TI chapters in Indonesia, Mexico and Peru and the TI National Contact in Vietnam. The goal was to jointly assess the degree to which the APEC Standards have been incorporated into local laws and, through discussions with the private sector in each country, whether these legal changes have been applied on the ground and if they improved transparency and reduced corruption. TI-USA, in cooperation with Procurement Watch, Inc. in the Philippines, carried out a similar project in that country with the support of the GE Foundation. The project resulted in country reports analyzing the state of implementation, in law and in practice, of the APEC Standards.

## **The Importance of Transparency in Government Procurement**

Government procurement, estimated at between 14 and 20 percent of a country's GDP, or approximately between \$8.16 trillion and \$11.65 trillion annually on a global basis, is devoted in large part to essential public services such as clean water, education, healthcare and infrastructure. With estimates that corruption can add 15-25 percent to the cost of government procurement, the potential financial and social costs are staggering. Therefore, combating corruption through greater transparency and integrity in this arena has been a long-standing and high priority objective of Transparency International chapters around the world.

Government procurement transparency has also been a focus of U.S. Government efforts because of the importance of fair competition to increasing U.S. exports and job creation. The United States has negotiated multilateral and bilateral agreements with strong government procurement transparency requirements through the World Trade Organization, bilateral and regional free trade agreements and the Asia Pacific Economic Cooperation ("APEC"). Similar provisions are now being negotiated as part of the Trans-Pacific Partnership Agreement.

Addressing corruption in government procurement has also been a key focus of multilateral development institutions, given its importance in effectively using resources, creating fair competition and growing the economy in emerging markets and developing countries.

## **APEC Transparency Standards on Government Procurement**

Members of the Asia-Pacific Economic Cooperation (APEC) agreed in 2004 to a set of Transparency Standards on Government Procurement that can foster a level playing field in government procurement by making all information readily available to competitors; requiring notice and comment periods prior to adopting laws and regulations governing procurement; providing an avenue to appeal administrative decisions; making publicly available the evaluation criteria and the name of the winning bidder and contract amount; and, upon request, notifying the losing bidders with an explanation as to why they lost. If properly incorporated into local law and implemented in practice, these standards could significantly enhance fair competition and minimize official discretion, reducing corruption for the benefit of the people in APEC countries.

## **Key Findings from Evaluation of Implementation of the APEC Standards**

### **Findings with respect to governments**

- Legal frameworks governing procurement have improved significantly since 2004. However, with the exception of Mexico, respective country legal frameworks do not yet incorporate all of the standards.
- In each country, implementation on the ground is lagging and fundamental institutional issues negatively impacting the integrity of government procurement persist.
- Decentralization has led to more procurement being handled at a regional and local level where public officials have had little training. More procurements are of a smaller value, and thus, subject to sole source bidding, significantly increasing the chances of corruption.
- Although the legal framework applies to all procurement entities at all levels of government, procedures are not standardized.
- Electronic procurement has contributed to increased transparency but remains hampered by the ability of government officials to manipulate the system internally. Additionally, smaller businesses lack or have inadequate Internet access for completing electronic procurement procedures.
- There is a lack of professionalism among procurement officials, a lack of technical expertise needed to create bidding specifications and evaluate tenders on merit.
- State-owned enterprises, acting as buyers and sellers in the market, distort competition and raise serious conflicts of interest in the procurement process.
- In all countries, there is no truly independent procurement review body.

### **Findings with respect to the private sector**

- Many companies are not adequately familiar with procurement laws and procedures, or believe that even when tender opportunities are properly published, the procurement may not be truly open to competition. As a result, they rely on "the old way" to carry out business.
- Bidders are reluctant to take advantage of the right to bid clarifications or challenge procurement decisions because they lack knowledge of their rights and do not want to antagonize public officials by asking questions and demanding that the law be followed.
- While each of the countries criminalizes bribery of domestic public officials, enforcement is not sufficiently vigorous or predictable and leads to complacency among companies.
- Many companies either do not have or fail to apply a code of conduct or internal controls to detect, sanction and remediate corruption.

### **Findings with respect to civil society**

- CSOs actively monitor procurement in Mexico and the Philippines, encouraged by a legal framework which gives them the right and much, if not all, of the information needed.
- Only Mexico provides a steady source of funding for CSO monitoring. CSOs in the Philippines are dependent on the private sector and overseas development assistance for funding, which may fluctuate and is inadequate to train and deploy sufficient monitors.
- While Indonesia's CSOs have a right to monitor, their numbers are not commensurate with the task and there is no guaranteed source of funding.
- The legal framework in Peru and Vietnam does not permit civil society procurement monitors and, while civil society is active in Peru, access to information is limited.

### **Recommendations**

Each report contains recommendations, tailored to the individual country, intended for the government, private sector and civil society.

**I. Among the top priorities for government** are: completing the legal framework to cover all the APEC Transparency Standards; providing notice and comment on procurement regulations during the procurement process; standardizing procurement procedures and documents across all levels of government; and, training officials on the legal, procedural, substantive and integrity-based aspects of procurement. Governments should also create a review

mechanism that is truly independent of the procuring entities and require companies to have a code of conduct, a training program and internal controls to detect corruption before allowing them to bid on government procurements.

**II. The private sector** in each country needs to increase its knowledge of the procurement laws and regulations and take advantage of the rights given to bidders under those laws. Most importantly, through business associations, chambers of commerce and in cooperation with civil society and other organizations, the private sector needs to speak with one voice demanding greater procurement transparency from the government; raise its own awareness of ethical issues; adopt and enforce codes of conduct that detect, sanction and remediate corruption; provide training to employees and business partners; and implement internal controls.

**III. Bilateral aid agencies and multilateral development institutions** should continue to assist procurement reform efforts, provide technical capacity and advice to procurement agencies and

**IV. Reporting on Progress:** While there has been good progress in securing political and legal commitments to undertake reform, more attention is needed to ensure commitments are kept. Regular reporting on implementation in law and in practice is required and should include the perspectives of government, the private sector and civil society.

APEC Leaders committed at the 2010 Summit to report progress on transparency and anti-corruption commitments. APEC economies should report this year on practical implementation, including such data as number of bids and value of contracts subject to competitive bidding and sole sourcing, number of bidders, number and results of bid protests, number of enforcement actions against procurement officials for failure to follow proper procedures.

**V. Trade Agreement Provisions:** Governments entering into trade arrangements should include measures to promote and monitor implementation. With respect to procurement, they should take the following issues into account:

- Decentralization of procurement to regional and local levels has removed many procurements from competitive bidding and from bidding by non-nationals. This may require lowering the threshold for procurement commitments in free trade agreements or obtaining commitments to lower the threshold for competitive bidding even if not bound as a trade commitment.
- Given bidders' reluctance to protest procurement decisions to a body that is associated with the procuring entity, governments should commit to create a review body independent of any procuring entity.

- Given the importance of good private sector conduct, governments should commit to require companies to have a code of conduct, training program and internal controls in order to participate in public procurement.
- Notice and an opportunity to comment on laws and regulations pertaining to government procurement – and on the development of procurement opportunities – are essential to promoting transparency. Judicial review should be available to enforce the requirement to provide notice and an opportunity to comment.

## Conclusions

These country reports illustrate that the potential of the APEC Transparency Standards on Government Procurement to increase transparency and reduce corruption can only be realized by vigorous, consistent multi-stakeholder efforts to implement and enforce those standards. The APEC Standards provide a useful baseline and their implementation should be part of broader procurement reform efforts.

The roles of the government, private sector and civil society in each country are complementary. The gaps in practical implementation of the APEC Standards clearly show that the extent of government commitment to implementing multilateral standards is often limited and local actors must demand compliance – and be compliant themselves – in order to truly advance government procurement transparency and integrity. Businesses need to improve their internal compliance through codes of conduct, internal controls and training and act together through collective action and with civil society organizations to reduce corruption.

The reports are available at [www.transparency-usa.org/publications](http://www.transparency-usa.org/publications). Comments and questions are welcome and should be directed to Laurie Sherman at TI-USA, 202-589-1616 or [ls Sherman@transparency-usa.org](mailto:ls Sherman@transparency-usa.org).

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