BENCHMARKING PUBLIC PROCUREMENT: WHAT IT BRINGS TO THE DEBATE

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ABSTRACT. The Benchmarking Public Procurement (BPP) project is a World Bank Group initiative launched in 2013 to address the lack of comparable data on public procurement at the global level. Created at the request of the G20 Anti-Corruption Working Group, the project focuses on regulatory environments that affect the ability of private companies to do business with governments. It is modeled after the World Bank Group's *Doing Business* initiative, which measures the ease of doing business in 189 countries and has fostered over 2500 business regulatory reforms worldwide since its inception in 2003. BPP is composed of two different sets of indicators assessing (1) the procurement life cycle and (2) complaints and reporting mechanisms. It covers 77 economies and is currently being expanded to 189 economies this year. The project draws its distinctiveness from presenting actionable indicators that are comparable globally.

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INTRODUCTION

The analysis presented below is made on the basis of the data collected by the Benchmarking Public Procurement initiative in 2016. Good governance is crucial to end poverty and boost shared prosperity, the twin goals of the World Bank Group (WBG). Countries with strong institutions prosper by creating an environment that facilitates economic growth, enables delivery of valuable public services, and earns confidence of citizens.

As a key government function, ensuring an effective public procurement system is critical in order to promote economic growth. Public procurement is massive: it accounts for around one fifth of global domestic product; and the purchase of goods and services represents a third of total public spending in most high-income economies to half of total public spending in developing economies. Public procurement can have a very strong impact as a lot of key resources flow through procurement.

Given its magnitude, public procurement is also the government activity most vulnerable to corruption and fraud. Corruption in public procurement imposes very high costs on both the government and the civil society. Eliminating corruption in public procurement is probably impossible but a range of measures is available for governments to combat corrupt practices related to pubic contracts. Sound public procurement laws that promote transparency and reduce the opportunity for opaque decisions are an important weapon in this fight.

BPP, an indicator-based research project launched by the World Bank Group in 2013, aims to provide comparable data on public procurement laws and regulations that affect the ability of private companies to do business with governments. The project builds on internationally accepted practices, and focuses on the most critical elements of the public procurement cycle, from the preparation phase to the contract management and including a well-functioning complaint system. BPP aims to promote evidence-based decision making by governments and to build evidence in areas where few empirical data have been presented so far, with the medium-term goal of improving governance and efficiency in public sector procurement.

This article presents the *Benchmarking Public Procurement* project and the 2016 findings, in order to demonstrate the relevance of benchmarking countries' public procurement systems.

METHODS

BPP assesses two critical dimensions of the public procurement system. The *Procurement Life Cycle* dimension focuses on elements that matter for private firms across various phases of the public procurement cycle: preparing, submitting and evaluating bids, and awarding and executive contracts. Transparent processes, easy access to information and open procurement markets drive down costs, improve quality and provide better value for money. They also lower the risk that any party will be improperly advantaged due to flaws in the system.

This BPP dimension attempts to address questions such as how difficult or costly is going through the main phases of the procurement life cycle? To what extent are procurement systems efficient from a regulatory standpoint, how high are transaction costs and to what extent potential bidders may be excluded from participating?

The second dimension, Complaints and Reporting Mechanisms, focuses on an equally critical aspect of private sector participation in procurement systems: a well-functioning complaint system. With companies and citizens demanding more transparency, accountability and participation, in policy decision making, establishing good complaints mechanisms is crucial to the procurement reform agenda. Such mechanism can ensure transparency and accountability in public procurement. Having set rules, defined time limits and remedial actions when processes fail strengthens credibility and confidence in the system. One of the main objectives of these mechanisms is to enforce public procurement laws so that authorities can correct mistakes and non-compliance. Trust in the procurement system will encourage more bidders to compete for public contracts.

This BPP dimension attempt to assess whether potential suppliers have sufficient means to raise a problem to relevant review bodies, as well as the overall the efficiency of the first tier and second tier review process.

All *BPP* indicators are composed of a large set of comparable data and together provide a country-by-county diagnosis of the main hurdles that the private sector faces while navigating domestic public procurement markets. Across the thematic areas covered, it presents two types of data: one combining a reading of the laws and other regulations with a measure of relevant aspects of the regulatory quality (de jure), and one assessing their implementation in practice, notably focusing on the time, the procedures and the costs incurred de facto).

In order to ensure that the data collected is standardized and therefore comparable, BPP relies on questionnaires with the same set of questions distributed to all economies. In addition, comparability is achieved through the use of a case study designed specifically for the BPP study and applied to all economies. The main contributors to the project are government officials involved in public tendering, law firms, other professional services providers (mainly accounting and consulting firms), chambers of commerce and business associations, law professors and private companies bidding on government contracts.

So far, a scoring methodology has been used to aggregate data points across a number of sub-indicators and allows to present the surveyed economies in five different groups (quintiles). Economies with the highest scores (81-100) are in the top fifth quintile, which implies that they are among the best performers for a given subtopic. Although these economies share a substantial number of good practices, their public procurement system can also be improved.

RESULTS

In 2014, BPP was successfully piloted in 11 economies World Bank, 2014).² In 2015, the project's coverage was expanded to cover 77 economies across seven regions. A report presenting the findings of the second round of data collection was published in October 2015.³ Currently, the project's geographical coverage will be expanded to 189 economies and a new report will be available in December 2016.

The results presented below illustrate the main findings obtained and presented in the *Benchmarking Public Procurement 2016 – Assessing Public Procurement Systems in 77 Economies* report.

Benchmarking Public Procurement 2016 data shows that in general, public procurement systems could be improved to achieve a greater level of transparency and facilitate suppliers' participation by reducing costs and delays, both during the procurement life cycle and before complaint mechanisms.

The Procurement Life Cycle

Guaranteeing that suppliers have access to tender opportunities, tender documents, and an understanding of how their bids will be evaluated is essential for the transparency and openness of the procurement process. Obstacles to such aspects increase transaction costs and exclude potential bidders, particularly small and medium enterprises, from participating in procurement procedures. Indeed, ensuring transparency and accessibility throughout the procurement life cycle—ranging from the first conception of the procuring entity's needs, to the contract award, all the way to final delivery and payment—benefits the private sector and ensures that the public sector gets value for money.

The *Procurement Life Cycle* indicator covers the following phases of the public procurement process from the perspective of the private sector:

- Preparing bids: captures a number of critical elements of the procurement life cycle that take place before a supplier submits a bid:
- Submitting and evaluating bids: measures the ease of bid submission, and whether the bid opening process is fair and transparent:
- Awarding and executing contracts: assesses whether the contract is awarded transparently, once the best bid has been identified.

In which countries would it be easier for the private sector to do business with the government? Where would a small or medium enterprise encounter higher transaction costs to participate in a call for tender? Would a potential bidder become aware of tender opportunities through an online portal in Vietnam? Is it easier to submit a bid in Canada or in Italy? How long will it take for a supplier to receive a payment in Botswana? The answers to these questions, as well as the main findings for the *Procurement Life Cycle* subtopics are addressed below.

Preparing the bids

When assessing their needs and researching potential solutions, procuring entities often resort to the private sector to conduct market research. It is a good practice that the needs assessment is publicly advertised so that more suppliers are able to participate in the elaboration of tender specifications. This benefits procuring entities since they are able to consider the full menu of options available and get the best value for public money. Only seven of the measured economies require that the consultation, if organized by the procuring entity, be publicly advertised. These include Algeria, Argentina, Brazil, Canada, Chile, Poland, and Taiwan.

In order to make an informed decision on whether or not to submit a bid, a supplier has to know about tender opportunities. By having access to procurement plans and other relevant documents, a supplier will be able to prepare a stronger proposal.

The procurement plan is required to be published in half of the measured economies. Although there are different means where it can be published (i.e. notice board of the procuring entity/city council/ministry, government act, newspapers, television/radio, etc.), doing so on an e-procurement portal or website of a procuring entity is recognized as a good practice. Suppliers in Algeria, Argentina, Australia, Bulgaria, Chile, Cote d'Ivoire, Mexico, Morocco, New Zealand, Ukraine, Vietnam, and another 21 economies would be able to access the procurement plan online. In Austria, Azerbaijan, Canada, Hong Kong, the Netherlands, and Thailand, for example, it is not required for the procurement plan to be published. And although this is also the case in Italy and the Russian Federation, procurement plans are nevertheless available online.

The means of publication mentioned above are similar for the notices of invitation to tender. Following the internationally accepted good practice, in a vast majority of economies these notices are available online. Indeed, this makes it easier for suppliers to have access to tender opportunities. In 15 economies, including Colombia, Ireland, New Zealand, Singapore, Sweden, the Republic of Korea, and the United States, an e-procurement portal or website is the only way these notices are published. Contrary to this, a supplier would not be able to access such notices online in Algeria, Burundi, Lebanon, Mozambique, Namibia, Nigeria, Sierra Leone, and Gambia.

Submitting and evaluating bids

The existence of a procurement portal is essential for making it easy and efficient for suppliers to obtain information in order to submit their bids. Lebanon, Myanmar, and Namibia are the only countries where a procurement portal is nonexistent.

The use of standard bidding documents (SBDs) is considered a good practice since suppliers know what to expect from the tender. Since they are drafted by the procuring entity, SBDs provide a guideline on the content of the tender. However, the use of such documents are not required in economies like Australia, Austria, France, Hungary, Malaysia, the Netherlands, Sweden, and the United Kingdom. Yet, close to a third of the measured economies do mandate the usage of standard bidding documents.

It is important for suppliers to be able to ask questions and clarify doubts that might arise from the notice of invitation to tender or the tender documents themselves. Likewise, the answers provided by the procuring entity should be made available to all interested suppliers.

Awarding and executing contracts

Once the most competitive bid is identified, the contract has to be awarded promptly and transparently. Losing bidders should be notified and given an opportunity to learn why they did not win. Procurement does not end at the award of the contract, as the contract needs then to be managed and the supplier paid in return for its performance.

The legal framework should provide a time limit to issue payments and grant an additional compensation when the procuring entity fails to pay on time. Indeed, delays in payment can have severe consequences for private sector suppliers, particularly small and medium enterprises (SMEs), which typically do not have large cash flows. Finally, the procuring entity should also be encouraged to manage the payment process through an online system, offering the possibility for supplier to sign the contract and request payments online.

In 28 of the 2016 surveyed economies can a supplier expect to receive payment within 30 days? In practice delays of more than 30 days are common. In half of the remaining surveyed economies, suppliers have to wait longer than 60 calendar days for payment. In a

third of the economies surveyed, a company has to ask for the inclusion of payment terms in the contract.

When it comes to penalties, many economies do not request procuring entities to pay them to suppliers in case of late payment.

Complaints and Reporting Mechanisms

A critical factor that influences private sector participation in public procurement opportunities is whether firms have access to a well-functioning complaints system that can provide accountability and confidence in the whole procurement system. Channels to report irregularities, misconduct and conflict of interest can increase fairness in procurement by adding credibility and legitimacy to decisions. Trust in the procurement system can encourage more bidders to compete for public contracts and an increased participation may trigger more competition, quality improvements and reduction of prices. A complaints review system is also a fundamental tool to fight corruption and protect the integrity of the procurement system.

BPP assesses whether countries have established laws and regulations to govern complaints and reporting mechanisms of public procurement processes throughout the procurement cycle. The Complaints and Reporting Mechanisms indicator measures the ease of resolving irregularities in public procurement processes through a complaints review system. The indicator looks into the accessibility that bidders and other stakeholders have for contesting and reviewing procurement decisions, the independence of the review process and if the available mechanisms provide an efficient and timely resolution of complaints, as well as adequate remedies. It also looks into the enforcement of the laws and regulations governing the complaints mechanisms and the transparency throughout the review process.

The Complaints and Reporting Mechanisms indicator is divided into three sub-indicators:

- Availability of Complaints and Reporting Mechanisms: assesses
 whether suppliers have sufficient means to raise a problem to a
 relevant review body and whether they have access to sufficient
 information to evaluate the opportunity to file a complaint.
- First-Tier Review Process: explores the overall procedure for a complaining party to obtain a decision from the first-tier review

body as well as the characteristics of filing a complaint before the first-tier review body.

 Second-Tier Review Process: assesses whether the complaining party can appeal a decision before a second-tier review body and, if so, the cost and time spent for such a process, as well as some characteristics of the second-tier review.

Based on the analysis of the data collected in 77 economies for the 2016 Report, in general, countries perform better in the **Availability of Complaints and Reporting Mechanisms** sub-indicator, with the global average standing in the 4^{th} quintile (70). The region that performed better was the OECD economies, while South Asian economies scored the lowest. Nonetheless, the data shows that there is still room for improvement regarding the first-tier review process, where the global average score was of 62.

All the surveyed economies have a legal framework that regulates complaints mechanisms, except in Malaysia, Myanmar and Namibia. Apart from these 3 countries, only Lebanon and Sierra Leone do not provide free access to complaints laws and regulations through a government supported website. Having all documents and procedures available on a government supported website reduces transactions costs and injects transparency to the review process.

A **two stages complaints mechanism** is the most common review procedure in most of the surveyed economies, with the procuring entity usually being the first-tier review body and a court or independent review body for appealing. However, only in 27 economies the complainants have a choice regarding the authority before which they prefer to file its complaint. It is important that complainants have a choice regarding the review body to ensure independence and impartiality.

In most economies, other parties besides the bidders are allowed to file complaints, but only in 27 of these economies, the external parties are allowed to challenge the award of the contract. In the push for more openness and transparency, there has been an increase of Civil Society Organizations becoming more actively engaged in monitoring and overseeing procurement processes, but nonetheless, only in 25 of the surveyed economies CSOs are able to file complaints. However, BPP analysis takes into account other factors to assess whether limiting the standing to file a complaint will prevent disgruntled parties of abusing the complaints system for

delaying procedures, such as assessing whether a complaint triggers a suspension of the bidding process, the duration of the suspension and the available remedies for complainants.

Another relevant aspect measured by the Complaints and Reporting Mechanisms indicator is the **time and cost** that it takes for a complaint to be solved. As mentioned before, long and costly procedures may deter potential bidders to participate for public contracts and it makes the procurement system more inefficient.

In the particular case of complaints and review mechanisms, long periods for rendering a decision may be disruptive to the procurement process, especially if a complaint triggers a suspension of the award or execution of the contract. In order to add certainty to the review process, it is important that the legal framework establishes reasonable time limits for the review bodies to render a decision. taking into account the balance needed to guarantee due process and limit contract delays. According to BPP data, 12 economies have not set time limits for the first-stage review body to render a decision, whereas for the second-stage review, the regulatory framework of 18 economies does not establish those limits. However, in some of these economies which are high-income (for instance, in Sweden and the United Kingdom), bidders can expect their complaints to be solved in a timely manner. To the opposite, in economies that do count with those legal time limits, in practice the legal limits are not systematically respected and decisions can take up to several years to be solved (for instance, in Chile and Mexico).

Delays in obtaining a review decision can add up to the costs of filing a complaint, making the redressal mechanisms less accessible for many bidders, in particular for SMEs. In terms of costs associated to filing a complaint, there is still much room for improvement. In both the first and second stages of the review process, bidders i will incur in costs for filing a complaint n approximately half of the surveyed economies. Eliminating the costs to complaint could level the field for more companies to engage in public procurement.

Finally, another integral component of the monitoring and oversight of the procurement system is the availability of mechanisms to report wrongdoings as well as situations of conflict of interest of public officials. These mechanisms should be available to public officials and the public.

To preserve the integrity and impartiality of the procurement system, public procurement legal frameworks should detail how to address situations of conflict of interest. In particular, they should mandate the disclosure of situation of potential conflict of interest of public officials and, if the conflict of interest is confirmed, regulate their recusal from any procurement process or decision.

According to BPP data, only 7 economies do not count with regulations that provide that a procurement official in a situation of conflict of interest should be suspended, removed, excused or disqualified from participating in the procurement process. In addition, in 6 economies where the regulations exist, the recusal of public officials does not happen in practice.

The regulatory framework should also establish clear reporting rules and procedures in order to facilitate the environment for reporting. Since fear of retaliation is an important deterrent of whistleblowing, incentives should be provided such as the possibility of reporting anonymously or ensuring to keep the identity of the whistleblower confidential. However, in 11 of the surveyed economies, public officials are not mandated to report misconduct, and also in 11 economies there is no protection to reporting officials.

DISCUSSION

The objective of the BPP project is to deliver data that can inform procurement practitioners as well as policy makers in their reform agenda. The strength of the research originates both in the use of the Doing Business model, which has been refined over more than 10 years and has a track record of reliability, and the coverage of cutting edge procurement issues, made possible by the frequent consultations conducted by the team. Consultations procurement experts ensure that the data is actionable and pertains to dimensions of procurement systems that governments can in fact rectify through regulations or better enforcement of the rules already in place. Complementing the input form procurement experts, frequent consultations with the private sector enable the BPP dataset to capture elements that are truly relevant to potential suppliers. As such, they ensure that the research stays on point with its set objective of identifying the entry barriers faced by private sector companies navigating procurement markets.

As a result of this combination, the reliability and relevance of the BPP dataset makes it a unique tool to assess public procurement systems across the world.

Indeed, it allows to track public procurement reforms in the countries measured and, at the same time, to support a qualitative, cross-country analysis of these reforms. Following the path of the Doing Business project, BPP aims to stimulate a peer-to-peer dialogue among policy makers and encourage governments to reform their procurement system to implement recognized good practices.

When it comes to the procurement life cycle, the 2016 findings show that, if many countries support access to information and meet several of the recognized good practices, some improvements could help strengthen their public procurement systems in order to make it easier for private sector companies to access and navigate the public procurement market, notably for small and medium enterprises which would in turn increase their participation.

First, procurement electronic platforms are critical as they make more information available to prospective bidders and facilitate interactions between them and procuring entities. Publishing yearly procurement plans on the portal, for instance, would help companies better plan for the preparation of a bid for a project they are interested in. Allowing bidders to submit their bids through the portal would also make the submission process significantly easier. Similarly, allowing suppliers to submit their request of payment online would also increase the efficiency and reliability of the public procurement system.

Second, data shows that bidders can incur substantial costs during both the bid submission and contract management phases. Bid security can be a major impediment to bidders' participation and the fact that, sometimes, the law does not regulate the maximum amount of bid security can create a major constraint for potential bidders. For this reason, the bid security should be regulated by law and its maximum amount should be capped. This cap should be substantial enough so as to deter companies from submitting nonserious bids, but not too high so as not to hinder participation. Additionally, stricter rules should be put in place and their enforcement closely monitored to ensure that suppliers are paid within the 30-day period advocated by international standards.

These measures could make a difference. With better access to information, easier procedures and reduced costs, public calls for tender would attract more offers. The resulting competition would help Turkish procuring entities achieve better value for money.

When it comes to the complaints system, the 2016 dataset identified areas of improvements in order to bring more transparency and integrity, and guarantee complaining parties that their concerns can be heard.

First, the complaints system should address the needs of its endusers. Complaining parties should be offered several methods to file a complaint. In particular, they benefit from being able to file their complaint online. Complaining parties should also have the choice of the forum used to file their complaints. By being able to decide which entity would better address their concerns, their trust in the complaints system would be reinforced.

The complaints system can also benefit from offering a wider range of remedies to complaining parties. Having remedial actions when processes fail strengthens confidence in the system. In particular, it is important to allow them to claim damages, in order to indemnify for the cost of a possible damage or loss.

Second, the complaints systems should be transparent. In particular, the law should clearly mandate where the complaint should be filed and the time limit the review body has to render a decision. It should also require the publication of decisions rendered by the first-tier review body. This contributes to enhance transparency and access to information and guarantee to bidders and the public a gateway to the complaints that have been raised with their respective resolutions.

CONCLUSION

The BPP project is expected to follow the path of Doing Business and contribute to the debate over procurement good practices at the international level. The primary expected outcome of the project is the stimulation of procurement reforms designed to facilitate access to procurement markets. The BPP indicator set was elaborated with this very outcome in mind, focusing on actionable elements that, if reformed or better implemented, can make a real difference in private sector participation. Increased participation means more

competition, which has the recognized effect of driving the prices down and improve the quality of the goods and services procured.

Therefore, by providing data that can trigger competition-driven reforms in public procurement, the project will help countries that need it the most achieving better value for money, with all the positive ramifications that this entails: budget efficiency, better quality of public services, increased trust towards the government. At a different level, encouraging participation in calls for tender by reducing barriers and restoring private sector's trust will have a direct impact on its growth.

As procurement is a unique pool of opportunities for companies of all sizes, a healthy and amenable system will encourage private sector companies to strive and enter the race to become a government supplier, thus contributing to innovation and private sector development.

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NOTES

- http://doingbusiness.org This should be delete and should be listed in the REFERENCES section, World Bank (2002). "Doing Business." [Online]. Available at http://doingbusiness.org/aboutus. Or World Bank (2002). "Doing Business 2016." [Online]. Available at http://www.doingbusiness.org/~/media/GIAWB/ Doing%20Business/Documents/Annual-Reports/English/DB16-Chapters/DB16-About-Doing-Business.pdf
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