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**TRANSPARENCY INTERNATIONAL'S CONTRIBUTION ON THE EUROPEAN COMMISSION'S
PUBLIC CONSULTATION ON EXPANDING THE USE OF E-PROCUREMENT IN THE EU**

**E-PROCUREMENT REDUCES OPPORTUNITIES FOR
CORRUPTION and BRIBERY**

INTRODUCTION

Corruption and bribery are widespread in the field of public procurement.¹ Within the EU it is estimated that public procurement accounts for approximately 16% of the Union's GDP.²

Transparency International (TI), the global civil society organisation leading the fight against corruption, is welcoming the European Commission's desire to expand pan-European e-Procurement as:

- **e-Procurement has significant positive effects in reducing opportunities for corruption and increasing the possibility of transparency³**

Despite this, e-Procurement does not guarantee transparency. TI consequently believes that:

- **integrity, accountability and transparency need to be at the heart of any pan-European e-Procurement system**
- **The EU should ensure that member states follow these principles**

¹ OECD: 2010: collusion and Corruption in Public Procurement

² http://ec.europa.eu/internal_market/publicprocurement/index_en.htm

³ Transparency International. 2006. Public Procurement Handbook.
http://www.transparency.org/content/download/50321/805137/version/1/file/curbing_corrup_publicprocurement_HNDBK_WEB.pdf

Within this paper we refer to the concepts of integrity and accountability, as we believe them to be fundamental values for any procurement system. TI uses the following definitions for these terms:

Accountability: “The concept that individuals, agencies and organisations (public, private and civil society) are held responsible for executing their powers properly.”⁴

Integrity: “Behaviours and actions consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions that create a barrier to corruption.”⁵

PUBLIC INTEREST GROUPS IN PUBLIC E-PROCUREMENT

- **To ensure that the public interest groups have a voice and are involved in procurement mechanisms and procurement system design**

The green paper works on a basis that it is primarily the contracting authority and the suppliers that are the key stakeholders in this dialogue. Transparency International believes that as public procurement accounts for such high levels of public expenditure, which is an area ripe for corruption, the public above all are also a key stakeholder in this dialogue. Throughout the process, the public and in particular civil society organisations need to be engaged to ensure that any expansion of a system works in the public’s interest, in respect to achieving efficiency savings and promoting the highest levels of transparency and integrity so as to develop trust. This is one of the key messages we would like to reiterate and believe it is important that sufficient time and resources are given to bring civil society and the public into the discussions on this complex but extremely important and relevant issue.

TI commends the efforts from the EC to ensure that integrity and transparency were an element of previous legislation⁶ and believes it is important to consider these principles as being a fundamental part of the expansion of e-Procurement also. The World Bank recently undertook a report into using technology in public procurement processes in respect to reducing corruption and found that corruption could only be reduced effectively by consciously building in elements of greater transparency and accountability into the e-Procurement specifications and design.⁷

This reiterates Transparency International’s view that these values must be implemented at each stage of the process to ensure that they are maintained, passed on to those who implement and utilise the system and ensure that all the processes have sufficient checks and balances to guarantee a system of the highest integrity possible.

** Monitoring*

According to the Siemens study provided with the consultation documents⁸, the measure to organise a benchmark exercise on transparency, auditing and traceability of e-Procurement systems had been delayed and no specific results had been identified. This is of great concern for Transparency International and underlines the need for transparency, accountability and integrity to remain a key part of all further expansion of e-Procurement systems. Monitoring is highly important and e-Procurement ought to make this easier and allow standardisation and facilitate

⁴ National Endowment for Democracy, Institutionalising Horizontal Accountability: How democracies can fight corruption and the abuse of Power. Online. Accessed 15 July 2009. www.ned.org/forum/reports/accountability/report.html

⁵ TI, Combating Corruption in Judicial Systems. Berlin: TI

⁶ Directives 2004/18/EC and 2004/17/EC

⁷ Procurement Harmonization Project of The Asian Development Bank, The Inter-American Development Bank and The World Bank, 2007. Corruption versus Technology in Public Procurement.

⁸http://ec.europa.eu/internal_market/consultations/docs/2010/e-Procurement/siemens-study_en.pdf

reduction of discretion through benchmarking. Authorities should not forget that independent experts from civil society can also be engaged to independently monitor procurement processes and procedures. Transparency International has played a part in such initiatives with success in the past, implementing “Integrity Pacts” and other civil society monitoring efforts which guarantee high standards and provide an independent assessment on levels of transparency and traceability.

There is also a fundamental lack of statistical data on e-Procurement. As of yet is very difficult to define best practices, particularly as regards to the integrity of a system, and also where there is room for collusion. Only with this recording of data will comparative benchmarking and monitoring be able to take place. Over time, decisions will become comparable and anomalies will be easier to identify and policy-making will become more reliable.

TRANSPARENCY IN THE E-PROCUREMENT PROCESS

- **To ensure that all information regarding public procurement is released when legally possible in an open and accessible format**

Transparency is a cornerstone of anti-corruption programmes, and transparency means comprehensive access to relevant information – this is precisely what information technologies should be designed to exploit. An approach to e-Procurement that simply maps existing processes and protocols into the online environment will under-achieve the potential.

With the automation of e-Procurement, all the mechanisms i.e. criteria, procedures, deadlines etc. of the process can be clearly defined. Online publication of tenders provides greater access for all, particularly SMEs as long as they have sufficient internet access.

E-Procurement is able to reduce the cost of recording and logging information at each stage of the process and also facilitates information accessibility. With increased transparency there is significantly less room for collusion. Public Procurement information should be released with the following in mind. That it is:

- Accessible
- Consistent
- Objective⁹

Transparency does not end with making data merely available. This data needs to reach its audience; its significance is limited if it is left unexplored by the wider public. Steps need to be taken to ensure that this data is not only logged transparently and is open, but that it is honestly explored and presented so that end users are able to take the data in a way such as to induce and inspire trust in the system and attached processes.¹⁰ Recently TI Georgia explored Georgia’s e-Procurement system which released information, but in a closed format (PDF) that didn’t allow the public to analyse the data.

TI works on the belief that all information that can be legally be made public, ought to be, and this applies to all stages of the e-Procurement also. The EC has previously pointed out the difficulties and advantages/disadvantages of releasing information at particular stages of the process on economic grounds, but TI believes that as long as all privacy laws are observed, then it is in the public’s interest to know about the nature of the bids and the bidding process.

⁹ Main Findings of the Forum Workshop on “Improving Transparency in Public Procurement” by Élodie Beth page 48 Ch5 in OECD 2005

¹⁰ Procurement Harmonization Project of The Asian Development Bank, The Inter-American Development Bank and The World Bank, 2007. Corruption versus Technology in Public Procurement

** Certification and cross-border Procurement*

80% of EU funds are spent through a shared management system in which the Member States' procurement law applies. This obviously provides significant differentiation in the systems used, as well as their priorities. Any EU driven expansion of e-Procurement will require further interaction and dialogue between these systems to ensure consistency and compatibility. However expansion of e-Procurement systems goes forward, integrity should be an intrinsic part of this system.

Considering there is also a push for more cross-border procurement, contracting authorities and suppliers will have more faith in a system that ensures the highest standards of integrity, rather than one which allows member states to have fewer checks and balances in place. This trust in undertaking cross border procurement may have significant economic impacts and benefits for the public at large. An electronic procurement system that is designed to boost the confidence in integrity and fairness of a country's domestic procurement are likely to attract many more bidders from beyond the national level, in particular SMEs and make truly borderless procurement across Europe much more feasible.

BELOW-THRESHOLD PROCUREMENT

- **To ensure measures pertaining to accountability and transparency apply across the board, rather than only above threshold.**

The value of small transactions and contracts which do not exceed thresholds are not subject to EU-regulation. For small contracts below the threshold there are also fewer mechanisms to ensure that the system is transparent. A significant proportion of EU funds are spent below the threshold and increased measures need to be taken to work towards incorporating below-threshold procurement into the fold, so that information on it can be logged and analysed, perhaps through the use of 'data warehouses' or databases designed to allow comprehensive analyses of all aspects of procurement and the behaviour of procurement officers and suppliers.¹¹ This will reduce the scope for corruption. If this mass of small procurement activities is excluded from the e-Procurement procedures, some of the real benefits of handling procurement online will not be achieved. This is however, not only a problem of designing e-Procurement procedure but a problem of procurement regulation in general. Regulation of below-threshold procurements is subject to the member states' lawmaking rather than European regulation, resulting in inconsistency and considerably lower standards of transparency.

Contracts can also be subdivided to artificially lower the value of contracts to below the threshold in order to avoid the regulation attached to above-threshold procurement i.e. recording, monitoring and publication of the procurement etc. For these cases e-Procurement systems would need to, again, have sufficient checks and balances to monitor such irregularities.

¹¹ Procurement Harmonization Project of The Asian Development Bank, The Inter-American Development Bank and The World Bank, 2007. Corruption versus Technology in Public Procurement

TRAINING

- **To ensure that all users of an e-Procurement system are trained, particularly in respect to the ethics and principles behind the system**

With the introduction or expansion of e-Procurement systems, it is vital that significant training is given to users all throughout the process to ensure that its goals can be fulfilled. This training does not only apply to procurement officials but also business stakeholders, suppliers and also civil society to encourage public oversight of such processes.

There have been real examples that e-Procurement trainings for both suppliers and officials have increased competition and reduced opportunities for corruption. In Albanian municipalities comprehensive training procedures put in place with the help of USAID enabled a 50% percent increase in offers according to Albanian Deputy Mayor Erjon Vesho. The better prices and knowledge of the systems from both sides also went a long way with visible reductions in errors.¹²

It is vital that in any training provided on new e-Procurement platforms that ethics and integrity are included so as to enshrine the importance of these values within all users of the system itself.

OTHER AREAS OF PUBLIC PROCUREMENT WHERE E-PROCUREMENT CAN BE SIGNIFICANT

** E-Procurement in the Public Procurement Cycle*

E-Procurement does not always play a role in each stage of the public procurement cycle. It is important to think about the areas which will not be covered by an e-Procurement platform and assess the risk for corruption in these areas. Often the needs assessment and implementation stages are not covered by e-Procurement systems and this requires preventive measures so that e-Procurement doesn't simply become a mechanism that "pushes" corruption up or down stream. For example technical designs and contract conditions can be structured in such ways as to render most suppliers as ineligible.¹³ Also, once a contract is secured it is sometimes the case that important criteria or conditions are overlooked, which in the previous instance allowed the bidder or supplier to give a lower quote.

Unrestricted access to e-Procurement is vital for further strengthening competition from suppliers and improving value for money in the public sector. Therefore it is important to allow unrestricted registration in e-Procurement systems for all suppliers unless they have been disqualified for non-performance or other legal reasons, such as corruption. An open access regime can be defeated by corrupt practices if not carefully managed. The PEPPOL project is a good initiative that is dealing with the development of a virtual company dossier (VCD). With a unified registry it is possible to allow unrestricted access to firms, but through a system that allows consistency, increases transparency and promotes high standards cross-borders.

** Debarment*

Debarment is an area that needs to be developed, especially if cross border e-Procurement takes place, so that sufficient mechanisms are in place to stop corruption organizations taking part in public procurement on a European scale. Transparency International has made recommendations on debarment previously and believes that lists of debarred companies should be made public and that this information should be consulted by all authorizing officers. Debarment information

¹² <http://www.lgpa.al/stories.html>

¹³ Procurement Harmonization Project of The Asian Development Bank, The Inter-American Development Bank and The World Bank, 2007. Corruption versus Technology in Public Procurement.

should be actively sought and exchanged so as to ensure organisations operating illegally are not able to operate in a MS without knowledge of their activity.

E-PROCUREMENT RISKS

** Legislation and e-Procurement*

Many public sector officials and suppliers consider excessive regulation a barrier to the take-up of e-Procurement. TI believes that deregulation that could potentially occur should not dilute the measures taken to ensure integrity in public procurement systems around Europe. This potentially dangerous step could lead to a fragmented procurement system with fewer checks and balances in place than previously, producing more opportunities for corruption and more worryingly, less accountability. Any modification to the regulations on public procurement as a result of an expansion of e-Procurement should consider transparent and fair procedures worthy of enshrining in the new legislation.

** Security*

E-Procurement systems themselves are not without risk of corruption. The heavy use of computer systems exposes new vulnerabilities around system integrity and technological security. It is also clear that incorrect data can be entered about a contract for example, which without sufficient checks may increase irregularities, although the much stronger capability of e-Procurement to cross-reference and audit information makes this form of corruption more difficult. Some jurisdictions for instance have introduced online tender submission without any technological security at all. Security breaches in the online environment also tend to be of higher visibility than for traditional procurement and as such have greater potential to undermine confidence in procurement reform.¹⁴

** Reducing the Paper Trail*

Previously, an OECD Round table discussion noted that care must be taken to ensure that the e-Procurement procedure itself does not facilitate collusion, especially as this method eliminates the paper trail that might otherwise have provided evidence of bid rigging in the process. The introduction of e-Procurement procedures, while desirable in terms of transparency and cost, reduces the possibility that evidence of collusion of this nature will come to light. There are some concerns, even from advocates of e-Procurement solutions that procurement officers trained specifically in public procurement legislation, ethics etc. may be replaced by technical officers (IT specialists), with few checks and balances to ensure that rules are followed.

CONCLUDING REMARKS

As mentioned previously, TI believes that e-Procurement can bring significant benefits in terms of reducing corruption, increasing integrity and transparency of public procurement if implemented correctly. E-Procurement shouldn't be an addendum to current procurement policy and should be designed with robustness, transparency and integrity in mind. Because it requires more than

¹⁴ Procurement Harmonization Project of The Asian Development Bank, The Inter-American Development Bank and The World Bank, 2007. Corruption versus Technology in Public Procurement

simply additional legislation, Transparency International believe it is important that goals of integrity and transparency are made intrinsic to this system from the get-go, rather than as an afterthought. It is important to involve all stakeholders including civil society when expanding e-Procurement so as to always ensure that information is made public as far as the law allows.

Transparency International wants to encourage the European Commission to continue with this ambitious push towards e-Procurement as it would certainly lose momentum without such a driving force behind it. We will fully support the process as it goes on and believe it is important to embrace this huge opportunity to ensure integrity and increase transparency in public procurement across Europe.

About Transparency International

Transparency International (TI) is the global civil society organisation leading the fight against fraud and corruption. Through more than 90 chapters worldwide (i.e. in almost every EU Member State and in many developing countries world wide) and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

TI looks forward to continue discussing these issues with you. If you need further information, please contact:

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