

Long WORKSHOP REPORT FORM

Number and title of workshop: WS 4.7: Enhancing Procurement Integrity through Collective Action

Coordinators:

Aleksandr Shkolnikov, Director for Policy Reform Programs, Center for International Private Enterprise

Shruti Shah, Senior Policy Director, Transparency International-USA

Date and time: Friday, November 12, 2010, **Time:** 9am to 11 am

Moderator: **Nancy Boswell**, President & CEO, Transparency International-USA

Rapporteur: **Shruti Shah**, Senior Policy Director, Transparency International-USA

Panellists (Name, institution, title)

- **Aleksandr Shkolnikov**, Director for Policy Reform Programs, Center for International Private Enterprise
- **Anupama Jha**, Director, TI-India
- **Rezki Wibowo**, Director, Transparency International-Indonesia
- **Matthieu Salomon**, International Senior Advisor, Towards Transparency (TI National Contact in Vietnam)

Summary

The workshop focused on the importance of procurement integrity in light of estimates that the global procurement market is \$14 trillion and the cost of corruption can add from 5 to 20% – and sometimes even more – to the cost. The potential monetary loss is staggering as is the impact on the lives of citizens who depend on public services and who pay for them.

Governments around the world have undertaken commitments to increase transparency in procurement – including commitments under the UN Convention against Corruption, UNCITRAL Model Law on Procurement, the WTO Agreement on Government Procurement and the consensus-based APEC Transparency Standards on Government Procurement. There is little evidence of whether or how effectively governments are implementing their commitment, however, and whether the private sector is playing its part in improving the integrity of public procurement through adherence to anti-bribery standards and practices in public contracting.

Transparency International-USA (TI-USA), with support from the Center for International Private Enterprise (CIPE), undertook a project in cooperation with other TI National Chapters to assess how well political commitments are being implemented and to develop recommendations for governments and the private sector to enhance integrity in procurement. This workshop provided an opportunity for TI National Chapters to present their findings from the project, based on an assessment of legal and regulatory reforms to date and on consultations with the private sector in their respective countries.

The workshop also highlighted recent initiatives to enhance procurement integrity through collective action. It assessed progress on commitments governments around the world have undertaken to increase procurement transparency and reduce corruption through trade arrangements and integrity pacts and the experiences of and challenges associated with TI-India's implementation of the integrity pact in India.

The workshop also addressed the role the private sector can play in contributing to integrity in public procurement through adherence to anti-bribery standards and practices.

The workshop discussions contributed to the accumulated findings and recommendations which will then be used for advocacy of further reform within the countries.

Summary of presentations and discussion:

Alex Shkolnikov began the discussion by emphasizing the importance of procurement transparency to the private sector, as well as the role of the private sector in fighting corruption. It is true, he noted, that companies are part of the problem, but it is also the case that small and medium sized companies are often victims of corruption due to extortion. Some of them are forced to pay bribes in order to stay in business, even though bribes are often ineffective in securing new business. In fact, only a small percentage of bribes paid by businesses actually lead to winning contracts. According to Alex, the challenge is in convincing businesses to fight corruption through various business organizations. He went on to describe CIPE's efforts to strengthen private sector adherence to anti-bribery policies and programs, address procurement transparency, and promote collective action as a means of addressing corruption.

Michael Wiehen, General Counsel of TI-Germany, spoke from the floor about the principles of an integrity pact, which is a Transparency International-developed tool aimed at preventing corruption in public contracting. It involves a process that culminates in an agreement between a government or a government department and all bidders for a public contract. The agreement contains commitments that neither side will: (a) pay, offer, demand or accept bribes; (b) collude with competitors to obtain the contract; or (c) engage in such abuses while carrying out the contract. The integrity pact also provides for a monitoring system that includes independent oversight and requires accountability.

Anupama Jha described the history of integrity pacts in India. ONGC (Oil and Natural Gas Corporation of India) was the first State owned enterprise (SOE) in India to sign an integrity pact. In 2007, the Central Vigilance Commission (India's main anti-corruption body) issued a circular recommending that all SOEs in India should adopt IPs. Following the CVC circular, several SOEs approached TI India to sign the IP and, as of today, 39 SOEs have signed one. The CVC has appointed independent monitors consisting of retired civil servants to oversee the pacts. Over time, TI-India concluded that the companies were using the pacts as merely a "check the box" exercise. Among other things, TI-India learned that bidders never sought out the assistance of monitors, which suggested possible collusion between the bidders and the government agencies. Similarly, bidders complained that they were unaware of whom to approach with integrity pact concerns. As a result of these discoveries, TI-India has been closely monitoring the use and effectiveness of integrity pacts. Several challenges remain. Companies are less willing to sign integrity pacts because they are not keen on being monitored. Moreover, the CVC has stated that civil society organizations are not equipped to properly monitor them. Despite the challenges, TI India has begun training NGOs and vigilance officers in a number of companies. Overall, Anupama emphasized that independent monitoring by civil societies is an important element of integrity pacts.

Rezki Wibowo discussed the procurement environment in Indonesia. Several years ago, the National Planning Agency in Indonesia estimated that about 40% of the state budget was leaked through public procurement. As a result of this study, the Indonesian government issued presidential Decree # 80 to regulate procurement. One of the features of the decree is that everyone involved in public procurement is required to sign an integrity pact. However, the signing of a pact in Indonesia is merely ceremonial and there is no real implementation, monitoring, penalties, or incentives. TI-Indonesia's experience in Indonesia is that corruption

begins at the planning and budgeting stage and that monitoring and public participation are important in all stages. Rezki stressed that wider stakeholder engagement is needed to make the model effective.



Matthieu Salomon discussed the TI-USA project in Vietnam carried out in cooperation with the TI National Chapter and with support from CIPE. The project focused on an assessment of legal and regulatory reforms under the APEC Transparency Standards on Government Procurement, consultation with the private sector on their practical impact, and recommendations for governments and the business community to enhance integrity in procurement. Matthieu discussed some challenges related to procurement transparency in Vietnam, where there is a significant amount of collusion in tendering. Companies often agree to submit several bids to meet the letter of the law, but bid winners are frequently pre-determined due to a subjective selection process. Whistleblowing laws, although they exist, provide little to no protection for whistleblowers and are therefore largely unused. Moreover, SOEs are such a dominant part of the Vietnamese economy that their participation in public procurement naturally creates tremendous conflicts of interest. There is some impetus for reforming SOE practices after a recent scandal involving a near bankruptcy of a government-owned shipping company, Vinashin, which racked up more than \$4 billion in debt. This has brought attention to the neglect of corporate governance in SOEs and the resulting waste of state capital. Matthieu noted that it remains unclear whether there is real will to reform or if such talk will die down once the scandal subsides. Matthieu said that it was essential for the private sector, particularly foreign companies, to work collectively through groups like the American and European Chambers of Commerce, if any progress is to be made against corruption in public procurement

Main Outputs

The participants and panelists:

1. Shared lessons learned across broad anti-corruption community;
2. Gained an awareness of the gaps between political commitments and practical impact in public procurement;
3. Focused on the importance of awareness and training to strengthen private sector adherence to anticorruption policies and programs;
4. Learned about the importance of monitoring by civil society on procurement projects; and
5. Discussed approaches for collaboration among government, businesses and civil society to enhance procurement integrity and contribute to recommendations for reform

Recommendations, Follow-up Actions

The workshop discussion indicated a strong interest in projects relating to improving procurement integrity. A potential follow-up action could be to develop a network of interested NGOs (perhaps via an online forum) to collaborate on developing reform priorities and advocating for their implementation.

Highlights

The workshop highlighted the basic principles for enhancing procurement integrity:

1. Transparency in the process, including how decisions are made.
2. Implementation of commitments made.
3. Participation by civil society in independent monitoring.
4. Active engagement by citizens and end users.