



TRANSFORMATIONAL CHANGE: EBRD-UNCITRAL PUBLIC PROCUREMENT INITIATIVE REVOLUTIONISES ELECTRONIC PUBLIC PROCUREMENT



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The public procurement market operates on a huge scale throughout the world: its total size may exceed US\$ 10 trillion annually. Governments all over the world wield enormous purchasing power and could use that to promote the Sustainable Development Goals (SDGs) of environmental protection, social impact and economic development.

However, governments tend to focus on more immediate issues, and this potential power remains under-utilised. The immediate issues include, rightly, ensuring that they are equipped with whatever they need to deliver services to their citizens, in as efficient a way as possible and without the ever-present risk of corruption materialising. Indeed, as many governments do not know at a detailed level what they are buying and selling, and for how much, (with long and non-transparent supply chains) nor where in the globalised world their public funds may end up. Reforming public procurement to improve the immediate outcomes, let alone to pursue a coherent set of sustainability objectives, is challenging because the procurement process is horizontal and cuts across the whole of government. Inertia and vested interests can also prevent change.

The digital government agenda offers the transformational opportunity of a world shifting from documents and paperwork to smarter, online digital services, and is the subject of many political aspirations and declarations. Applying it



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ELIZA NIEWIADOMSKA
SENIOR COUNSEL, EBRD
NiewiadE@ebrd.com

2

CAROLINE NICHOLAS
HEAD, TECHNICAL ASSISTANCE
SECTION, UNCITRAL
caroline.nicholas@un.org

to the reform of public procurement is highly complex and may meet inner resistance as noted above. Many reform programmes have not been entirely successful so far, in that they have not harnessed the potential of digitisation – in particular, through the effective use of digital data. However, there are public procurement champions who see the digitalisation of public procurement as a chance to allow procurement officials to move beyond the complex and sometimes unclear regulations, to be relieved from clerical tasks and to focus on expanding their market knowledge and improving performance.

Learning from the best

To learn from these champions and to gain an insight into the future of public procurement systems in the digital economy, the EBRD-UNCITRAL Public Procurement Initiative – a collaboration between the EBRD’s Legal Transition Programme and the United Nations Committee on International Trade Law (UNCITRAL) – began a research project with global leaders in the field, including Chile, Brazil, Cyprus, the Republic of Korea and Portugal. Research

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demonstrated that those profiled opted for transparent automated evaluation procedures and “planning to payment” eProcurement systems. This way, the electronic system with all-digital data manages compliance with procurement regulations (all mandatory pass/fail rules and policy requirements are in the automated online workflows), as well as offering massive transactional efficiency gains for the government and business community alike through automation and robotics. What we found most enlightening was that all of these countries embraced open data policies. They applied the Open Government principles of transparency, accountability and engagement with stakeholders in practice, through the effective use of data and created open public access to information about public procurement that sustained their digital transformation reforms through difficult times of institutional change.

Testing our hypothesis

Research tells us that to succeed in digital transformation in public procurement, policymakers and reformers should embrace the following outlook:

- Public procurement is a means to achieving quality and efficient public services while promoting sustainable development objectives.
- Clear processes in legal instruments and standards for data are positive contributors towards this end.
- Public procurement policy as expressed in national systems reflects international standards, and is user- and performance-driven.
- Public procurement regulatory frameworks should be re-engineered for the digital economy.
- In digital markets, embracing stakeholder feedback and openness to collaboration with the business community is a necessity, not a privilege.
- Digital government solutions should be innovative to enable public procurement to create online marketplaces that serve public-sector and private-sector buyers alike.



PUBLIC PROCUREMENT POLICY THAT IS USER-DRIVEN AND PERFORMANCE-DRIVEN

The procurement process is not an end in itself, but serves the delivery of public services and should be designed to drive fiscal performance in government, which should result in a high-quality public service for citizens. Regulatory reforms should strive to make public procurement legal frameworks compliant with international policy standards but optimised for the digital economy. Public procurement policy should be transparent, clear and accessible, promoting sound governance, competition and objectivity. Public procurement regulation (from planning to tender to award and throughout public contract implementation) should aim to secure the transparency, accountability and integrity of procurement decisions and maximise the participation of the business community in public tenders, since the level of competition is a recognised driver of value for money in public spending. All these elements of good practice allow procurement systems to develop the capacity to allow the pursuit of the Sustainable Development Goals.

A call for “principle-based” and “technology neutral” public procurement laws

Technological progress is beneficial, but it brings a challenge for legislators: markets and policies are driven by technology, therefore are often subject to change. This challenge was recognised by the 2011 UNCITRAL Model Law on Public Procurement (the “UNCITRAL Model Law”) and the idea of a “principle-based”, practice-oriented and “technology neutral” public procurement law was brought forward. To be responsive to a changing market and to evolving technology, primary public procurement laws should prescribe principles to be followed and introduce the key economic concepts of public procurement and general rules for procurement procedures. In this respect, transparency safeguards, value for money through fair competition and fiscal efficiency of procurement for governments are key procurement principles promoted by the UNCITRAL Model Law. At the same time, primary laws should avoid excessively prescribing formats of procurement proceedings – technical detail



that is prone to becoming outdated but that implements the principles in the primary law can quickly be introduced in the secondary legislation on public procurement. Secondary legislation with technical requirements for procurement procedures can be revised more easily, to enable national legislators and policymakers to match technological progress or market developments and not jeopardise the efficiency of procurement by a lengthy process of amending primary laws.

A need for a standardised “policy toolbox” for governments

The UNCITRAL Model Law provides a description of procurement best practice from around the world in a standardised manner and describes various procurement methods and techniques, as may be needed by governments for different types and values of public procurement contracts. It details best practices methodologies for execution of each stage of the public procurement process (advertising, solicitation, evaluation, award and contract implementation), with a key emphasis on transparency. This standardisation of steps and stages of procurement procedures helps to understand how to select the correct approach to award specific public contracts. The

UNCITRAL Model Law methodologies also explain how procedural steps are combined into a sequence to create procurement methods suitable for various types of procurement. Clarity of procedural steps and rules for procurement methodologies facilitate the flexibility of procurement regulation, but at the same time maintain certainty for procurement officers and predictability of the procurement process for participating suppliers.

NATIONAL PUBLIC PROCUREMENT SYSTEMS DESIGNED FOR STAKEHOLDER FEEDBACK AND OPEN TO COLLABORATION

Public procurement systems should foster and solicit feedback to drive further improvements and innovation. Any stakeholder who might be affected by a procurement decision of the government should be able to provide feedback and participate at the right time. Feedback by buyers and sellers on each other will improve their interactions. Feedback from citizens and users of public services helps improve delivery and builds public trust. Feedback from procurement officials in a transparent and structured way (such as debriefing) allows sellers

to understand buyers' needs. It takes time and care to build trust, responding and adapting to changing needs and demands. Still, once civil society and business stakeholders are satisfied that the public procurement system takes account of their perspectives, incentives change and coalitions for reform can be created to overcome vested interests.

While working on the EBRD-UNCITRAL Public Procurement Initiative technical cooperation projects, we learned to appreciate the capacity of civil society to create feedback and engagement loops across government with business and civic actors, and to institutionalise their interactions.

Our initial interest in the Open Government agenda was driven by problems with enforcing transparency safeguards in public procurement. Most public procurement laws around the world declare that procurement should be transparent, including the laws of the most corrupt countries, and where transparency rules are sometimes simply not respected. We considered that the effective digitalisation of the procurement process, matched with the use of open data that executes transparency rules by default, should improve the enforcement of the relevant transparency safeguards. This turned out to be correct, as demonstrated, for example, by the success of the combined forces of Open Government and digitalisation of public procurement in Georgia in 2010 and in Ukraine in 2015. What we learned along the way is that when it comes to the quality of public services

information truly empowers. The more citizens act on accurate information about public spending on public services and make themselves heard, the more successful public procurement reforms and systemic improvement in the government tend to be. As the Open Government features of open access to information, civic monitoring and feedback are embedded in the public procurement policies, ordinary people and businesses, who benefit from changes, start to have an interest in defending public procurement reforms. This incentivises governments to continue their reforms and to bring further improvements when they can see the benefits. New constituencies emerge—such as small businesses previously shut out of the public procurement market. Reforms in countries such as Ukraine and Moldova have already saved billions of euros, increased efficiency and competition, exposed cartels on the public procurement market and improved both the quality of public services and the accountability of public procurement officials.

DIGITAL GOVERNMENT SOLUTIONS THAT ARE CREATING ONLINE MARKETPLACES

Existing paper-based procurement procedures should not be taken online, but the entire process should be redesigned as a user-friendly digital service, delivered in collaboration with the private sector. Open data and open source tools operated by the government and networking with commercial operators of e-commerce platforms that are suitably robust in terms of transparency and accountability, can become a standard for digital procurement services.

A new model for digital government in public procurement

The digital procurement model promoted by the EBRD-UNCITRAL Initiative technical cooperation projects uses an open source and open data distributed architecture for multi-platform networking. This is similar to blockchain, but without a blockchain price tag. Instead of blockchain technology, it uses open data in the format of the open contracting data standard (OCDS) to guarantee data standardisation and ensure user trust in accuracy of data exchange. The digital procurement systems built on this

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model form a collaborative online network between government-operated e-government systems and commercial e-commerce platforms. Each system consists of a government-owned open source central unit, a web portal and networking e-commerce platforms. The network central unit serves as an interoperable online OCDS data exchange and a transaction repository for linked networking commercial electronic platforms (that can be open source or proprietary), which provide digital procurement services to buyers and suppliers. Data collected by a network central unit is displayed in real time on an open, accessible, searchable, government-run and open source web portal. The web portal creates a single point of access to all procurement information, including online electronic bidding because it is automatically synchronised in real time between all network members – the government central unit and the web portal, the networked commercial platforms and (if available) other eGovernment services and digital registers.

Results of the pilots: Ukraine and Moldova

Working with this hypothesis, the EBRD-UNCITRAL Initiative engaged in collaboration with Open Contracting Partnership¹ and Transparency International.² This co-working created a forum for dialogue between public procurement policy experts and civil society organisations and resulted in the EBRD becoming an early supporter of the Open Government civic technology lab at Transparency International Ukraine.

Spurred on in 2014 by the Maidan Revolution in Ukraine that ousted the corrupt Yanukovich regime, Transparency International Ukraine became a champion of public procurement reforms and paved the way to innovative thinking about digital government solutions for public procurement. Software prototyped by civic activists became the pilot of ProZorro in February 2015 and led to the creation of a national-level eProcurement system for Ukraine in August 2016, which implemented the transparency standards of the UNCITRAL Model and EBRD-UNCITRAL policy approach. In autumn 2016, DoZorro – a watchdog for ProZorro – was launched to create a civil society network monitoring public procurement conducted on the ProZorro platform.

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In five years, ProZorro has progressed from a civic start-up to a mandatory system for all public sector entities, with over 200,000 suppliers registered. ProZorro has made savings of UAH 100 billion (3.8 billion euros equivalent) in its four years of existence (savings are calculated as the difference between the initial value of the purchase and the amount of the signed contract after the auction). The total number of electronic reverse auctions since the launch of the system in 2015 has reached more than UAH 4 million (150,375 euros equivalent) and the savings exceeded UAH 100 billion (3.8 billion euros equivalent). The system has accumulated 100 terabytes of procurement data. Each citizen can see how their taxes are spent. About 90 per cent of registered businesses on ProZorro are small and medium-sized enterprises (SMEs). Monthly, 3,000 to 5,000 new suppliers register in ProZorro. Over 50,000 suppliers registered in the system in 2019. ProZorro is trusted – it is significant that suppliers from more than 40 countries (mainly from the European Union) are registered in ProZorro and participate in Ukrainian public tenders.

MOLDOVA

Building on the global success of ProZorro and DoZorro, work on the use of the UNCITRAL Model Law with Open Government concepts continues in Moldova, where an end-to-end digital online marketplace for public and commercial buyers has been piloted since 2017.

In Moldova, UNCITRAL Model Law standards were used to develop MTender – an electronic

procurement system that complies with the World Trade Organization Agreement on Government Procurement mandatory requirements and the requirements of the 2014 EU public procurement directives. The MTender is deliberately geared towards minimising corruption and collusion risks and increasing value for money and the fiscal efficiency of public procurement for the government. Although developed in stages, the MTender digital procurement service is now about 60 per cent complete in terms of functionality, covers almost 97 per cent of public entities funded from the state budget and has enrolled 4,700 suppliers. The results are as follows:

- estimated state budget savings of €29,966,095 from public procurement awarded in electronic competitive procedures within 15 months of operation
- six times more contracting authorities using eProcurement and using more advanced eProcurement functionalities
- six times more procurement advertised online and subject to competition
- 20 times more public procurement procedures recorded online on the web portal
- a 30 per cent increase in participation of new suppliers in MTender electronic tenders (1,396 new suppliers)
- Moldovan state budget investment in MTender pilot: in-kind MCloud hosting/€0
- estimated investment of commercial partners – local e-commerce platform operators: €200,000.

Transformational change

Learning from examples in Ukraine and Moldova, the regulatory standards of the UNCITRAL Model Law matched with Open Government principles for digital tools have the proven potential to change fundamentally how public procurement works, with huge implications for efficiency, fairness and innovation.

Gearing public procurement laws towards Open Government concepts means emphasising in the regulatory framework transparency safeguards, high levels of integrity and accountability of public officials and introducing instruments for a genuine dialogue with civil society and the business community about public procurement performance and outcomes for public services.

Application of Open Government principles to digital government tools for public procurement means using open source technologies, open data standards – Open Data for Government Standards (ODGS), Open Contracting Data Standard (OCDS) – and real-time online communication and data exchange. When implemented together, eProcurement tools make it possible for governments to conduct public procurement in a digital and transparent manner, secured by real-time publishing of the OCDS open data about public procurement transactions. Reliable and complete information about procurement and public contracts is easily accessible online for all stakeholders – public buyers, suppliers and contractors – and civil society is expected to generate trust in government and encourage civic participation. It can improve the accountability of public officials, enable the management of the data-driven public procurement process by relevant governmental agencies and create favourable market conditions for competitiveness as well as the public procurement market participation of SMEs.

CONCLUSION

The case of Ukraine and ProZorro/DoZorro and Moldova and MTender projects demonstrates that modern policy thinking and Open Government values embedded into digital transformation of public procurement can accelerate the historic shift from documents to data in public procurement, and operate as a significant tool to allow states to implement the legal standards of the UNCITRAL Model Law and policy approach of the EBRD-UNCITRAL Initiative in practice. It can catalyse systemic reforms, help innovations have a global impact and foster a culture of openness about procurement policies, tools, data and reform results in governments that lack the trust of their citizens. It can allow governments that face political and market challenges to leapfrog to a better future and establish new leaders in the digital transformation of public procurement.



¹ <https://www.open-contracting.org>

² <https://www.transparency.org/>