

RECOMMENDATIONS FOR THE PUBLIC PROCUREMENT SYSTEM OF THE REPUBLIC OF GUATEMALA



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Introduction

The following recommendations were prepared by the [Institute for Development of Freedom of Information](#) (IDFI), together with [Acción Ciudadana](#) (AC), based on the assessment of the Public Procurement Law (PPL) of Guatemala, its sub-legal acts and other legal texts. The assessment itself is based on the Transparent Public Procurement Rating (TPPR) [Methodology](#), a tool created by a multinational alliance of CSOs, aiming at identifying strengths and weaknesses of PPLs around the globe.

The Methodology is largely based on best international standards from organizations, such as the EBRD, WTO, OECD, EU and OCDS, and covers all the major components of any public procurement system, from the nature of the legislation to the complaint review process, with focus on the transparency of public procurement systems. The assessment covers the following key characteristics (values) of a well-functioning public procurement system: **Efficiency, Transparency, Accountability and Competitiveness**.

The aim of this document is to offer insight into areas of potential improvement for Guatemala's public procurement system considering the experience and best practices [identified](#) by the TPPR Project in 18 countries in the Eurasian region. The final results of the quantitative evaluation of Guatemala's public procurement legislation will be made available on the TPPR [website](#) in January 2019.

Overview

Guatemala's public procurement system is [regulated](#) by the Law on Public Contracts, its sub-legal texts and other legal acts. The law determines the Directorate General for State Procurement, under the Ministry of Public Finance, as the body responsible for managing and regulating the system, as well as developing policy, based on procurement statistics that it must keep.

The Directorate is also charged with running and developing the central public procurement information system - the [Guatecompras](#). The use of this platform is obligatory for all procuring entities, who have to upload almost all public procurement related information regarding all stages of public procurement in the system.

The public procurement system in Guatemala is not fully electronic. While electronic submission of bids is allowed, paper-based tendering remains an option. Maintaining a partially paper-based procurement system is a considerable impediment to the efficiency and modernization of public contracting. Lack of compliance with the transparency obligation is one challenge faced by such combined procurement systems.

Indeed, browsing through Guatecompras suggests that the database may not be complete. This observation is in line with experience from other public procurement information portals, whereby, despite legal obligation, procuring entities fail to be consistent in uploading the required information and documents. The only cases where this problem is not serious enough to be a cause for concern are public procurement systems that are fully electronic and centralized, where information completeness is ensured due to the automated nature of procurement procedures. For example, Georgia, Moldova, Romania and Ukraine both have centralized e-procurement portals, and have negligible problems with the completeness of uploaded information.

Considering the above-mentioned and based on the TPPR Methodology, IDFI would like to offer the following recommendations for Guatemala:

Transparency

Update of Guatecompras by Introducing Electronic Procurement – Having a functioning website where all procuring entities have to upload all of their procurement related information is an important first step, but it should be built upon and improved. The next obvious step to improving Guatecompras is the introduction of e-procurement, which offers tremendous benefits related to increased efficiency due to elimination of record keeping needs, speeding up of procurement processes, slashing corruption by reducing human-to-human contact, boosting competition through elimination of geographic barriers, and automatic generation of machine-readable data that can be used for analysis.

Apart from e-procurement procedures, the platform can be greatly improved by allowing bulk download of existing data; obligating procuring entities to upload more pieces of public procurement information and documentation; using best international standards, such as the Open Contracting Data Standard, to better structure public procurement related data; and use open formats (such as CSV, HTML, JSON) that allow free and easy manipulation of data, instead of PDFs and scanned files.

Transparency, efficiency and modernization are stated as the three main goals of Guatecompras. While the system does manage to meet these goals to some extent, they cannot be ensured until a full transition from a paper-based system to electronic procurement is made.

Full Bid and Contract Documentation – Even though Guatemala’s legislation ensures transparency of all procurement information, in practice, many of the key documents are missing on the Guatecompras platform. These documents include full tender documentation, contracts, contract implementation and quality control information.

As [demonstrated](#) by the Open Contracting Partnership as well as practical experience from countries that offer full transparency of bid contents (e.g. Albania, Ukraine, Georgia, Belarus, Kyrgyzstan and Romania), disclosure of bids and related documentation does not lead to any adverse effects on commercial interests. In fact, evidence is in favor of the contrary: since competitors typically already know each other’s capabilities, opening of tender proposals further encourages competition.

Evidence also suggests that opening bid information reduces the duration of cartel agreements. Disclosure of full tender documentation as well as all bidding document serves as an invitation to all stakeholders to monitor the previously closed process, to assess how well the tender commission has performed its functions, and dispute its award decision if necessary, and potentially identify cases of collusion, corruption or inefficiency, price-fixing and other possible violations of the law. The mere fact that bidding documents is open for everyone to see discourages wrongdoers from engaging in misconduct in the first place. This effect is amplified with each additional type of procurement documentation that is disclosed.

Making sure that contract implementation and quality control documents are made public is useful for analyzing the implementation of contracts and procurement performance in general. Having public access to inspection and quality control mechanisms would enable citizens and other non-governmental stakeholders to participate in quality control processes.

Annual Procurement Plan – In addition to the information that is already being published, procurement plans should also include procurement objects (CPV) and location. In addition, search filters should

include the above two as well as planned month of purchase, so that businesses can filter when the procuring entity plans to buy what and prepare accordingly.

Subcontracting – Guatemala’s PPL allows for subcontracting of public procurement contracts, but does not ensure the publication of information about the subcontractor. Disclosure of this information ensures that subcontracting does not become a legal [loophole](#) for corrupt practices. Best practice in this regard is to also obligate subcontractors to satisfy all of the eligibility requirements that were included in the tender.

Efficiency

While most efficiency related benefits originate from the speed and automation that come with centralized e-procurement, including timed and automated reverse auctions, which, as an example, have led to an average of 12% saving (more than USD 600 million since 2011) in Georgia, the following changes could also be beneficial:

A Classification System for Goods, Works and Services – The Guatemalan public procurement system does not use a system of classification of goods, works and services (or at least this system is not displayed in the system as a field that can be interacted with). The CPV system (Common Procurement Vocabulary) is one such option that can be introduced in order to avoid confusion and to have a way of keeping track of what is being purchased. Introducing a standardized classification system is a necessary step to a successful e-procurement system. Such a system would also enrich the search and analysis capabilities of the Guatecompras platform.

Payment Receipts – Delays in payment is an often encountered problem. Introducing an obligation to publish payment receipts may serve as a stimulus for procuring entities to comply with their financial obligations. Ultimately, however, the best solution to delayed payments is the incorporation of the payment procedure inside the electronic procurement portal, where procuring entities have to upload payment receipts as an automated, mandatory step to completing a procurement.

Competition

Domestic Preference – Article 5 of the Law on Public Contracts defines specific circumstances when procuring entities may import goods, such as only if there is no local production. While reasons for the existence of domestic preference policies are understandable, it is the belief of the authors of this document that such preferences may be harmful to competition and overall health of the procurement system; specific data is needed about the beneficial impact of the above policy in order to make any conclusions about its success. While it is beyond the capabilities of this document to measure the success of any domestic preference policy, experience from other countries suggests that without a centralized e-procurement system, even generation of the data required to measure the impact of such a policy on the public procurement system as a whole would be a tremendous challenge.

Accountability

Dedicated Mechanism for Dispute Resolution in Public Procurement – Guatemala currently does not have a dedicated mechanism for resolving public procurement disputes. Interested parties (suppliers and other stakeholders) can use the Guatecompras to submit nonconformities, i.e. complaints about a specific procurement that fails to comply with the legislation. However, it is entirely up to the procuring entity whether it takes these complaints into account, it can reject follow-up complaint with no liability on its part.

The main reason why a dedicated dispute settlement mechanism is needed in public procurement is the need for speedy resolution of complaints. If a tender participant discovers a problem with the tender documentation and the only place to appeal is the court, where case proceedings may take months, the problem may not receive adequate and timely attention that it deserves.

In addition, procurement related disputes require specific knowledge and competence that regular judges or arbitration and mediation professionals may not have. For this reason, best international practice is to set up an independent dispute resolution body or committee, composed of procurement professionals and, ideally, civil society representatives, that will be charged with receiving and resolving all procurement related disputes within short pre-defined deadlines and be granted the authority to issue decisions that are binding to procuring entities.

The nonconformities module on the Guatecompras platform provides full information and can easily be modified to reflect the changes, should a dedicated dispute resolution mechanism be created. The same level of transparency should be extended to dispute resolution documents.

It is also essential for all stakeholders, including citizens, to be given the right to file public procurement related complaints free of charge. The dispute resolution body may also be given the right to reject complaints that it deems were submitted simply for hindering procurement procedures. This will increase public and business trust towards the system by allowing direct engagement and raising awareness about the workings of the public procurement system.

Private Sector, Civil Society and Public Consultation Mechanism – Guatemala's PPL should include a mechanism for wider consultations with the business sector, civil society and the general public on public procurement policy matters. Such mechanism can be mandatory and frequency for such consultations can be defined by law. This mechanism will prove increasingly useful if Guatemala decides to fully transitioning from a paper-based to an electronic procurement system by allowing policy makes to take into account the needs and suggestions coming from all possible stakeholder groups.

Introduction of such a mechanism will also generate valuable information about the level of engagement of various stakeholders with the Guatecompras platform, and feedback about the problems they encounter and the changes they would like to see.