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Annex I Guidance Note

Prevention of corruption in procurement at various government levels, including good practices, lessons learned and challenges, and the effective use of technology to prevent, detect, deter and counter corruption in procurement

1. The Secretariat has produced this Guidance Note to assist States parties in providing information on initiatives and practices they have implemented regarding the topics under consideration at the fifteenth session of the Working Group on the Prevention of Corruption taking place from 28 August to 6 September 2024.
2. The Secretariat wishes to recall paragraph 12 of the report of the Working Group on Prevention on its second intersessional meeting, which noted that in advance of each meeting, States parties and signatories should be invited to share their experiences of implementing the provisions of the Convention under consideration, preferably by using the self-assessment checklist.
3. In furtherance of this, the Secretariat outlines a set of questions, based on those in the self-assessment checklist, which States parties and signatories may wish to use as a guide when providing information regarding the two topics under consideration. States parties and signatories are encouraged to view the questions below only as guidance and are free to provide any information believed to be relevant to the topics under consideration.

I - Information requested from States parties and signatories in relation to prevention of corruption in procurement at various government levels and the effective use of technology to prevent, detect, deter and counter corruption in procurement (arts. 9 and Conference resolution 10/9).

1. Please describe (cite and summarize) the measures/steps your country has taken (or is planning to take) to implement this provision of the Convention.

According to the Procurement regulations, a member or the secretary of the Evaluation Commission may not participate in the activities of the Evaluation Commission, where at the bid opening session it appears that the organization founded thereby or the organization wherein he or she holds a share (unit), or the person with whom they are linked by kinship or in-law relationships (parent, spouse, child, brother, sister as well as parent-in-law, spouse's child, spouse's brother and spouse's sister), or the organization founded by that person or the organization wherein that person holds a share (unit) has submitted a bid to participate in the procedure concerned.

Where the condition envisaged by the mentioned regulation, the member or the secretary of the evaluation commission having a conflict of interests in relation to the procedure concerned shall recue himself or herself from the procedure concerned immediately after the bid opening session.

Members and the secretary of the commission shall sign a statement on absence of the conflict of

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interests, which shall be published in the bulletin on the first working day following the end of the bid opening session.

These rules do not limit the participant's right to submit an application, but if the decision-maker in this procurement process is related to the participant who submitted the application, then this official must recuse himself.

In addition, in accordance with the requirements of the Procurement Legislation:

- The participant who is a resident of the Republic of Armenia submits with the application the link to the website containing information about their beneficial owners registered in the agency of the State Register of Legal Entities in accordance with the Law "On State Registration of Legal Entities, Divisions of Legal Entities, Institutions and Individual Entrepreneurs".

- The participant, who is not a resident of the Republic of Armenia, submits a declaration on the beneficial owners of the legal entity involved in the procurement process upon application.

If the specified information is not submitted, the applications will be rejected. Moreover, after opening bids during purchases organized through the electronic procurement system, participants' documents become freely available in the system and any person has the opportunity to get acquainted with them, including the information on the beneficial owners of the participants (armeps.am). In addition, according to the mentioned legislation, the mentioned information submitted by the selected participant is published in the mentioned Gazette simultaneously with the announcement of the decision to conclude the contract.

In relation to integrity in public procurement processes, States parties and signatories may wish to cite and describe measures that:

- **Ensure the national procurement system is based on principles of transparency, competition and objective criteria in decision-making;**

According to the Article 3, Part 2 of the Law "On Procurement" (*hereinafter Law*), the procurement process shall be based on the following principles:

(1) organization of the procurement process based on uniform rules of competition, transparency, proportionality, publicity and non-discrimination;

(2) enlargement of the circle of bidders and promotion of competition among them for the purpose of concluding a contract;



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(3) equality of rights for every person to participate in the procurement process, irrespective of the fact of being a foreign natural person, an organization or a stateless person.

According to the requirements of the Procurement Legislation, all information related to the procurement process is published in the official gazette bulletin at www.procurement.am.

The information is freely available on the Internet.

- **Establishing in advance the conditions for participation, including selection and award criteria and tendering rules;**

According to the Article 27, Part 2 of the Law, the procurement notice shall contain the following information:

- (1) name and registered office of the contracting authority;
- (2) code of the open tender;
- (3) brief and clear wording of the contents of the contract and the descriptions of the subject of procurement;
- (4) notice on the eligibility of bidders to participate in the open tender;
- (5) the language or languages in which the bids must be submitted;
- (6) brief summary of qualification criteria for bidders;
- (7) criteria to be used for determining the selected bidder;
- (8) form, venue and time limit for submission of bids;
- (9) name and location of the body responsible for the appeal and precise information on the time limits for filing appeals;
- (10) form, venue, date and time of bid opening;

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(11) a note that the provisions of the Agreement on Government Procurement of the World Trade Organization apply to the given procurement process, where the procurement price exceeds the thresholds specified by the Agreement;

(12) other information, if necessary.

Due to the Point 3 of the same Article, a person having submitted a written request to the contracting authority based on the procurement notice shall have the right to receive a hard copy of the invitation on the first working day following submission of the request.

According to the Article 28 of the Law, the invitation shall contain:

- (1) reference to the notice published, in addition to which the invitation is provided;
- (2) code of the tender;
- (3) instructions for preparation of bids;
- (4) qualification criteria, eligibility requirements and the procedure for evaluation thereof;
 - (4.1) price of procurement,
- (5) descriptions of the subject of procurement;
- (6) the procedure for evaluation of bids and for selection of a selected bidder;
- (7) the draft contract;
- (8) where procurement is carried out in lots and bidders are allowed to submit bids only for one part of goods, works and services to be procured - the conditions and procedure therefor;
- (9) the procedure for calculation of the price proposed by the bid including exchange rate thereof, where the price is quoted in foreign currency;

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(10) a note that the proposed price in addition to the value of goods, works and services also includes the costs for transportation, insurance, duties, taxes and other charges and may not be less than the cost price thereof. Calculation of the proposed price shall be presented in the bid;

(11) requirements for the bid security and the contract security;

(12) conditions including the form, venue, time limit for submission of bids, the language and validity of the bid;

(13) the procedure for receiving clarifications on the procurement process, information on meetings to be held with the bidders, as well as the name and surname of the secretary of the evaluation commission;

(14) form, venue, day and time of bid opening;

(15) references to the provisions of this Law and other legal acts on the given procurement;

(16) conditions for submitting the proposal on conclusion of a contract;

(17) the right of the bidder to appeal against the actions (inaction) related to the procurement process or the adopted decisions and the procedure thereof;

(18) grounds for rejection of the bid;

(19) information on preparation, submission, opening and evaluation of the bid, as well as other necessary information on procurement.

2. The invitation shall also envisage that the bidder:

(1) submits a statement certified thereby with the bid justifying the eligibility thereof to participate in the procurement and the compliance with qualification criteria provided for by the invitation provided that the bidder undertakes, in cases and as prescribed by this Law, to submit the documents (information) provided for by the invitation justifying the statement;

(2) submits in the bid:

a. his confirmed statement about unfair competition, abuse of a dominant position and absence of anti-competitive agreement within the given procurement process;

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b. According to the Law of the Republic of Armenia "On State Registration of Legal Entities, State Registration of Divisions of Legal Entities, Institutions and Individual Entrepreneurs", in the case of a legal entity with the obligation to submit a declaration on beneficial owners, a link to the website containing information on the beneficial owners of the legal entity participating in the procurement process, and in the case of other legal entities, a declaration regarding the beneficial owners of the legal entity participating in the procurement process, in the form and procedure established on the basis of Article 60.3, Part 6 of the RA Law "On State Registration of Legal Entities, Divisions of Legal Entities, Institutions and Individual Entrepreneurs".

- **Provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure;**

According to the Article 20 of the Law:

1. In case of an open tender, the time limit envisaged for submission of bids shall be calculated from the day of publishing the notice and the invitation of procurement in the bulletin.

2. Except for the contracting authorities referred to in sub-points "d" and "e" of Point 1 of Part 1 of Article 2 of this Law, the time limit for submission of bids shall be at least thirty calendar days.

3. For the contracting authorities referred to in sub-points "d" and "e" of point 1 of Part 1 of Article 2 of this Law, the time limit for submission of bids shall be at least:

(1) fifteen calendar days, where the procurement price does not exceed two-hundred-fold of the procurement base unit;

2) at least forty calendar days in the case of paper based procurements, and at least thirty calendar days in the case of electronic procurements, if the procurement price exceeds two hundred times the procurement base unit.

4. Where due to emergency or unforeseen situation an urgent need for procurement has arisen and it is impossible to apply the time limit for submission of bids, provided for by part 2 or point 2 of part 3 of this Article, provided that it has been objectively impossible to foresee such need, the time limit envisaged for submission of bids shall be at least ten calendar days.

Moreover, according to the requirements of Article 18 of the Law, the preferred form of procurement is the tender.

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- **Provide for transparent publishing of all procurement decisions including publishing the invitations to tender;**

According to the requirements of Procurement Legislation, in the official Procurement Gazette are published the following:

1. the invitation to procurement procedure,
2. statements about declaring the procurement procedure not completed/completed,
3. statements of the evaluation commission,
4. statements about signing a contract,
5. the statement about the signed contract.

- **Establish procedures, rules and regulations for review of the procurement process, including a system of appeal;**

According to the Article 46-րդ of the Law:

1. Every person shall have the right to appeal against the actions (inaction) and decisions of the contracting authority, the Evaluation Commission and the Procurement Appeals Board in accordance with the procedure established by the Civil Procedure Code of the Republic of Armenia. Every person has the right to appeal the characteristics of the subject of procurement, the requirements of the pre-qualification statement or the invitation before the deadline for submission of bids in accordance with the procedure established by the Civil Procedure Code of the Republic of Armenia.

2. Relations pertaining to the procurement shall not be regarded as administrative relations and shall be regulated by the legislation of the Republic of Armenia regulating civil law relations.

3. Damages caused as a result of actions or inactions of the client, Evaluation Commission are compensated in accordance with the procedure established by the Civil Code of the Republic of Armenia.

4. The period defined by Part 3 of Article 10 of this Law is the statute of limitations for appealing the actions (inaction) and decisions of the client, the Evaluation Commission, except for the appeal of decisions provided for in Part 2 of Article 6 of this Law and disputes related to unilateral termination of the contract, in which case the statute of limitations is thirty calendar days.

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Provide for a thorough selection of personnel responsible for procurement, including screening procedures; as well as establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases;

According to the requirements of Procurement Legislation, the head of the contracting authority is responsible for each procurement process, as well as in terms of their assigned powers:

- 1) procurement coordinator.
- 2) the responsible department.
- 3) the Evaluation Commission.

According to the Point 8 of the established Procedure by the 04/05/2017 N 526-N RA Government Decision, the procurement coordinator:

- 1) is responsible for the organization and coordination of the contracting authority's procurement process;
- 2) issues a conclusion regarding the documents approved by the contracting authority within the framework of procurement, ensures compliance of the procurement procedure and related documents with the conditions set by the RA Procurement Legislation;
- 3) performs the powers of the secretary of the Evaluation Commission;
- 4) draws up and submits the protocol and contract of the given procurement procedure for the approval of the head of the contracting authority.

According to the Point 12 of the Procedure, the responsible department can be assigned to the contracting party:

- 1) the relevant structural unit, subordinate body or organization operating in the field of coordination;
- 2) the formed professional group, which may also include representatives of other bodies or organizations;
- 3) state official, if the contracting authority in question does not have the appropriate structural divisions. According to the Point 13 of the Procedure, the authority of the responsible department cannot be delegated to the procurement coordinator. The person(s) participating in the design of

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the procurement request of the responsible department must have the professional ability to characterize the procurement object, which is determined based on the type of procurement object.

According to the Point 15 of the Procedure, the procurement coordinator, as well as the latter's representative or employee, cannot be included as a member of the Evaluation Commission. The member of the Evaluation Commission must have the qualifications of the participants and the professional ability required to evaluate the proposals, which is determined according to the subject of the procurement. Moreover, if the representatives of the contracting authority's staff do not have the necessary professional abilities, then a relevant expert (specialist) is invited to be included in the Commission.

- **Put in place other administrative practices promoting integrity in procurement (such as the rotation of personnel, debarment procedures, etc.).**

The regulations are stated by the Procurement Legislation.

2. Please describe (cite and summarize) the measures/steps your country has taken, if any (or is planning to take, together with the related appropriate time frame) to promote the effective use of technology to prevent, detect, deter and counter corruption in procurement.

RA Ministry of Finance plans to introduce a new electronic procurement system. The system is also planned to be integrated with the system of the register of legal entities and to automatically transfer the data of beneficial owners received from participants and officials who have no conflict of interest with that participant to the RA Corruption Prevention Commission, which will have the opportunity to identify cases of interconnectedness in purchases by comparing it with the data of the officials submitting the declaration.

From this point of view, it is also appropriate to consider the application of additional restrictions from the point of view of the entire public sector, applying regulations through public service legislation to those officials who, from a "level" or "function" point of view, can influence decision-making in the procurement process.

States parties and signatories may wish to provide information on measures that:

- **Utilize technology, such as online platforms for the distribution of information relating to public procurement and tenders as a way to prevent corruption, enhance**

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transparency and ensure competition and objective criteria in procurement decision-making.

www.procurement.am, www.armeps.am, www.armeps.am/ppcm

Information sought may, in particular, include the following:

- **Description of any electronic system of public procurement, including, for example:**
 - **The means by which tender invitations are published;**
 - **The inclusion of all pertinent information on the award of contracts;**
 - **Ways in which applications may be submitted (including the use of electronic procurement platforms); and**
 - **Ways in which the criteria to be used for selection and award are publicized.**
 - **Any other ways, in which technology is used in the procurement process**
 - **Any other ways, in which technology is used to detect corruption or identify irregularities.**

In the "Guidelines and Manuals" sub-section of the "Legislation" section of the official Procurement Gazette at www.procurement.am, are published the "Economic Operator" guide for the user of the Armepps e-procurement system, the E-procurement implementation guide.

At the same time, in the "Sample Forms of Documents" sub-section of the "Legislation" section, model forms of invitations used in procurement documents are published, which necessarily contain information on the evaluation of bids and the draft contract.

When providing information on the use of technology to prevent, detect, deter and counter corruption in procurement, States parties and signatories may wish to refer to their submissions for the sixth meeting of the Working Group, held in 2015.

3. Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties and signatories may have faced include:

- **Challenges in developing the proper legislative framework;**
- **Coordination challenges between government agencies responsible for integrity in procurement and other bodies;**
- **Communication challenges between government bodies, agencies responsible for integrity in procurement, and business community representatives;**
- **Other implementation challenges; and**
- **Financial challenges with respect to maintaining sufficient and consistent funding for government bodies and other government agencies responsible for integrity in procurement and management of public finances.**

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4. Do you require technical assistance in relation to the measures described above? If so, please specify the forms of technical assistance that would be required. In case you have received or are receiving technical assistance to implement these measures, please indicate so in your response.

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