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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.

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;
- Establishing in advance the conditions for participation, including selection and award criteria and tendering rules;
- Provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure;
- Provide for transparent publishing of all procurement decisions including publishing the invitations to tender;
- Establish procedures, rules and regulations for review of the procurement process, including a system of appeal;

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

ANSWER:

a. *The Public Procurement Act (PPA) of 2021 is the procurement legal framework guiding the procurement system in Botswana, the aims of which are to:*

- *regulate Public Procurement in Botswana through establishment of structures and systems,*
- *promote the integrity of, and fairness and public confidence in the procurement process,*
- *make procuring entities fully accountable for all procurement activities,*
- *provide a framework of rules for procurement of works, services and supplies.*

b. *The Public Procurement Act (PPA) is guided by the following principles:*

- *An open and competitive economy*
- *Responding to external obligations relating to trade and procurement*
- *Empowerment of Citizens and Citizen Contractors*
- *Fair and equitable treatment of contractors*
- *Accountability and transparency*
- *Integrity, fairness of and public confidence in the process*
- *Value for money and Lifecycle costing.*

c. *The public procurement legal framework (Section 71) requires the procuring entities (PEs) to plan and publish such plans each financial year. They are also required to use the Standardized Bidding Packages (SBPs) developed and controlled by the Public Procurement Regulatory Authority (PPRA also referred to as the “Authority”) in line with the PPA, its Regulations and Best Practice, to ensure procurement requirements standardization across all PEs. PEs are required to develop bidding documents using SBPs templates, with clear instructions and requirements, as well as evaluation criteria and basis for award. Such bidding documents should be published openly for all potential bidders to participate as may be necessary to ensure transparency and fairness.*

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The Act also requires award decisions, including those of complaints and challenges dealt with, to be published.

Regulation 13 provides for minimum bidding periods for the different stipulated procurement methods, and PEs are required to adhere to those specific requirements. However, where necessary, bidding periods may be extended to accommodate any emerging issues.

Parts XIV and XV of PPA provide for clear complaints review and resolution mechanisms. A Public Procurement Tribunal has been established in terms of Section 114 of the Act to deal with general appeals within the procurement space. This body is independent of the PPRA.

Section 9 of the PPA requires the Authority to “establish and set up an appropriate structure to regulate and register procurement personnel, and oversee any other matter relating to professionalization of procurement personnel”. This includes accreditation and registration of procurement practitioners. However, this is an on-going exercise.

To ensure the integrity of the procurement system, the Authority has put in place the Code of Conduct for Contractors, and the Suspension and Delisting Committee to deal with misconduct of contractors. The Code of Ethics for Procurement Professionals is in place to guide the conduct of procurement personnel. The development of Administrative Sanctions to deal with misconduct of Procurement Professional is underway.

In order to further promote integrity, the PPA requires evaluation and debriefing committees to be appointed on an ad-hoc basis. Further to this the Authority is mandated to issue a model structure for a procuring entity to ensure separation of duties and good corporate governance amongst others. Section 21 of PPA provides for a clear conflict of interest management system which includes declaring of interest by all involved in procurement.

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.

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

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



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- 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.

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.

The Integrated Procurement Management System (IPMS) was introduced in 2009 to cater for Contractor Registration, e-Bidding, Capacity Building, Dispute Resolution and Asset Disposal modules, of which only the first two were implemented. However, the contractor registration module was fully implemented while the e-bidding was at piloting stage when the new Public Procurement Act was enacted in 2021. The e-bidding was discontinued due to teething problems associated with the implementation. The re-engineering of the e-bidding module was further required through Section 55 of PPA, which requires establishment of a National eProcurement System, the exercise for which is on-going. This is expected to be an end-to-end one stop information and transaction portal for public procurement, which shall provide for:

- (a) the registration of users and suppliers;*
- (b) the preparation of a tender;*
- (c) the advertising of a tender;*
- (d) auction;*
- (e) the submission of a tender and opening of a tender;*
- (f) the evaluation and award of a tender;*
- (g) the signing of a contract;*
- (h) the certification of a payment;*
- (i) the handling of a complaint by a contractor;*
- (j) a catalogue;*
- (k) the management of demand;*
- (l) the management of a supplier;*
- (m) a quotation;*
- (n) the management of a contract;*
- (o) the evaluation of a supplier;*
- (p) procurement planning; and,*
- (q) any other procurement process.*

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;

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- 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.

In order to strengthen the above measures, Section 8 of the PPA, empowers the Authority to, amongst others:

(a) monitor, assess, review and report on the performance of the public procurement system to the Minister and advise on desirable changes;

(b) conduct periodic inspections of the records and proceedings of a procuring entity to ensure compliance with this Act;

(c) institute periodically, in respect of any procurement –

(i) a procurement audit during a tender process,

(ii) a contract audit in the course of execution of an awarded tender,

(iii) a performance audit after the completion of a contract, and

(iv) an investigation at any stage of a procurement process.

(d) undertake research and conduct surveys, nationally and internationally, on procurement matters.

(e) promote the training and professional development of any person engaged in public procurement in accordance with this Act, including contractors, to ensure adherence to ethical standards.

Challenges

The challenges experienced are associated with:

- *Implementation of the new Act by some PEs, such as resistance to change, non-compliance, poor reporting etc.*
- *Lack of procurement skills*
- *Professionalization of Procurement cadre not yet in place.*

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- *Limited human and financial resources to implement the PPA.*
- *PE Structures not yet issued.*
- *Delayed re-engineering of the eProcurement.*

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.

PPRA is receiving technical from the Directorate on Corruption and Economic Crime (DCEC) on corruption related issues.

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