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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.).

Finland's public procurement system is harmonized by the EU law. Based on the renewed EU public procurement law, Finland enacted a comprehensive public procurement legislative reform in 2016. The Act on public procurement and concessions contracts (1397/2016, Act on Public Contracts) and the Act on procurement procedures and concession contracts for entities operating in the water, energy, transport and postal services sector (1398/2016, Act on Public Contracts in the Utilities Sector) implement the Directive 23/2014/EU on the award of concession contracts, the Directive 2014/24/EU on public procurement, and the Directive 2014/25/EU on procurement by entities operating in the utilities sector. Act on Public Contracts and Act on Public Contracts in the Utilities Sector entered into force 1st January 2017.

Relevant legislation:

Courts Act (673/2016), particularly Chapter 5, available at:
<https://finlex.fi/en/laki/kaannokset/2016/en20160673.pdf>

Act on Public Contracts (1397/2016) available at: <https://www.finlex.fi/fi/laki/ajantasa/2016/20161397>
See unofficial English translation of Act (1397/2016) at:
<https://www.finlex.fi/fi/laki/kaannokset/2016/en2016>

Act on Public Contracts in the Utilities Sector (1398/2016) available at:
<https://www.finlex.fi/fi/laki/ajantasa/2016/20161398>

EU Public procurement law sets minimum requirements for qualitative and selection criteria as well as the award of public contracts. Selection of candidates and tenderers and selection of tender is regulated in Chapter 10 of the Act on Public Contracts and subcontracting in sections 77 and 78. Mandatory exclusion grounds are listed in section 80 and discretionary exclusion grounds in section 81 of the Act. Contracting entities shall exclude a tenderer or request to replace a subcontractor who does not meet the mandatory exclusion grounds and selection criteria or may exclude a tenderer or request to replace a subcontractor who does not meet the discretionary exclusion grounds. Contracts shall be awarded on the basis of criteria laid down in accordance with Articles 67 to 69 of the Public Procurement Directive, provided that the contracting authority has verified in accordance with Articles 59 to 61 that all of the conditions are fulfilled. Articles are implemented in sections 85, 88-89, and 94-96 of the Act on Public Contracts. Public contract shall be awarded on the most economically advantageous tender. Decision can be based on price, life-cycle costs and price-quality ratio comparison.

The Ministry of Finance has published guidelines for general term of public procurement in supply and service contracts. General Terms of Public Procurement in Supply Contracts (JYSE 2014 SUPPLIES) available at: <https://bit.ly/2OtOkrI>. General Terms of Public Procurement in Service Contracts (JYSE 2014 SERVICES) available at: <https://bit.ly/2pQWvPO>. The terms and conditions of public procurement are currently being updated. Ministry of Economic Affairs and Employment published a Guide to socially responsible public procurement (MEAE guidelines and publications 12/2017), which is available at: <https://bit.ly/2PA3FmS>.

The Finnish Competition and Consumer Authority (FCCA) supervises compliance with procurement rules. FCCA supervision started in the beginning of 2017. Supervision primarily seeks to intervene in

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direct procurement carried out in blatant negligence of legal provisions and left completely unreported, as well as in other significant procurement corresponding to direct procurement carried out in a grossly faulty or discriminatory manner. Requests for action can be submitted by anyone. Requests function as an important source of information for the FCCA in order to identify unlawful procedures and supervise compliance with the law. Most cases concern illegal direct procurement (58 out of total 86). Only two cases required further actions. The FCCA can go to the Market Court and demand serious sanctions, including voiding the contract. While the FCCA is not obliged to report suspected bribery to the Police, it is able to do so. The FCCA has reported to the Police number of occasions.

The Market Court of Finland is a special court, which has the jurisdiction to hear public procurement cases. Tenderers may refer matters concerning public contracts to the Market Court with a written petition. Appeals against the rulings issued by the Market Court can be lodged in the Supreme Administrative Court.

Public procurement has been identified as a risk sector in Finland. The Anti-Corruption Strategy and the related Action Plan (2021–2023) has aimed, *inter alia*, at preventing and combating corruption in the context of public procurement and increase the transparency of procurement. The latest Strategy and Action Plan for Tackling Grey Economy and Economic Crime (2020–2023) contained several measures on public procurement. Both of the aforementioned Action Plans will be updated during 2024 and the Strategies will be renewed as appropriate.

The ProcureFinland action program (Hankinta-Suomi) aims at developing public procurements and has continued implementing measures that enhance openness and transparency in procurement. The ProcureFinland program (2019-2023) defined eight common goals to improve the effectiveness of public procurement. Especially the goal concerning social sustainability focuses on enhancing integrity and its application. One of the guides depicting anti-corruption efforts in practice is the “Guidelines for combating the grey economy for procurement units.” The development of procurement effectiveness continues as a close collaboration among sector actors.

The ProcureFinland program (2024-2027) is led by five organizations: the Ministry of Finance, the Association of Finnish Local and Regional Authorities, the Confederation of Finnish Industries, the Federation of Finnish Enterprises, and the Wellbeing Services County Company Hyvil Oy. The latter represents the state's self-governing wellbeing services counties, which have been responsible for organizing social and healthcare services as well as rescue services since the beginning of 2023. The goal of the common action program is to promote the sustainability of public finances and the social impact of public procurement.

The Ministry of Justice has organized targeted and tailored trainings for the high-risk sectors of corruption during 2022 (as part of the National Strategy and Action Plan for Tackling the Grey Economy and Economic Crime and the National Anti-Corruption Strategy). Targeted training focuses on the concept and forms of corruption, especially in the Finnish context, and the risk mapping in the public procurement process as well as the vulnerabilities and possible ethical loopholes in the decision-making processes. Every training session also provides tools to build up or further develop the organizations’ integrity and anti-corruption framework. During 2021-2022 the Ministry of Justice has organized number of different targeted trainings for the public procurement professionals and internal auditors, as well as civil servants and anti-money laundering professionals.

In 2022, procuring entities were provided with a procedural guide to tackle the grey economy in public procurement. The guide provides information for procuring entities on how to identify grey economy, including corruption, labour exploitation, and tax evasion.

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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
 - 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.

Duty to announce procurement and notification procedure is regulated in Chapter 7 sections 58-61 of the Act on Public Contracts. Contracting entities shall submit a notice for publication in HILMA, central electronic contract notice system (www.hankintailmoitukset.fi), for all procurements that exceed national threshold values set in section 25 of the Act. Finland has implemented national thresholds lower than the EU threshold values in Articles 4 and 13 of the Public Procurement Directive. National thresholds ensure functioning of the principles of transparency and non-discrimination. Contracting authorities shall accept European Single Procurement Document (ESPD) in all public tenders that exceed EU thresholds. See EU and national thresholds here: <https://tem.fi/en/eu-and-national-thresholds>.

In general notice for publication for national or EU procurement can be submitted to HILMA. HILMA interacts with official registries and it automatically retrieves necessary information for the procurement, e.g. tax records, and social security contributions. Criminal records, however, must be checked separately. Procurement authorities are required to check criminal and other relevant records from all successful tenderers, including senior management and other persons in charge. Procurement authorities may require the same information from subcontractors. European Single Procurement Document (ESPD) is integrated to HILMA. Finland is currently looking for viable options to include criminal records to the automatic confirmation system. Contracting authorities may submit an extensive notice for publication in procurements that exceed national thresholds and are under EU thresholds.

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Finland's state procurement information is available for everyone at tutkihankintoja.fi -service. [Tutkihankintoja.fi](http://tutkihankintoja.fi) was established as part of the Digitalisation of Government Procurement Programme in September 2017. The service retrieves and publishes information on the state electronic invoicing systems and allows the citizens, companies and interest groups to explore the state spending. The service has improved transparency significantly. Citizens are provided with information on the purchases made by the state and Finnish municipalities as well as how public funds are being spent. For companies, the service provides information on current market conditions.

Building on the entries concerning procurement in the new Government Program (2023–2027), there will be a further intensification of open collaboration between public and private sector stakeholders. One of the key initiatives already underway is a project to establish a National Database of Public Procurement Information. This database is set to enhance transparency by enabling assessment of developmental activities and legislative changes, dissemination of best practices, and detection of irregularities. As part of the database effort, legislation will mandate the open and centralized publication of purchase invoice data from public entities without the need for separate requests.

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.

The responsibility for organising health and social services and rescue services was transferred from municipalities to country level, i.e. self-governing wellbeing services counties from the beginning of 2023. The reform has also affected procurement contracts in many ways. The wellbeing services counties will be public corporations and, as such, the most significant public procurement units within the scope of the Finnish public Procurement Act, which is why a significant share of these external resources must be procured through competitive tendering procedures laid down in the Act.

According to the [State Institute for Economic Research](#), a rough estimate suggests that more than 40% of the annual operating expenditure, or more than EUR 8 billion, is spent annually on purchases outside the wellbeing services counties with the counties' estimated EUR 21.2 billion. As much as EUR 2.5 billion of these purchases are procured from competitive markets through public procurements above the threshold value. Therefore, wellbeing services counties will be responsible for over 15 per cent of Finland's public procurements subject to competitive tendering.

As public procurement has been identified as a risk area in Finland, the wellbeing services county level must also be secured for transparent and effectively competitive procurement processes. The [ProcureFinland](#) programme for 2024-2027 (as part of the implementation of the [National Public Procurement Strategy](#)) aims at promoting the implementation of the objectives in wellbeing services

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counties, as well as in several ministries, the municipal sector and other public sector organisations in close cooperation with the private and third sectors.

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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