

Chapter 1
**Advancing Public Procurement:
Practices, Innovation and Knowledge Sharing**

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INTRODUCTION

Public procurement is continuing to evolve both conceptually and organizationally. That evolution accelerated during the 1990s as governments at all levels came under increasing pressures to “do more with less.” Indeed, all governmental entities of rich and poor countries are struggling in the face of: unrelenting budget constraints; government downsizing; public demand for increased transparency in public procurement; and greater concerns about efficiency, fairness and equity. Additionally, public procurement professionals have faced a constantly changing environment typified by rapidly emerging technologies, increasing product choice, environment concerns, and the complexities of international and regional trading agreements. Further, policy makers have increasingly used public procurement as a tool to achieve socioeconomic goals.

In this environment, public procurement has become much more complex than ever before, and public procurement officials must deal with a broad range of issues. They have been walking on a tight rope in:

- Balancing the dynamic tension between (a) competing socioeconomic objectives, and (b) national economic interests and global competition as required by regional and international trade agreements;
- Satisfying the requirements of fairness, equity and transparency;
- Maintaining an overarching focus on maximizing competition; and
- Utilizing new technology to enhance procurement efficiency, including e-procurement and purchase cards.

CONTENTS OF THE BOOK

Twenty-one studies or papers (hereafter called “chapters”) were selected, via a rigorous peer review process, on the basis of scholarship. Thus, it is expected that they cover a variety of research issues. However, three major procurement issues have been the focuses of fourteen chapters: procurement partnership and cooperatives (five chapters), procurement regulations and ethics (four chapters), and public procurement as a policy tool (five chapters). The remaining seven chapters address other public procurement issues.

By no means do the above identified themes reflect scientifically the current trends of research interests. Actually, there are a good number of papers presented at the conference which focus on many critical procurement concerns, including procurement reforms, transparency concerns, e-procurement, and procurement approaches or techniques.

Partnerships and Collaborative Procurement in the Public Sector

The first five chapters of the book explore different collaborative procurement and public-private partnership arrangements. Collaboration or cooperation can be formed in both sides of public procurement: the demand (or buyers) side and the supply (or suppliers) side. The reader will be able to draw differences and similarities in this area of procurement practices and can draw of lessons.

In Chapter 2, “Organizing for Collaborative Procurement: An Initial Conceptual Framework,” Elmer Bakker, Helen Walker, and Christine Harland provide an overview of different collaborative procurement forms that are recognized in literature and practices, and provide a conceptual framework to help assess when to use which form. The framework is built on literature on collaborative procurement and organization and contingency theory. Having examined a range of factors, uncertainty of the environment and the newness and importance of the buying need are argued to be the main contingency factors in determining the ideal collaborative procurement form. The resulting decision-making framework requires empirical testing. According to the authors, however, when to use which collaborative procurement form is not yet clear.

In Chapter 3, “Using Agency Theory to Model Cooperative Public Purchasing,” Cliff McCue and Eric Prier state that cooperative purchasing is beginning to receive renewed attention by scholars and practitioners alike in both the private and public sectors. Generally, cooperative purchasing arrangements are believed to reduce costs, expedite transactions, and increase product knowledge. In the public sector, cooperative purchasing has been reported to reduce political risk and minimize “red tape.” The authors contend that the lack of conceptual clarity has marred the literature on cooperative public sector purchasing, and as a result, public sector purchasers have no theoretical guidelines to help them decide upon this purchasing mechanism. The authors propose using agency theory to analyze, define, and establish a conceptual framework of cooperative public purchasing to help guide academics and public sector purchasing professionals.

Cooperative purchasing has been considered as a good procurement approach in reducing procurement costs and risks, minimizing “red tape” and maximizing the economy of scale (due to large volume purchases) for the government. But cooperation does not occur only on the buyer side, but also on the seller side. In many countries, vendors may collaborate in major projects particularly in the area of new technology research and development, which produces many types of benefits, including sharing new knowledge and minimizing financial risks in development new technologies. However, Flóra Felső, Barbara Baarsma and José Mulder, in Chapter 4, “Cooperation for Tenders: Is It a Threat to Competition?” raise a major concern: the possible threat to competition. The authors examine the case of joint ventures or “combinations” in the Netherlands. According to the authors, Dutch construction companies frequently tender together in “combinations” for public procurement projects. How often is “frequently” and how often is it in conflict with competition law? Their study shows that only in 3.75% of the projects a combination may be a violation of the cartel prohibition. However, the study shows that as the contract value increases, combinations are becoming more frequent and that combinations are forming within the same group of companies. Procurement authorities are left with the puzzle of promoting competition but tolerating “necessary” cooperation. Capacity problems do not comprise valid arguments for the necessity of cooperation.

Another issue in this part of the book, public-private partnerships (PPPs) are also addressed. This issue has been an area of policy research in the last thirty years, although PPPs have existed for many centuries and have long been addressed by economists. However, it has been a more recent research area in public procurement, particularly when government in many countries have increasingly used outsourcing. While there have been many successful public-private partnership cases, there have been also unsuccessful cases. According to Sandy Y. L. Chong and Guy C. Callender, in Chapter 5, "One More Time... How to Measure Alliance Success in Conditions of Public-Private Partnering," although the emphasis on partnership formation between governments and the private sector has grown rapidly in recent years, more than half of these alliances are unsuccessful. The causes of these failures can be traced to disagreements between organizations in each sector over control issues, inadequacy of management support, and lack of cooperative behavior. The authors consider these issues against the backdrop of PPPs. Given the significant scale of PPPs and the size of the contracting organizations, questions arise over the impact of partnership satisfaction and "relative ownership of investment." The research presented in this conceptual chapter, supported by two dynamic case studies, has applied consequences for procurement policy makers and managers seeking to build successful PPPs.

According to William Lucyshyn, in Chapter 6, "Market-Based Government: Lessons Learned from Five Cases," one of the major issues to be decided over the coming decade is that of the "proper role of the government in the 21st century." Although, the U.S. federal government's longstanding policy has been that the government will neither produce products nor provide services that are available in the private sector, this policy has not been followed. Consequently, many "commercial" functions are being performed by government employees on a monopoly basis. Various strategies, such as outsourcing, competitive sourcing, public-private partnerships, and privatization, have been initiated in an effort to introduce competition and make the government more "market-based." The author examines five cases where these strategies have been implemented, and finally identifies lessons that can be learned from those cases.

Public Procurement Regulations and Ethics

A sound procurement system is based on four major elements or pillars: legislative and regulatory framework, institutional framework and management capacity, procurement operations & market practices, and integrity of procurement system (Aruajo, 2003; Agaba & Shipman, in this book). Procurement laws and regulations are a double-edged sword: a procurement regulatory system establishes standards and code of ethics that guide buyers and sellers, but may create red tape that jeopardizes procurement efficiency.

Nigel Caldwell, Wendy Phillips, Thomas Johnsen and Michael Lewis, in Chapter 7, “Procurement Ethics and Telecare Innovation in UK Healthcare,” state that public procurement is increasingly being required to deliver outcomes beyond traditional cost issues (e.g., social engineering, sustainability and innovation). In the United Kingdom, the health sector in particular is perceived as failing to adopt new technologies. Some of the potential innovations relate to technologies that address rapid changes in demographics. Meeting the needs of increasingly frail elderly citizens through new technologies is thus becoming a procurement and medical challenge across much of the western world. However, pursuing technologies based on procurement rather than medical (clinical) imperatives could juxtapose two very different ethical approaches: utilitarianism vs. deontology.

In Chapter 8, “Governmental Procurement: FAR from a Competitive Process,” Dean E. Brunk states that the Federal Acquisition Regulation and the coinciding practices of the United States federal government’s procurement process are perilously vulnerable to antitrust abuses. As the world’s single largest purchaser of goods and services, the federal government has tried to take greater care to ensure that its procurement professionals and government contractors abide by and protect the antitrust regulations governing American commerce. The author highlights several areas of potential antitrust danger in the federal procurement process and offers suggestions for a more efficient and competitive process.

In Chapter 9, “Regulation and Deregulation in Public Procurement Law Reform in the United States,” Joshua I. Schwartz suggests that the U.S. federal government’s procurement reforms of the last 15 years be understood in two contexts: the long-term development of

the procurement system and a larger movement toward regulatory reform. Deregulatory procurement reforms are a cyclical response to the costs that predictably accompany the very real benefits of a system that promotes efficiency, integrity, and equity through a structured regime of competitive public procurement. According to the author, reform should focus on marginal adjustments and should avoid radical deregulation that would undermine the fundamental values of the system. Nor is more sweeping procurement deregulation supported by the rationale for other deregulatory reform in the United States because procurement regulation itself seeks to assure the public the benefits of competitive markets.

In Chapter 10, “Law and Economic Analysis of the Estonian Public Procurement Act,” Ringa Raudla examines the Estonian Public Procurement Act by using three different strands of analysis in law and economics – economic construction of the legal argument, evaluative analysis, and normative analysis. The author focuses mainly on the amendments of the Estonian Public Procurement Act during 1999-2001, including changes made to tendering procedures, lowering the value thresholds of procurement, and introducing consolidated procurement. The analysis finds that the amendments failed to achieve their goals and led to unintended effects. The lessons learned from these shortcomings are discussed in the light of the general problems of administrative reforms in transition countries.

Public Procurement as a Policy Tool

Annually, government in every country spends a great portion of national resources on acquiring supplies, services, and capital assets. This magnitude of government procurement outlays has created opportunities for government to implement selected national policies. Government entities can require, for example, that contractors maintain fair employment practices, provide safe and healthful working conditions, pay fair or living wages, refrain from polluting the air and water, give preference to disadvantageous businesses, national and local contractors and to small or women/minority-owned businesses, and promote the rehabilitation of prisoners and the severely handicapped. Each country has its own procurement preferences. However, in a globalized environment, procurement preferences given to national firms may exclude international

competitions and, thus, violate international trade agreements and practices.

Green procurement (that is, buying environment-friendly goods and services) has been a movement encouraged by many countries and international organizations such as the World Trade Organization, the World Bank, etc. The European Community's directives and guidelines on public procurement also encourage government to purchase environment friendly products. Lina Carlsson and Fredrik Waara (Chapter 11, "Environmental Concerns in Swedish Local Government Procurement") study Swedish local governments' effort in green procurement. The authors interviewed procurement officers in Swedish regions, counties and municipalities. According to their findings, procurement officers prefer to integrate environmental concern in contract specifications or in selection criteria. Local government agencies' interest in obtaining goods and services at low cost and lack of administrative resources are perceived to be barriers in green procurement. Finally, procurement officials prefer environmental evaluation criteria that are as easy as possible for their tender evaluation. Their concern is coincidentally addressed in Chapter 12.

Indeed, in Chapter 12, "Green Award Criteria in the Most Economically Advantageous Tender in Public Purchasing," Katriina Parikka-Alhola, Ari Nissinen and Ari Ekroos state that in the European Union, government contracts must be awarded to tenders who offer "the lowest price" or are "the most economically advantageous." Use of environment-favorable criteria in public procurement, i.e., green public purchasing, has been recognized as a key tool towards sustainable development. The authors focus on how environmental award criteria are used and how green procurement emphasis is weighed against other elements of economical advantageousness. Studying 180 tender cases in Denmark, Finland and Sweden in 2005, the authors found that, in 90% of purchases, the award basis is "the most economically advantageous," as most frequently-used award criteria include price, quality and delivery terms. Environmental award criteria are included in tender evaluations of only 28% of studied cases.

Public procurement is used as a policy tool for economic purposes. Andrew Erridge and Sean Hennigan, in Chapter 13, "Public Procurement and Social Policy in Northern Ireland: The

Unemployment Pilot Project,” present their study of public procurement as a tool to assist the unemployed. They analyze a pilot project on utilizing the unemployed in public contracts which was part of the 2002 public procurement policy in Northern Ireland. Evidence and arguments on the use of public procurement for social policy goals are explored against the context of a review of UK government labor market policies. The background to the Unemployment Pilot (UP) Project is outlined, and the findings from monitoring and evaluation of the project are presented. The chapter concludes that the UP Project successfully addresses criticisms of the use of public procurement for social policy goals, and demonstrates the case for investment in labor market programs on the grounds of equity, social cohesion and efficiency.

Barbara Ann C. Allen in Chapter 14, “Unintended Consequences: Procurement Policy and the Canadian International Trade Tribunal,” addresses another case of public procurement’s socio-economic goal. The Canadian International Trade Tribunal (CITT) was a creation of NAFTA and the need for a procurement dispute resolution system. It was designed as an administrative tribunal with the intention that American suppliers would have an outlet for redress if a bid process were contrary to the trade agreement requirements for transparency and competitiveness. The reality is that very few international complaints have been made, and that domestic suppliers have used it as a strategic mechanism in the procurement process. Determinations have impacted the entire procurement process. Using the neo-institutionalist transaction cost theory, this chapter explores the unintended consequences of the creation of the CITT and illuminates how it became a procurement policy shaping institution.

Finally, another case of public procurement’s socio-economic goal is presented by Loreni F. Foresti, Rafael S. Arantes and Vinício Rossetto, in Chapter 15, “The Use of the Public Procurement Power to Promote the Development of Small Businesses: The Brazilian Experience.” The Brazilian government has changed its public procurement system in order to enable the use the public procurement power as a tool of industrial development policy, focusing on small businesses (SBs). The Brazilian experience is based on the use of information technology in tenders; improving planning of state procurement; and promoting changes in the legislation in

order to enable a differential treatment for SBs. The main innovations proposed are tenders up to US\$ 40,000 as set-aside for SBs; mandatory subcontracts for SBs; and a set-aside quota for SBs in the case of big contracts.

Other Public Procurement Issues

Seven chapters selected under this part of the book cover a variety of procurement issues, including procurement reforms, performance measurement, benchmarking, etc.

Procurement Reforms

Procurement reforms, particularly in the area of procurement law and regulations, occur quietly but frequently. As mentioned early, a public procurement system is built on four pillars. Weaknesses in one of the four pillars will lead to an unsound public procurement system. Thus, if a problem occurs in a public procurement system, a thorough analysis should be conducted and a well-thought reform should be applied. In developing countries, where procurement legal systems have been recently established, procurement law and regulation reforms tend to occur more frequently than in developed countries where a procurement legal system has been tested and modified for many years. However, well-established procurement legal systems are not flawless. Indeed, they must be amended frequently in order to cope with the changing environment. There are two reform cases: procurement reform in Uganda, and reform of public procurement law in the Western Balkans.

In Chapter 16, “Public Procurement Reform in Developing Countries: The Uganda Experience,” Edgar Agaba and Nigel Shipman state that the characteristics of an unreformed public procurement system, in particular the opportunities for corruption and financial mismanagement, can become impediments to development. Consequently, procurement reform is an important development tool in African countries. Using several models of a reformed public procurement system, this chapter considers the desired outcomes of procurement reform, the stages in the reform process and the challenges encountered. It assesses the achievements and shortcomings of procurement reforms in Uganda and presents a

strategy for overcoming the challenges that many African countries face.

As mentioned above, procurement law has to be reformed due to the changing environment. As the countries of the Western Balkans are preparing their accession to the European Union, their public procurement systems have to be reformed. In Chapter 17, “The Reform of Public Procurement Law in the Western Balkans,” Martin Trybus describes the reform of the public procurement laws of these countries. The priority of the relevant reform process in Albania, Bosnia and Herzegovina, Croatia, Macedonia, Serbia, Montenegro, and Kosovo has been to achieve compliance of the national public procurement laws and regulations with the requirements of the European Community Treaty and the Public Procurement Directives. The chapter will provide an overview of these requirements with respect to coverage, procedures, qualification, award criteria and remedies and discuss their impact on the procurement laws of the region.

Measuring Procurement's Value

In Chapter 18, “Procurement’s Value: What Are We Really Measuring?” Andrew B Kidd states that the systems traditionally used in public sectors, such as those in Australia, to measure success do not generally adequately account for the investment in the supporting procurement capability and capacity. As a result, measures of success have inadequate reference points and cannot satisfy the growing demand for measures of procurement’s contribution to organizational success. The concept of public value, as a measure of public sector success, is much discussed. An examination of public value provides insights into its use as a measure for procurement success capable of taking into account the investment in procurement capability and capacity.

Procurement Accountability

Ohad Soudry, in Chapter 19, “A Principal-Agent Analysis of Accountability on Public Procurement,” proposes a framework used to ensure public procurement accountability: the principal-agent problem. This is an agency model developed by economists which addresses the problems arising in situations where one party – the *principal* - delegates an amount of discretion and decision-making

authority to the other party - the *agent* - who is then required to perform some service on the principal's behalf. This chapter utilizes the framework of the principal-agent problem to analyze the methods used by most public procurement systems in order to ensure the accountability of their public procurement officials. The chapter first addresses the principal-agent problem in public procurement from a domestic perspective. The second part examines the potential of international and regional agreements for strengthening the accountability of national procurement officials. Lastly, the chapter examines some problems which may arise as a result of using such control mechanisms.

Public Procurement Process Revisited

Public procurement has been viewed as a management function that starts only after a project is funded and a contract is needed. This view holds that procurement professionals do not have opportunities to participate in the project planning and funding decisions. In Chapter 20, "Early Public Procurement Involvement in Emerging Technologies? The Case of Tissue Engineering," Wendy Phillips, Nigel Caldwell and Thomas Johnsen argue that public procurement is increasingly viewed as a driver of innovation. However, its involvement often occurs during the later stages of the technology life cycle, when the risks are diminished and the technology is standardized. For emerging technologies, the successful transition from basic research to successful commercialization requires early support from key elements of the innovation system. This chapter presents an in-depth study of an emerging technology, tissue engineering, reporting on the findings of over 35 interviews with key individuals identified using reputational sampling. The chapter calls for public procurement involvement earlier on in a technology's life cycle and closer engagement with relevant stakeholders.

Multiple Sourcing

Public procurement officials frequently face the choice of buying goods or services from one or from more suppliers. In Chapter 21, "Public Purchasing Future: Buying from Multiple Suppliers," Merijn M. Linthorst and Jan Telgen review the reasons why one or the other alternative is preferred. Then the authors analyze these reasons in

the context of the shifting goals of public procurement. It is argued that the more recent and further reaching goals of public procurement will lead to more cases of multiple sourcing in public procurement. Finally the authors explore the use of multiple lots in public procurement against the background of the discussion on multiple goals and multiple sourcing. The authors conclude that multiple lots and multiple sourcing should be combined to achieve the goals of public procurement.

Procurement Benchmarking

Chapter 22, “Benchmarking European Public Procurement Practices: Purchasing of ‘Fix-Line Telephone Services’ and ‘Paper for Printers,’” Laura Carpineti, Gustavo Piga and Matteo Zanza attempt to benchmark selected product categories commonly purchased by selected European public procurement agencies. Questionnaires from European procurement agencies provide several insights on procurement contest design and on participation and competition patterns of two important supply contracts: fixed-line telephone services and paper for printers. Data show that in the first, public procurement practices are rather similar; and in the latter, they vary significantly across EU countries, despite the standardized nature of products. Moreover, some cases of cross-border participation to tenders suggest that players consider the European market as a single market.

CONCLUSION

Public procurement systems in different countries in the world, developed or developing countries, share some common knowledge and practices. The chapters published in this book clearly confirm this statement.¹ Thus, international conferences such as the 2nd International Public Procurement Conference are a great contribution to public procurement professionals because it is at these conferences that procurement practitioners and researchers from many countries have a chance to share and learn new knowledge and best practices.

NOTES

1. However, there are some variations among public procurement systems, caused by the maturity level of the procurement systems

and governance (democratic systems with undisputed check and balance of three branches of government—legislative, executive and judiciary—and weak democratic systems, which are normally dominated a the executive branch or a political party—; cultural differences (some cultures tend to tolerate gratuities or gifts given to government officials; some others may have very strict restrictions on gratuities); market conditions where many vendors exist and are willing to bid for government contracts, and some other countries do not have a competitive market; and the level of professionalism of procurement workforces.

REFERENCES

- Araujo, A. (2004). "Procurement Capacity Building in Developing Countries." Paper presented at the 1st International Public Procurement Conference, October 21-23, Fort Lauderdale, Florida, USA.