

U4 Expert Answer



Liberia: Overview of public procurement

Query

Could you please provide an overview on public procurement in Liberia: Which measures to mitigate corruption risks have been provided by law and to which extent are they being implemented, especially in the construction sector? How effectively does the PPCC oversee procurement practices? What is the role of civil society in this regard and who are the important actors?

Purpose

Preparation of a pilot intervention to strengthen civil society participation in public contract monitoring in the roads sector.

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Summary

Since the end of the civil war, Liberia has taken important steps to reform its procurement system. Nowadays, the country can count on a robust legal framework on public procurement. There are however serious implementation challenges due to a severe lack

of professional workforce and infrastructure in both the public and the private sector.

The Liberian government is already addressing these issues through basic and advanced staff training in procurement, but despite the steps taken in sensitising and training public procurement practitioners and the progress made, there is still a long list of issues that needs to be addressed in order to guarantee an efficient and transparent procurement process: access to information, whistleblower protection, capacity building in the public and private sector and prevention of conflict of interest among others.

The role of civil society and the public in public procurement should also be strengthened. Civil society can play an important role providing additional oversight and monitoring, but the government of Liberia has not taken full advantage of this possibility.

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1. Public procurement and corruption in Liberia

Overview

After thirty years of civil strife, beginning with the coup d'état of 1980 and the subsequent civil upheaval of the 1990s and early 2000s, Liberia is beginning to experience relative stability and modest progress. The current government, headed by President Ellen Johnson Sirleaf, initiated reforms geared toward boosting economic recovery, political reconciliation, and national development. However, serious challenges, including widespread corruption, a lack of transparency, and low public accountability have hampered progress.

For instance, in 2009, according to the IFC & World Bank Enterprise Survey, more than 70 per cent of firms surveyed reported having experienced at least one bribe payment request. In addition, more than 51 per cent of companies reported being expected to give gifts to secure a government contract – a figure that is considerably higher than in other countries in the Sub-Saharan region where, on average, 33 per cent of companies reported being expected to give gifts (IFC & World Bank 2009).

Public procurement reform was thus critical to Liberia's transition from war to recovery as the award and implementation of contracts and concessions is critical to development.

Re-building public procurement in Liberia

A procurement needs assessment undertaken in 2003 by the National Transitional Government of Liberia (NTGL) in conjunction with the United Nations (UN) and the World Bank (WB) pointed out that the legal framework for public procurement and concessions in the country was inadequate because procurement rules and procedures were loose and did not guarantee transparency, efficiency, equal opportunity to bidders or value for money. There was also no mechanism for procurement oversight or to deal with appeals and complaints. Contracts were often awarded politically without a competitive process and public entities were seldom held accountable for non-adherence to the approved budget for procurement expenditures (PPCC 2008, p. 3). The reform of the public procurement system was clearly a priority for the government. The reform process was carried out in two phases:

Phase 1: the interim procurement system (2003-2005): this phase consisted of preparing an interim public procurement policy and procedures, as well as interim guidelines for awarding concessions by the NTGL. In consideration of this stage of the reform process, Article XVII of the Comprehensive Peace Agreement (CPA) signed in Accra, Ghana on August 18, 2003, established the Contract and Monopolies Commission (CMC).

The CMC was responsible of overseeing contractual agreements undertaken by the transitional government and, with assistance from the Office of the European Commission in Liberia and the WB, prepared the Interim Public Procurement Policy and Procedures (IPPPP) as well as the Interim Guidelines for Concessions (IGC) as a first step to improve public procurement and concessions practices in Liberia.

Phase 2: the Public Procurement and Concessions Act (2005- 2010): The objective of the second phase of the public procurement reform was to establish a comprehensive public procurement and concessions law which would address many of the corruption risks. This was achieved in 2005 with in the approval of the Public Procurement and Concessions Act (PPC Act).

Measures to mitigate corruption

The PPC Act and the Procurement Regulations issued in 2010 underpin Liberia's public procurement framework. Some of the key elements comprised in the PPC Act to ensure transparency, accountability and competitiveness in all processes linked to public procurement of goods, services and works, which in turn helps to reduce corruption opportunities, include:

- Mandatory professional training for public procurement officials (Section 5(o))
- Regulations addressing conflicts of interest (Section 13),
- Strict formal limits for sole sourcing (Section 101) and advertised open competitive bidding as the default method of procurement (Section 46),
- An independent administrative procurement complaints body, the Complaints, Appeals and Review Panel (CARP), that allows unsuccessful bidders to challenge the PPCC decisions (Section 10),
- Sanctions such as imprisonment for a maximum of five years, fines for up to US\$100,000 and suspensions from participating in any public tender for companies found guilty of major violations of

procurement regulations i.e. bribery, collusion, breach of confidentiality, etc. (Sections 44 and 138)

- Mandatory publication of bidding opportunities (Sections 49(3)(a) and 57(1)), intention to award (Section 31(1)) and contract awards (Section 37).
- Establishment of an independent oversight mechanism for all contractual agreements undertaken by the government

Overall, these elements are in line with international best practices: the Public Expenditure and Financial Accountability Performance Measurement Framework (PEFA framework), a multi-donor methodology used to assess the condition of country public expenditure, procurement and financial accountability systems, ranked Liberia's procurement legal framework with an overall grade of B in 2011 in a scale from A (best) to D (worst), as it complies with five of the six elements considered to evaluate this dimension. The only element the PPC Act does not comply with is the access to certain procurement information such as the government procurement plans and data on resolution of procurement complaints.

The PPC Act, as amended and restated in September 2010, also complied with eight out of the ten Global Integrity's (GI) indicators used as benchmarks to evaluate transparency, fairness, and conflicts of interest safeguards in government procurement in 2011 (Global Integrity 2011b). In this case, the PPC Act also falls short in terms of access to information and does not establish a mechanism to monitor the income, assets and spending habits of public procurement officials.

Moreover, the law does not contain provisions to encourage whistleblowing: civil servants who report cases of corruption, graft, abuse of power, or resources have been welcome, but they are afraid to come forward for fear of repercussions. People who blew the whistle at the National Port Authority (NPA), for example, were eventually fired, allegedly as a reaction to the employee's breach of confidence (Global Integrity 2011b).

Overall, Liberia's legal framework for public procurement is robust as it complies with most of the international best practices considered relevant by both the PEFA framework and Global Integrity.

2. PPCC effectiveness in the implementation of the PPC Act

Implementation through a holistic capacity building approach

The implementation of the procurement legislation in Liberia has proved to be challenging. The civil war forced the government to rebuild the public procurement system as well as its infrastructure and institutional capacity from scratch. Until recently, civil servants without the necessary training and experience were in charge of carrying out procurement tasks. As a result of this, only 47 per cent of the capital budget was spent in the fiscal year 2009-2010 (World Bank 2012, p. 62).

To address these massive reconstruction needs, in its efforts to strengthen public procurement in Liberia, the Government has adopted a comprehensive approach to procurement reforms that focuses on three pillars: (i) strengthening the Public Procurement and the Concessions Commission (PPCC) to adequately perform the regulatory function as stipulated in the PPC Act; (ii) building the capacity of procurement personnel in order to have functioning procurement structures in procuring entities; and (iii), building the capacity of the private sector to promote responsiveness and competition in available procurement opportunities.

While there is much room for improvement, particularly in regards to the investigation and punishment of wrongdoings, the government has taken important actions to improve the three pillars discussed above (World Bank 2012, pp. 2-3). The most notable achievement in the implementation of the PPC Act has been the fight against its overwhelming lack of capacity in the public and private sector. The government has focused on building the necessary technical and human resource capacity required by the PPCC to successfully carry out its mandate. More specifically, the actions taken so far in each of these pillars involve:

(i) Strengthening the PPCC

The PPC Act boosted the public procurement function with the creation of the Public Procurement and Concessions Commission (PPCC) in, 2006. The PPCC replaced the CMC as oversight mechanisms for all contractual agreements undertaken by the government and was commissioned with the mandate of:

- Maximizing economy and efficiency in procurement, and obtaining best value for public expenditures;
- Promoting economic development of the country;
- Promoting integrity, fairness, accountability and public confidence in the procurement process;
- Achieving transparency in the procedures, processes and decisions relating to procurement and concession agreements;
- Decentralizing public procurement to procuring entities;
- Eradicating monopolies and promoting competitiveness in the concession procurement process.

Therefore, in order to strengthen the PPCC, the government increased its staff by 30 percent to a total of 40 employees. Twelve additional procurement monitors were hired and suitable computer equipment was bought (World Bank 2012, p. 62).

(ii) Building the capacity of procuring personnel

To address the second pillar of this strategy, and meet the urgent need for procurement staff with specific skills, the government focused both on upgrading the skillsets of existing employees and on training new procurement personnel.

For the existing public officials, two different training courses were designed: a short-term in-service program in basic procurement that was launched with the help of the Liberia Institute for Public Administration (LIPA), and a monthly procurement clinic at the Ministry of Public Work, where the staff from various ministries and government agencies can learn practical skills for carrying out procurement processes.

In order to expand the current pool of procurement personnel, the government established a school to deliver an intensive one-year procurement training course to 25 students per year. These students are then deployed in the public sector to reduce the shortage of skilled procurement professionals. Competition for places is high: the course was advertised to the public in local newspapers, resulting in more than 370 applications in 2011.

(iii) Building the capacity of the private sector

Liberia, however, recognized that the traditional capacity-building approach focused only on the public sector would not suffice to address its situation, because the civil war also affected the private sector:

companies lacked knowledge about how to prepare bids for contracts with government institutions and perceived the public procurement process as inefficient and corrupt (World Bank 2012, p. 38).

To promote competition among suppliers and increase their responsiveness to procurement opportunities, the government needed to work with local companies, develop their skills for taking part in competitive bids and win back their trust.

Therefore, to address the third pillar of the capacity reconstruction strategy and help local suppliers of goods and services participate effectively in the tender process, the PPCC began regular training sessions to build the capacity of private sector staff on how to submit strong competitive bids. These sessions are open to all interested companies and consultants, and have been welcomed by the private sector. These sessions have helped rebuild wider public trust in procurement and increase companies' willingness to participate.

Achievements

By addressing capacity issues for all stakeholders, i.e. the PPCC, the public sector personnel and the private service providers, positive results are starting to show and Liberia's procurement framework is improving (World Bank 2012, p. 64); for instance, the average completion times of procurement processes have been reduced. According to the *Liberia Country Program Evaluation: 2004-2011* conducted by the Independent Evaluation Group (IEG), it takes about 6 months (181 days) to get a contract approved. This is much better than the regional average of 387 days (IEG 2012, p. 102).

Improvements have also been made in the dissemination of public procurement opportunities, which are now regularly published in newspapers. Last but not least, the percentage of capital budget spent rose from 47 percent in the fiscal year 2009-2010 to 58 percent in 2010-11 (World Bank 2012, p. 64).

The efforts to tighten procurement practices through the reconstruction of the institutional and human resource capacity earned Liberia the WB's Procurement Innovation Challenge award in 2012.

Implementation challenges

While the procurement law is considered robust and procurement processes have become more efficient, in

practice public procurement falls short of the high standard the law sets. The Global Integrity Report (GIR), for example rates Liberia's public procurement system as "moderately effective". Some of the deficiencies in the enforcement of the PPC Act are outlined below:

Overuse of single sourcing

The PEFA framework grants Liberia the lowest possible score (D) in the indicators related to implementation, due to an overuse of single sourcing. According to the PEFA evaluation, this is caused by the devolution of procuring powers to ministries and agencies that lack good procurement planning. This has forced the PPCC to issue a high amount of "No Objections" when the procurement method is changed from the default open competitive bidding to single sourcing.

No data is available to determine the actual level of non-compliance related to changes in procurement methods, but the PPCC has revealed that the ministries of Health and Social Welfare, Agriculture, Planning and Economic Affairs, as well as the National Port Authority, have higher compliance ratings due to their close ties with donor agencies. The contact with donors has pushed these ministries to align their procurement procedures with those provided in the PPC act.

Blacklisting

Transparency International's minimum standards for public contracting suggest maintaining a blacklist of companies for which there is sufficient evidence of involvement in corrupt activities (Transparency International 2006, p. 55). The providers in this list should not be allowed to participate in tendering for a specified period of time.

Although the PPC Act contemplates this mechanism as a way to sanction companies and reduce risks of corruption in public procurement, no company, despite reports of misconduct, has been blacklisted or banned from participating in future biddings.

Public access to information

Both the GIR and the PEFA framework point at deficiencies in public access to procurement information (plans, bidding opportunities, contract awards, and data on resolution of procurement complaints). Liberia scored 71 points out of 100 in GI's assessment of this dimension.

In accordance with the PPC Act, the PPCC has started

publishing the procurement plans of the five largest spending ministries—finance, public works, health and social welfare, education and internal affairs. However, this has not happened systematically. Furthermore, while most ministries and agencies advertise contract opportunities that are for open competitive bidding, contract awards are rarely advertised.

According to GI's evaluation of Liberia's Transparency, Fairness, and Conflict of Interest Safeguards in public procurement, it is hard for citizens to access the results of major public procurement bids. Although there is limited demand from the public for this kind of information, typically it is not easily released easily (GI 2011b). This also makes it difficult for civil society to monitor and prevent conflicts of interest.

Low capacity context

Despite the achievements in capacity building outlined in the previous section, the PPCC still lacks the capacity to effectively monitor many projects. Some challenges identified by the PPCC to further address its implementation capacity gap include the lack of trained procurement specialist at the PPCC to facilitate continuous training of procurement professionals in Ministries and Agencies; the lack of IT infrastructure including accounting software to enhance the work of the PPCC while ensuring a high degree of accuracy; and the lack of training for CARP to facilitate proper discharge of its duties which is tied to restoring bidders confidence in the bidding process.

Implications for the construction sector

The government's 2008 poverty reduction strategy sets out as its most important priority the reestablishment of basic infrastructure and services. Rebuilding of the road network is of strategic importance for Liberia as roads are essential for creating jobs and new economic opportunities, revitalizing agriculture (70 percent of the Liberian economy is based on it), reducing prices, strengthening local governance, facilitating access to health and education services, connecting the population to service centers, increasing the effectiveness of the police and other security forces, and helping to maintain peace.

The inadequate road infrastructure¹ also hinders peace-

¹ Liberia's road network is about 10,000 km, comprising 734 km of primary roads, 2,350 km of secondary roads, and

building efforts by limiting economic opportunities, constraining the ability of police and other security forces to operate effectively, and weakening national cohesiveness and integration (IMF 2008, p. 16) and hinders trade as their current condition impedes farm-to-market transport (IEG 2012, p. 45).

For these reasons, rebuilding the country's road network is deemed as a government priority and several donors are supporting rehabilitation of selected main roads and city streets.

Corruption risks in the construction sector

According to TI's 2005 Global Corruption Report, which focuses on corruption in the construction sector, there are thirteen features that make infrastructure projects prone to corruption. Some of the most salient ones are:

- Size, uniqueness and complexity of the projects which make it relatively easy to inflate costs or hide bribes and difficult oversight and monitoring.
- Lack of frequency in major projects. These projects may be critical to the survival or profitability of contractors and generate incentives for contractors to bribe in order to get them.
- Government involvement, which combined with the structural and financial complexity of the projects makes it relatively easy for officials to extract bribes.
- Number of contractual links. Every single link provides an opportunity for someone to pay a bribe in exchange for the award of a contract.
- Most components in construction end up being hidden or covered by other components. This creates an incentive for contractors to do defective work or use inferior materials and to bribe the relevant official to certify that the work was done properly.
- Lack of transparency. Costs are kept confidential even when it is public money that is being spent.

For these reasons, among others, construction ranks as the most corrupt industry in global surveys (Kenny

5,700 km of feeder roads. Less than 10 percent of the network is paved, and 86 percent of the paved roads are in poor condition (IEG 2012, p. 45).

2010, p. 2). Due to lack of information, it is difficult to assess what the situation is in Liberia and how the PPCC is enforcing the PPC Act in this particular sector. However, some general risks can be identified.

For example, the lack of transparency in the PPC act is a critical concern for the construction sector in Liberia. The PPC Act does not require the publication of complaints in the bidding process. Furthermore, while most ministries and agencies are now advertising contract opportunities, contract awards are rarely made available to the public (IMF 2012, p. 58).

Another obstacle for the full implementation of the PPC Act is again related to the lack of capacity of local industry: The major infrastructure projects, roads in particular, require well-organized, financially solid and technically capable contractors, which leaves the local underdeveloped industry out of the competition.

For this reason, smaller contracts, such as maintenance and smaller physical works, might have to be awarded to the local less competitive contractors in order to help build their capacity and ability to plan and implement bigger projects in the future. There is discussion among development partners on how to introduce these (Independent Evaluation Group 2012, p. 102).

However, the major projects requiring skills and expertise will be carried out through international competitive bidding (ICB), for example through output and performance-based road contracting (OPRC). This will also benefit smaller local contractors providing them with basic needs to increase their profit margins and do smaller works. The longer projects, such as OPRC for 10 years, provide an excellent opportunity for such developments (Independent Evaluation Group 2012, p. 102).

3. The role of civil society in public procurement

The OECD Principles stress the need to "empower civil society organisations, media and the wider public to scrutinize public procurement" (Principle 10). This encompasses the publication of information on major contracts, reports of oversight institutions as well as "involving representatives from civil society organisations and the wider public in monitoring high-value or complex procurements that entail significant risks of mismanagement and corruption." (OECD 2009)

Similarly, the Open Contracting Global Principles encourage governments to create an “enabling environment, which may include legislation, that recognises, promotes, protects, and creates opportunities for public consultation and monitoring of public contracting, from the planning stage to the completion of contractual obligations” (Paragraph 8).

The PPC Act, however, does not provide for civil society participation in the procurement process. Therefore, until now, Civil Society Organisations (CSOs) have not been actively involved in the public procurement process and the limited public access to public procurement information has made it difficult for them to play a role in monitoring the implementation of awarded public contracts in the construction sector. CSOs in Liberia are also generally faced with capacity constraints.

There is also a lot to be done in terms of civil society participation throughout the procurement process and public access to procurement information. While most ministries and agencies advertise contract opportunities that are for open competitive bidding, contract awards are rarely advertised (International Monetary Fund 2012, p. 58) However, despite this limited access to procurement information, CSOs are becoming more active in monitoring contracts and projects: The Coalition for Transparency and Accountability in Education (COTAE), for example, published a report on procurement in the education sector in 2011.

The PPCC is starting to foster a relationship with CSOs, but there is much room for improvement. The PPCC should create the environment for the active participation of CSOs in the procurement process by improving access to information so that they can perform meaningful oversight. Doing so could play a significant role in promoting accountability as CSOs can provide an independent and impartial voice to the procurement process.

Using civil society to verify that procurement procedures have been followed and to review the application of evaluation criteria and contract awards validates the procurement and lessens the risk of corruption in the process. It also heightens public awareness and trust in the process. (Transparency and Accountability Initiative 2011, p. 2)

CSO actors that could support the public procurement agenda in Liberia

Center for Transparency and Accountability in Liberia (CENTAL)

CENTAL is one of the leading promoters of good governance with a core focus on fighting corruption and impunity in Liberia. It is also the local chapter in formation of TI. Its mission is to create and strengthen a participatory social movement across all sectors of society to fight corruption, improve governance, reduce poverty, and build a culture of integrity among all peoples and institutions in Liberia.

Institute for Research and Democratic Development (IREDD)

IREDD works with indigenous communities and structures around the issue of good governance and advocacy. Its aim is to link communities to the overall governance framework and to generate a culture of local participation in policy development and implementation.

National Youth Movement For Transparent Elections-Partners for Democratic Development (NAYMOTE)

NAYMOTE is a pro-democracy group that seeks to build and strengthen constituencies for a multiparty democracy characterized by the collective will of forging good citizenship and the demand for responsive governance at all levels.

Actions for Genuine Democratic Alternatives (AGENDA)

AGENDA is a policy research and advocacy think tank working in collaboration with local and international activists to promote transparency and accountability. Its mission is to create a public space for democratic dialogue leading to socio, political and economic development. One of AGENDA's main objectives is to build civil society and media capacity in holding government accountable

Liberia Freedom of Information Coalition (LFIC)

The goal of LFIC is to promote citizens access to information through policy advocacy for the Implementation of the Legislative Act of 2010 establishing the Liberian Freedom of Information regime. As part of the quest to promote Access to

information, LFIC has set up a Secretariat for the Coordination of its campaign to monitor, provide civic education and capacity building for the successful implementation of the FOI.

National Democratic Institute (NDI)

NDI is a non-profit, nonpartisan organisation working to support and strengthen democratic institutions worldwide through citizen participation, openness and accountability in government. The NDI in Liberia is currently focusing on strengthening the electoral process, the legislature and fostering citizen participation.

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