

U4 Expert Answer



Non-competitive public procurement

Query

What steps can be taken to reduce the risks related to non-competitive procurement and preferential treatment of certain suppliers/builders in government infrastructure contracts?

Purpose

Inform dialogue with the Ethiopian government regarding procedures and practices of public procurement.

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Summary

Competition in public procurement helps to increase value for money for the procuring entity, while at the same time offering fair opportunities for potential bidding organisations.

To prevent non-competitive practices in public procurement, principles of competition and transparency must be defined in legislation and regulations. To complement a strong legal framework there needs to be oversight from independent bodies, and civil society should be empowered to hold the government and procurement bodies to account.

In Ethiopia, a newly implemented procurement law has had some impact on corruption in public procurement generally, and has helped to reduce the amount of contracts that are tendered non-competitively. However non-competitive practices are still an issue, particularly in the telecommunications sector. The country suffers from a lack of opportunity for civil society oversight, meaning that there is still the possibility for procurement laws to be abused or circumvented, as enforcement remains inconsistent.

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1. Overview of non-competition in public procurement

It is estimated that an average of 13% to 20% of gross domestic product is spent worldwide on the procurement of services and goods in the public sector, which amounts to approximately US\$9.5 trillion per year (Kühn & Sherman 2014). Because of the huge amount of resources involved in public procurement, the risks for corruption are high.

There is a consensus among the international community that transparency and open competition in public procurement makes for better value for money and less opportunity for corruption to occur. Transparency, openness and competitive bidding are also enshrined in the OECD Principles for Integrity in Public Procurement (OECD 2007; OECD 2009; National Public Procurement Unit 2015). Indeed, experts state that competitive procedures should be guaranteed in law as the default method of public procurement, and that single-sourcing and other non-competitive methods should be used as rarely as possible, in exceptional cases strictly defined by law (Heggstad & Frøystad 2011). Moreover, operating public procurement in an environment that is regulated but allows for flexibility is generally considered to be preferable to a system which is overregulated (OECD 2007).

Non-competitive public procurement involves a government agency awarding contracts to companies without opening up the tendering process to open competitive bidding procedures. With a high level of transparency in the decision making process, non-competitive procurement is acceptable and can be permitted in a number of exceptional circumstances. Such circumstances include contracts with a small overall value which falls below pre-defined thresholds set by the government or procurement agency. Other legitimate reasons for using non-competitive procurement methods include urgent need, secrecy relating to national security concerns, spending in response to catastrophic events, and goods or services that are only available from a particular provider (OECD 2010).

There are many sectors in which non-competitive procurement is more likely due to the nature of the goods that ministries in those sectors need to acquire, and officials within these sectors are more able to abuse the above mentioned exceptional circumstances. For example,

contracts from the telecommunications and public infrastructure sectors regularly require large-scale contracts, and often feature highly technical requirements that may only be met by a limited number of companies. Therefore, procurement in this sector can be easily manipulated to favour certain companies. Moreover, defence sectors regularly make use of the national interest exception to allow them to use non-competitive procurement methods.

The literature offers three main methods of non-competitive procurement (UNODC 2013; Kühn & Sherman 2014). These are:

1. Restricted: pre-selected qualified companies are allowed to submit a bid
2. Negotiated: the procuring entity and potential contractors negotiate contractual terms. This is often used when tender processes fail to produce a suitable contractor.
3. Single-sourced: the procuring entity selects the contractor without any competitive process, and is the most frequently used non-competitive procurement method

However, despite agreement among experts that open competition should be the default option in public procurement, in many countries a significant number of contracts are still procured non-competitively. The procurement process may be more vulnerable to corruption when non-competitive procurement has become the norm (OECD 2007).

2. Corruption risks in non-competitive public procurement

Non-competition can exacerbate corruption risks in the procurement cycle. These methods often lack transparency, and because of this are less likely to be subject to strong oversight or scrutiny. Also present is the risk of non-competitive procurement being abused when procurement staff are not well trained, governed by a professional code of standards or ethics, or are working in an environment without the necessary resources and support (Heggstad & Frøystad 2011).

Abusing legal loopholes

Corrupt procurement officials might attempt to manipulate laws and regulations to bypass

competitive tendering and additional oversight for their own interest

Manipulation can include splitting up a high-value contract into a number of smaller ones for them to fall below the value thresholds which require a contract to be opened to competition and a higher degree of scrutiny. This practice gives the appearance of a large number of low-value contracts being awarded, rather than one larger one, and is designed in order to circumvent procurement legislation (World Bank 2013).

Similarly, inappropriate contract bundling can be used to avoid truly competitive tender procedures. In this method, the procuring entity bundles a number of different contracts together to create a tender that is so complex that only a particular company is able to produce the entire contract. It is usually the case that procurement bodies that engage in contract bundling included as a requirement for successful bids that the bidding company must successfully deliver all aspects of the contract themselves. In this way, corrupt officials are able to directly award contracts to companies they favour, by making the contract so large and complex that competition becomes impossible, or at least drastically limited (World Bank 2013).

Urgent purchases, particularly near the end of a financial year, are also at risk of being abused for the purposes of avoiding competition. Government ministries may not be able to take any excess budget into the next financial year, and therefore the pressure to spend available funds increases as the timeframe in which the money can be spent shrinks. This can lead to an abuse of “emergency purchases” to allow the ministry to directly procure the desired goods and/or services. Procurement in an emergency is usually allowed to be single sourced because of the exceptional circumstances that surround them. Such exceptional circumstances could include the urgent purchases of food or temporary shelter in the case of natural disaster. However, this exception can easily be abused to allow a government department to quickly spend any excess budget (Kühn & Sherman 2014)

Another method of avoiding competition is simply to prolong existing projects, often without justification (Heggstad & Frøystad 2011). Linked to this is the use and abuse of framework contracts. Framework contracts are standing agreements that form the basis for good and

service purchases, and can save time and money by eliminating bidding processes. However, they may not always represent good value for money as prices are often not fixed before the framework agreement is drawn up. This also leaves them open to bribery and extortion from both parties, with officials able to demand bribes in exchange for continuing the agreement, and the company able to raise its prices to take advantage of its captive market (OECD 2007). Extensive use of framework agreements and extending contracts without justification means that new contracts cannot be contested fairly. This puts the procuring entity at risk of being overcharged for services or goods.

Lack of transparency

Inadequate access to procurement documents allows greater opportunities for corruption to occur in the public procurement process. Non-competitive bids tend to be less transparent than competitive ones, as the opportunity for external and independent scrutiny of decisions is reduced. For example, procurements that fall below certain thresholds are frequently subject to less oversight and more individual discretion, whereas procurements that are single-sourced in an attempt to protect national interests are usually completed in secret, and documents outlining their procedures are unlikely to be published. If procurement agencies are not obliged to publicly announce or publish decisions that are made or other procurement documentation, or they are not adequately audited by independent or external organisations, then it becomes very difficult to hold the procuring entity to account.

A lack of transparency is an issue, particularly with non-competitive procurement methods that are justified based on the grounds of emergency, national security, low contract value or urgent need. These methods tend to require less scrutiny, particularly contracts of low value, or ones protected by national security concerns. If the decision making process behind these justifications is not properly documented and made available for scrutiny by auditors and the public, it becomes very difficult for any deliberate manipulation to be caught and punished. Indeed, a lack of transparency in the process even gives officials more opportunity and security to manipulate the procurement process in their favour as they are able to act without fear retribution.

Lack of technical capacity

Public procurement is a highly technical and intense area of work. Staff that are poorly trained and inexperienced, or that lack an understanding of the risks that are inherent in the procurement cycle, increases the likelihood that high ranking procurement staff can abuse the system, using non-competitive methods to serve their own interests.

Poorly trained staff may not be fully aware of the rules governing public procurement and therefore are less likely to correctly identify when non-competitive procedures are being abused. This is particularly relevant for staff who carry out internal evaluations of procurement entities, as they require expert knowledge and training to effectively identify wrongdoing and abuses of non-competitive procurement methods in particular. (Heggstad & Frøystad 2011). Moreover, as the role of supreme audit institutions (SAIs) is to offer a last independent check on the procurement process, it is important that the staff of SAIs have the technical capacity to carry out high quality and regular audits (Van Zyl, Ramkumar and de Renzio 2009). Similarly, staff may not be aware of whistleblowing mechanisms that would allow them to speak up when they see wrongdoing.

Moreover, a corruption risk can arise when single procurement officials are able to hold a position of significant power that affords them sole decision making power over procurement deals. If staff are allowed to make decisions alone, without other staff to review the decisions or provide oversight, there is an increased likelihood that procurement officials may favour non-competitive procurement methods to benefit their own interests (Plummer at al. 2012). This is particularly the case in sub-national or regional procurement entities, where standards of professionalism may not be as high as at central government level (Kühn & Sherman 2014).

3. Steps to reduce non-competitive public procurement

There are multiple methods by which it is possible to reduce the opportunity for procurement officials to abuse non-competitive procurement methods for corrupt means.

An important way to encourage competition in public procurement is having a strong legal framework in place, as well as an environment in

which effective oversight of decisions and processes can be made.

Strong legal framework

Public procurement legislation should clearly define in what cases non-competitive tendering can and should be used, and the level of transparency that is required by the procuring entity. It should also include clear, reasonable and effective sanctions, as well as provisions for whistleblowers and their protection, and public access to information.

General provisions

Key to preventing an over-use of single-sourcing contracts in public procurement is a strong legal framework that emphasises the need for competition and transparency in the public procurement process.

Legislation should state that the open method should be the default method of public procurement, and that any deviation from this method should be openly and clearly justified (UNCITRAL 2011). If competition is enshrined in legislation, it lowers the likelihood that other, less competitive methods are selected, and it makes it much harder for unjustified use of non-competitive procurement to occur.

In addition to making competitive tendering the default procurement method, the legal framework should clearly define under what circumstances single-sourcing and other non-competitive procurement methods are allowed and justified, to ensure that these cannot be abused and overused. This list of circumstances should be as exhaustive as possible and should cover low-value procurement, procurements that lack genuine competition (for example, proprietary rights), the protection of state secrets and interests, and exceptional circumstances. The legislation should also explicitly and clearly lay out the thresholds that exist for different levels of oversight and review. These should be as low as possible to include the majority of procurements and to deter officials from attempting to split contracts up to avoid competitive processes (OECD 2009).

In addition, the law should state that documents submitted for the justification of not using open competition as a procurement method should be standardised to avoid staff coming up with ad hoc or inadequate justifications for single-sourcing.

This should include descriptions of the unique features that prohibit open competition, documented research that shows the chosen vendor as the only source available, and any compatibility issues and/or timing issues that may affect competitive bidding procedures (National Association of State Procurement Officials 2015).

Linked to this, the legislation should explicitly lay out the specific requirements that a non-competitive procurement must meet before being approved. This could include a second approval official or panel, who could objectively and independently judge the merit of non-competitive tendering in each case, to ensure that no single official is able to make decisions alone and that the method is not being abused (OECD 2010). Staff in key positions should also be regularly rotated between roles so as to avoid a build-up of power or influence in one position (Kühn & Sherman 2014).

The law should also include provision for an ethical and professional Code of Conduct. Such a code should (Kühn & Sherman 2014):

1. outline a commitment to integrity and ethical behaviour
2. describe and manage conflicts of interest
3. require disclosure of financial assets of procurement officials
4. make financial asset reports for senior managers available to the public
5. provide anonymous and safe mechanisms for whistleblowers

Legislation should also provide for training for all staff.

Moreover, legislation should restrict the use of open-ended arrangements, including framework agreements, particularly with companies that own an exclusive right to provide a particular good, supply or service. This is because such agreements tend not to represent good value for money in the longer term, and other vendors may later enter the market, allowing for a competitive procedure to be used in future procurements (National Public Procurement Unit 2015).

The United Nations Commission on International Trade (UNCITRAL) in 2011 published a model law that is intended to be used as a guide for countries wishing to update and improve their public procurement laws. The model law includes provisions that promote competition, maximise

economy and efficiency, and promotes integrity and transparency. See [here](#) for the full version of the UNCITRAL Model Law.

Transparency requirements

A transparent procurement system is much less likely to have issues with integrity and non-competition, as more stakeholders are able to access information and hold officials and contractors to account (UNODC 2013).

Transparency requirements should be enshrined within a country's procurement laws to offer additional scrutiny and increase the accountability of decision makers. This involves the mandatory publication of procurement opportunities and the procurement rules that are to be followed. As well as this, legislation should make the proactive publication of information about procurements, and the decisions behind them, mandatory. Most importantly, justification for using non-competitive public procurement methods, rather than opening a tender for competition, should be made public by procuring entities without the need for such information to be requested by the public (OECD 2010; UNODC 2013).

The Open Contracting Global Principles provide standards of transparency in procurement processes. These principles establish that the public should legally have access to information regarding the formation, award, execution, performance and completion of public contracts. Moreover the public should be able to access information and documents that outline the rules that explain the procurement process (including policies regarding information disclosure). Specifically, governments should publish information about contracts, pre-studies, bid documentation, audit reports, performance reviews and sub-contracting arrangements (Open Contracting Partnership 2013).

Access to information legislation

Transparency requirements can be complemented and improved by access to information laws. If procurement entities are not required to proactively publish information about tenders, then these should be made available upon request. This is especially true for information regarding the justification of decisions to use non-competitive procurement methods.

Access to information legislation defines what government documentation and information the public are allowed to request access to. This

usually includes provision for the cost of the service, and sets out criteria which outline the boundaries of an acceptable request. All parties need easy access to the procurement information, particularly regarding early tender documentation (OECD 2009). Moreover, access to documents should be made in a timely fashion and should not be unduly or prohibitively expensive for the enquirer (OECD 2009; Morgner & Chêne 2015). This allows for effective oversight from civil society organisations and the public, and serves to make it more difficult for officials to corruptly manipulate procurement methods towards single-sourcing and non-competition.

Whistleblower protection

Whistleblowers play a crucial role in highlighting corruption in all sectors and can play an important role in uncovering and reporting corruption in public procurement processes. Therefore, legislation should be in place that enshrines the rights of whistleblowers to speak up, and also protects whistleblowers against retaliation from employers and colleagues (Kühn & Sherman 2014).

A country's legislation should allow for officials and members of the public to blow the whistle on bad practice and maladministration in procurement. It should provide safe mechanisms for whistleblowers to make their complaints, and should protect the whistleblower and his or her family from any possible retribution from their employers. Such mechanisms could include a dedicated complaints desk or a direct 24/7 hotline. These mechanisms should also be able to offer anonymity to the complainant if required (OECD 2010).

Dissuasive sanctioning

Countries should seek to enforce existing procurement rules with effective, proportional and timely sanctions (OECD 2010). Such sanctions may include administrative penalties, such as suspensions, debarments from future procurements, fines, but should include that offenders are made to repay any funds stolen (Heggstad & Frøystad 2011). There should also be criminal law provisions such as prosecution and prison sentences (OECD 2007). It is important that all staff are aware of all sanctions that can be imposed. Knowledge of the possible sanctions can act as a deterrent against staff deliberately manipulating the procurement process in their favour.

Effective oversight mechanisms

Effective oversight of the entire procurement process is another vital mechanism that is needed to ensure that governments and procuring bodies adhere to rules and legislation regarding non-competition and single-sourcing. This can come in the form of governmental bodies and external auditors, civil society and from international donors.

Government bodies

As part of the procurement process, there should be some form of external oversight which reviews each procurement (Heggstad & Frøystad 2011). This oversight could be performed by various institutions, including the public procurement agency, supreme audit institutions and specialist parliamentary committees, but also from sector-specific oversight agencies. These can all have oversight functions, including budgetary monitoring and publishing reports on individual procurements. Moreover, they can investigate specific issues within procurement activities and examine the legality of certain actions, particularly via access to information requests (OECD 2009; Open Contracting Partnership 2013). Such audits and oversight can help to improve operations, decision making and public accountability for procurement entities, and knowledge that their actions may be scrutinised can deter procurement officials from attempting to manipulate the procurement process.

Investigation into procurement malpractice should be performed by sector experts and specialised procurement lawyers. Investigations should be very wide ranging in scope, aiming to discover protected relationships which would help remove the problem wholesale and lessen the likelihood of further corruption taking place (OECD 2007).

Civil society and media

Oversight is also included as a key feature of the Open Contracting Global Principles for public procurement. These state that governments should recognise the right for the public to participate in the oversight of public contracts, and that the government should also provide an environment that allows and promotes such practices (Open Contracting Partnership 2013).

Civil society can play a crucial role in holding procurement officials to account. This is reflected in principles published by the [OECD](#), [Open Contracting Partnership](#) and [Transparency](#)

International, who all highlight the need for civil society to provide oversight of public procurement to ensure that the process is free from unjustified non-competitive practices and corruption. Civil society can encompass members of the private sector, end-users, civil society organisations (CSOs), the media and the general public. All of these groups can use publicly available information and access to information requests to investigate cases and highlight when there have been manipulations and wrongdoings in public procurement. They can also directly help by monitoring processes and directly participating in procurement processes as stakeholders at key-decision making points (OECD 2010; Kühn & Sherman 2014).

Civil society organisations can also help to raise awareness of the issues that non-competition and corruption in public procurement can have. This can be done via advertising and communication campaigns in the media, and is crucial in supporting the integrity of the procurement process (OECD 2009). Awareness raising can help to lessen the likelihood of corrupt officials getting away with abusing non-competitive procurement methods, as it increases the opportunity for other members of society to recognise wrongdoing when it occurs.

Civil society organisations can make use of integrity pacts as a tool by which they can offer oversight and monitoring of public procurement procedures. Integrity pacts are a form of agreement between the government agency offering a contract and the companies that are included in the bidding process. A crucial part of the integrity pact is that it includes provision for a monitoring system which is typically led by civil society (Transparency International 2013).

Civil society, however, needs to be supported by a strong environment of transparency, along with access to information, to be truly effective. (OECD 2009).

4. Non-competitive procurement in Ethiopia

Ethiopia is a country that has undergone recent changes to its public procurement framework, but which still has issues with non-competitive procurement methods being used to favour certain companies. This section will provide an overview of the corruption risks in public

procurement in Ethiopia, before looking at the legislative framework and oversight that is in place to deal with procurement issues.

Overview of corruption risks in procurement in Ethiopia

Despite Ethiopia's relatively lowly ranking of 110 out of 175, and a score of 33 out of 100 (0 equals highly corrupt, 100 equals very clean) in Transparency International's most recent Corruption Perceptions Index (Transparency International 2014), Ethiopia's procurement sector is not considered to be as corrupt as many of its neighbours who have similarly low corruption ratings (Plummer et al. 2012). For example, only 3% of firms expect to have to pay bribes to get access to public contracts in the country, and just 6% expect to give gifts in order to receive construction permits (International Bank for Reconstruction and Development & World Bank 2012).

Similarly, a Global Integrity report in 2010 rated Ethiopia's public procurement legislation and enforcement as weak to moderate (Global Integrity 2010). Additionally, the Open Knowledge Foundation recommends that Ethiopia needs to improve transparency in public procurement, create an independent professional body, strengthen the position and role of civil society, implement a clear and consistent enforcement system, be more open and share more information, and push for fairer contractual relationships to improve competitiveness (Plummer et al. 2012).

In terms of non-competitive procurement, one study showed that the total value of procurement contracts awarded on the basis of open competition was 78.4% in 2006/07, and 85.9% in 2007/08. However, these figures were not as accurate as they could have been, as the study experienced difficulties in gaining access to the actual numbers of contracts (Caprio & Haile 2010).

In recent years, Ethiopia has made efforts to reform its procurement law. In 2009 it passed legislation intended to achieve more transparency, efficiency, fairness and impartiality into the process (Business Anti-Corruption Portal 2014). The law was based on the UNCITRAL Model Law (Chekol & Tehulu 2014), and included the implementation of an electronic public procurement system (Martini 2015).

In spite of progress made, some assessments continue to point to weaknesses in procurement systems. A 2007 review of Ethiopia's public financial management system gave the country a low score on controls in procurement, and the effectiveness of its internal audits. Specifically the report remarked that the Federal Public Procurement Agency (FPPA) is understaffed and has a limited capacity. It also noted that the public procurement system was judged to be unfair and inefficient by private sector participants (Caprio 2007).

There are also some structural problems that plague Ethiopia's government and public sector that have a significant impact on the risk of corruption in public procurement in the country. One of these is the degree to which political favouritism is able to influence which companies and individuals are able to win government contracts. This can be seen by the success of the company EFFORT (the Endowment Fund for the Rehabilitation of Tigray) at winning government contracts. EFFORT has companies that operate in Ethiopia's industrial, mining, constructing, agro-processing, trade, and service sectors (Vaughan and Gebremichael 2011).

Another corruption risk lies in the pay scales of Ethiopia's civil servants. Often salaries are so low that civil servants are incentivised to turn to petty corruption and extorting bribes in order to supplement their wages. Indeed, a 2012 study found that Ethiopian civil servants had developed an informal practice of manipulating the number of days they spend travelling, in order to boost the money that they receive in per diems, which on their own are not seen as adequate (Søreide et al 2012). Such low levels of pay and compensations make it much more likely that civil servants would be open to accepting bribes from a procuring company in return for classified information or a favourable position within a procurement bidding process.

Sectors vulnerable to corruption

The main procurement sectors in Ethiopia are education, health care, water supply and

construction, road construction and telecommunications.

A 2011 in-depth study of each of Ethiopia's main procurement sectors found that, while corruption levels were relatively low in primary health care, basic education, rural water supply and justice, risks in construction, land and mining have been increasing since 2009. It also found that there was significant corruption to be found in the new investment sectors of telecommunications and pharmaceuticals. Specific corruption concerns include a lack of competition and favouritism in the construction and water sectors, as well as in the telecommunications sector, acting as a barrier for new market entries (Vaughan and Gebremichael 2011).

Ethiopia's two major sectors involved in public procurement are the construction (particularly road and condominium housing) and telecommunications sectors. This is because they often require big, highly centralised and extremely resource intensive projects. This gives officials opportunity to extract commissions from over-inflated project costs, and may increase the desire for splitting contracts to avoid thresholds. Both these sectors also regularly involve new, sophisticated or unique materials, products and services. This can make opening tenders to competition difficult, as there may be a very limited pool of suppliers who can compete (OECD 2007).

The road construction sector spends around US\$1.2 billion¹ per year. However, while international experts suggest that the amount of money spent on this sector means an increased opportunity for corruption more generally, there is not such a large issue with non-competitive procurement. It is noted, however, that the increase in contracts might result in more contracts going to a small group of companies, rather than a diversification of the market (Plummer et al. 2012).

Similarly, the construction of condominium housing in Ethiopia's capital, Addis Ababa, has also come under intense scrutiny for the alleged illegal procurement of construction goods and materials. Some estimates put the amount of

¹ Note: Transparency International takes "billion" to refer to one thousand million (1,000,000,000).

money that has been spent in this way at over birr 86 million (roughly US\$4 million) (The Reporter 2015). There have also been reports of potential residents paying bribes to managers in the city administration in order to gain access to the subsidised residences (Haddis, no date).

Ethiopia's telecommunications sector is monopolised by the state telecommunications company, and the country has not privatised the design and construction of public works. There is evidence that the telecommunications sector struggles with non-competitive tendering procedures, and with large contracts regularly being single-sourced. The Ethiopian Telecommunications Corporation (ETC) is the sole public provider of telecommunications services in the country, and there are suggestions that it is able to win long-term contracts without evidence of commercial justification or competitive tendering taking place (Plummer et al. 2012).

There are also concerns that the process for choosing the companies that lead the expansion and upgrading of the telecommunications networks are non-transparent and corrupt. It is claimed that companies such as ZTE have been awarded contracts based on diplomatic ties and in order to secure money from China, as opposed to competitive bidding procedures, and that this is therefore leading to substandard service delivery (Wong 2015). Indeed, the World Bank criticised the contract awarded to ZTE in 2006 by the Ethiopian government for being non-competitive and for lacking adequate regulation of quality and pricing, and called for an audit of the contract (Plummer et al. 2002).

Legal framework

Ethiopia's procurement legislation was updated in 2009 with the Procurement and Property Administration Proclamation No 649/2009. The law itself has been described as satisfactory by the World Bank (World Bank 2012). Article 6 of the new law calls for the publication of awarded contracts on the procurement agency [website](#) (Caprio & Haile 2010).

A 2010 report by the Public Expenditure and Financial Accountability Program states that the 2009 legislation specifically defines the conditions for the use of single-sourcing and other non-competitive public procurement methods. Indeed, it defines five other procurement methods (restricted tender, two stage tendering, requests

for proposals, single-sourcing and requests for quotations) and clearly defines in which situations each are allowed to be used. It also requires that the decision to use a non-competitive procurement method must be clearly justified in accordance with legal and regulatory requirements. Moreover, the report states that the new legislation includes a clear and detailed complaint mechanism. In this mechanism complaints are submitted to the head of a procuring entity. If a decision is not made within the legal timeframe, or the complainant is not satisfied with the decision, the complainant can submit a further complaint to the Federal Public Procurement and Property Administration Agency (PPA). Complaints can also be taken to court. The new law also states that data on the resolution of complaints must be accessible for public scrutiny (Caprio & Haile 2010).

However, despite the apparent strength of procurement legislation in theory, Ethiopia's procurement law and regulations are sometimes unclear and are inconsistently applied in practice. There is also a lack of transparency, and audits either do not take place or are not performed on a consistent basis. The law also lacks a clear debarment process and provision for independent oversight of professional standards and ethics (Vaughan and Gebremichael 2011; Plummer et al. 2012).

Whistleblowing

Ethiopia has whistleblower protection legislation which protects public and private employees against making internal disclosures or lawful public disclosures of evidence of illegality. The law bars appointed and elected officials and public servants from making direct and indirect reprisals against whistleblowers, although notably does not offer protection for any person who makes a complaint without evidence (US Department of State 2013).

In addition to this, the Federal Ethics and Anti-Corruption Commission (FEACC) houses a full-time ethics officer who operates within the Ethiopian Telecommunications Corporation and whose primary functions are awareness raising and ethics training. The FEACC also has some complaint handling functions and investigative powers to back these up (Government of Ethiopia 2005).

However, these laws and protections have been found to be inadequate in encouraging

whistleblowers to speak up, as staff remain fearful of the potential repercussions that may come from blowing the whistle (Global Integrity 2010).

Access to information

In addition, Ethiopia has no standalone access to information law. The new 2009 procurement law requires only that information on tenders and contract awards are made public on the FPPA website. However, a multi-stakeholder group persuaded the Ethiopian government to revise the country's procurement regulations to include most of the Construction Sector Transparency Initiative (CoST)'s information disclosure requirements. Ethiopia's CoST programme is now helping to monitor and hold to account procurement agencies involved in construction-related procurement, leading to a number of large-scale savings and some potential governance reforms (CoST 2014).

Oversight

There are a number of institutions in the country that play the role of oversight for the public procurement process. However, it seems that systematic random audits are not a common practice in reviewing public sector procurement (Plummer et al. 2012). Moreover there are a large number of sector-specific oversight bodies, as well as those at the federal and state level, which may hinder a collective and comprehensive approach to audit and oversight.

Office of the Federal Auditor General

The Office of the Federal Auditor General (OFAG) is Ethiopia's supreme audit institution. It has had its remit changed multiple times since its original creation in 1931, but since 1979 it has remained stable, and is empowered to conduct audits of government spending. While appointment to the OFAG and its reporting procedures are independent, the government still retains control of its funding and other reporting functions which hinder its independent position and its ability to conduct independent audits of public procurement (Office of the Federal Auditor General 2015).

The OFAG is responsible for auditing the accounts of private contractors working with the government on any contract exceeding US\$47,954 (one million Ethiopian birr). It can also audit public organisations with a view to protecting the government and public interest, and audit the performance of federal government offices and organisations to ensure they are working within

the law. All audit results are reported back to the Finance and Budgetary Affairs Standing Committee of the House of People's Representatives, which reviews whether public money was spent for approved purposes and with special regard to economy and efficiency (Office of the Federal Auditor General 2010).

The Federal Public Procurement and Property Administration Agency

The Federal Public Procurement and Property Administration Agency (FPPA) is charged with overseeing public procurement in Ethiopia. The FPPA provides guidance on disposal, single source procurement, and framework contract agreements to procuring agencies, and has a mandate to set national public procurement standards and build capacity. The FPPA's [website](#) has extensive lists of approved suppliers, those that have been debarred, and other information relating to public procurement in the country. However it does not appear to have specific oversight functions itself, which appear to be left to the OFAG. It sets out the public procurement standards but does not appear able to enforce them (World Bank 2012; Chekol and Tehulu 2014).

However, there are claims that the PPA is understaffed and suffers from capacity constraints (Abebe, no date).

The Ethiopian Telecommunications Authority

The Ethiopian Telecommunications Authority (ETA) is the appointed regulator for the telecoms sector. It is not fully independent as its director is appointed by the communications ministry, which must also approve its annual reports. Similarly, the ETA's budget is controlled by the Council of Ministers. Finally, the ETA does not have the necessary staff, capacity, nor powers required to adequately oversee the business of the Ethiopian Telecommunications Company. Overall, this means that one of the major legitimate review mechanisms for public procurement is not able to act fully independently or effectively against any malpractice and wrongdoing in regard to non-competitive procurement in the telecommunications sector, meaning that the opportunity for non-competitive public procurement is heightened (Plummer et al. 2012).

Civil society and the media

Ethiopia does not have a strong civil society and its operations are heavily restricted by the

government. Indeed, [TRACE International](#) rates Ethiopia's capacity for civil society oversight to be very weak, with a high risk that oversight is ineffective at countering corruption risks (TRACE International 2014).

A new law passed in 2009 has been criticised for violating international standards of freedom of association, including by banning non-governmental organisations that receive more than 10% of their funding from foreign sources from the majority of human rights and advocacy activities. (International Center for Not-for-Profit Law 2015). This law also redefined the way in which Ethiopian civil society organisations must be organised, creating four new categories of charity/society. These changes meant that only 1,655 out of 3,522 non-governmental organisations in Ethiopia were able to re-register (AFRAN 2010).

This directly impinges on the freedom of expression and association of the Ethiopian people, both of which feature in the country's constitution. There is, therefore, a lack of opportunities for citizens and civil society organisations to hold the government to account, as the environment in which they operate is hostile and unstable (Caballero, no date).

Similarly, the media in Ethiopia struggles to play an effective oversight role regarding competition in public procurement. The government has repeatedly moved to limit the rights and freedoms of the independent media in the country, particularly since the general election in 2010. In the run up to the most recent election in 2015, the government also clamped down strongly on the media and journalists, with criminal proceedings, physical threats and prison sentences used curtail the strength of reporting in the country (Reporters Without Borders 2015). Because of these developments, Ethiopia's media is rated as "Not Free" by Freedom House, who also note that Ethiopia currently has 17 journalists imprisoned – the second highest number in Africa (Freedom House 2015). All this is despite Article 29 of the country's constitution protecting the freedom of the press and specifically allowing the media access to information of public interest (Horne 2015).

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