



**Conference of the States Parties
to the United Nations
Convention against Corruption**

Distr.: General
1 October 2010

Original: English

**Open-ended Intergovernmental Working
Group on the Prevention of Corruption**

Vienna, 13-15 December 2010

**Good practices in the prevention of corruption in public
procurement**

Background paper prepared by the Secretariat*

Contents

	<i>Page</i>
I. Introduction	2
II. Electronic government and the fight against corruption	2
III. Public procurement systems and the implementation of article 9, paragraph 1, of UNCAC	5
A. Electronic procurement systems	7
B. Benefits relating to increased transparency	7
C. Benefits relating to increased efficiency	8
D. Additional preventive measures	9
E. Case study: implementation of electronic procurement in Albania	10
F. Considerations on the implementation of electronic procurement systems	11

* This document has not been formally edited.



I. Introduction

1. In its resolution 3/2, the Conference of the States Parties to the United Nations Convention against Corruption called upon States parties to promote the business community's engagement in the prevention of corruption by, inter alia, developing initiatives to promote and implement public procurement reform. The Conference further encouraged interested States parties, representatives of private sector entities and relevant international organizations to consult and collaborate with each other in order to share best practices for the alignment of systems of public procurement with the requirements of article 9 of the Convention, and invited States parties, where appropriate, to consider the use of computerized systems to govern public procurement and to track and identify suspect cases, and to consider, in accordance with the fundamental principles of their legal systems, the adoption and use of procedures to prohibit private sector entities involved in corrupt contracting practices from future participation in public tenders.

2. In the same resolution, the Conference requested the United Nations Office on Drugs and Crime (UNODC) to collect, analyse and disseminate information on good practices in the field of prevention of corruption, taking into account existing expertise within the United Nations system and other relevant organizations and focusing particularly, inter alia, on public procurement, and to report on such efforts to the Open-ended Intergovernmental Working Group on the Prevention of Corruption.

3. Pursuant to resolution 3/2, this paper aims at providing an overview of recent developments in the field of public procurement and an account of the possible contribution of computerized systems of public procurement (e-procurement) to the fight against corruption. In fact, recent developments in public procurement have highlighted the potential benefits arising from the use of electronic means also with a view to fighting corruption. Moreover, the analysis of the information provided through the self-assessment of the implementation of the United Nations Convention against Corruption, and presented to the second session of the Conference of the States Parties (CAC/COSP/2008/2 and CAC/COSP/2008/2/Add.1) indicated several examples of e-procurement systems as best practices in implementing article 9, paragraph 1, of the Convention.

4. Since the effective implementation of e-procurement may require interaction with other components of the electronic government (e-government) framework, it seems useful to provide a brief overview of the potential contribution of e-government to the implementation of the United Nations Convention against Corruption and its chapter II on preventive measures in particular.

II. Electronic government and the fight against corruption

5. The notion of e-government refers to the use of electronic means in the performance of government activities and the delivery of related services. Such activities could involve the exchange of information among public offices both at the central and at the local level, economic operators and citizens. Thus, e-government activities could touch upon any public sector, ranging, for instance, from tax and customs administration to health, social security and personal

identification. The objective of e-government initiatives is to increase efficiency and transparency in the operation of the public administration, thus reducing costs for citizens and commercial operators.

6. The role of e-government has been duly recognized in the international arena. In particular, the Plan of Action of the World Summit on the Information Society (WSIS) states that information and communication technologies can support sustainable development, inter alia, in the field of public administration. Actions relating to e-government include: (a) implementing e-government strategies focusing on applications to innovate and promote transparency in public administrations and democratic processes, improving efficiency and strengthening relations with citizens; (b) developing national e-government initiatives and services, at all levels, adapted to the needs of citizens and business to achieve a more efficient allocation of resources and public goods; and (c) supporting international cooperation initiatives in the field of e-government, in order to enhance transparency, accountability and efficiency at all levels of government.¹

7. While the vast majority of States offer e-government services, their quality and quantity may vary significantly.² Factors such as the availability of a developed telecommunication infrastructure and the readiness of human capital may influence actual access to available services. In the absence of such conditions, the offer of online services may be frustrated by users' inability to exploit them. Other elements that may negatively impact the deployment of e-government services include the absence of clear drive in implementing the policy, resistance by concerned public offices, the lack of a comprehensive approach encompassing all governmental services, and the adoption of specific technologies that may prevent sharing subsequent technological developments or prove to be immature or inappropriate for the intended use.

8. With respect to UNCAC, e-government may contribute to implement several provisions relating to preventive measures, such as articles 7 (Public sector), 8 (Codes of conduct for public officials), 9 (Public procurement and management of public finances), 10 (Public reporting) and 13 (Participation of society).

9. A number of these provisions relate to the desirability to enhance public access to information. In this case, the mere availability of that information in electronic form in a timely and complete manner may multiply potential users and greatly facilitate their access to the relevant data. This is due to the nature of the electronic media and, in particular, its accessibility from multiple remote locations and at virtually no cost per additional user.

10. In other instances, the electronic application may go beyond the passive provision of information and assist in effectively monitoring and taking prompt action. An example of such use is provided by software used to screen financial

¹ World Summit on the Information Society Plan of Action, UN Doc. WSIS-03/GENEVA/DOC/5-E, Action Line C7.

² The United Nations e-government development index (EGDI) may assist in assessing the level of implementation of e-government in the various countries. For more information on the EGDI, and the related methodology, see United Nations, *E-Government Survey 2010*, New York, April 2010, United Nations Publication Sales No. E.10.II.H.2.

transactions and detect those relevant to counter money-laundering or the financing of terrorism.

11. Additional contributions to a better control over practices potentially relevant to the fight against corruption may come from electronic applications originally designed mainly for other purposes but that are equally part of the broader e-government notion. For instance, several countries have established national single window facilities for customs operations. Such facilities allow economic operators to prepare and submit to governmental authorities the documents necessary to comply with import-export regulatory requirements through a single entry point (often, the customs authority), which is responsible for sharing that information among other interested offices.³

12. Gains arising from the use of single windows in customs operations include: simplification of procedures for traders, for instance by avoiding multiple submission of information; increase in the level of traders' compliance and government revenue; and streamlining of existing procedures allowing for reallocation of resources. From the perspective of the fight against corruption, increased governance and control over the various cross-border trade related processes may significantly contribute to the prevention of illegal behaviours. While the adoption of a single window facility does not necessarily require the use of electronic means, significant benefits may arise from adopting those means.

13. Several sources may provide guidance on e-government issues. In the United Nations system, the Department of Economic and Social Affairs of the United Nations Secretariat (UNDESA) and, in particular, its Division for Public Administration and Development Management (DPADM) administers the United Nations Public Administration Network (UNPAN), a global network connecting institutions worldwide to promote better public administration. In this framework, a periodical Global E-Government Survey is prepared, which includes compilations of good practices.⁴ This information is also available online in databases such as the Knowledge Base of E-Government Practice.⁵ UNDESA is also facilitating the implementation of the aforementioned WSIS Action Line on e-government.

14. Other international organizations carried out significant work on e-government. Among them, the Organisation for Economic Co-operation and Development (OECD) has launched an E-Government Project to explore how governments can best exploit information and communication technologies (ICT) to further good governance principles and achieve public policy goals. The Project

³ For more information on single windows for customs operations, see United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), Recommendation No. 33, *Recommendation and Guidelines on establishing a Single Window to enhance the efficient exchange of information between trade and government*, United Nations Publication Sales No. 05.II.E.9; UN/CEFACT, draft Recommendation No. 35, *Establishing a legal framework for international trade Single Window*, UN Doc. ECE/TRADE/C/CEFACT/2010/23/Rev. 1.

⁴ Most recently, see UNDESA, *Good Practices and Innovations in Public Governance*, New York, June 2009, United Nations Publication Sales No. E.09.II.H.1; UNDESA, *Compendium of Innovative E-Government Practices*, Volume III, New York, 2009, UN Doc. ST/ESA/PAD/SER.E/114.

⁵ <http://www.unpan.org/DPADM/EGovernment/KnowledgeBaseofEGovernmentPractices/tabid/1264/language/en-US/Default.aspx>.

produces reports on best practices and other guidance documents. It also carries out country peer reviews.⁶

15. A number of additional resources on e-government, including research documents and training tools, are available. Examples of such work carried out by entities of the United Nations system include the Center for Electronic Governance of the United Nations University International Institute for Software Technology.⁷ Moreover, the Academy of ICT Essentials for Government Leaders,⁸ a training programme managed by the United Nations Asian and Pacific Training Centre for Information and Communication Technology for Development (UN-APCICT/ESCAP), devotes a specific module to e-government applications. Other useful repositories of best practices maintained by other international organizations include ePractice, a portal created by the European Commission to facilitate exchange of information on delivery of services by public administration. The portal also collects cases, in particular, from European Union member States, European Union candidate member States and European Free Trade Association (EFTA) member States.⁹

III. Public procurement systems and the implementation of article 9, paragraph 1, of UNCAC

16. Public procurement represents a significant share of the economy in most States. Its importance may be even greater in the developing world, where the role of the public sector is more prominent. From an economic perspective, bribery and collusion (also known as bid-rigging) are significant sources of additional costs in the procurement process, thus affecting the efficient allocation of scarce public resources. Therefore, significant attempts have recently been made to design and implement procurement systems aimed at preventing corruption and improving competition. Both goals may contribute to improve market efficiency, thus helping economic development.

17. Public procurement may be used not only as an instrument for carrying out the ordinary functions of the public service, but also as a policy tool to promote economic development. Its importance may be even more significant during financial crises, when its efficiency is necessary to ensure that the actions intended to counter negative economic scenarios are effective.

18. Article 9, paragraph 1, of UNCAC, dealing specifically with issues relating to public procurement, is based on the three guiding principles of transparency, competition and the use of objective decision-making criteria. Thus, while the direct goal of this provision is the prevention of corruption, additional goals are also pursued to improve economic efficiency and maximize the benefits arising from the use of public funds.

19. In detail, article 9, paragraph 1, of UNCAC prescribes the adoption of procurement systems addressing, inter alia: the timely and effective public distribution of procurement-related information; the establishment in advance and

⁶ http://www.oecd.org/department/0,3355,en_2649_34129_1_1_1_1_1,00.html.

⁷ <http://www.egov.iist.unu.edu/cegov/center>.

⁸ <http://www.unapcict.org/academy>.

⁹ <http://www.epractice.eu>.

public availability of the conditions for participation in procurement exercises; the establishment in advance and public availability of selection criteria; the implementation of an effective system of review and appeal of procurement-related decisions; and the adoption of special rules for staff of procurement entities.

20. The implementation of the measures prescribed by article 9, paragraph 1, of UNCAC may require the analysis of existing procurement laws and procedures as well as their review in light of prevailing legislative standards and best practices in order to formulate adequate reform proposals. This approach, and, in particular, the process reengineering phase, could allow for full consideration of the possible benefits arising from the adoption and implementation of new technologies. A decision in that sense may, in turn, require more legislative reform, including, at a general level, the adoption of enabling electronic communications legislation.

21. Efforts to promote the reform of procurement systems are ongoing also at the international level. In particular, the World Bank utilizes a diagnostic tool, the Country Procurement Assessment Report (CPAR), to assist its member countries in analysing their procurement policies and procedures.¹⁰ Attachment 1 to the CPAR lists the elements constituting a well-functioning public procurement system, which overlap with or complement those listed in article 9, paragraph 1, of UNCAC.

22. The implementation of procurement-related aspects of UNCAC has already been discussed in a paper submitted by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL) to the second session of the Conference of the States Parties to UNCAC, held in Nusa Dua, Indonesia, from 28 January to 1 February 2008 (CAC/COSP/2008/CRP.2). That paper describes the essential legislative and non-legislative elements of a procurement system and provides a first contribution to assessing the interaction between corruption and procurement.

23. In detail, the paper suggests that the requirements set forth in article 9, paragraph 1, of UNCAC could be implemented by adopting procurement legislation based on the UNCITRAL Model Law on Procurement of Goods, Construction and Services (the UNCITRAL Model Law).¹¹ The UNCITRAL Model Law is currently being revised to include, inter alia, specific provisions on the use of electronic communications in public procurement.¹² Other uniform transnational legislation that may assist in achieving the goals established in article 9, paragraph 1, of UNCAC includes relevant European Union texts.¹³

¹⁰ <http://go.worldbank.org/RZ7CHIRF60>.

¹¹ Adopted in 1994: United Nations Publication Sales No. E.98.V.13. On this point, see also Christopher R. Yukins, Integrating Integrity and Procurement: The United Nations Convention against Corruption and the UNCITRAL Model Procurement Law, *Public Contract Law Journal*, Vol. 36, No. 3, 2007 (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=995244).

¹² For more information on this work, see the webpage of UNCITRAL Working Group I (Procurement) at http://www.uncitral.org/uncitral/en/commission/working_groups/1Procurement.html.

¹³ See, in particular, Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (Official Journal of the European Union L 134, 30 April 2004, pp. 1-113); Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts,

A. Electronic procurement systems

24. As mentioned above, in its resolution 3/2, the Conference of the States Parties to the United Nations Convention against Corruption invited States parties, where appropriate, to consider the use of computerized systems to govern public procurement and to track and identify suspect cases. Moreover, recent practice has focused on the contribution of e-procurement systems to improve efficiency in procurement. Accordingly, some initial considerations on the potential benefits arising from the use of electronic communications in procurement, as well as on possible challenges relating to their implementation, are provided as a contribution to broader discussion.

25. Several valuable sources of information may provide information on e-procurement systems. The United Nations Procurement Capacity Development Center identifies e-procurement as a focus area and features various materials, including methodologies and toolkits, assessments and studies, policy and strategy documents and articles.¹⁴ The Multilateral Development Banks e-GP Community of Practice offers toolkits for guidance on the planning, management, implementation and support of e-procurement systems, case studies and other resources.¹⁵ Finally, several studies and tools developed by the OECD in the framework of its work on fighting corruption in the public sector, in particular, with respect to public procurement, are relevant to e-procurement. For example, the OECD Procurement Toolbox contains a tool on online public procurement reporting.¹⁶ Additional case studies on e-procurement are contained in the databases on e-government mentioned above.

B. Benefits relating to increased transparency

26. The use of electronic media may provide a significant contribution to achieving transparency in procurement operations. In particular, electronic tools such as the Internet may easily enable dissemination of information at a reasonable cost. The information shared may be general or may refer to specific procurement exercises. It is often recommended that all the information provided should be accessible from a single source (in the case of the Internet, a single portal) to facilitate its retrieval.

27. Examples of general procurement-related information include: legislation, including regulations and practice; judicial cases, especially with precedential or illustrative value; handbooks and explanatory manuals; and frequently asked questions, including on timelines for the procurement process. Specific information may include: advertising of tenders; justifications for the use of non-competitive procedures and for the cancellation of existing tenders; and awards. In certain cases, it may also be possible to provide early information on procurement plans, so that potential providers could prepare themselves accordingly.

public supply contracts and public service contracts (Official Journal of the European Union L 134, 30 April 2004, pp. 114 -240).

¹⁴ <http://www.unpcdc.org/focus-areas/e-government-procurement.aspx>.

¹⁵ <http://www.mdbegp.org/>.

¹⁶ http://www.oecd.org/document/58/0,3343,en_21571361_44258691_44921210_1_1_1_1,00.html.

28. Moreover, the above information could be complemented with additional electronic resources aimed at better informing the public on certain projects of special economic and social relevance, such as major infrastructure projects. In that case, the information provided could relate not only to procurement opportunities (if appropriate, by linking to central procurement portals), but also to other aspects such as environmental impact, status of project implementation, employment opportunities and budget.

29. Information sharing may lead to broader participation of business in public procurement, and therefore more competition, with positive economic returns for the procuring entity in terms of cost and value. The electronic media might be particularly effective in encouraging the participation of small and medium-sized enterprises with access to electronic resources, which may not otherwise have the resources necessary to monitor procurement opportunities scattered among several entities. Moreover, increased transparency through electronic dissemination of information could improve control over procurement procedures by business competitors and civil society.

C. Benefits relating to increased efficiency

30. Other significant benefits that may arise from the adoption of e-procurement systems relate to increased efficiency. In this respect, two main levels may be identified. On the one hand, the implementation of electronic communications may improve information management; on the other hand, the preparatory work that such choice would entail provides also an opportunity for reviewing all phases of the procurement process, thus introducing additional efficiency gains.

31. With respect to information management, a major benefit associated with electronic communications consists in the fact that all information exchanged electronically may be automatically stored with appropriate features for quick retrieval and integrity assurance. In other words, in a properly implemented e-procurement system, it is possible to build a complete record of all communications exchanged in connection with a procurement exercise as the case progresses. For instance, such a system may automatically record author and time of electronic signatures relating to all procurement-related decisions. This feature might be particularly useful in documenting complex procurement exercises, for instance, when modifications are made to the original tender conditions. The system could store information generated electronically (such as e-mails or electronic signatures) as well as information generated otherwise and converted to electronic form (for instance, scanned copies of paper documents, or digital audio recordings).

32. The possibility to have all communications readily available and in complete form is of great importance to effectively enable case review, auditing and investigation, as documents may be duplicated easily, quickly and at limited cost and thus be available for further analysis. This approach may also help in addressing recurrent issues in paper-based information management systems, such as missing or displaced files or time- and resource-intensive archive retrieval.

33. At the same time, the electronic system may be designed in a manner to streamline the information flow, in particular, with a view to impeding that a case could progress in spite of missing requirements: in this case, the electronic tool

could simply block any further action. That feature could improve stricter compliance with established procedures, which is useful in reducing cases of involuntary deviation, thus allowing to focus resources on more serious breaches.

34. Another important efficiency gain achievable with e-procurement systems relates to the interaction with the clients of those systems. Access to electronic systems is a process made of three fundamental steps: the identification of the entity and the release of credentials to that entity for system access; the authentication of the entity requesting access to the system against presented credentials; and the authorization to access the system in case authentication is successful. The process applies to all entities entitled to establish a secure interaction with the system, including staff of the procuring entity, other public servants and third parties engaged in commercial operations, such as bidders. The authentication phase may rely on multiple levels of authenticating factors and may require the participation of a third party as certification service provider.

35. While this process may appear more complex and expensive than the one implemented in traditional systems, when properly designed and implemented, it may provide a significantly higher level of security in interactions with system users by effectively controlling access to the information stored in the procurement system. In fact, the electronic system may strictly enforce selective access to information contained therein, as the system needs to verify the credentials and the access level associated with them before granting access to the data. Entities having access to the system, including staff of the procuring entity, but not possessing the required credentials (or possessing the required credentials but wishing to access data before a certain deadline, such as the one for opening of tenders) would not be able to access the data.

36. The second main profile of efficiency gains in the design and implementation of e-procurement systems relates to the possibility of assessing and streamlining the procurement chain. The introduction of electronic means in the procurement process should not be limited to the digital reproduction of the steps implemented in a paper-based environment, but extended to the evaluation and review of the process, regardless of the media adopted. Such exercise could involve all stages of the procurement chain: planning and budgeting (including establishing or enhancing the electronic interoperability with financial entities); selection of the procurement method; request for tenders, their evaluation and adjudication; purchasing systems; contract management and payments.

37. This approach may facilitate implementation of electronic means in a consistent manner, thus achieving additional advantages compared to existing procedures. For instance, it might be possible to modify procedures for interaction with bidders, reducing personal contacts that might expose officials to undue influence and sharing information of general relevance provided in reply to questions.

D. Additional preventive measures

38. Another set of potential efficiency gains pertains to the proactive implementation of measures to prevent corruption. Appropriate software could monitor procurement exercises and signal indicators of risk. Moreover, procurement

systems may interact with other public databases to verify third parties' qualifications such as commerce licences and compliance with special legislative requirements. This approach could be particularly valuable in managing complex tasks such as verifying the status and qualifications of subcontractors in large infrastructure projects.

39. Finally, electronic means have led to the development of certain modern purchasing techniques that are available only in that form. This is the case of dynamic purchasing systems and electronic reverse auctions, which are techniques used, in particular, to buy large quantities of standard items or commodities of low value.¹⁷

E. Case study: implementation of electronic procurement in Albania

40. Albania has recently implemented a mandatory electronic public procurement system.¹⁸ This case may offer an interesting example of implementation of such system in an economy in transition with limited ICT infrastructure and computer literacy, and where the fight against corruption, including in public procurement, is identified as a priority.

41. Measures on wider dissemination of information relating to procurement, such as online advertisement of public tenders in a single portal and free download of related documents, were introduced in Albania in 2007. As of 1 January 2009, Albanian law mandates that all public procurement exercises, both at the central and the local level, worth over 3,000 euros must be processed electronically.

42. Steps of the procurement exercise performed electronically include advertisement of tenders, submission of bids and notices of award or cancellation. Moreover, general information related to legislation, regulations, standard bidding documents and procurement manuals is available on a central procurement portal.

43. The Albanian E-Procurement System has allowed for a reduction of about 15 per cent in the cost of tender procedures in the year 2009, and for an increase in the average number of economic operators participating in tender procedures from 2,3 participants per tender exercise in 2005 to 7,7 in 2009.¹⁹

¹⁷ For example, article 1 of the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 provides the following definitions of dynamic purchasing system and of electronic (reverse) auction:

“6. A ‘dynamic purchasing system’ is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

7. An ‘electronic auction’ is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.”

¹⁸ Albanian Public Procurement Agency (PPA) E-Procurement System, available at: <https://www.app.gov.al>.

¹⁹ Source of data for the Albanian E-Procurement System: Pjerin Marku, Albanian e-GP r-e-volution, presentation given at the 2010 United Nations Public Service Day Awards Ceremony and Forum, Barcelona, 21-23 June 2010.

44. Moreover, it seems that implementation of this system has actually contributed to increase the use of ICT by economic operators. External evaluations have confirmed higher client satisfaction and fewer complaints after the transition to the electronic system.²⁰

F. Considerations on the implementation of electronic procurement systems

45. Based on considerations and expectations akin to those exposed above, many attempts to implement e-procurement systems have been made in every region of the world. However, the success of such initiatives has varied significantly. As mentioned above, factors like availability of sufficient ICT infrastructure and average computer literacy have often been identified as critical. A practical approach has often been advocated, aiming at the progressive roll out of a comprehensive e-procurement system. Such approach might ensure keeping momentum for the process by building on the successful completion of intermediate steps and might facilitate the provision of adequate training to staff. Other experiences point at the importance of firm commitment and enduring support from senior management throughout the implementation phase.

46. It has further been recommended to avoid solutions with technical requirements not proportionate to economic and ICT reality of the country, which might result in excessive costs for the procuring entity and economic operators. The adoption of a technology-neutral approach seems also to be a relevant element, together with the adoption of enabling legislation on the use of electronic communications whose scope is not limited to the field of public procurement.

²⁰ Sigma, Albania Public Procurement System Assessment, May 2009, p. 9.