

RECOMMENDATIONS FOR THE PUBLIC PROCUREMENT SYSTEM OF THE PLURINATIONAL STATE OF BOLIVIA



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Introduction

The following recommendations were prepared by the [Institute for Development of Freedom of Information](#) (IDFI), together with an independent expert Rafael Lopez Valverde, based on the assessment of the Public Procurement Law (PPL) of Bolivia, its sub-legal acts and other legal texts. The assessment itself is based on the Transparent Public Procurement Rating (TPPR) [Methodology](#), a tool created by a multinational alliance of CSOs, aiming at identifying strengths and weaknesses of PPLs around the globe.

The Methodology is largely based on best international standards from organizations, such as the EBRD, WTO, OECD, EU and OCDS, and covers all the major components of any public procurement system, from the nature of the legislation to the complaint review process, with focus on the transparency of public procurement systems. The assessment covers the following key characteristics (values) of a well-functioning public procurement system: **Efficiency, Transparency, Accountability and Competitiveness**.

The aim of this document is to offer insight into areas of potential improvement for Bolivia's public procurement system considering the experience and best practices [identified](#) by the TPPR Project in 18 countries in the Eurasian region. The final results of the quantitative evaluation of Bolivia's public procurement legislation will be made available on the TPPR [website](#) in January 2019.

Overview

Bolivia's public procurement system is regulated by the Law on Government Control Administration (1990) and other, more recent, secondary legislation, such as the Supreme Decree No. 181 on Basic Rules of the System of Administration of Goods and Services (2009). The procurement system lays out the basic principles and general framework of the procurement process, makes it operational and indicates how the law must be applied to specific circumstances, and it applies to every single public entity. However, there's no separate state body directly responsible for managing public procurement; rather, the function is assigned to a public servant within each public entity, directly designated as such by the maximum executive authority (MAE).

It is important to note, though, that the law also determines that the Ministry of Economy and Public Finances is the Governing Body in charge of the system and the information it generates. While this means the Ministry is ultimately responsible for the proper functioning of the system, the responsibility of the individual process remains in the public entity.

There is one single centralized website: www.sicoes.gob.bo and its use is mandatory. The system requires that all tenders be published in the SICOES website. However, while the tender is made public online, it is not possible to apply online. Tenders are always conducted through formal paper-based channels. The proponent must prepare a formal proposal and include a series of legal documents and other requirements. All tender processes are published electronically in the SICOES system. Once it is published, then the process is paper-based and handled within each public entity. The results of the procurement process are also published.

The website was launched in 2001. It is operational, but the statistics, which are supposed to be an essential part of the system to fulfill the objective of transparency, are not accessible. It is possible to retrieve some information through the advanced search using filters, but this is limited. Even though there's a link in the page to "statistics" and it is clearly stated that the objective of the SICOES system is

to provide information, the link is broken so it's not possible to retrieve any kind of information. The website is also technically difficult to use, since it uses JavaScript and information is presented in PHP format, which is not user-friendly and hard to use for stakeholders without the necessary skills.

Being unable to generate important statistics is a serious disadvantage to a centralized information system. SICOES currently does not generate data, such as:

- Average number of bidders, which is the main indicator used to measure the level of competition in the PP system;
- Prevalence of single source procurement (in countries where this is possible, it is often revealed that the use of direct procurement is alarmingly high, which then allows public procurement authorities to come up with ways of dealing with the issue and measuring progress);
- Percentage of public funds saved as a result of competitive tenders. The purpose of spending public funds through open tenders, as opposed to direct procurement, is to minimize cost through price competition. Not being able to generate this information means that there is no way of measuring success in this area.

Considering the above-mentioned and based on the TPR Methodology, IDFI would like to offer the following recommendations for Bolivia:

Transparency

Update of the Central Portal by Introducing Electronic Procurement – Having a functioning website is a good first step, but it should be built upon and improved. The next obvious step to improving the central PP platform is the introduction of e-procurement, which offers tremendous benefits related to increased efficiency due to elimination of record keeping needs, speeding up of procurement processes, slashing corruption by reducing human-to-human contact, boosting competition through elimination of geographic barriers, and automatic generation of data that can be used for analysis.

Apart from e-procurement procedures, the platform can be greatly improved by allowing bulk download of existing data; obligating procuring entities to upload more pieces of PP information and documentation; using best international standards, such as the Open Contracting Data Standard, to better structure PP data; and use open formats (such as CSV, HTML, JSON) that allow free and easy manipulation of data, instead of PDFs and scanned files.

Full Tender Documentation and Bid Content – Article 22 of the Supreme Decree states that the information (bids and related documents) provided by tender participants who were not successful is to be used for the purpose of the tender only and forbids its use for any other purposes, unless the proponent authorizes it in writing. As [demonstrated](#) by the Open Contracting Partnership as well as practical experience from countries that offer full transparency of bid contents (e.g. Albania, Ukraine, Georgia, Belarus, Kyrgyzstan and Romania), disclosure of bids and related documentation does not lead to any adverse effects on commercial interests. In fact, evidence is in favor of the contrary: since competitors typically already know each other's capabilities, opening of tender proposals further encourages competition. Evidence also suggests that opening bid information reduces the duration of cartel agreements.

Disclosure of full tender documentation as well as all bidding document serves as an invitation to all stakeholders to monitor the previously closed process, to assess how well the tender commission has performed its functions, and dispute its award decision if necessary, and potentially identify cases of collusion, corruption or inefficiency, price-fixing and other possible violations of the law. The mere fact that bidding documents is open for everyone to see discourages wrongdoers from engaging in misconduct in the first place. This effect is amplified with each additional type of procurement documentation that is disclosed.

Subcontracting – Bolivia’s PPL allows for subcontracting of public procurement contracts, but does not ensure the publication of information about the subcontractor. Disclosure of this information ensures that subcontracting does not become a legal [loophole](#) for corrupt practices. Best practice in this regard is to also obligate subcontractors to satisfy all of the eligibility requirements that were included in the tender.

Efficiency

Payment Receipts – Bolivia’s PPL does not ensure publicity of payments received by contractors. Lack of transparency of such information makes it difficult to analyze cases of delayed payments, potentially decreasing the trust towards the public procurement system and the procuring entities. Introducing an obligation to publish payment receipts may serve as a stimulus for procuring entities to comply with their financial obligations. Ultimately, however, the best solution to delayed payments is the incorporation of the payment procedure inside the electronic procurement portal, where procuring entities have to upload payment receipts as an automated, mandatory step to completing a procurement.

Competition

Domestic Preference – Article 29 of the Supreme Decree obligates procuring entities to procure locally produced goods and consider imported goods only if local production is unavailable. Article 72 also allows procuring entities to use the direct procurement procedure to procure goods and services from state-owned enterprises as long as the quality is sufficient and price is equal to or lower than the market price. According to Article 87, even subcontractors have to be domestic companies.

While reasons for the existence of domestic preference policies are understandable, it is the belief of the authors of this document that such preferences may be harmful to competition and overall health of the procurement system; specific data is needed about the beneficial impact of the above policy in order to make any conclusions about its success. While it is beyond the capabilities of this document to measure the success of any domestic preference policy, experience from other countries suggests that without a centralized e-procurement system, even generation of the data required to measure the impact of this policy on the PP system as a whole would be a tremendous challenge.

Short Bid Submission Periods – Article 57 of the Supreme Decree determines a minimum of 4 day preparation period for tenders from Bs. 50 to 200 thousand and 8 days for tenders from Bs. 200 thousand to 1 million. In case of minor processes (less than Bs. 50 thousand) there are no time parameters or deadlines.

While a case can be made for having such short preparation periods in e-procurement, these periods are too short for a paper-based system and may hinder competition by limiting potential suppliers. Minimum preparation time should also exist for minor processes to avoid the possibility of abuse.

Accountability

Designation of a Body Responsible for Managing and Improving the Public Procurement System – Bolivia's PP system has strong control mechanisms, but it does not have a knowledge management system which would allow the governing body (the Ministry) to generate critical and analytical information in order to evaluate and improve the system and find the gaps and loopholes. Therefore, to stimulate progress and future continuous improvement of the system as a whole, a single body should be given the responsibility, as well as the resources and authority required, for developing the public procurement system through monitoring, data collection and analysis, policy development and ensuring the existing regulations are adhered to.

PPL Must Extend to All Types of Public Spending – Between 1990 and 2005, 1480 million Bolivianos were spent as "reserved expenses" (gastos reservados), which were discretionary funds used by the high central government. Since April 2006, with the approval of the Supreme Decree 28686, theoretically, there are no more reserved expenses and the public funds allocated for state security should be "handled transparently and opened to social control, exercised by each citizen".

However, there is no actual mechanism to openly and transparently have access to the data on this kind of government spending. Moreover, even though there are no more reserved expenses, there have been 2 government programs since 2006 that operated outside the system. The first one was "Bolivia Cambia, Evo Cumple", which between 2006 and 2012 was funded with around USD 440 million. The money was distributed discretionally mainly by the president in various regions of the country. The second was the "Fondo Indígena", meant to be an investment fund for indigenous communities. Between 2010 and 2014, 1100 projects were approved for around Bs. 730 million according to data published by the Senate.

These two cases show that while there is a system that works in many ways, it is still very possible to operate outside of it in a discretionary way, with no accountability. Therefore, public procurement legislation must extend to the spending of all public funds, regardless of the form this spending is done in.

Dedicated Mechanism for Dispute Resolution in Public Procurement – Bolivia currently does not have a dedicated mechanism for resolving public procurement disputes. The Supreme Decree N181, in its 87th Article, determines that each contract must include a controversy resolution mechanism. The mechanism itself, however, is not explicitly stated, but other norms like the Law N708 define arbitration, mediation and conciliation as valid controversy resolution procedures.

The main reason why a dedicated dispute settlement mechanism is needed in public procurement is the need for speedy resolution of complaints. If a tender participant discovers a problem with the tender documentation and the only place to appeal is the court, where case proceedings may take months, the problem may not receive adequate and timely attention that it deserves.

In addition, procurement related disputes require specific knowledge and competence that regular judges or arbitration and mediation professionals may not have. For this reason, best international practice is to set up an independent dispute resolution body or committee, composed of procurement professionals and, ideally, civil society representatives, that will be charged with receiving and resolving all procurement related disputes within short pre-defined deadlines and be granted the authority to issue decisions that are binding to procuring entities.

Such centralization of dispute resolution allows for more efficient data collection, whereby complaints and their resolutions can be published online for all stakeholders to see, and for the procurement authority to be able to identify common concerns and base its policies or guidelines on them.

It is also essential for all stakeholders, including citizens, to be given the right to file PP related complaints free of charge. The dispute resolution body may also be given the right to reject complaints that it deems were submitted simply for hindering procurement procedures. This will increase public and business trust towards the system by allowing direct engagement and raising awareness about the workings of the public procurement system.

Private Sector, Civil Society and Public Consultation Mechanism – Bolivia's PPL should include a mechanism for wider consultations with the business sector, civil society and the general public on public procurement policy matters. Such mechanism can be mandatory and frequency for such consultations can be defined by law. Such a mechanism helps policy-makers to take into account the needs and suggestions coming from all possible stakeholder groups, which will be especially useful if Bolivia decides to start transitioning from a paper-based to a fully electronic procurement system.