



Access

Purpose of the Checklist

- To guide and support public procurement practitioners in reviewing, developing and updating their procurement framework, according to the 12 principles of the Recommendation of the Council on Public Procurement.
- To encourage self-assessment and providing a starting-point for implementing the Recommendation.
- To provide more detailed information and guidance for each of the 12 principles as well as actions that can be taken to improve the strategic use of public procurement.

Public Procurement
Principle: **Access**

Procurement Stage:
All phases

Audience: **Policy Maker,
Procuring Entity, Private
Sector, Civil Society**

Description

Access can be strengthened by following proposed steps below, while also improving other closely-linked principles (please refer to the box below). Suggestions and comments on the content and format of the Checklist can be sent to: public.procurement@oecd.org.

Main linkages between access and other principles of the Recommendation

- Transparency: Transparency contributes to fair and equitable treatment for potential suppliers.
- Integrity: Access to procurement opportunities for potential competitors of all sizes, including the limited use of exceptions to competitive tendering (direct awards, accelerated procedures, etc.), increases competition and decreases corruption risks.
- Balance: The design of the specific tender opportunities can encourage the broad participation from potential enterprises, including new entrants and small and medium enterprises.
- Participation: The design of specific tender opportunities can encourage broad participation from potential competitors, including new entrants and small and medium enterprises.
- Participation: Transparent and regular dialogues with suppliers and business associations to provide potential vendors with a better understanding of the country's needs facilitates access to procurement opportunities for potential competitors of all sizes.
- Efficiency: A coherent and stable institutional, legal and regulatory framework are essential to increase participation in doing business with the public sector and are key starting points to assure sustainable and efficient public procurement systems. The use of competitive tendering is a means of driving efficiency by achieving better value for money: low prices and/or better products are desirable because they result in resources either being saved or freed up for use on other goods and services.

- **E-procurement:** E-procurement systems can ensure access to public tenders and increase competition. Competition authorities make extensive use of the large databases of bidding information that e-procurement generates to screen data and detect suspicious bid strategies which can be the symptoms of a collusive arrangement.
- **Capacity:** A trained public procurement workforce can ensure the delivery of clear and integrated tender documentation, standardised where possible.
- **Accountability:** Rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition.

(A) Coherent and stable institutional, legal and regulatory frameworks

Adherents should have in place coherent and stable institutional, legal and regulatory framework, which are essential to increase participation in doing business with the public sector and are key starting points to assure sustainable and efficient public procurement systems. These frameworks should:

- 1) be as clear and simple as possible;
- 2) avoid including requirements which duplicate or conflict with other legislation or regulation;
- 3) treat bidders, including foreign suppliers, in a fair, transparent and equitable manner, taking into account Adherent's international commitments (e.g., the Agreement on Government Procurement within the framework of the World Trade Organization, the European Union Procurement Directives, and bilateral and multilateral trade agreements).

A.1 Adherents should have in place a coherent and stable legal and regulatory framework. In order to achieve this end, adherents could ensure that the framework:

- Is recorded and organized hierarchically (laws, decrees, regulations, procedures),
- Cover goods, works, and services (including consulting services) for all procurement using public funds,
- Cover all levels of government (national, regional, provincial and local) as well as public companies, decentralised authorities and public charity societies,
- Include regulations that supplement and detail the provisions of the procurement law and do not contradict the law,
- Apply across specialized legislation governing the procurement by entities operating in specific sector, as appropriate,
- Is published, easily accessible to the public at no cost and updated regularly,
- Assign the responsibilities for the maintenance and update of the framework,
- Is in line with international agreements on procurement the country has signed up to/ include related commitments and obligations,
- Eliminate any restrictions or barriers for foreign suppliers to participate in the public procurement processes,

- Cover Public Private Partnerships (PPP) including concessions,
 - Assign the responsibilities for developing policies and supporting the implementation of PPPs including concessions,
 - Permit the consideration of sustainability criteria (economic, environmental, social) in public procurement,
 - Include any "set-aside" provisions for suppliers depending on their size,
 - Is complemented with a user's guide or manual for procuring entities for the correct implementation of procurement laws and regulations.
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A.2 Adherents should have in place a coherent and stable institutional framework. This framework could:

- Identify the procurement function ('activity' versus 'institution') and specify how the procurement function is organised,
 - Identify the normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function),
 - Specify the roles and responsibilities of the different entities at each phase of the procurement function/process,
 - Specify which activities are centralized and those which are decentralized,
 - Identify the centralized procurement function in charge of consolidated procurement, framework agreements, or specialized procurement,
 - Define the procuring entities,
 - Include guidelines related to communication between different entities.
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A.3 Adherents should assign the following functions to one or several agencies (or procurement entities) without creating gaps or overlaps in responsibility:

- Providing advice to procuring agencies,
- Providing procurement information
- Drafting procurement policies,
- Proposing changes/drafting amendments to the legislative and regulatory framework,
- Monitoring public procurement,
- Managing statistical databases,
- Reporting on procurement to other parts of government,
- Developing and supporting the implementation of initiatives for improvements of the public procurement system,
- Providing implementation tools and documents to support training and capacity development of implementing staff including integrity training programmes,
- Supporting the professionalization of the procurement function,
- Designing and managing centralized online platforms and other e-procurement systems.

(B) Clear and integrated tender documentation, standardised where possible and proportionate to the need

Adherents should deliver clear and integrated tender documentation, standardised where possible and proportionate to the need, to ensure that:

- 1) specific tender opportunities are designed so as to encourage broad participation from potential competitors, including new entrants and small and medium enterprises. This requires providing clear guidance to inform buyer's expectations (including specifications and contract as well as payment terms) and binding information about evaluation and award criteria and their weights (whether they are focused specifically on price, include elements or price/quality ratio or support secondary policy objectives); and**
- 2) the extent and complexity of information required in tender documentation and the time allotted for suppliers to respond is proportionate to the size and complexity of the procurement, taking into account any exigent circumstances such as emergency procurement.**

B.1 Adherents should develop requirements or guidelines that public procurement officials should follow in designing tender documentation and, where possible, standardised tender documentation. Those can include:

- Model for invitations, tender documents and contracts,
- Different tender documentation according to different types of contract requirements and/or according to the complexity of the needs,
- Specifications on minimum content of the tender/solicitation documents,
- Standards and mandatory set of clauses or templates that are reflective of the legal framework,
- Standard contract conditions for the most common types of contracts and consistent with internationally accepted practice,
- Requirements to use neutral specifications citing international norms when possible and the use of functional specifications, where appropriate,
- Requirements to recognize standards which are equivalent when neutral specifications are not available.

B.2 Adherents should design tender opportunities so as to encourage broad participation from potential competitors, including new entrants and small and medium enterprises. In order to achieve this end, adherents could consider:

- Providing clear guidance to inform buyers' expectations, including specifications (requirements) and contract as well as payment terms,
- Detailing the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract,

- Providing binding information about evaluation and award criteria and their weights (whether they are focused specifically on price, include elements or price/quality ratio or support secondary policy objectives),
- Providing information on procedures for bid submission, receipt and opening,
- Ensuring that registration – if required – does not constitute a barrier to participation in tenders,
- Introducing specific measures to support and facilitate participate of SMEs in public procurement, as appropriate, such as training desks for SMEs,
- Establishing rules for the participation of state-owned enterprises that promote fair competition.

B.3 Adherents should ensure adequate advertising rules and time limits. This can include:

- Publicly advertising procurement opportunities unless restrictions of procurement opportunities is explicitly justified,
- Adapting the opening period of public tenders to the method, nature and complexity of procurement for potential bidders to obtain documents and respond to the advertisement,
- Defining the minimum timeframes for submission of bids/proposals are defined for each procurement method and extending the timeframes when international competition is sought,
- Publishing public procurement opportunities is an accessible way at no cost without any other barriers.

(C) Competitive tendering and limit the use of exceptions and single-source procurement

Adherents should use competitive tendering and limit the use of exceptions and single-source procurement. Competitive procedures should be the standard method for conducting procurement as means of driving efficiencies, fighting corruption, obtaining fair and reasonable pricing and ensuring competitive outcomes. If exceptional circumstances justify limitations to competitive tendering and the use of single-source procurement such exceptions should be limited, pre-defined and should require appropriate justification when employed, subject to adequate oversight taking into account the increased risk of corruption, including by foreign suppliers.

C.1 Adherents should strictly define the procurement methods (open tenders, restricted competition, and direct awards). This can include:

- Establishing procurement methods unambiguously along with the associated conditions under which each method may be used,
- Prescribing procurement methods providing an appropriate range of options to ensure value for money, fairness, transparency, proportionality, and integrity,

- Establishing guidelines for officials to facilitate the choice of the optimum method, specifying criteria for using different types of procedures and describing how to use them,
 - Choosing, documenting and justifying procurement methods in accordance with the purpose and in compliance with the legal framework,
 - Monitoring the distribution by procurement method and collecting information per year, number of procedures and value of contracts.
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C.2 Adherents should strictly define all exceptions to public tender. This can include:

- Regulating the use of exceptions in the legal and regulatory framework, according to the value and strategic importance of the procurement, the specific nature of the contract, the confidentiality of the contract to protect state interests and exceptional circumstances, such as extreme urgency,
- Identifying the body responsible for the ex-ante review of exceptions,
- Duly justifying exceptions in writing (except for national security reasons) and disclosing appropriately,
- Reviewing all types of exceptions (by nature and by amount),
- Monitoring the number of exceptions to public tender used, including per purchasing categories (goods, services, works).