



**FUTURE
PROOFING
PROCUREMENT**

 **UNOPS**

UNOPS would like to acknowledge the contribution of the various authors to this supplement to the 2015 Annual Statistical Report on United Nations Procurement. The views expressed in this publication are those of the authors and do not necessarily reflect those of the United Nations. Furthermore, the views expressed in this publication are not necessarily shared by each of the authors.

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The background of the cover features a repeating pattern of world maps, each enclosed within a circular border. These maps are overlaid on a grid of small dots and connected by thin, light-colored lines that resemble a circuit board or a digital network. The overall color scheme is a monochromatic light gray or off-white, giving it a technical and futuristic appearance.

FUTURE PROOFING PROCUREMENT

Thematic Supplement to
the 2015 Annual Statistical Report
on United Nations Procurement

Foreword by UN Secretary-General



| Photo: UN Photo/Mark Garten

In 2015, the United Nations and its partners took a bold step towards transforming our world with the adoption of the Sustainable Development Goals (SDGs). Over the next 15 years, these 17 goals will help guide our collective work for a better future for all.

By its very nature, procurement is a vital element for the implementation of the SDGs. It serves as a crucial connector between suppliers and buyers, people and processes, and donors and recipient governments. Whether in the private, public or tertiary sectors, procurement is one of the main channels through which sustainable development aid is delivered. Every year, governments

spend over \$11 trillion on public procurement and the UN purchases over \$17 billion in products. The goods and services that are procured are designed to promote social equality, support environmental protection and advance economic development.

This report highlights the value of taking a longer view of the supply chain, fostering innovation, and collaborating and building partnerships. I commend the organizations and individuals profiled for sharing their ideas and best practices. I encourage all readers to take inspiration from these efforts and continue working to build a better, more sustainable world for all.

Ban Ki-Moon

Secretary-General, United Nations

Foreword by UNOPS Executive Director



| Photo: Government of Norway/Torgeir Haugaard

With more than 20 years of experience in more than 130 countries, UNOPS work to serve people in need has helped build a better world. Procurement has always been an essential component of that help, ensuring that we have access to the supplies, tools and resources we need to get the job done.

Information is perhaps one of the most important tools that we have to address the challenges faced by the world. The more knowledge we have about the past, the better prepared we can be for tomorrow. Each year, as we develop the Annual Statistical Report on United Nations Procurement, it is

a time for us to stop and reflect on everything that we have purchased, not only as an organization, but also as a family of agencies.

By working together and making smart investments today, we create valuable dividends that can be reaped for years to come. That is why the topic of future proofing is so timely and relevant for this year's thematic supplement. Information, transparency and a healthy dose of imagination will guide us to the future of procurement, and I am pleased that the conversations and discussions that need to get us there are already underway.

A handwritten signature in black ink that reads "Grete Faremo". The script is fluid and cursive, with a prominent initial 'G'.

Grete Faremo
Executive Director, UNOPS

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Possibilities for our common future

Relationships and shared dialogue to drive
sustainable development

By Patricia J. Moser, Jamieson Saab and Dr. Rolando M. Tomasini, UNOPS



| A supply chain is as much a pathway of processes and policies as a network of relationships between organizations and people.
Photo: UNOPS/Kike Calvo

Introduction

The concept of sustainable development was first introduced to the world in 1987, when the Brundtland Commission published its report 'Our Common Future.' Almost three decades later, this concept continues to weigh heavily on the thoughts and conversations of our time, mainly revolving around two central questions: What will tomorrow bring, and how can we be ready?

The concept of 'tomorrow,' as well as the creativity and possibilities that it inspires, have been the impetus for countless human inventions, from mobile phones and airplanes, to plastic and the Internet. These inventions have changed the world and continue to do so with each new iteration. Crucially, however, tomorrow is a two-way street, welcoming many new ideas while also bidding farewell to old ones. So how can procurement practitioners navigate this complex crosswalk and ensure that they arrive safely at their destination?

Sustainable procurement

UNOPS recognizes that, working together with suppliers, we can unlock new approaches to old problems. At the same time, we acknowledge that our relationship with them, much like the natural environment, must be stewarded in order to flourish. With this understanding, UNOPS started to engage with certain key suppliers to understand what they can contribute, and how we can work together to drive sustainability and innovation across our value chain.

This process, which involved a supplier survey with over 30 companies, has begun to remove some of the roadblocks and perceptions that exist in the traditional procurement environment. As we seek to drive sustainability considerations

throughout our supply chain and build on our current leadership in sustainable procurement, these dialogues are enabling us to shape a common understanding of a potential way forward, and of how we can turn these possibilities into reality. While for some, this may be a relatively simple solution, age-old wisdom suggests that the most complex and advanced approach is not always the best.

At the same time, an organization can take many routes in its growth and evolution. The location of those organizations along those routes varies depending on their age, size, location, leadership and even the industries in which they operate. Much like a car uses energy to move forward, so too can we become the proverbial fuel that supports organizations' development. In line with this thinking, we recently embarked on a journey to build the capacity of diverse and traditionally disadvantaged suppliers in-country.

We hope that this initiative will enable us to break down some of the barriers that small, medium and local suppliers have traditionally faced in participating in public procurement, and that it will help us to organically develop industries for tomorrow. Our common future, and our ability to advance sustainable development, is just that: Common. Buyers and suppliers need to work together if we are to be successful – there are important lessons and knowledge to be shared on both sides of the table.

Partnerships

Partnering with organizations outside of the traditional procurement process to develop non-transactional/ non-commercial relationships in which risks, resources and rewards are shared equally, can enable us to be better together. These partnerships

can take the form of co-investing in the development of new products and services, sharing knowledge or jointly raising public awareness around key issues such as the Sustainable Development Goals (SDGs).

These partnerships emerge and evolve from a cross-sectoral dialogue where private sector, governments, development organizations and civil society must exchange ideas to reconcile different views, identify opportunities to structure funding mechanisms, and collectively build capacity and understanding. This is an ongoing and explicit effort undertaken today by many countries whose development agendas have shifted to promote commercial diplomacy as a means to integrate the private sector in their work towards the attainment of the SDGs.

As part of that process, UNOPS has been involved in leading conversations with the representatives of main donor countries to identify the most suitable partnership and innovation models that could promote a cross-sectoral engagement and alignment towards the implementation of the SDGs. In some cases, it means national development funds supporting local companies in adapting their products and services to a new market. In others, it means funding to ramp or scale up capacity.

UNOPS experience as a trusted third party can help to de-risk the venture, and ensure that transparency and fair competition are embedded throughout. Such partnerships exist today in UNOPS portfolio in more specialized areas such as engineering, policy, capacity building, resource mobilization and financial modelling with other companies and academia.

By creating a wealth of valuable expertise and resources across a variety of sectors on which we will be able to draw in the future, we can bring positive change to the way we deliver projects and be ready for tomorrow.

Conclusion

A supply chain or procurement function is as much a pathway of processes and policies as it is a network of relationships between organizations and people. Proper relationship management requires an understanding of the linkages between different parties, continuous dialogue and the desire to work together to constantly enhance those elements.

In sum, our ability to deliver aid on the ground depends on the availability of suppliers and their willingness to work with us. It is thus crucial for us to open the channels of communication, whether through increasing dialogue on sustainability and innovation, building the capacity of disadvantaged groups or developing non-commercial partnerships in which we share risks and resources equally.

What matters is that, in the end, we are putting our ears to the ground and building a shared vision for the future. As Albert Einstein once said: "To raise new questions, new possibilities, to regard old problems, from a new angle, requires creative imagination." The dialogues that we are having now are the vehicles that will get us there, and will help us ensure that our supply chain and our organization are truly futureproofed.



Patricia J. Moser is the Director of the Procurement Group at UNOPS. She joined the organization in January 2015 with more than 20 years of experience in leading and consulting organizations in procurement, supply chain and business operations. She has worked across a variety of industries, including banking, telecommunications, technology, retail, the public sector, not-for-profit, vaccine manufacturing, consumer packaged goods and

health care. Recognized for her ability to create high performance supply chain and procurement teams in organizations, she has been widely profiled in, quoted and written for many publications, and has spoken to numerous groups on leading edge approaches to business issues, procurement and supply chain. Patricia holds Bachelors of Science degrees in Psychology and Chemistry, as well as a Master of Business Administration with a focus on marketing.



Jamieson Saab is the Sustainability Team Leader for UNOPS Procurement Group. For the last seven years, Jamieson has been helping large multinationals capture and maximize the business benefits from improved environmental and social outcomes. His most recent project saw him develop the sustainability strategy for the Canadian division of the world's largest home improvement

retailer. Previously, he worked for a global office solutions provider and was responsible for developing the company's sustainable supply chain framework and strategy. In 2015, he was recognized as one of Canada's Top 30 under 30 Sustainability Leaders. A Canadian citizen of Lebanese decent, Jamieson was born and raised in Toronto, Ontario. He holds a Bachelor of Commerce from Queen's University and a Masters of Environmental Studies from York University, both in Canada.



Dr. Rolando M. Tomasini heads UNOPS Global Outreach and Partners Liaison team, supporting collaboration with strategic partners and coordinating partnership development across the organization. He also leads UNOPS efforts on partnerships with the private sector, academia and NGOs, and due diligence on the latter actors. At UNOPS, he has held several roles in procurement, policy and partnerships. Prior to joining UNOPS, he managed the supplier risk team at a leading multinational for strategic suppliers and served as a procurement consultant to implement category management and cost modelling tools. He also designed and rolled out global corporate procurement

academies for seven fast-moving consumer goods (FMCG) and industrial leading multinationals. At the onset of his career, he contributed to the establishment of a research group at INSEAD on humanitarian logistics. This led him to conduct field research through secondments to all the UN emergency agencies and produce a collection of award winning case studies, chapters and books on emergency supply chain and humanitarian logistics. He holds a Specialized Master in International Procurement, MCIPS and a PhD in Supply Chain on public private partnerships. His commitment to research keeps him engaged in multiple projects and lecturing at business schools and corporate academies in Spanish, French and English.

Urban glue and trim tabs

The creative re-imagination of infrastructure

By Norman Foster, Foster + Partners



| Droneports, similar to the 3D rendered image above, could eventually become emblems on the African landscape.
Image: Foster + Partners



The epitaph on Buckminster 'Bucky' Fuller's gravestone sums up his life's philosophy in three words - "Call me Trim Tab." A trim tab is a tiny flap on the ailerons, rudder or elevator of an aircraft that can reduce the load on these control surfaces through small adjustments. In other words, a tiny change has a huge effect. Bucky saw himself as an independent agent of change in the vast sea of humanity. He believed in the ability of an idea, however small, to take root and exert a force, like the trim tab, and so bring about meaningful change in the world. He also placed confidence in the ability of technology to serve humanity by doing "more with less."

Nowhere is this truer than in Africa. The population is predicted to double to 2.2 billion before 2050 - up from 210 million when I was born. Unprecedented levels of spending will be needed for the roads and other infrastructure needs just to stand still. But Africa can build itself better and more cheaply with lighter and newer technologies. Cheap digital fabrication, cheap robotics and cheap clean energy can boost new types of manufacturing in isolated towns across the continent.

One early example of this leap to the future will be cargo drones. Not the small, noisy quadcopter drones you see in parks, but large robot sailplanes capable of taking off and landing vertically. These crafts will carry precious cargo swiftly and accurately at motorbike prices, clear over lakes and mountains on fixed drone lines between towns. Medical and emergency supplies will go first, then spare parts, e-commerce and businesses we cannot even predict.

Of course, cargo drones need somewhere to land, be loaded, have their batteries charged, get repaired and be stacked between flights: they will need 'Droneports.' In ten years' time, most towns in Africa will have a Droneport connected to other Droneports by a network of cargo drone lines in the lower sky.

In our proposal, Droneports will cost no more than petrol stations and will be built with local materials – soil for bricks, combined with prefabricated formwork made out of timber or plastic that locks together to form the basic structure. The brick vaults have large spans and form flexible spaces that can be grouped to modulate the building according to the site. The idea is to use as much local labour as possible to provide jobs and teach building skills. As well as drone-related activities, Droneports will house community functions such as digital fabrication labs, health clinics, postal and courier offices, and shaded markets bringing in and sending out supplies. In towns that lack almost any civic presence, Droneports should eventually become emblems on the African landscape. Beyond Africa, the concept is applicable to many emerging economies.

Infrastructure is the urban glue that binds individual buildings together – infrastructure of roads, connections, transport, parks and public spaces. In

an industrialized society, buildings and the movement of goods and people between them account for two-thirds of energy consumption. This is important in a world where 18% of the population, or 1.3 billion people, still have no access to electrical power. Statistically those communities are characterized by lower life expectancy, higher infant mortality and less political and educational freedom. There is a moral imperative to provide more globally available energy while seeking to conserve its consumption. The answer to this apparent paradox is to adopt a holistic approach to the design of sustainable communities in which the infrastructure and individual buildings are considered interactively.

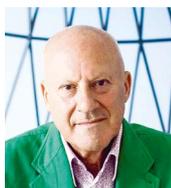
Take, for instance, the project for the regeneration of Dharavi, an informal settlement in the heart of Mumbai, India. Conventional planning wisdom favours the bulldozing of such communities and their relocation to new settlements, often in remote locations that cannot offer the work opportunities provided by inner cities. In one experimental research project, we sought to question that assumption. In an area of 1.75 square kilometres, Dharavi houses an estimated population of 1 million and its principal livelihood is the recycling of 80% of the city's waste. Although considered prosperous by comparison with rural India, Dharavi lacks all the basic amenities of a modern city – particularly in terms of water, sanitation and public space.

Given the thriving social structure of this informal settlement, we explored the potential for a series of phased upgrades that would combine self-help by the community, with a mixture of new and existing technologies. At its core, there could be a new infrastructure spine to bring in fresh water, data and power to the community. A spine above ground

in the centre of the street can avoid disruptive excavation. Its surface can provide a table for selling goods, cooking, seating and socializing – supporting all of the activities that currently take place in only the public realm. Using pre-sized concrete tables to plug in to the spine, it would be possible to delineate plot sizes and population density, and a new ‘owner-driven’ architecture could start to take place. Similarly, a ‘heart unit’ within each home could connect to the infrastructure spine, and incorporate an oven, clean water supply, waste removal and electricity source – a basic framework for domestic life. Industry in India, particularly in the automotive sector, has the skills to

mass-produce such heart units, which also have the potential to transform the quality of life in both urban and rural areas – this in turn would help to stem the exodus to the cities.

These projects are essentially research based and the hope is that one or more will make the transition into the real world of physical reality. They each encourage a mix of local and imported technologies to harness the involvement of a local community. A pilot project, even on a relatively small scale, would be the equivalent of Fuller’s trim tab – a small intervention with the power to provoke wider change for the good – to make a positive difference.



Norman Foster is Founder and Chairman of Foster + Partners, a global studio for architecture, design

and engineering. Over the past four decades, the practice has pioneered a sustainable approach to architecture and ecology through a wide range of work, from urban masterplans to offices, cultural buildings, airports

and industrial design. He has been awarded architecture’s highest accolades, including the Pritzker Architecture Prize, the Praemium Imperiale Award for Architecture in Japan, the Royal Institute of British Architects Royal Gold Medal and the American Institute of Architects Gold Medal. In 1999, he was honoured with a life peerage, becoming Lord Foster of Thames Bank.



Advancing sustainability in procurement

Engaging traditionally disadvantaged businesses

By Anita Househam, United Nations Global Compact

According to the United Nations Global Compact's (UN Global Compact) annual survey of its participants, businesses in the initiative rank supply chain practices as the biggest challenge to improving their sustainability performance. Companies in the UN Global Compact commit to embed ten universal principles in the areas of human rights, labour, the environment and anti-corruption into their strategies and operations, and take action to advance societal goals. Extending the Ten Principles into the supply chain is a difficult endeavour – often due to the size of the supply chain, distance from suppliers and partners operating where there are lower standards.

However, the fact of the matter is that many companies' most significant impacts, both negative and positive, on the environment and society, occur in their supply chains. As these



| The Women Vendors Exhibition and Forum matches women-owned businesses with potential buyers. Photo: ITC/Fredy Uehara

networks have grown in scale and complexity over the past few decades, so too have the opportunities for companies and organizations to promote human rights, advance equality, improve labour conditions, protect the environment and support ethical business conduct. There is a real opportunity for companies and organizations to scale up their sustainability efforts by implementing the Ten Principles in their procurement practices and throughout their supply chains.

Small- and medium-sized enterprises (SMEs) exist in most supply chains, particularly at the sub-tier levels, from local farmers in the food and agriculture industry to small-scale miners in the IT and automotive industries. Due to a lack of financial and technical resources, capabilities, expertise and understanding of sustainability issues, SME suppliers

can sometimes bring significant risk to a company's supply chain, and to the environment and community where they operate.

Supporting traditionally disadvantaged businesses, such as SMEs, has a number of benefits, including ensuring compliance, reducing risk, creating a stable environment, tapping new markets and strengthening the company's license to operate. Supporting disadvantaged suppliers can also make a significant impact in promoting human rights, equality, fair labour practices, environmental progress and anti-corruption policies. The UN Global Compact calls on companies to take action to support their SME suppliers and has developed guidance that outlines a number of steps companies can take, including sharing knowledge, building the capacity of suppliers, creating long-term relationships and

engaging in public policy. The guide, 'Support Your SME Suppliers'¹ also offers examples of good practices, the business case for action and further resources that may be of assistance to companies in this endeavour.

Inclusive sourcing is a key pillar of sustainable procurement and presents an important opportunity for companies to support human rights and increase economic development by offering economically disadvantaged² groups an equal opportunity to compete for business, enhancing their income and improving their business skills. It also makes business sense by broadening the vendor pool with loyal and flexible suppliers, enhancing competitive advantage, providing access to new products and generating innovation.

In 2015, the UN Global Compact and Oxfam launched a Poverty Footprint³

assessment tool to help multinational companies with complex supply chains better understand their impacts (positive and negative) on the poor in a particular region. Based on a deep partnership between a non-governmental organization (NGO) and company, the tool enables companies to identify forward-looking actions and opportunities to develop pro-poor business models, and to minimize negative impacts.

When engaging with suppliers and sub-tier suppliers, companies should identify and consider opportunities to work with businesses owned by certain underrepresented stakeholder groups, such as women, minorities, indigenous people, the elderly, youth and disabled workers to promote a more inclusive supply chain.⁴ Some companies do so by partnering with associations or organizations that represent and promote businesses run by these groups.

The Women's Empowerment Principles (WEPs), developed together by UN Women and the UN Global Compact, offer seven steps to businesses on how to empower women in the workplace, marketplace and community. Principle 5 of the WEPs calls on companies to make inclusive sourcing a key pillar in their business strategy by expanding business relationships with women-owned enterprises, and supporting and investing in women entrepreneurs. As a concrete opportunity for companies to expand inclusive sourcing initiatives, the UN Global Compact supports the Women Vendors Exhibition and Forum, led by the International Trade Centre (ITC). The Forum matches women-owned businesses with potential buyers. The WEP's Call to Action on Inclusive Sourcing⁵ provides an overview of the business case for inclusive sourcing and actions companies can take to source from women. Toks Restaurantes, a multi-

unit chain restaurant in Mexico, has made it a priority to address income inequality in the country, particularly for women and children, through an income-generating programme called 'Productive Projects' where women are integrated into the company's value chain by supplying quality, natural and handmade products to the restaurant. To date, the programme has impacted the lives of over 6,000 women in over 50 communities in Mexico and has brought positive bottom line impacts to the company through increased profits, innovation and performance.

Engagement at the local level to ensure sustainability in your supply chains

There are over 80 Global Compact Local Networks around the world working closely with the UN Global Compact to advance the initiative and its Ten Principles at the country level. Through these networks, companies can make local connections with other businesses and stakeholders, and receive guidance for putting their sustainability commitment into action.

Local Networks play an integral part in helping UN Global Compact participants implement supply chain management programmes that effectively address challenges specific to the local context. Local Networks can provide specific guidance on local governance requirements and can highlight social and environmental issues that are of particular importance for companies within their network. Additionally, with over 60% of UN Global Compact participants categorized as SMEs, Local Networks can better address SME engagement, which is important for companies whose value chain includes SMEs.

In an effort to support the Local Networks, the UN Global Compact has developed a toolkit to help enable Local Networks to conduct workshops on how companies who are part

of a supply chain can implement sustainability. The workshops will also enable Local Networks to highlight how companies, including SMEs, can advance the Sustainable Development Goals. The toolkit is based on the framework set out in 'Supply Chain Sustainability – A Practical Guide for Continuous Improvement' (2nd edition)⁶ for creating sustainable supply chain management programmes. In order to further support its SME participants, the UN Global Compact and its Local Networks had the original guide translated into eight languages, including Hindi, Chinese,

Turkish and Spanish, and also developed a SME version⁷ to support companies' messaging efforts to their SME suppliers.

Given that procurement is only one part of supply chain management, it's important to understand how the other functions within a business and organization – including legal staff, product developments and marketing, diversity and inclusion – can impact the supply chain. The UN Global Compact encourages companies to set expectations for good practices across its supply chain by including areas such as selection, training, auditing and

remediation. With guidance from its Advisory Group on Supply Chain Sustainability, the UN Global Compact continues to work to identify and promote existing resources, initiatives and good practices, including through webinars and its 'Resources and Practices' website,⁸ a one-stop shop for materials on supply chain sustainability. Additionally, it continues to develop guidance where needed, such as our recent 'Guide to Traceability'⁹ and soon-to-be launched 'SME Guide to Traceability,' in order to address the needs and expectations of the future.

¹'Support Your SME Suppliers,' UN Global Compact (2015): https://www.unglobalcompact.org/docs/issues_doc/supply_chain/SMEsinSupplyChain.pdf.

²From low income backgrounds with limited upward social mobility.

³Poverty Footprint Implementation Guide': <https://www.unglobalcompact.org/library/3131>

⁴'Supply Chain Sustainability – A Practical Guide for Continuous Improvement,' p. 48: https://www.unglobalcompact.org/docs/issues_doc/supply_chain/SupplyChainRep_spread.pdf.

⁵'Women's Empowerment Principles, Call to Action - Commit to Inclusive Sourcing': http://weprinciples.org/files/attachments/Inclusive_Sourcing_Flyer_-_Call_to_Action_23_May,_2013.pdf.

⁶'Supply Chain Sustainability – A Practical Guide for Continuous Improvement,' 2nd edition (2015): https://www.unglobalcompact.org/docs/issues_doc/supply_chain/SupplyChainRep_spread.pdf.

⁷'Supply Chain Sustainability - A Practical Guide for Continuous Improvement for Small and Medium Enterprises' (2011): https://www.unglobalcompact.org/docs/issues_doc/supply_chain/Supply_Chain_Practical_Guide_SMEs.pdf.

⁸'Supply Chain Sustainability – Resources and Practices': <http://supply-chain.unglobalcompact.org/>.

⁹'A Guide to Traceability – A Practical Approach to Advance Sustainability in Global Supply Chains': https://www.unglobalcompact.org/docs/issues_doc/supply_chain/Traceability/Guide_to_Traceability.pdf.



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She joined the UN Global Compact in 2010 and manages its supply chain sustainability work, in addition to social sustainability programmes and initiatives, such as the Children's Rights and Business Principles, a joint initiative with UNICEF and Save the Children.

She also manages the UN Global Compact Office's policy and legal affairs, and provides advisory support to other issues areas. Since completing her Masters of International Business Law at the School of Oriental and African Studies in London (United Kingdom), she has gained 10 years of corporate sustainability experience working with the business industry, investors, government, intergovernmental organizations and civil society.

Philanthropic investment

Could it hold the key to innovative procurement for development?

By Jennifer Raffoul and Magda Theodate,
Parliament of Trinidad and Tobago and Global Executive Trade

“...the aim of philanthropy...is improvement in the quality of human life.”

- ‘American Philanthropy’ by Robert Bremner, United States academic and historian

Introduction

In 2015, experts from around the world set the global agenda for country development by launching the Sustainable Development Goals (SDGs) that will extend until 2030. However, according to the United Nations Intergovernmental Committee on Sustainable Development Financing,¹⁰ governments and traditional development aid agencies simply do not have enough funds to meet the goals; a multitrillion dollar yearly funding gap exists.

In order to meet the enormous challenges our world is facing, seismic shifts will need to occur in how procurement for development is undertaken and where funding comes from. According to the UN, public

procurement systems represent an annual expenditure of over \$10 trillion USD,¹¹ an equivalent of 15% of global GDP. However, development results seem to indicate inefficiencies in achievement of impacts.

The origin of procurement systems: A response to market inefficiencies

Traditional procurement systems evolved as a response to imperfections in the market for goods and services as a result of incomplete information. As such, public funds could be allocated inefficiently if producers of goods and services were not completely aware of the purchasing desires of consumers.

To date, attempts to improve public procurement focus on strengthening procurement processes and capacity within developing countries and institutions. However, innovative financing models could be a game changer for public procurement and development.

Social impact investors are individuals and businesses committed to fostering benefits for the societal good through ‘impact investments,’ largely to

disadvantaged communities, while earning a profit on their investments. These forces combined result in the ‘impact economy.’¹² There is a swell of excitement and new interest around this investment class. With a rise in impact-motivated investment decisions, and an increasing alignment between corporate social values and the SDGs, there is a real opportunity to develop a framework within which development actors, governments and philanthropic entities can actively collaborate. However, the tools, including procurement options, are yet to be developed to make these innovative partnerships scalable.

The issue is how to tap into the opportunities philanthropic funding provides to innovate in public procurement. Who can lead this innovation? And what can be done within the current system to encourage it? The discussion below explores the priorities and direction necessary for future proofing procurement.

Innovative procurement and impact investments

In 2013, the G8 countries¹³ started a social impact investment steering group. The social impact investment



| From cocoa pods to chocolate confections: a metaphor for process innovation. Photo: Martin Mouttet

movement is characterized by a number of principles that can give procurement professionals insight into the future. First, social impact actors recognize that today's philanthropists seek a reciprocal relationship with the cause they aim to support: the opportunity to help develop new ideas, generate impact or create a sense of fulfilment are sometimes as important as expected returns on their investment. In other words, unilateral giving is out and co-production¹⁴ is in. Second, they acknowledge a link between a greater investment risk appetite and the impact financing model, and use that knowledge to encourage the use of non-traditional procurement methods to foster philanthropic investment. Lastly, the government's role is clearly established. As the largest purchaser of goods and services, governments must determine how much innovation they can reasonably introduce in public procurement in order to meet financial growth objectives and make a social impact.

Concrete steps can be taken on the investment and impact side in using philanthropic funding to bring innovation to procurement. First, define metrics for project success in terms of financial returns and social impact. Second, promote involvement of private investors in programmes in developing economies and match them to high-risk/high-return priority areas. This includes motivating individual investors to become more involved in the impact economy by showcasing successful models, as well as by having guarantors for a percentage repayment of the investments. Third, create specialized teams for impact investment project portfolio management in support of the SDGs – staffed with procurement, foundation and investment professionals who've spent part of their careers working in the developing world to manage the pipeline. Fourth, bring

together experts on social impact investment mechanisms to develop standard practices on how to adopt these investment models that could be shared with policymakers. Finally, develop a global, data-driven IT platform on what to look for when engaging in social impact procurement, including Request For Proposal packages specific to meeting social aspects of the SDGs, evaluation methodologies, sample contracts and supplier performance standards. The latter may include drafting simple legal frameworks for managing impact investment disputes and encouraging a multisector approach when designing such programmes, including a phased implementation plan for impact deliverables and financial returns.

Such actions have already begun in Australia, the United Kingdom and the United States, for example, but expanding them would signal to the investment markets that development actors are ready and willing to take bold steps to better engage in the impact investment arena.

Social impact investment mechanisms

There are a number of investment categories specifically intended to have both financial returns and social and environmental impact. These include corporate social responsibility (CSR) initiatives, Benefit Corporations (or B Corporations) and social impact bonds (SIBs). Social entrepreneurship companies, also called social enterprises, are a hybrid model. Like traditional non-profits, their objective is measurable social and/or environmental impact. However, like for-profits, they design revenue streams into their operating model for financial sustainability and scalability.

Certification as a B Corporation represents the current industry standard for companies working

in the social impact space. The combination of metrics and an independent certification system for B Corporations adds both data and legitimacy for social entrepreneurs. SIBs are a contract between the government and the executing agency, when the latter is a non-profit or for-profit entity. Some models of SIBs¹⁵ may also include private sector intermediary banks or development financing institutions. CSR programmes are an effort by corporations to demonstrate their good citizenship, but the funds are simply charitable giving, not targeted funding for social impact.

Impact and philanthropic investing instruments have made significant changes in the development landscape in the last decade. They are defined not only by large financial flows, but also by innovative project design, multisectoral partnerships and their emphasis on defined outcomes, along with strong execution capacity. In particular, they tend to use their own contract terms and conditions and work with nontraditional development partners, which allows for greater flexibility and faster disbursement of resources than traditional multilateral development banks.

Conclusion

In summary, the development procurement model must evolve to allow impact investors to explore approaches that are both innovative and practical in addressing public needs. If philanthropic funds, experience and skill are combined in a manner that aligns development objectives with impact, innovation and diversified resources, future proofing procurement and the social impact it can create looks bright.

¹⁰ United Nations Sustainable Development Solutions Network, 'Working Paper on Investment Needs to Achieve the Sustainable Development Goals,' 12 November 2015: <http://unsdsn.org>.

¹¹ UNOPS, 'Supplement to the 2013 Annual Statistical Report on United Nations Procurement': <https://www.unops.org>.

¹² J.P. Morgan, Rockefeller Foundation, Global Impact Investment Network, 2010.

¹³ See G8 Steering Group membership: <http://www.socialimpactinvestment.org>.

¹⁴ Cahn, Edgar S., 'No More Throw Away People: the Co-production Imperative,' December 2014.

¹⁵ Goldman Sachs, 'Our Thinking: Social Impact Bonds,' Accessed 20 April 2016: <http://www.goldmansachs.com/our-thinking/pages/social-impact-bonds.html>.



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Igniting our public-health supply chain DNA

By Liuchi Hara, United Nations Population Fund

Introduction

The fight against substandard, spurious, falsely labelled and counterfeit (SSFFC) medical products requires pragmatic ways to address the traceability of life-saving health commodities. This is why the United Nations Population Fund (UNFPA), is working with suppliers to implement bar coding technology into the public-health supply chain.

Igniting our public-health supply chain DNA

Consider the global public-health system as a living organism that continuously evolves with diverse needs. Public-health procurement is one of the dominant gene expressions of the public-health supply chain DNA. As such, gone are the days of meeting the needs of public-health development aid by merely procuring and donating to low- and middle-income countries.

In the private sector and in the academic world, procurement has long been defined as part of supply chain management. UNFPA's Procurement Services Branch has, over the years, reflected on this fact



| Track and trace technology improves the traceability and integrity of life-saving health commodities. Photo: UNFPA/ Liuchi Hara

and gradually transformed itself to express other functions beyond its traditional public-health procurement gene, activating areas such as quality assurance, track and trace, and more. Furthermore, the terms 'Procurement and Supply Chain' and 'Procurement and Supply Management (PSM)' have become ubiquitous among the majority of UN procurement agencies and other development aid partners. This is evidence of the growing effort made by each of the agencies to evolve beyond public procurement by activating other genes in the public-health supply chain DNA. In other words, UN agencies are increasingly

integrating a wider set of business functions and processes that have been dormant in our public-health supply chain DNA.

Today, among the donor community, there is growing concern about the public-health supply chain being widely exposed to disruptions by a number of forces, including, for example, falsified medical products and theft or diversions of publicly donated health supplies. This concern will continue to grow as more direct and indirect public procurement of life-saving health commodities are donated to low- and middle-income countries. Aside from the high reputational risk that traditional public procurement agencies are exposed to, falsified medical products and theft or diversions of life-saving health commodities can have a dire effect on final users who are reliant on the national public-health system. In order to be able to tackle this challenge, UNFPA's Procurement Services Branch has been taking proactive steps to activate all the critical genes in our public-health supply chain DNA. The track and trace gene is one of the steps that plays a critical role in helping the organization be fit for tomorrow.

Key to success: Focusing on the 'How'

The existence of SSFFC medical products is an unacceptable risk to public health.¹⁶ It is believed that SSFFC and theft/diversions will remain a critical challenge for the public-health supply chain. Therefore, how can traditional donor (procurement) agencies fight against falsified medical products and ensure donated products become immune to theft or diversions?

UNFPA Procurement Services Branch is responding to this challenge, beginning with a two-step approach: firstly, by introducing bar coding technology to the public-health supply chain and, secondly, by taking a lean approach to eliminate wasted time and effort through the adoption of existing standards.

Since its first use in 1974, bar coding technology has become widely adopted by a number of industries, from retail to health care. Bar coding technology has become synonymous with track and trace technology, enabling organizations to gain traceability over distributed products by having real-time visibility of product movement from one touch point to another.

UNFPA and other development aid partners quickly recognized that

creating custom bar codes was not a sustainable solution. Rather, adopting bar codes based on existing global standards was equally important for success. To this effect, UNFPA adopted the GS1¹⁷ global (open) standards in order to accelerate efficiency gains from bar coding and enhance transparency in the public-health supply chain. In health care, GS1 is the standard for bar codes and provides the necessary framework for traceability by enabling a common language among all supply chain network participants.

This two-step approach will have several immediate impacts. First, it will help to build a solid foundation for organizations and recipient countries to drastically improve the visibility of the public-health supply chain. With better visibility, this will enhance the overall integrity of the public-health supply chain. Moreover, the approach will reduce, if not eliminate, the reputational risk to the donor agency and other development aid network participants, as well as the negative health and safety risks to the consumers and final beneficiaries.

Future proofing by creating a living community

While introducing bar codes and adopting global standards will have multiple positive impacts, they are not a means to an end. In order

for the public-health supply chain DNA to truly thrive, we will need to continuously evolve all the vital genes to the same level that we currently do with public procurement.

As such, together with the United States Agency for International Development (USAID),¹⁸ UNFPA's Procurement Services Branch co-founded the Reproductive Health Product Global Traceability Advisory Group (RH GTAG) to help future proof the public-health supply chain. The RH GTAG is a public-private forum consisting of procurement agencies, manufacturers, freight forwarders and other relevant stakeholders collaborating to advance efforts to improve the efficiency and integrity of the public-health supply chain. This structured approach offers the means to continuously communicate diverse needs, restrictions and strategies in a cooperative and transparent manner. As a result, this public-private forum will help inoculate all public supply-chain network participants against the modern contagion of SSFFC and theft or diversions.

¹⁶ SSFFC, WHO: <http://www.who.int/medicines/regulation/ssffc/en/>.

¹⁷ GS1 is a global, neutral, non-profit standards organization that brings efficiency and transparency to the supply chain: <http://www.gs1.org/about> (accessed: 31 March 2016).

¹⁸ See <https://www.usaid.gov/>.



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Combating corruption in procurement

Debarment present and future

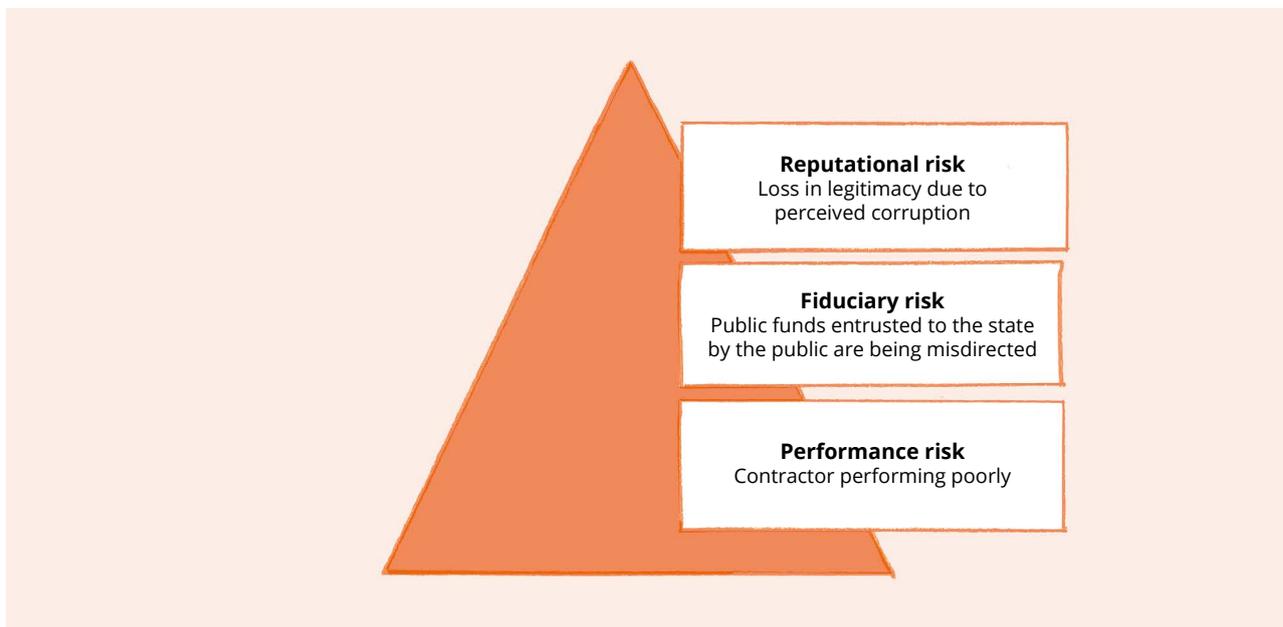
By Johannes S. Schnitzer and Christopher Yukins,
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Strengthening, or 'future proofing,' supply chains requires strong deterrents to supplier misconduct, and remedial mechanisms to protect the supply chain from corruption and malfeasance on an ongoing basis. As scandals in procurement around the world have shown, corruption often results in shoddy work, can undermine a public organization's or government's legitimacy and almost always results in the diversion of public funds. Public supply chain managers now rely on contractor compliance (or 'self-cleaning') to inhibit corruption through internal contractor compliance efforts and debarment to remove corrupt actors from the supply chain.

Depriving private companies of the opportunity to do business with a government or an international organization is likely to be one of the strongest deterrents for wrongdoers. Procurement systems around the world are developing debarment systems – a relatively new, but increasingly common, tool for fighting corruption in procurement – to exclude, or blacklist, corrupt contractors. Debarment functions may sanction corrupt or inadequate

contractors, and can serve as early warning systems for other procurement systems that seek to avoid these same contractors. Drawing on examples from national systems, multilateral development banks and international institutions, this paper will assess the essential elements of a successful debarment system.

There are at least three basic approaches to discretionary debarment. To understand why different procurement systems take different approaches, it may make sense to assess the three kinds of corruption risks that procurement authorities must address. As the chart to the right reflects, procurement authorities bear reputational risk from corruption, and corruption also poses performance risk, i.e., a risk that the project will not be performed as planned. In addition, corruption can pose fiduciary risk – the risk that funds entrusted by the public, or others, to public officials will not be used as intended. Compliance and debarment systems address all three risks, though in different ways and with varying effectiveness.



| Compliance and debarment systems address the three risks faced by procurement authorities.

The approach taken by several governments is for an agency's suspension and debarment official to assess the contractor's 'present responsibility,' much as a contracting officer would assess a prospective contractor's qualification for a pending contract.¹⁹ This is a highly discretionary approach, under which the suspension and debarment officer may exclude contractors because of almost any serious issue regarding contractor qualification. Under this approach, the contractor will be excluded only if it cannot show that it is presently qualified. This means, conversely, that contractors may be allowed to continue to compete, despite proven bad acts, if the contractors can show that they have been sufficiently rehabilitated to qualify as presently qualified (or 'responsible').

It is important to stress that this approach – one that allows a suspension and debarment official to debar contractors on a discretionary basis, across an entire procurement system – often operates against a backdrop of very aggressive compliance requirements. Under those requirements, which may

be applied specifically to public contractors or more broadly to all firms, companies will undertake regular internal measures, such as training, discipline and review, to identify bad actors and eliminate corruption. These compliance efforts (sometimes called 'self-cleaning') are important anti-corruption tools.

Another approach – frequently used by multilateral development banks – is very different. A multilateral development bank's sanctions system typically follows a highly structured, adjudicative approach to assess its investigators' allegations that contractors working for the bank's borrowers have engaged in certain narrow categories of bad acts. A multilateral development bank's system, as a general rule, explicitly sanctions for prior bad acts that qualify as grounds for debarment. The present responsibility of the contractor is relevant only insofar as the bank may allow, as a result, for a shorter period of sanctions.

While the first approach is arguably focused primarily on performance risk, the second approach – launched originally to address perceived

fiduciary risk – also seems structured to minimize potential reputational risk to the bank. This is because a multilateral development bank's debarment system typically focuses primarily on prior bad acts (not present qualification, or ability to perform) and because a multilateral development bank's highly structured, adjudicative system leaves sanctions personnel with much less discretion to address current performance risk from corrupt contractors. While both systems have their advantages and disadvantages, the multilateral development bank's approach makes it more difficult for debarment officials to assess the present qualification of contractors, and to ensure that those contractors do not pose performance risk in the future.

The European Union (EU) presents yet another model. Under Article 57 of the current EU Procurement Directive 2014/24/EU, for example, Member States are not required to establish debarment systems. Instead, procuring entities in Member States are to exclude contractors only for certain bad acts and egregiously poor performance on an *ad hoc*, contract-by-contract basis. This *ad*

hoc approach may create significant administrative burdens for procuring entities and raises questions as to whether individual procuring officials will have sufficient competence to assess the sometimes complex legal grounds for exclusion.

The European procurement directive provides for mandatory and discretionary grounds for exclusion. Mandatory grounds include final convictions for corruption or fraud. Discretionary grounds include: (i) if a firm is guilty of grave professional misconduct, which renders its integrity questionable; (ii) certain conflicts of interest, including when a firm has unduly influenced the decision-making process leading to the award of a contract; (iii) false statements in connection with the procedure for the award of a public contract; (iv) agreements to distort competition; and (v) where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority. The 2014 European procurement directive, for the first time, allows an economic operator to provide the procuring entity with evidence that measures have been taken that show its reliability despite the existence of a relevant ground for exclusion. These are sometimes referred to as remedial or self-cleaning measures, i.e. measures that allow a company to recover eligibility to bid for public contracts by demonstrating sufficient evidence of, in particular, the introduction of concrete technical, organizational and personnel measures, which are appropriate to prevent further criminal offences or misconduct.

While the United Nations Convention Against Corruption (UNCAC) does not specifically call for debarment systems, the United Nations Office of Drugs and Crime's (UNODC) 'Legislative Guide for the

Implementation of the UNCAC' (2nd ed. 2012) recommends appropriate measures, such as debarment, to encourage compliance with UNCAC. Various governments and international organizations, including UNOPS and many multilateral development banks, have developed their own systems to exclude contractors that have committed certain crimes (such as bribery or fraud).

While debarment systems are now firmly rooted in procurement systems around the world, various questions regarding how to shape debarment systems are not fully resolved. These questions include:

- Should contractors be treated more leniently if they disclose prior bad acts through a voluntary or mandatory disclosure system?
- Should debarment be handled by a centralized body or official, or should exclusion be delegated to line contracting officials?
- Should contractors be excluded only for criminal bad acts or for poor performance as well?
- Should debarment be mandatory or discretionary?
- How long should a contractor be excluded – only temporarily (commonly referred to as 'suspension') or on a more permanent basis, perhaps for a term of years ('debarment')?
- Should contractors be allowed to rejoin future procurements if they undertake 'self-cleaning,' i.e., intensive corporate compliance efforts? Should contractors (as is the case in the United States) generally always be required to have compliance systems in place?

- Should an excluded firm's affiliates be excluded as well? What criteria should be applied in assessing affiliates for exclusion?
- If a nation debars a contractor, should other nations or international organizations give automatic or presumptive effect to that debarment?
- What kind of information should be shared between procuring authorities regarding contractors' integrity, and how should it be shared?

Debarment systems continue to advance and evolve, and policymakers are likely to continue to wrestle with a number of difficult issues as they shape these systems for the future. For the present and future, therefore, debarment will remain an important, and controversial, issue in the fight

against corruption in procurement. Debarment systems have already proven to be an effective tool in the fight against corruption. Private companies, on the one hand, tend to (proactively) refrain from getting involved in bad acts that might lead to debarment and therefore lost business opportunities. On the other hand, private companies, despite proven bad acts, may recover eligibility to bid for public contracts following a debarment, if the contractors can show that they have been sufficiently rehabilitated.

For public bodies intent on future proofing their supply chains using debarment, several choices present themselves. The public body can, if it chooses to, rely on its individual contracting officials to catch and exclude corrupt contractors. This approach, however, may not be as thorough or reliable, as contracting

officials may lack the capacity necessary to identify and address corruption. Alternatively, if the public body is intent on ensuring a very objective process that sanctions prior bad acts, the highly structured and adjudicative approach taken by the multilateral development banks may be best. Other public bodies, however, may want to take a more flexible approach and debar, not based on prior bad acts, but rather based on a contractor's present qualification. This, in turn, may mean encouraging contractors to install 'self-cleaning' or internal compliance systems, which allow contractors to share in the fight against corruption in procurement and help future proof supply chains.

¹⁹See, in particular, the approach taken in the United States federal government, per Federal Acquisition Regulation Subpart 9.4, 48 C.F.R. Subpart 9.4.



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Building clean supply chains

By Dominic Grace, United Nations Development Programme



| There is a need to focus greater attention on developing truly clean supply chains by promoting vendor compliance from raw materials to the final product. Photo: UNDP Mexico



What is a clean supply chain?

Supply chain management has been studied for decades – typically with a view to reducing costs and improving the value-added process, but more recently as part of broader organizational and developmental imperatives. This article will focus on the driver that has become essential in the 21st century: Sustainability.

Sustainable supply chain management is often described as the voluntary integration of social, economic and environmental considerations with key inter-organizational business systems to create a coordinated supply chain.²⁰ Ensuring that an organization has a sustainable supply chain can be extremely challenging. Supply chains cover the range of processes from raw material extraction to final product completion and delivery, and essentially everything in between. Depending on the transformation process, supply chains can have many different stages. An example of this complexity is found in the car industry. A common impulse is to study the car manufacturer, yet the manufacturer is usually a car assembler using around 15,000 pieces from hundreds of sub-contractors in order to build the car.²¹ It is therefore important to also consider these sub-contractors, their processes and their supply sources (which may involve further supply tiers) until the raw material is reached.

In a UN context, sustainability has become a core value and guiding principle. The 17 new Sustainable Development Goals (SDGs) serve as an agenda to end poverty, fight inequality and injustice, and tackle climate change by 2030. The United Nations Development Programme (UNDP) is applying these concepts and supporting the concept of sustainable supply chain management through its Clean Supply Chains initiative, as outlined in the UNDP Procurement Strategy 2015-17.

With a view to best practice in sustainable supply chain management – and considering the complexities inherent in this process – this article will discuss the decisions and steps taken by UNDP to build sustainability into its supply chains.

How does UNDP currently build clean supply chains?

UNDP maintains a wide supplier base, increasingly sourcing goods and services from developing countries or those with economies in transition. The aim is to build long-term business relationships with reputable vendors that will help UNDP address some of the world's most pressing challenges. As one of the largest procurers in the UN system, it is incumbent on UNDP to procure in a way that is consistent with its objectives and mandate. As a result, efforts to future proof

procurement rely heavily on ensuring that UNDP's suppliers' principles align with the broader goals of the UN.

Supply chain due diligence

UNDP's Programme and Operations Policies and Procedures (POPP) highlights the importance of conducting market research to reveal a better understanding of the market in which one operates. UNDP's supply chain analysis covers:

- Complexity
- Stability and vulnerability
- Level of dependency on other vendors for key components
- Each member's contribution to the end product
- Delivery and transportation methods

Contract management stage

The tender processes for UNDP reflect broader sustainability considerations by adopting the UN Supplier Code of Conduct, which includes considerations for child labor, discrimination, human rights, the environment and corruption. Understanding that this Code could be construed as merely aspirational in and of itself, UNDP has expressly integrated it into its General Terms and Conditions, thus creating an obligation from the contractor to UNDP to observe and abide by the Code.

Review and enforcement

Furthermore, UNDP created an instrument to address corruption and other unethical practices. With fraud and other proscribed practices often remaining entrenched in global supply chains, UNDP actively deals with cases of corruption or unethical practices through its Vendor Sanctions Policy, which includes debarment for up to seven years. This policy established the Vendor Review Committee in

order to make decisions regarding the entities involved in the case, and to ensure that rules are enforced. As an indicator of the effectiveness of this process, this initiative has been replicated by several UN organizations.

It is important to note that, while fit for purpose, these measures focus on contractors dealing directly with UNDP. But how can UNDP extend its rules and enforcement mechanisms beyond direct contractors, in order to cover all subcontractors and suppliers embedded in this process? How will UNDP build cleaner supply chains in the future?

Building on the previous initiatives mentioned above, UNDP has recognized the need to focus greater attention to developing truly clean supply chains – in effect, ensuring that vendor compliance is promoted throughout the entire cycle, from raw materials to final product – and that human rights, labor and sustainability are considered integral parts of an ethical sourcing process with adequate recourse, where appropriate. Some examples of how UNDP is doing this include:

- Encouraging all UNDP suppliers to join the UN Global Compact: The Global Compact is a voluntary international corporate citizenship network designed to support the participation of both the private sector and other social actors. Global Compact participants advance responsible corporate citizenship and universal social and environmental principles to meet the challenges of globalization.
- Conducting spot checks: UNDP, through its Office of Audit and Investigations, has the capability to conduct spot checks to analyse a supplier's compliance with the UN Supplier Code of Conduct and other contract commitments.

- Involving civil society organizations to help monitor and verify suppliers' efforts to establish a clean supply chain: Thousands of NGOs and other entities have developed specific knowledge around clean supply chains that can valuably inform UNDP's projects and processes.
- Including sustainability as part of UNDP's criteria in every tender: UNDP is currently developing a system for assessing a supplier's sustainability. This sustainability measure would then be added to the criteria for awarding contracts.
- Incorporating social and environmental standards: UNDP is actively incorporating such standards in the creation of all UNDP projects, which are then operationalized through procurement actions.

Unethical practices and debarment

UNDP is also considering the use of its Vendor Sanctions Policy to enforce the sustainability of its contracts. Applying this tool would allow UNDP to debar companies that do not comply with the UN Supplier Code of Conduct. For example, UNDP recently learned that an NGO recipient of UNDP funds had violated the labor rights of workers involved in one of its projects. UNDP subsequently sought to debar the NGO from the UN system, first through an investigation by the Office of Audit and Investigations and then through the Vendor Review Committee, resulting in debarment. Increasing the scope of the Vendor Review Committee so that it covers the entity contracted by UNDP, its sub-contractors and the range of sustainability considerations throughout the supply chain will

be key components to building clean supply chains.

Implementing the measures outlined above – in conjunction with a consistent focus on promoting ethical sourcing practices throughout the procurement cycle – will ensure that UNDP makes the best possible efforts to eliminate unethical practices from all stages of our business relationships and transactions, and future proofs its supply chain.

²⁰ Ahi, P., & Searcy, C. (2013), 'A comparative literature analysis of definitions for green and sustainable supply chain management,' *Journal of Cleaner Production*, 52, p. 329-341.

²¹ Klier, T., & Rubenstein, J., (2008), 'Who really made my car? Restructuring and geographic change in the car industry,' p. 1.



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Big data reconsidered

By Alan R. Earls,
Procurement Leaders

For several years, big data has been one of the hottest topics in information technology. Thanks to the intersection of cheaper information storage, greater available network bandwidth and rapidly increasing processing power, it has been possible to store and use all kinds of data created by businesses.

Even procurement, where analytics haven't been a big focus for investment, has gotten in on the act, searching for tactical wins and strategic advantage. But a few voices have begun to question some of the hype around big data, suggesting that in some cases it may be a solution in search of a problem – or at the very least that organizations need to be more sophisticated in how they employ it.

There's an urgent need to harness data to change the way companies purchase the goods and services they need, or face being left behind by organizations that are much more agile and able to generate value from more effective purchasing strategies. Equally, there's pressure

on businesses to truly understand their supply chains; future proofing the function means being able to adapt to emerging risks, legislative shifts and industry trends, all of which rely on collecting and analysing data.

On the theoretical side, a bevy of academics have levelled criticism at the big data paradigm, which seem to boil down, for the most part, to concerns about drawing conclusions from statistical evidence where causation is not understood. For example, an article in *Science* by professor David Lazer, at Northeastern University in Boston (United States), showed that a big data effort at Google to pinpoint flu outbreaks was highly inaccurate. Data quality – the old garbage in equals garbage out problem – has also been identified as a threat to efforts to justify big data spending.

But for those closer to the actual application of big data, the problems seem to be more about simply implementing big data in the most effective way. Bryan Eaves, a partner at a boutique procurement consulting firm, says big data is just part of the solution. "You still need analysts to create meaningful reports and business managers to interpret those and make meaningful business decisions on the back of that," he

explains. Eaves, who previously served as Head of Sourcing and Procurement for gasoline retailer Pilot Flying J, among other organizations, says all procurement functions want to have great data in order to determine where to focus their time and efforts.

"One of the problems with most data is that it is incomplete," notes Eaves. For example, larger companies have spent millions of dollars on computer systems that are supposed to generate great data. But business practices can undermine that intention, particularly if buyers use blanket purchase orders. While seemingly easier, they do not produce enough data to analyse after the fact, he says. Bill Huber, Managing Director, Digital Platforms & Solutions for a United Kingdom-based sourcing and advisory firm says big data can be characterized as the art and science of extracting business value from the reams of structured and unstructured information available from business operations, social media and other sources. In other words, buying 'big data' doesn't mean purchasing massive amounts of raw data points, but rather purchasing a service that mines and refines that data into something that is useful to the business. "Data is like unrefined ore. The value of it is its conversion into useful material," he says.

| *To change how they purchase goods and services, organizations need to harness data – or face being left behind. Photo: Shutterstock/McIck*

For a procurement professional using big data, it's important to be well informed about the subject, says Huber. That includes recognizing that traditional spend analytics is a purely forensic approach. It's only the tip of the iceberg in terms of the meaningful big data potentially available to improve product and service quality, as well as end-user satisfaction and compliance, reduced cycle times and more.

According to Toby Brzoznowski, Executive Vice President of a leading supply chain design, analytics and modelling consultancy that has worked for worldwide brands such as Ford, Johnsonville Sausage, HP, Cardinal Health and ThyssenKrupp, there is a similar attitude of caution. "We often say that data is useful if you have the right data and you know how to use it," he says. "Just having a plethora of data without understanding how to manipulate it to look for answers doesn't provide any benefit."

One benefit is that data provides insight into the current state of operations. However, when you utilize your data with simulations and run what-if scenario analyses, you can get an 'actionable' look into the future of what could be, backed by your own data, allowing your business to be more nimble and resilient in the face of change.

One mistake that organizations make with big data, according to Brzoznowski, is not organizing it well. Every time they want to analyse it,

the process becomes unnecessarily cumbersome, taking excess resources and time. "Good data organization and regular blending can allow for automation. This would make data easier to use and companies more likely to utilize it on a regular basis, leading to better outcomes," he says.

Furthermore, competing internal objectives can make the story told by the data look very different depending on the viewer. Instead of going to the data with a hypothesis in mind, remain objective and let the data tell the story. "In the long run, consistency equals efficiency," he adds.

Is big data worth pursuing?

How do you decide if big data is worth pursuing? Often, this decision is based on inadequate thinking, explains Anshu Prasad, lead partner of the analytics service practice for a global management consulting firm. "We make a lot of assumptions," notes Prasad. "We assume that the data going into the process is correct." Opening the aperture wider through big data can be powerful. Parallel processing, sound infrastructure and advanced analytical tools can make it easier to grasp a wider set of data. "Sometimes that does drive significantly improved insight, but not always," he adds.

Prasad, who regularly works with CEOs and top executives to harness big data capabilities, says he has seen people struggling to find use cases that will get the attention of the rest of the organization and make a

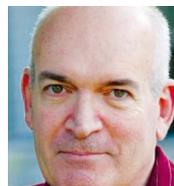
meaningful impact. "There is the risk of the hype not being the same as the reality and for disillusionment to set in."

"One of the issues, frankly, is the lack of ambition about what organizations want to accomplish," he says. For example, if you take big data as just a step in the business intelligence continuum, it will be underwhelming.

"We have seen clients get their teams together to come up with big data use cases, but ended up with different ways of making reports more easily accessible – and not even necessarily interactive," he says. Given the promise of big data, that isn't enough to justify the effort. Indeed, something a bit more conventional, like achieving self-service access to more regular data and analytics, could be even more important from a business-impact standpoint than an anaemic big data launch.

However, he also warns that data quality matters. Putting poor data into the hands of users isn't constructive. That's why companies are again revisiting topics such as master data management that had been largely pushed aside by the rush toward the panacea of big data.

In fairness, he notes, big data concepts allow for gaps in data, while algorithms and machine learning can overcome some of those problems. But anyone looking at big data as just another reporting exercise may be very disappointed.



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Network benefits for buyers and suppliers

By Caroline Chandler,
ICLEI – Local Governments for Sustainability

Ten years ago, the Danish city of Copenhagen set out to buy 90% organic food for all publicly funded meals prepared by the city without increasing the overall food budget. This was an ambitious plan, particularly considering that the market share of organic food in Denmark is estimated at around 8% nationally.²² What followed was a series of meetings with suppliers, a complete reworking of the menu and a training programme for the kitchen staff. In the last decade, without any additional spending on food, the city has reached an average of 90% organic food across all of its kitchens when measured by mass. This target was reached progressively, going from zero organic food to interim targets of 60% in 2009, 75% in 2012 and 90% in 2015. This achievement is the result not only of an ambitious political vision, but also of extended planning, capacity building and market engagement.

Considering the broader impacts of public procurement and opting for products and services with environmental and social benefits enables public authorities to invest in the future of their cities and can actively encourage local innovation

and entrepreneurship. This form of sustainable procurement is a vital tool in ensuring the quality of life in towns and cities by, for example, improving air quality and reducing levels of waste. However, the Copenhagen example underlines a key difficulty faced by procurers. The implementation of sustainable procurement policies is a long-term, and often incremental, process. It takes much longer to embed these practices into an organization than the average length of a contract or even the length of a political administration. Benefits are not always immediate and measuring success often requires a long-term perspective.

This process can seem daunting to procurers who need to navigate the choppy legal and financial waters of local politics and international trade regulations. For politicians on a short-term election cycle, the idea of success in ten years when they may no longer be in power can seem like an unnecessary distraction from more immediate concerns. Furthermore, the budgets of local governments in many areas have significantly decreased since the global financial crisis. Public procurers sit at an awkward junction between long-term policy ambitions

and the everyday realities of short-term contracts issued within strict financial constraints.

Cooperation between public authorities has a crucial role to play here. In the current economic climate, networks are a useful tool to ensure procurement is safeguarded against spending cuts, evolving public sector needs and fluctuating demand and supply. Networks of procurers can share positive and negative experiences with their peers, as well as gain insights and receive targeted advice on how best to approach specific issues faced by public authorities.

For the last year, Copenhagen has been sharing its experiences in catering through a small working group that is coordinated by ICLEI as part of the European Procurement of Eco-innovative Catering (or INNOCAT) project²³ on eco-innovative catering. This group brings together five cities to discuss their achievements, goals and the challenges they face as they strive to procure more sustainable school catering services. The size of the group, as well as the possibility it provides for frank discussion on a very specific topic, can furnish a great deal of value to its members and has enabled them to include more stringent sustainability criteria in their contracts with confidence and on a quicker timescale.

This type of working group is very effective, but can be time consuming for procurers working at a more general level. It is important to have networks that function on a number of different levels, providing general as well as product-specific support. In 2004, we set up the Procura+ European Sustainable Procurement Network²⁴ – a group of more than 40 public authorities from 16 different countries cooperating at the European level. The Global Lead Cities Network on Sustainable Procurement (GLCN),²⁵

which was launched in 2015, provides a unified voice within the international community to raise awareness of sustainable procurement and ensure it remains visible on the global political agenda.

Procura+ works by drawing on the combined knowledge and experience of its participants to provide advice and support that reflects the actual difficulties faced by procurers at the local level and solutions that have already proven successful in overcoming these barriers. Procura+ participants work collectively on specific areas related to sustainable procurement in thematic interest groups. Within the GLCN, too, implementation is key. As well as championing sustainable procurement, participating cities have committed to set and report against quantified targets. In order to achieve these targets, the members meet at an annual summit to share lessons learned and set their agenda for the coming year.

The peer support that participants can receive through networks has the potential to enable tangible successes at both a practical and policy level. For example, the Finnish city of Helsinki saved 172 tonnes of carbon dioxide equivalent (CO₂e) with one green procurement of IT equipment, achieving energy savings of 27% and cost savings of €72,000 over the lifetime of the products. In Barcelona City Council (Spain), integrating green requirements is now compulsory for all contracting bodies in 12 high priority procurement categories.

Procurement networks can be beneficial to suppliers too. The Sustainable Public Procurement (SPP) Regions²⁶ project focuses on the sub-national level, supporting the creation and expansion of regional procurement networks within countries to increase sustainable public procurement



As platforms for experience and knowledge sharing, procurement networks support innovative and sustainable public procurement. Photo: Alejandro Garcia

and public procurement of innovation. These more localized networks can offer a certain stability to suppliers and an access point for better communication. Working within a specific national framework, it is possible to work even more closely together by, for example, participating in joint procurement activities. Through joint market engagement activities with multiple procurers, the benefits range from having access to a group of procurers to more tangible advantages, such as the possibility of reduced administrative burdens – or the possibility of ‘winning big’ by securing a potentially lucrative framework contract. A guaranteed demand can often provide the impetus for a supplier to invest in meeting more stringent social and environmental conditions.

The scale of such coordinated procurements can lead to very impressive savings. Within the Green Public Procurement (GPP) 2020 project,²⁷ which ran from May 2013 to April 2016, central purchasing bodies and other public authorities from across Europe published a number of low-carbon tenders and measured

the savings against a standard tender in terms CO₂e and tonnes of oil equivalent. In the project as a whole, savings of over 700,000 tonnes of CO₂e were achieved. Some of the biggest of these came from large framework contracts – for example, the Italian central purchasing body Consip saved 205,767 tonnes of CO₂e in one energy performance contract.

ICLEI is a local government organization, so it is perhaps unsurprising that we view networking as a vital tool. We have been working in the field of sustainable procurement for 20 years and coordinate a number of procurement networks, ranging from small working groups to large international networks, each of which has its own role to play in future proofing sustainable procurement.

²² See <http://www.agricultureandfood.dk/danish-agriculture-and-food/organic-farming>.

²³ See <http://www.sustainable-catering.eu/home/>.

²⁴ See <http://www.procuraplus.org/>.

²⁵ See <http://www.glcn-on-sp.org/home/>.

²⁶ See <http://www.sppregions.eu/home/>.

²⁷ See <http://www.gpp2020.eu/>.



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to sustainable development. With 1,200 members, it is the largest association of local governments dedicated to sustainable development. ICLEI's 200 European members are from 35 countries and include municipalities from small towns to huge capital cities. This year, ICLEI is celebrating twenty years of action on sustainable procurement.

Eligibility and efficiency in public procurement systems design

By Nicola Dimitri,
University of Siena

Introduction

The emphasis given to the notion of 'best value for money' in public procurement by the recent 2014 European Directives has made even more explicit that successful procurement should not only be identified by the lowest price, but rather by a desirable combination of price and quality. This emphasizes the notion that efficiency in procurement ought to be broader than merely savings maximization for a given level of quality. Indeed, future proofing an institution is fundamentally affected by the quality of its purchases at least as much as the savings and control it has on its finances.

Over the years, efforts towards more efficient procurement in the public sector have taken different directions. This includes: qualification and reputational systems for firms set up by contracting authorities; a preference for competitive tendering procedures over negotiated procedures; more careful determination of the number and size of lots in contract design; mitigation of collusive behaviour; and higher investments in capacity building initiatives.²⁸ Empirical

evidence suggests that most of the unnecessary overspending in public procurement is due to insufficient capacity and competence of the officers in charge rather than corruption.

To further enhance efficiency, Italy recently introduced a new qualification system for public purchasing bodies, establishing eligibility criteria for authorities to procure contracts above a certain threshold for goods, services and works. This paper discusses some key economic issues and scenarios that such an eligibility system may induce. To simplify the explanation below, we shall use the expression Central Purchasing Body (CPB) for public entities that purchase on behalf of some other administrations and/or for themselves only.

What would CPBs qualify for?

The general principle is that CPBs would need to qualify and become eligible to procure goods, services and works when the contract size or value is above a predefined threshold. This is to ensure that the needed level of integrity, competence and

experience would be guaranteed for dealing with larger and more complex contracts. In principle, a CPB could qualify for purchasing goods, services and/or works. It may decide to focus its expertise on one or two of these only, for example, perhaps because resources are scarce or as a strategic choice. We further elaborate on why this might be done below.

Who would grant eligibility to CPBs?

Qualification would likely be granted by a specialized and independent entity, which could be national or international, as long as competence, integrity and independence are guaranteed. The institution would decide whether a CPB meets eligibility criteria and whether they qualify.

How would CPBs qualify?

Eligibility would hinge on multidimensional criteria. Whenever possible, eligibility should be based on numerical indicators verifiable by the relevant parties and by a court in cases of legal controversies. Criteria would also certify the ability to perform based on previous experience (cost control, delivery time, etc. of previously managed contracts), provable quality to allow entrance of new CPBs, size, competence and integrity. A feedback system by the contracting firms could also be introduced. If A , B , C are three criteria on which eligibility is based, then each of them will receive a score $s(A)$, $s(B)$, $s(C)$ to harmonize different units of measurements. Then, eligibility could be obtained if the scores assigned to each criterion are above a minimum score (threshold) $m(A)$, $m(B)$, $m(C)$, and if the total score $s(T)=s(A)+s(B)+s(C)$ is also above a minimum overall level m .

In some cases, qualification could also be granted for a limited period, as an experimental phase, before it would be granted to a CPB for longer periods.

Furthermore, eligibility could be checked and renewed periodically to ensure the criteria are continuously being met. Finally, reasons for permanent or temporary exclusion from the system would have to be clearly defined and rigorously implemented to maintain integrity, credibility and professional standards at the appropriate level.

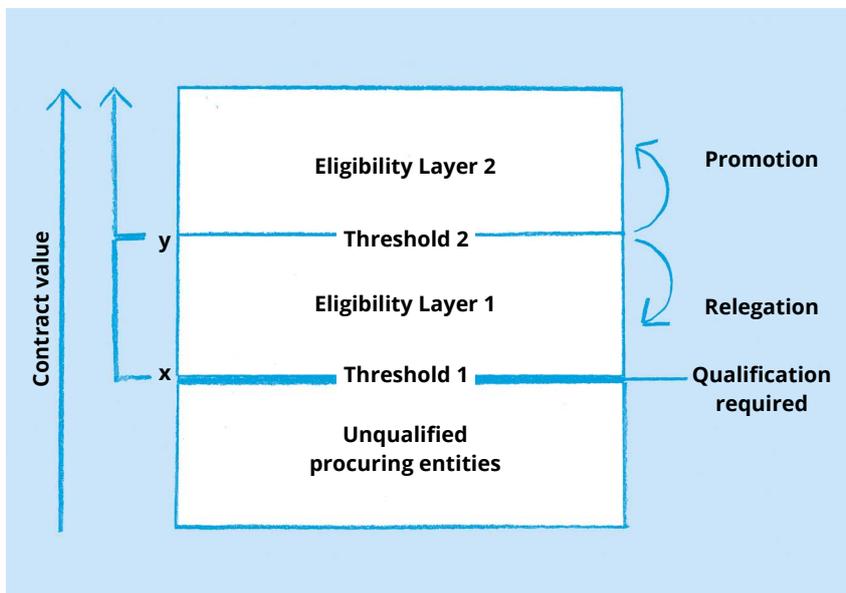
An open or closed qualification system?

Another important issue is whether to use a closed system that would only qualify a limited number of CPBs or an open system that could qualify any purchasing institution that meets the criteria. An open system would likely induce more competition among CPBs and may therefore provide a stronger incentive to deliver better value for money.

Who wants to qualify and why?

What are the advantages for a CPB to qualify? First, using qualification systems would enable CPBs to maintain direct control over the selection and delivery of core goods, services and works. Though important, this may not be sufficient for an institution to decide to become eligible. A further incentive comes through procuring on behalf of other public entities, where CPBs could charge a fee to the buyer based on performance variables such as savings or quality levels. As a consequence, CPBs may be interested in building their reputation as efficient purchasers, since this would attract institutions to procure through them.

Such a fee may become a source of meaningful self-funding for contracting authorities and CPBs to complement and increase state funds. For those institutions that decide not to qualify, transaction fees would be a way to 'pay-as-you-go' for procurement, rather than investing



| One potential structure for an eligibility system for central purchasing bodies.

resources on a permanent basis. Finally, what if no institution wishes to seek qualification? Should the system allow public entities to apply exclusively on a voluntary basis, solicit institutions to apply or both?

What would an eligibility system look like?

Eligibility systems are likely to differ across countries with varying political, economic, cultural and geographical contexts. However, the systems could consider having at least two eligibility layers for which procuring entities qualify. In the case of just two layers, for example, there could be one for contracts with a monetary value between x and y (with $x < y$),

as well as one for larger contracts above y . Multiple layers would enable entrant CPBs to gradually develop and gain experience on smaller value contracts while being screened before managing larger, more complex contracts. Moreover, CPBs could decide to step down from managing big contracts or be relegated by the qualifying agency to a lower level (however, not the lowest), perhaps for them to improve and qualify again for the top layer.

Care must be taken when designing a system with multiple layers so that large CPBs, which often have better price-quality conditions, do not necessarily exclude procurements from medium-sized CPBs. This could

be done by introducing a rule that large CPBs could only deal with a limited number of contracts with values in the range of x and y .

A further possible way out could be to limit the number of qualified CPBs, with a system of promotions and relegations between the different layers, for example. This would give an incentive for CPBs to operate at maximum efficiency.

To conclude, eligibility in public procurement systems may represent an important element to grant delivery of best value for money and the future proofing of public institutions.

²⁸ Bandiera-Prat-Valletti (2009), 'Active and Passive Waste in Government Spending: Evidence from a Policy Experiment,' *American Economic Review*, 99(4), p. 1278-1308.



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Innovative solutions for disaster preparedness

Public procurement for innovation as an instrument for collaboration
between the public and private sectors

By Dr. Hlekiwe Kachali, Eija Meriläinen and Isabell Storsjö,
Humanitarian Logistics & Supply Chain Research Institute (HUMLOG)



| Public procurement for innovation can be a powerful tool for future proofing procurement for disaster preparedness and supply security. Photo: Joseph Sackey

Procurers increasingly have to anticipate future trends while retaining a clear vision for the medium to long term. How can public procurers meet today's societal needs while future proofing communities against possible disaster events? Is procurement ready for the future? What needs to be done to future proof procurement?

Disaster risk awareness has improved over time. Research shows that investment in preparedness can prevent or mitigate the effects of disasters more effectively than resources put into post-disaster operations. Similarly, participation of private entities in disaster management has increased, however governments still play an important role in citizens' protection. New EU directives on public procurement encourage using innovation and

cooperation between public and private actors.²⁹ Such partnerships combine the capabilities of public authorities, which represent the people and seek to meet society's long-term goals, with those of the private sector, which has specialized and sometimes innovative resources useful for disaster management.

This work presents findings on challenges faced by the Finnish health and energy sectors in considering public procurement for innovation (PPI),³⁰ which may have a bearing on disaster management.

Procuring for preparedness in Finland

As part of the global supply system, Finland is partly dependent on external actors for the security of its supply. The Finnish Government

characterizes security of supply as ensuring that society functions under all circumstances.³¹ Finland's National Emergency Supply Agency (NESA) is mandated to plan for supply reliability. NESA recognizes private enterprise as important partners in this regard, since they administer a considerable percentage of infrastructure, services and goods. Therefore, a cornerstone of secure supply is public and private sector collaboration for disaster preparedness.³²

According to NESA, energy and health care are critical sectors that must function during a crisis. In both of these areas, stockpiling is one measure of preparedness to guarantee supply. For instance, suppliers of certain pharmaceuticals must have emergency stock in the country equal to between 3 and 10 months' consumption. For energy,

contingency planning involves holding coal and oil fossil fuel reserves. In other words, security of supply, while reliant on extranational networks and logistics, requires some national self-sufficiency. Innovative goods, services and works, for example locally generated renewable energy, can fulfil societal needs while ensuring a secure supply.

Challenges faced by Finnish health care and energy sectors in procuring for the future

In Finland, energy sector preparedness is still focused on stockpiling fossil fuels. However, innovative sources for renewable energy could contribute to supply security and emissions reductions. Similarly, in the health care sector, the stockpiling of medicines based on historic trends ensures availability, although this may be inadequate in cases of unanticipated health crises, such as Ebola.

Given what is required to mitigate risks, what hinders PPI as a policy goal and as an enabler for other policy objectives? Conversations with supply and demand side partners in the Finnish health care and energy sectors may provide some insights.

First of all, globalization and outsourcing have opened the Finnish public sector to a more diverse supplier base and to more complex supply chains. Additionally, multinational suppliers, sometimes based outside the home market, might not prioritize innovation for small markets like Finland. This can be challenging in a crisis.

Secondly, procurers point to the public procurement process as an obstruction to PPI. New EU regulations (2014/24/EU and 2014/25/EU) aim to make public procurement less bureaucratic. Nonetheless, the

process is still perceived as skewed towards the 'how' and not the 'what' of procurement. If public procurers feel the process is too exacting, they are less likely to include additional objectives in tender requirements, such as innovation, that they feel might add even more complexity.

Furthermore, public sector procurers can be risk averse. They believe that taxpayers' money should be spent not only on solutions that work but that are seen to work, i.e. public services must maintain credibility in delivery of services. In addition, failure carries a high price. Individual procurers feel they would be held personally liable in case of failure of procured goods, services or works. Apart from risk aversion, successful public procurement requires a wider range of skills and capabilities that procurers do not always possess. Complicated processes and legislation demand knowledge and supporting functions in order to be understood and used effectively.

Another barrier to PPI lies in procurers' understanding of user needs. Procurers acknowledged that they embarked on procurement activities based on contract lifecycles or on perceived customer needs with minimal consultation between end-user and procurer. This makes public procurement more reactive than proactive.

Additional barriers relate to sectoral structure. For instance, the centralized design of the Finnish electricity network would require massive investment to incorporate expanded localized production, from renewable energy sources like solar and wind, which could inhibit the adoption of more innovative solutions. Lastly, a barrier to PPI is the lack of reference cases in Finland – suppliers may have solutions but need to be able to show them if they are to be adopted for wider use.

Future proofing procurement

Public procurers contend that political and organizational support for PPI should be clear and consistent. PPI needs to be seen as a strategic tool useful in fulfilling societal needs. Correspondingly, if PPI is a strategy, supporting skills development is crucial.

Furthermore, successful planning starts with understanding intended outcomes. Procurers need to be more proactive in discerning user needs and in working with suppliers. Ongoing dialogue between procurement and supply experts from different areas fosters trust, knowledge and confidence.

Risk management in public procurement should also be explored. The organization, not the individual,

should assume responsibility in case of failure. This will encourage procurers to be more considerate of new, possibly untried solutions. The award of contracts should also be evolved, for instance by allocating different parts of a contract to multiple organizations instead of just one, thus diversifying the base of suppliers.

Clearly, in disaster preparedness the onus is on both public organizations with information of end-user needs and private entities with technical know-how to pool their resources. PPI can be a powerful instrument for this, however, challenges such as better understanding and articulation of users' needs, proactive pursuit of innovative solutions, increased skills support for procurers and improved public authority risk management need to be overcome in order to future proof procurement.

²⁹The Sendai Framework for Disaster Risk Reduction 2015-2030 outlines measures to tackle new and existing disaster risks. Additionally, countries adopted the Paris Agreement aspiring to keep the increase in global average temperatures to below 2°C above pre-industrial levels. These societal challenges call for concerted efforts involving public and private actors.

³⁰PPI can be defined as "using public demand to trigger innovation."

³¹See www.nesa.fi.

³²See <http://www.nesa.fi/security-of-supply/public-private-partnership/>.



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Eija Meriläinen

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and the involvement of local actors in disaster relief. In 2015, she studied the aftermath of the Valparaíso fire (Chile) of 2014 and before that the reconstruction of Christchurch (New Zealand) following the 2010 and 2011 earthquakes. Prior to embarking on an academic career, she worked in supply chain management functions within the fast-moving consumer goods industry.



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The rise of mandatory human rights due diligence

New regulations extend corporate liability across groups and their supply chain

By David McClintock, Arnaud Poitevin and Pierre-François Thaler, Ecovadis

Introduction

Human rights due diligence requirements for global value chains are being beefed up at a very fast pace. A bill that the French Government has announced is slated for adoption in December 2016 could be a game changer for global value chain management. The move fostered similar regulatory initiatives, now being pushed forward in Switzerland,³³ Germany and at the EU level, which is already working on a draft conflict mineral regulation. While France is at the forefront with a comprehensive approach encompassing all human rights, the United States led a serious crackdown on forced labour in supply chains with new regulations.³⁴ This evolutionary global regulatory landscape could lead to new supply chain management practices, closer to anti-corruption compliance processes, due to heightened liability, financial and reputational risks. The recently enhanced role of the Organisation for Economic Co-operation and Development (OECD) in supply chain monitoring completes this new global trend.³⁵

A French Revolution?

It is a world first, if not a French revolution. *Devoir de Vigilance*, or DdV, is a proposal being considered by the French Parliament. It is designed to enforce a mandatory due diligence plan (*plan de vigilance*) on businesses and their subsidiaries, subcontractors and suppliers to prevent human rights violations caused by them. The Government officially backs the bill, which it believes to be “ambitious and balanced progress,” and foresees an adoption before 6 December 2016.³⁶ For the first time, a State has proposed a piece of legislation imposing a mandatory due diligence plan on public limited companies³⁷ and their supply chains that addresses human rights abuses.

Beyond reporting requirements

What is at stake here is a whole new approach for the enforcement of human rights due diligence. There is a clear move from a logic of reporting – of ‘comply or explain’ without any real obligation of means or result – to a logic of compliance that involves

the monitoring role of the judiciary and, sometimes, civil and/or criminal liability on the part of the company for the harm caused. The creation of liability for failing to act with due diligence represents a real breach of the principle of corporate veil, which usually prevents a parent company from being held responsible for harm caused by its subsidiaries, especially those located in a foreign country.

Growing pressure at the European level

Fear that passing a domestic law will impact competition with foreign companies is once again paving the way for calls to ensure a level playing field. French Members of Parliament (MPs), top French Government officials and business organizations have expressed their intention to propose a regulation providing for human rights due diligence obligations at the EU level.³⁸ An alternative EU regulation on mandatory due diligence would avoid a competitive disadvantage for national companies. At the end of April 2015, the European Parliament subsequently adopted



| The push for more stringent human rights due diligence regulations could be a game changer for global supply chain management.
Photo: Shutterstock/arindambanerjee

a joint motion for a resolution demanding the European Council consider the necessity of new EU legislation “to create a legal obligation of due diligence for EU companies outsourcing production to third countries, including measures to secure traceability and transparency.”³⁹ In early March 2016, the Council of Europe adopted a far-reaching recommendation urging States to ensure an effective human rights due diligence by businesses.⁴⁰ French MPs called on members of national parliaments from all EU member states to support an

initiative for a ‘Green Card,’ which aims to get the Commission to engage in a similar legislative process at the EU level, on 18 May 2016.⁴¹

Are corporations the new global police tasked with enforcing human rights?

The French bill puts the burden of proof on the claimant and provides for civil liability that can be triggered if the due diligence plan is not established and enforced effectively in cases of damage caused by acts, the failure to act or negligence of

the author.⁴² Criminal proceedings against executives or board members may not be totally excluded.⁴³ According to the text, courts can levy a civil fine of up to €10 million. The text empowers any person with a legitimate interest in acting (for example, affected stakeholders, trade unions or NGOs) with the ability to request courts to order the company to establish, publish or account for the implementation of the due diligence plan, including proceedings for interim relief. The range of corporations concerned is only limited to French parent companies, including the

activities of subsidiaries over which they hold exclusive control,⁴⁴ and of subcontractors and suppliers with whom they have an established business relationship.⁴⁵ The law should thus likely only cover first-tier suppliers.

Some provisions also feature a foreign, if not extraterritorial, element. Courts are empowered to monitor the effectiveness of the due diligence plan and assess its implementation by foreign subsidiaries, suppliers and subcontractors.⁴⁶ This law illustrates the increasing trend of transforming transnational corporations into enforcement bodies of international norms through contracts and shareholding, competing with and/or complementing public bodies.

Getting prepared: Implications for companies

The French initiative and the evolving global regulatory landscape will considerably change the risk environment for companies on issues that are broad and complex. Procurement management is likely to be affected by significant changes that can already be foreseen: stronger involvement of compliance, health, safety & environment (HSE) and legal departments in procurement practices; reinforcement of countries /sectors/suppliers risks mapping and prioritization; enhancement of anti-corruption compliance due to correlated risks between forced labor and corruption practices; multiplication of contractual clauses and audits related to Environmental Social and Governance; enforcement of a sound strategy of reduction in the volume of suppliers and intermediaries with companies engaging in longer-term relationships; capacity building with their suppliers; and expected delocalization of supplies from countries at risk as a last resort.

³³ A referendum on a regulatory proposal similar to the French initiative is upcoming in Switzerland, as civil society organizations just obtained the required number of signatures for the inception of the process. See Swiss Responsible Business Initiative, 'Over 140'000 signatures for the Swiss Responsible Business Initiative,' 15 April 2016: <http://konzern-initiative.ch/over-140000-signatures-for-the-swiss-responsible-business-initiative/?lang=en>.

³⁴ Mandatory compliance regulations against forced labour are on the rise in the USA. The Trafficking Victims Protection Act (TVPA) of 2000 gained extraterritorial reach in 2008, the Trade Facilitation and Trade Enforcement Act of 2015 imposed a strict ban on importation of goods made with convict or forced labour in early 2016, the Federal Acquisition Regulation (FAR) 2015 amendment strengthened protections against trafficking in persons in Federal contracts. Moreover, reporting regulations have recently been enacted in California through the Transparency in Supply Chains Act of 2010, which has inspired a similar bill being discussed in the US Congress, the Business Supply Chain Transparency on Trafficking and Slavery Act of 2015 (H.R. 3226).

³⁵ The 'OECD Guidelines for Multinational Enterprises' were revised in 2011 to comply with the 'UN Guiding Principles on Business and Human Rights.' The activity of OECD National Contact Points, tasked with the enforcement of the Guidelines, including by ruling on non-compliance of companies, have attracted much attention in the past few years.

³⁶ Ericka Bareigts, secrétaire d'État chargée de l'égalité réelle, *Assemblée nationale, Compte rendu intégral Séance du mercredi 23 mars 2016*: <http://www.assemblee-nationale.fr/14/cri/2015-2016/20160158.asp#P757088>.

³⁷ Sociétés anonymes. The law will indeed be inserted in the Chapter V of the *Code du commerce* dedicated to public limited companies.

³⁸ See Mathias Fekl, Secretary of State for Foreign Trade, *Compte Rendu Intégral Deuxième Séance du Jeudi 29 Janvier 2015, Assemblée Nationale*, 12 March 2015. See also, even though not binding, an incentive for an EU action: *Proposition de résolution européenne de Mme Danielle AUROI relative à la responsabilité sociétale des entreprises au sein de l'Union européenne, Assemblée Nationale*, n° 2762 13 mai 2015).

³⁹Note, however, that this resolution so far does not legally bind the European Council or the Commission (for adopted pursuant to Rule 123 of the Rules of Procedure of the European Parliament). But it is a precedent that may lead, as advocated by some French Members of Parliament, to a request to the European Commission by the European Parliament for a legislative proposal under Article 225 of the Treaty on the Functioning of the European Union. See European Parliament, Joint motion for a resolution 2015/2589(RSP) (EU), on the second anniversary of the Rana Plaza building collapse and progress of the Bangladesh Sustainability Compact, 28 April 2015.

⁴⁰Recommendation CM/Rec(2016)3 to member States on human rights and business.

⁴¹European coalition for corporate justice.

'French Duty of Care law: despite business pressure, an important step towards final adoption,' 24 March 2016: [http://corporatejustice.org/news/123-french-duty-of-](http://corporatejustice.org/news/123-french-duty-of-care-law-despite-business-pressure-important-step-made-towards-final-adoption)

[care-law-despite-business-pressure-important-step-made-towards-final-adoption](http://corporatejustice.org/news/123-french-duty-of-care-law-despite-business-pressure-important-step-made-towards-final-adoption).

⁴²As defined by the Code Civil (France), art L. 1882 & L. 1883. This means that claimants will have to present evidence that harms caused where triggered by a failure of the plan.

⁴³See *Code pénal* (France), art L. 121-3.

⁴⁴As defined by the Code de Commerce (France), art L. 233-16, paragraph II, which includes direct or indirect ownership of a majority shareholding; the capacity to appoint the majority of boards, management bodies or supervisory bodies members or dominant influence established by contract or statutory clauses.

⁴⁵Ibid, art L. 442-6, paragraph I-5. The notion of established business relationship covers durable relationships, implicitly on a more or less long term. It thus implies that the suppliers concerned can only be direct or first-tier suppliers and not sub-tier suppliers. However, there is still a debate on the range of suppliers actually covered by this provision

among the various stakeholders in France.

⁴⁶The content of the plan will be detailed in a subsequent decree. However, implementation issues, to some extent due to the absence of ex ante impact assessment and lack of participation of all stakeholders, are already foreseeable. The ability of foreign victims or affected stakeholders to claim for damages may be restricted by provisions of private international law, particularly the Rome II Regulation imposing that the applicable law shall be the law of the country where the damage occurs. So far, the law does not address in a distinct way three notions that are clearly differentiated in the 'UN Guiding Principles on Business and Human Rights': causing a negative human rights impact, contributing to it and having leverage over it. The proposal also discards the notion of crucial relationship. This is undoubtedly an issue that would need to be overcome in the future decree.



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