

# ISTANBUL PPP WEEK

16 - 19 JAN 2023

PPP: INVEST IN  
PEOPLE | CLIMATE | ECONOMY



## THE IMPORTANCE OF TRANSPARENT AND COMPETITIVE PPP PROCUREMENTS


Monday 16<sup>th</sup> of January, 2023

LEC04 – 16:00 to 17:00

Presented by **David Baxter** – International Sustainable Resilience Center (ISRC)

# Outline

- Procurement context – specter of corruption
- Need for transparency and competition
- Global trends
- Procurement Process – application of transparency and competition
- Principles for promoting procurement integrity
- Two case studies
- Conclusion
- Q&A



“We will work to strengthen regulatory frameworks at all levels to further increase transparency and accountability of financial institutions, of the corporate sector as well as of public administrations”.

Addis Ababa Action Agenda Declaration 2015.

# Introduction

In February 2015, an article published by Public Services International (PSI) argued that Public-Private Partnerships (PPPs) don't work.

The following PSI criticisms were directed at PPPs:

- “PPPs are shadowy agreements which hide behind confidential negotiations to protect commercial secrecy.
- There are no public consultations, lots of false promises, and incredibly complex contracts, all designed to protect corporate profits.
- There is also a fair amount of bribery, as privatization contracts can be extremely valuable.
- PPPs are used to conceal public borrowing, while providing long-term state guarantees for profits to private companies....This is fundamentally incompatible with protecting the environment and ensuring universal access to quality public services.

**Transparency is a perception concern that needs to be managed.**

Source: [https://www.world-psi.org/sites/default/files/rapport\\_eng\\_56pages\\_a4\\_lr.pdf](https://www.world-psi.org/sites/default/files/rapport_eng_56pages_a4_lr.pdf)



## WHY PUBLIC-PRIVATE PARTNERSHIPS DON'T WORK

The many advantages of the public alternative

BY DAVID HALL, PSIRU

Embargoed until 18 March



# Introduction

Governments (local and national), International Organizations, Multilateral Development Banks and NGOs are increasingly requiring transparent and transparent procurement best practices in contracting and are developing relevant procurement rules (procurement enabling environment) to ensure integrity, transparency and efficiency in the public procurement process.

- In the case of PPPs this is an effective way to ensure that “value for money” is achieved and innovation is introduced
- It is a way to mitigate risk
- It is a mechanism to combat corruption
- It also increases the interest of legitimate bidders in tenders
- It is a way to select a competent firm or consortium
- To identify the most effective and efficient solution to the proposed project’s objectives—both from a technical, and value for money perspective



# World Bank – Importance of Transparency

World Bank - Transparency is the sole factor that has been demonstrated to reduce the risk of corruption in procurement across different jurisdictions and conditions.

## UNECE - UNECE Standard on a Zero Tolerance Approach to Corruption in PPP Procurement -

- In developed and developing countries around the world, there are compromised public processes, bribes being paid for basic public services, friends and relatives of officials being awarded contracts, and other abuses where public authority is leveraged for personal gain.
- The damage is not only monetary. Corruption slows the provision of public services, impairs economic activity and growth and undermines the time, energy and resources applied by those attempting to provide actual good governance and public services.
- Governments embracing the UN SDGs, however, in particular those seeking robust development programs that include PPPs, should not measure corruption simply on the toll that it takes, or how it undermines their efforts; instead, governments should measure corruption by what they have to gain in successfully combating it and implementing a zero tolerance approach. How much could be saved? How many more people could be served? How would the world look with far less corruption?



United Nations Economic Commission for Europe

## UNECE PPP STANDARD FOR ZERO TOLERANCE APPROACH TO CORRUPTION IN PPP PROCUREMENT

Revised Draft v2.0  
March, 2017

Implementing the United Nations Agenda for  
Sustainable Development through effective 'People-First  
Public Private Partnerships'

# Some Facts - UNECE Standard on a Zero Tolerance Approach to Corruption in PPP Procurement

- The 2014 **OECD** Foreign Bribery Report estimates that bribery consumes 10.9 % of the total transaction value in public procurement globally
- The **World Bank** estimates that about USD 1 trillion is paid each year in bribes around the world
- **Transparency International** estimated that corruption in construction could add as much as 50 % to a project's cost. It further estimated that 10 to 30 % of investment in a publicly funded construction project may be lost through mismanagement or corruption
- The **Construction Sector Transparency Initiative** states that “by 2030, unless measures are introduced that effectively improve this situation, close to \$6 trillion could be lost annually through corruption, mismanagement and inefficiency”.<sup>5</sup> And yet the importance of taking steps toward anti-corruption are perhaps better measured not by the monetary savings, but by the increased impact that programs and projects could have in a corruption free environment.

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## Economic Commission for Europe

Committee on Innovation, Competitiveness and Public-Private Partnerships

### Working Party on Public-Private Partnerships

#### First session

Geneva, 21-22 November 2017

Item 5 of the provisional agenda

**Review of the PPP work since the eighth and final session of the Team of Specialists on PPPs on 20-21 October 2016**

## UNECE Standard on a Zero Tolerance Approach to Corruption in PPP Procurement

Implementing the United Nations Agenda for Sustainable Development through effective ‘People-First Public Private Partnerships’

### Note by the Secretariat

#### Background

The following document was prepared by a UNECE Project Team led by Marc Frilet (France).

The present document has been finalised by the Project Team following a public consultation as envisaged by the Open and Transparent Standard Development Process and has been endorsed by the Bureau of the Team of Specialists on Public-Private Partnerships with a recommendation to the Working Party to endorse it.

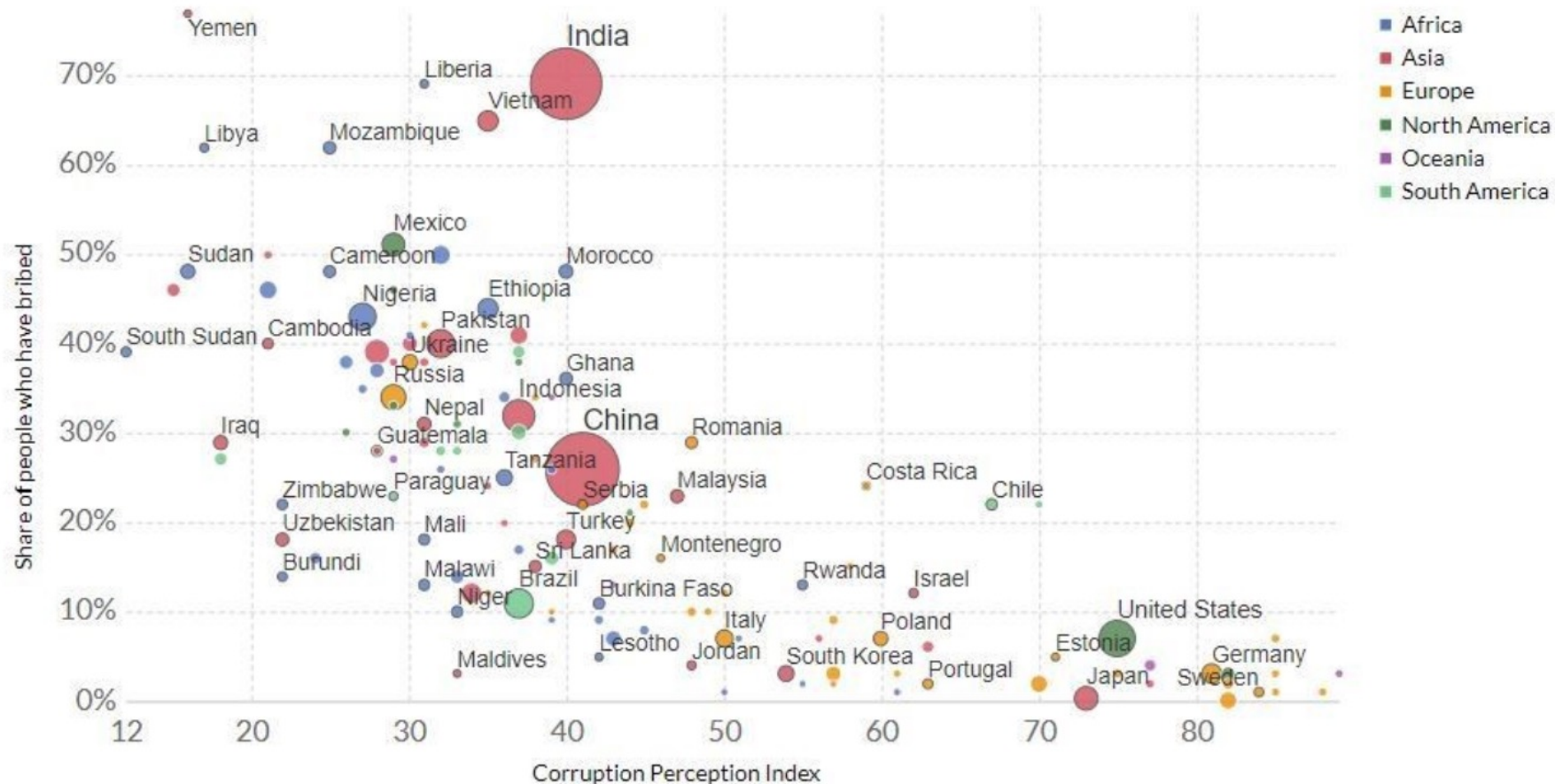
# Some Facts – World Economic Forum

Source:  
<https://www.weforum.org/agenda/2019/12/corruption-global-problem-statistics-cost/#:~:text=The%20Transparency%20International%20Corruption%20Perception%20Index%20scores%20178,of%20all%20178%20scored%20lower%20than%20five.%204.>

## Corruption Perception Index vs. Share of people who have bribed, 2017

The horizontal axis shows scores in the Corruption Perception Index (lower values reflect higher perceived corruption). The vertical axis shows the percentage of people who report having paid a bribe to access public services in the last year.

Our World in Data



Source: Transparency International (2018), Transparency International - GCB (2017)  
CC BY



# Some Facts – World Economic Forum

Recent findings on global corruption – identified by  
Transparency International

- Across the EMEA region (that's Europe, the Middle East, and Africa) and India almost half of all workers think bribery and corruption are acceptable if there is an economic downturn.
- Corruption, bribery, theft and tax evasion, and other illicit financial flows cost developing countries \$1.26 trillion per year - enough money to lift the 1.4 billion people who get by on less than \$1.25 a day above the poverty threshold and keep them there for at least six years.
- The Transparency International Corruption Perceptions Index scores 178 countries on their degree of corruption – 10 is the cleanest possible, and 0 indicates endemic corruption. In 2010, around three-quarters of all 178 scored lower than five.
- As much as \$132 billion is lost to corruption every year throughout the European Union's member states

## U.S. HITS NEW LOW IN GLOBAL CORRUPTION INDEX

2019 Corruption Perceptions Index shows anti-corruption efforts  
stagnating in G7 countries

23 January 2020

# Importance of Procurement Transparency

Procurement Transparency is crucial to:

- Guarantee accountability of public funds spent on procured projects
- Increase private sector confidence in public administration
- Ensure donor/ lender confidence
- Protect country's and procurement agencies reputations
- Building strong partnerships
- De-risking projects
- Increasing project bankability
- Save money and time

“Public procurement is one of the government activities most vulnerable to corruption. In addition to the volume of transactions and the financial interests at stake, corruption risks are exacerbated by the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders.”  
(OECD, 2016)

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Sustainable Development Goal Targets:

- Goal 16: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”
- Target 16.5: “Substantially reduce corruption and bribery in all their forms”
- Target 16.6: “Develop effective, accountable and transparent institutions at all levels”



# Sharing of Procurement Information – Important for PPPs

“Imbalanced sharing of information can lead to opportunities for corruption.

Because corruption is often concealed, stakeholder access to procurement information is critical to holding public and private sector participants accountable.”

(UNECE, 2017)

# Competitive Pre-bidding

- Develop a comprehensive communication plan
- Encourage citizen participation in budget allocation decisions - win political support
- Publication of procurement plans, pipelines, and forthcoming procurement activity on website
- Comprehensive outreach to all stakeholders
- Market sounding to spread the news
- Sufficient time to respond to solicitations
- Outreach information sessions and other pre-bid announcements in reputable media and accessible government websites
- Disclosure of unsolicited proposals being considered
- Disclosure of all relevant project information to all parties
- Avoidance of ambiguous documents
- Sharing of all communication and information exchanges with all bidders

The screenshot shows the website for the Public Private Partnerships Unit. The logo at the top left reads 'Public Private Partnerships Unit' with the tagline 'The centre of PPP expertise'. The navigation menu includes 'HOME', 'PROJECTS', 'ANNOUNCEMENTS', 'CONTACT', and 'PPP DISCLOSURE FRAMEWORK'. A search bar is located in the top right corner.

A dropdown menu is open, displaying a table with the following data:

STAGE	SECTOR	COUNTY
Pre-procurement	Energy and Petroleum	Baringo
Procurement	Tourism, Trade &	Bomet
Post-procurement	Industrialization	Bungoma
	Health	Busia
	Privately Initiated	Elgeyo Marakwet
	Investment Proposals (PIIPs)	Embu
	Transport and Infrastructure	Garissa
		Homa Bay
		Isiolo
	Water and Sanitation	Kajiado

Below the dropdown, the 'PROJECTS' section is visible. It includes a 'Filter by Sector' button, a '64 Project(s)' indicator, and a search bar. There are also buttons for 'COPY', 'CSV', 'EXCEL', and 'PDF', and a 'Display 10' dropdown. At the bottom, a table header is shown with columns: 'NAME', 'SECTOR', 'COUNTY', 'STAGE', 'CONTRACTING AUTHORITY', and 'VALUE (MILLION)'.

# Transparency During Bidding

“Tender and bidding documents that are vague, provided too little time to respond, have criteria that favour one bidder, are intentionally inconsistent, or not universally circulated, are all approaches that can be used to skew the competition in a PPP.” (UNECE, 2017)

- Opportunities are widely advertised, and bidders given a reasonable amount of time to submit proposals
- Bidding documents are unambiguous and information rich
- All bidders must have access to the same amount of information at the same time
- Any contact with the bidding authorities should be controlled, supervised and kept to a minimum
- All communications must be shared
- USPs require additional due diligence - goal should be to procure USPs competitively

## PennDOT Accepting Unsolicited Public-Private Partnership Proposals Until April 30

04/01/2022

*Submission period applies to PennDOT-owned projects and infrastructure*

**Harrisburg, PA** – The Pennsylvania Department of Transportation (PennDOT) Office of Public-Private Partnerships (P3) announced today that it is accepting unsolicited proposals for transportation projects from the private sector through April 30.

The submission period applies to PennDOT-owned projects, infrastructure, and services. During this period, the private sector can submit proposals offering innovative ways to deliver transportation projects across a variety of modes including roads, bridges, rail, aviation, and ports. Proposals can also include more efficient models to manage existing transportation-related services and programs.

Unsolicited proposals are being accepted through 11:59 PM on April 30. Instructions on how to submit a project and information on the unsolicited proposal review process can be found on the state's P3 website, [www.P3.pa.gov](http://www.P3.pa.gov).

PennDOT holds an unsolicited proposal period in April and October each year.

The private sector may also submit applications for non-PennDOT-owned assets directly to the P3 board during this time. Transportation entities outside of the governor's jurisdiction, such as transit authorities and the Pennsylvania Turnpike Commission, may establish their own timelines or accept proposals year-round.

The state's P3 law allows PennDOT and other transportation authorities and commissions to partner with private companies to participate in delivering, maintaining, and financing transportation-related projects.

As part of the P3 law, the seven-member Public Private Transportation Partnership Board was appointed to examine and approve potential public-private transportation projects. If the board determines a state operation would be more cost-effectively administered by a private company, the company will be authorized to submit a proposal and enter into a contract to either completely or partially take over that operation for a defined period of time.

The next unsolicited proposal acceptance period will occur in October. To learn more about P3 in Pennsylvania, including active projects, visit [www.P3.pa.gov](http://www.P3.pa.gov).

**MEDIA CONTACT:** Alexis Campbell, [alecampbel@pa.gov](mailto:alecampbel@pa.gov), 717-783-8800

# Transparency Post Bidding

- Accuracy of information provided by winning bidder verified again upon award.
- Publication of awards and award details is essential
- Confidential information can be protected – e.g. propriety information, commercial information,
- Unsuccessful candidates shall upon request receive information on the relative advantage of the successful tender – information in this regard can be restricted
- All procurement documents need to be archived (e.g. documentation, reports and electronic traceability
- Any renegotiations should not change substance of contract in the interest of winning bidder – also value for money proposition needs to be protected
- All procurements need to be monitored – especially when it comes to deliverables and expected outcomes



OECD MAPS Procurement Transparency Indicators

# Principles for Promoting Procurement Integrity

## G20 High-Level Principles for Promoting Integrity in Privatization and Public-Private Partnerships



- Principle 1: Define clear rationales and frameworks for privatization and PPPs to reduce opportunities for corruption
- Principle 2: Ensure transparency and public awareness to build accountability
- Principle 3: Ensure that the sector's regulatory and competition frameworks are sound to prevent, detect, and respond to corruption risks
- Principle 4: Ensure clear governance and integrity to address corruption risks
- Principle 5: Use transparent methods to determine the modes of delivery, transaction and valuation of assets to help combat corruption
- Principle 6: Ensure high standard of participants' integrity
- Principle 7: Implement mechanisms to promote accountability, transparency and competition in tendering and sale
- Principle 8: Establish mechanisms for monitoring and evaluating privatization and PPPs to promote transparency and accountability
- Principle 9: Promote stakeholder scrutiny and enable access to information to enhance the effectiveness of anti-corruption measures



# Case Study – USP Sri Lanka – Competitive?

## Project Details

- M/s SK E&S Company Ltd. submitted an investment proposal for the supply of offshore Floating Storage and Regasification Unit (FSRU) and pipeline infrastructure and supply of Liquefied Natural Gas (LNG) for the Ceylon Electricity Board of Sri Lanka.
- The project encompasses the design, construction and installation of an FSRU to be moored approximately 9 km north - northwest of Colombo Port entrance.

## Procurement Reason

- The Government of the Democratic Socialist Republic of Sri Lanka (GOSL) has decided to call for counter proposals for this unsolicited proposal in order to allow this proposal to compete with other possible investors.
- According to the Swiss Challenge Procedure of the GOSL..... any interested potential investor can challenge the proposal submitted by M/s SK E&S Company Ltd. by submitting counter proposals which can be matched by the original proponent.
- If the original proponent is unable to match the counter proposal, the tender will be awarded to the prospective bidder provided the agreement to pay the development cost of the original proponent.

## Timeline

- Issued November 5<sup>th</sup>
- Response date – December 12<sup>th</sup>



DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA  
MINISTRY OF POWER AND RENEWABLE ENERGY

INTERNATIONAL COMPETITIVE BIDDING (ICB)

REQUEST FOR COUNTER PROPOSALS UNDER SWISS CHALLENGE PROCEDURE  
FOR THE ESTABLISHMENT OF AN OFFSHORE FLOATING STORAGE AND  
REGASIFICATION UNIT (FSRU) AND PIPELINE INFRASTRUCTURE AND SUPPLY OF  
LIQUEFIED NATURAL GAS (LNG) FOR CEYLON ELECTRICITY BOARD

Tender No: PE/TEN/LNG/SP/2017/55

# Case Study – Dual Procurement Process

- Expert witness (International Court of Arbitration - Company submitted a USP – multi-billion \$ project
- Initial agreement to do a prefeasibility study – would lead to a sole source award if there was a sense that the project could be viable – proponent could exercise first right of refusal
- Study completed – proponent felt project viable and shared findings with government
- Government agreed – instructed proponent to work with relevant government ministry to establish SPV
- New Law introduced
- Simple details for agreement – open to interpretation and litigation
- Without informing proponent the government launched a parallel competitive procurement
- No info released on parallel procurement to bidders
- No indication given that it was an USP and that the proponent had been given an award advantage
- USP proponent lost – given worst technical evaluation
- Proponent entered into litigation
- Years later government is facing the possibility of paying damages of millions of USD
- Project not yet built, Minister convicted of corruption for other projects
- Multiple best practices not followed that could have prevented this outcome - lack of transparency

# Conclusions

- PPP Projects are prone to corruption in the procurement stage
- Opaque PPP procurements are prone to failure, are costly, and damage reputations
- Transparency mechanisms reduce the risk of corruption and bad choices
- Transparency mitigate risks
- Competition offers value for money and saves costs
- Established best practice guidelines, standards and recommendations that foster transparency safeguards
- Online e-tools can assist in implementing transparency mechanisms
- A culture of ethical procurement needs to be established
- Institutional capacity needs to be strengthened
- Transparency indicators be developed and monitored to ensure integrity risks are kept to a minimum
- All procurement documents need to be archived
- E-procurement is less prone to corruption



# ISTANBUL PPP WEEK

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