

ADVANCING GOOD GOVERNANCE in International Development

Making Market-based Approaches to Development Work for the Poor

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Rhodes House, Oxford

Debate: Should We Make Public Sector Contracts Public?

One of the greatest governance challenges in development finance and broader public contracting is ensuring the quality of project/contract implementation. Last year's seminar paper identified this element as the most significant issue in achieving expected outcomes and the element that is the least transparent stage of the public procurement cycle. This year's paper goes deeper into this stage by addressing the issue of transparency and accessibility of project implementation and the strengths and weaknesses of multilateral and donor monitoring systems. One important factor, however, is the lack of disclosure of public contracts. There are serious legal, trade and security issues that have been raised against such disclosure; but these are beginning to be challenged in a number of countries. This session debated the issue in a constructive dialogue designed to raise understanding and move the agenda forward.

Key Points from the Session

- 1. The two parallel trends of increased transparency and disclosure amongst international finance institutions (IFIs) and bilateral agencies and the increasing role of civil society in improving the delivery of aid should offer great potential for raising the quality of aid projects.** Significant progress regarding disclosure of contracts has been made through the World Bank and other IFIs' disclosure reforms and increased use of freedom of information acts by donor and recipient countries, but civil society's ability to hold project operators and sovereign states accountable is still constrained by a lack of crucial information. While IFI and bilateral agencies now provide improved insight into the criteria they use to determine and plan the projects they fund, their failure to disclose and make accessible information on the implementation of those projects in a timely fashion disempowers civil society and, ultimately, beneficiaries.
- 2. A balance can be struck between civil society organizations' desire to make the public contracting process entirely transparent and the private sector's concerns about limiting competition and commercial confidentiality.** The debaters advanced opposing arguments in favour of providing vital clarity to funders and bidders in a public commitment to transparency and in support of limiting the burden of disclosing contractual information on governments. Ultimately, it was determined that while bid documents may be complicated, they can be made accessible by ensuring that the key elements are included in a summary. This would alleviate the concern that disclosure would in reality make no difference to transparency due to the burden of reviewing and monitoring the lengthy contracts and the fear that the important information in the contracts will be hidden away. The up-front costs may be higher, but the improvements in efficiency and overall costs will decrease. Such a summary, however, does not remove the importance of publishing the actual contract itself.
- 3. Both developing and developed countries can use public disclosure of contracts to their advantage.** The "sweet spot" is in emerging economies where transparency in relation to public contracts can set the stage for more competition especially by making it easier for smaller firms to understand and participate in the procurement process. It could also lead to wider sharing of approaches to contracting across sectors and countries. While concerns have

been raised about potential collusion, there is evidence that such transparency could reduce rather than increase such actions.

4. **Realization of the potential benefits of publishing contracts will require other parallel efforts.** These include increasing the capability of civil society to be able to understand, assess and monitor contract implementation. Also, greater use of third parties to ensure technical compliance and quality and to validate changes to the contract would contribute to better implementation. Finally, there needs to be a clear line of authority to report problems and concerns.

Emerging Questions

1. How can the procurement process be modified to allow governments to review the past performance of tenderers, particularly in fragile states, when determining whom to award contracts to?
2. Is there a more balanced approach that can be adopted with regard to disclosure that would make it more palatable to companies, such as a tabular approach where all of the salient information is provided, but there is some level of privacy as well?
3. How can we best equip stakeholders to hold companies and governments accountable for delivering projects?
4. Should IFIs and donors require publication of contracts as a condition of aid even if they are not actually a party to the contract?