

Sample: Asia-Pacific Economic Cooperation (APEC) Government Procurement Experts Group Non-Binding Principles on Government Procurement: Transparency

(September 1997, pulled from <http://www.osec.doc.gov/ogc/occic/apec.html>)

Introduction

1. Under APEC's collective action plan on government procurement (GP), a set of non-binding principles on GP will be developed in 1997–2000 for adoption by members on a voluntary basis. In pursuing this work, the Government Procurement Experts Group (GPEG) has decided to start with the principle of transparency.
2. The GPEG has identified a set of elements pertaining to the principle of transparency in GP, which are set out in the ensuing paragraphs. Examples on practices are also provided for the purpose of illustrating the possible ways to give effect to these elements, and are not intended as prescriptions of how these elements should be given effect in practice. It should also be noted that the elements of transparency in GP identified by the GPEG are non-binding and individual economies are in the best position to decide on the applicability of individual elements of transparency to them, and how best to translate these elements into practical measures, taking into account the specific characteristics of their economy and possibly the costs and benefits of adopting specific transparency measures.

Elements of Transparency

3. The general principle is that sufficient and relevant information should be made available to all interested parties consistently and in a timely manner through a readily accessible, widely available medium at no or reasonable cost. This general principle is applicable to all aspects of GP, including the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts, as further elaborated in paragraphs 5 to 14.
 - **Sufficiency and relevance of information:** to enable potential suppliers to make informed decisions. For example, potential suppliers must have access to information on the conditions for participation and the requirements of the intended procurement in order to decide whether to participate and to prepare a responsive offer.
 - **Timeliness:** to ensure that the information is valid and useful when available to the receiver.
 - **Availability to all interested parties:** to ensure that the procurement process is fair to all participants and seen to be fair.
 - **Through a readily accessible medium at no or reasonable cost:** to ensure that information is accessible in practice.
 - **Consistency:** the objectives of maintaining a transparent procurement system can only be achieved if the system remains consistently transparent. This also includes making information up to date and informing relevant parties of changes and additional information promptly.
4. Notwithstanding the above, the following information may be withheld: commercially sensitive information, and information the release of which would prejudice fair competition among suppliers, impede law enforcement, contrary to public interest or compromise security of the economy concerned. Where such information is withheld, the reason should be given on request.

The general operational environment

5. The laws, regulations, judicial decisions, administrative rulings, policies (including any discriminatory or preferential treatment such as prohibitions against or set aside for certain categories of suppliers), procedures and practices (including the choice of procurement method) related to GP should be transparent.
6. This is to let suppliers know the rules of the game so that they can decide whether to participate. In practice, this can include—
 - publishing these “rules” in a medium which is readily accessible to all.
 - publishing either a positive or negative list of the entities subject to these “rules”.
 - publishing any changes immediately.
 - establishing contact points for enquiries.
 - wherever possible, providing a description of the above information on the APEC GP Home Page and linking APEC members’ individual GP Home Pages, where available, with the APEC GP Home Page.

Procurement opportunities

7. Procurement opportunities should be transparent.
8. This would encourage wider participation leading to increased choices for the buyer and enhanced competition, contributing to achieving better value for money in procurement activities. In practice, this can include—
 - making open and competitive tendering the preferred method of tendering. Where other procurement methods are to be used, any procurement invitations issued should indicate the intended method.
 - where open tendering is adopted, publishing procurement opportunities in a medium readily accessible to suppliers (e.g. official journals/gazettes, newspapers, specialised trade journals, Internet, and through embassies and consulates.)
 - allowing adequate and reasonable time for interested suppliers to prepare and submit responsive bids.
 - publishing contact details of purchasers, and their product/service purchase interests, for suppliers wishing to register their interest in being notified of bidding opportunities which may not be publicly advertised.
 - making early advice of complex high-value procurement needs available to interested suppliers through staged procedures such as public requests for information, requests for proposals and invitations for pre-qualification, and allowing adequate time for interested suppliers to prepare and submit a response.
 - making available requirements and procedures for pre-qualification of suppliers.

Purchase requirements

9. All the information required for suppliers to prepare a responsive offer should be made available.
10. This is to facilitate effective and efficient participation by potential suppliers in the procurement exercise. Also, because potential suppliers know the specific requirements, the non-responsive offers that the buyer may have to process can be minimized, increasing the operational efficiency of the buyer. In practice, this can include—
 - including in procurement notices the following information : the nature of the product or service to be procured, specifications, quantity, time frame for delivery, closing times and dates, where to obtain tender documentation, where to submit bids, and contact details from which further information can be obtained.
 - publishing any changes to the above information immediately.
 - providing tender documentation and other information to suppliers promptly on request.
 - wherever possible, drawing up specifications in terms of performance/functional/operational requirements using international or other relevant standards.

Bid evaluation criteria

11. All criteria for evaluating bids should be transparent and bids should be evaluated and contracts awarded strictly according to these criteria.
12. This is to ensure fairness and integrity. In practice, this can include—
 - setting out in procurement notices and/or tender documentation all evaluation criteria, including any preferential arrangements.
 - maintaining proper record of decisions.

Award of contracts

13. The award of contracts should be transparent.
14. This would demonstrate government accountability to suppliers and the public. In practice, this can include—
 - publishing the outcome of the tender including the name of the successful supplier and the value of the bid.
 - as a minimum, promptly notifying unsuccessful suppliers of the outcome of their bids and where and when contract award information is published, and debriefing unsuccessful suppliers on request.

Due process

15. Due process and public accountability are essential elements of fair, open and impartial procurement procedures, and the availability of an avenue/channel for review of complaints is an element of transparency. In practice this can include—
 - designating a body/person for the purpose of reviewing supplier complaints about procurement processes which are not able to be resolved through direct consultation with the procuring agency in the first instance. This may take the form of an independent authority.
 - making information on review procedures readily available.
 - making the review process available equally to domestic and foreign suppliers.