Buying Power

Aid, Governance and Public Procurement

Olivia McDonald
February 2008

Contents

Executive summary

It sounds very administrative and technical, but reform of government procurement – the rules that guide government purchasing of goods, works and services – is one of the most controversial aspects of the good governance agenda. Donors have two goals: *greater accountability and transparency*, which is limited because of its reliance on a one-size-fits-all approach; and *greater efficiency*, which is narrowly defined as value for money to be secured through open competition. This not only restricts the flexibility of developing country governments to use procurement as a policy tool for development, it can also have significant consequences for local firms that rely on government contracts.

Government procurement matters

The rules guiding government purchasing and contracting need to be accountable and transparent. This is not only to limit corruption – a central concern with regard to procurement – but to contribute to a more accountable relationship between a government and its citizens. It is also important because of the sums involved. In the Dominican Republic, 20 per cent of government expenditure is spent on procuring goods and services; in Malawi and Vietnam it is 40 per cent; and in Uganda as much as 70 per cent.[1]

Government procurement accounts for approximately 4.5 per cent of developing countries' gross domestic product (GDP)[2] and governments tend to be the largest single consumers of goods and services in most countries. A government's use of purchasing can thus be a very significant tool to achieve socio-economic objectives.

If procurement reform is done accountably, with a view to achieving both cost-effectiveness and broader development goals, it can play a powerful role in poverty reduction.

Concern that aid money could be wasted or even fraudulently used is the primary motivation for donor engagement in procurement. This is increasingly the case as donors shift to using budget support, where aid is given centrally to fund a government's entire development strategy.

However, while pursuing procurement reform through aid strategies on the one hand, donor countries are pursuing liberalisation of procurement markets in trade negotiations on the other. Globally, government procurement is big business, with government annual spending on tradable goods and services estimated at more than US$2,000 billion.[3] Government procurement is seen as the most significant trade sector excluded from multilateral processes. [4]

Our findings are not only relevant for donors; they are also important for our partner organisations, many of whom are running projects to analyse government budgets and monitor expenditure. This paper should help them consider how far donor support in this area is helping or hindering them in this work.

Aid effectiveness and government procurement

It is timely to raise these issues now. Not only are trade agreements requiring substantial procurement reforms currently being agreed, but in September 2008 a meeting of development ministers will take place in Accra, Ghana to review donor commitments to improve the effectiveness of aid.

One of the main aid-effectiveness commitments is to increase the use of country systems such as those used for government procurement.[5] Donors have pledged to stop requiring recipient governments to use different procurement procedures for each donor – this can be difficult for countries with weak administrative capacity.

However, donors' use of national procurement systems is, in part, linked to the degree of liberalisation of those systems.

This link to liberalisation is alarming when set against the failure of donors to stop aid-tying, which allows them to ensure domestic firms secure aid-funded contracts.[6]

Findings

This paper finds that while donors – particularly the World Bank – place procurement reform squarely in the governance agenda, it is not clear if they are succeeding in bringing about effective change in this area. They are, however, most definitely succeeding in promoting procurement systems that increase opportunities for foreign firms.

Governance: There is an important role for donors in supporting the development of more accountable and transparent procurement. However, at present donors seem to prefer a quick fix, adopting a standard procurement law and system rather than developing a reform that can be adapted to be appropriate to each country context.

This practice has undermined the governance goal in some cases. Following complex new procurement rules has placed a heavy burden on governments, including the major spending ministries. Local governments are particularly affected, most directly because they do not have access to the professionals (such as engineers and procurement consultants) required to make procurement decisions. Greater forethought about the constraints of government – particularly local government – at the outset would help prevent this.

Efficiency, development and open competition: Efficiency is defined narrowly in terms of value for money – the best quality at the lowest cost. In this view, efficiency is best secured through open competition, so procurement reform is seen as encouraging a more liberalised system.

A broader definition of efficiency that considers development gains alongside cost and quality would ensure that procurement plays more of a role for poverty reduction. Yet our research has found that the standard model favoured by donors actually reduces the ability of developing countries to do this.

There are very real consequences to opening up government procurement markets, particularly for local firms who previously relied on government contracts. Our research finds that the tools to mitigate these effects are not prioritised by donors sufficiently to counter the huge constraints facing local firms.

Recommendations

Christian Aid believes that donors can play an invaluable role by providing long-term support to developing countries to make the rules guiding government purchasing clearer, the process more transparent and government officials more accountable. It may be necessary to link aid – and budget support in particular – to improved procurement systems. Donors must also commit to using those recipient systems in order to avoid the heavy transaction costs to recipients of complying with the varied procurement rules of each different donor.

However, the decision of whether or not to allow foreign firms to compete for particular contracts must remain the decision of recipient governments. If this means that aid money gets spent in the local economy rather than in the donor country, so be it. This practice may even maximise the development impact of government spending, and indeed of aid.

Christian Aid believes that donors, including the UK's Department for International Development (DFID), need to improve aid effectiveness targets on the use of country systems and their support to procurement reform in recipient countries.

Aid effectiveness commitments need to be reformed to ensure:

- the criteria to evaluate country procurement systems focus only on accountability and transparency
- measurable targets on aid-untying hold donors accountable
- disaggregated individual donor performance on using country procurement systems.

Donors engaged in procurement reform need to:

- limit requirements entirely to changes that improve the accountability and transparency of recipient government procurement to its own citizens
- ensure that such changes are tailored to each individual country context, taking government capacity and the workings of the political system into consideration
- provide long-term capacity development support to governments to enable them to implement these reforms
- immediately remove any requirement to partially or fully open up national procurement markets in return for aid or debt relief
- recognise the effectiveness of linking procurement to development objectives
- positively support developing countries to use government procurement flexibly to support their economic development objectives – whether that is, for example, by directly building up the competitiveness of local firms or by bringing in the expertise of foreign firms.

Introduction

This study looks at the impact of donor-driven procurement reform on both governance and economic policy making. It is thus both a contribution to Christian Aid's work on the impact of conditions that require increased liberalisation and an initial contribution to a body of work analysing donor-driven governance policy reforms and how far they actually deliver for poor people. It is aimed at officials of donor governments – particularly the UK – the World Bank and the Organisation of Economic Co-operation and Development's Development Assistance Centre (OECD DAC). It is also hoped this will be useful for Christian Aid partners and other non-governmental organisations, to help them develop a more critical approach to public procurement reforms and the aid effectiveness agenda.

Procurement reform is a standard good governance reform, and is generally accompanied by reforms to the civil service; legal, judicial and security sectors; revenue and budget systems; and electoral, financial and administrative decentralisation. Good governance reforms have been a priority for donors since the 1990s. The number of public sector governance conditions as a percentage of overall World Bank lending conditions has increased from 17 per cent in 1995-1999 to 50 per cent in 2007.[7]

Essentially, a public procurement system is a set of rules that guide a government's purchasing of goods, works and services, however big or small. Procurement reform seeks to guide all purchases: from a new blackboard to textbooks for all schools; from getting an engineer to mend a toilet to renovating an urban water system.

The drive to budget support has increased attention on government procurement – particularly because it represents a large part of government budgets. If there are no rules guiding this expenditure, there is a clear risk that money will be allocated inefficiently or inappropriately. This perhaps explains why so many countries have had conditions set in recent years. Our analysis reveals that Afghanistan, Bangladesh, Ghana, Peru, Rwanda, Sierra Leone, Tanzania and Uganda have all introduced new procurement legislation since 2001 in response to World Bank conditions.[8]

Public procurement is perhaps one of the most controversial of all procurement reforms, because it has both important economic policy implications and governance implications. The story in Box 1 reflects the concerns of local stakeholders in Ghana that procurement reform has cost local producers.

Box 1: Happy birthday, Ghana: Chinese cloth for anniversary celebrations

In January 2007, the Ghanaian government chose to give the contract to produce cloth for its 50th anniversary cloth to a Chinese, rather than a Ghanaian, firm. The story was widely covered in the Ghanaian press including Public Agenda, a paper founded by Christian Aid partner organisation Integrated Social Development Centre (ISODEC), questioning the rationale behind this decision.

In response, the Ghanaian government claimed that it followed the procedures laid out in its new Public Procurement Act. According to the government, local firms simply lacked the capacity to produce the volume of cloth in the time required.

Abraham Koomson, secretary general of the Ghana Federation of Labour, argued that 'if the government had approached local firms just three months earlier, they could have come together to produce all the cloth required'.[9] It is notable that, despite a concerted government strategy to get the textile industry on its feet, as it struggles against low-cost imports, smuggling and an influx of second-hand clothes, the labour force has declined from 25,000 in 1977 to 7,000 in 1995 and just 2,961 by 2005.[10]

The findings in this paper have been assembled through desk research, interviews with procurement experts and primary research in Ghana. It aims to evaluate how effective donor support to procurement reform has been in building more rigorous and accountable systems and how far this support has been motivated by a desire to secure market access for donor-country firms.

Chapter 1 considers how far some general criticisms of good governance reforms apply to procurement reform and Chapter 2 looks at how effectively donor-driven procurement reform achieves its governance goals of accountability, transparency and efficiency. Chapter 3 explores the links between procurement and economic policy and some of the impacts that procurement reform is having on developing countries.

Chapter 1: Donor support for procurement reform

There is a broad consensus that good governance reforms are important and that donors should do all they can to use technical assistance to support recipient countries' implementation of such reforms. However, the effectiveness of donor support has been undermined by a reliance on a one-size-fits-all approach, with limited regard to poverty impact and specific political and economic contexts.[11] This chapter considers how far these criticisms apply in the field of procurement reform.

Country ownership

Procurement reform is rarely country-owned. It tends to be driven instead by aid conditions, which are increasingly prioritised by donors since the shift to budget support. While this is understandable, it goes against the increasing recognition among donors of the importance of recipient leadership in the selection and sequencing of reforms.

In Ghana the World Bank had been pushing procurement reform for a number of years, but it was accorded much greater priority after 2000. The reform was directly linked to aid and debt relief and was a high priority for the World Bank and other donors, who wanted to give more aid via budget support. While there is evidence that the government saw that political capital could be gained from linking this reform to their commitment to fighting corruption, it is clear that the reform took place primarily at the request of Ghana's donors.

Similarly, the Sierra Leone Procurement Act was passed in 2004 at donors' instigation. According to the World Bank country economist, 'the idea for it came from the development partners'.[12]

Although consultation on such reforms is vital, it is not clear that procurement reforms get the full debate they need. This is also illustrated by the case of Ghana: the World Bank claimed the new bill 'was one of the most publicly-debated bills in Ghana, inside and outside parliament', but some observers questioned how deep that debate went. Eric Oduro Osae, from Ghana's Institute of Local Government Studies, argued that 'the people brought in to represent economic groupings did not understand the issues' and that there was 'not much debate [in parliament, as] most parliamentarians were very ignorant and this issue is very technical.'[13]

One-size-fits-all

Leading academics including Ha-Joon Chang and Dani Rodick emphasise the importance of institutional development, but question the effectiveness of imposing 'best practice' institutions, which according to Chang 'usually mean Anglo-American institutions'.[14] Reforms need to be realistic and appropriate to the country concerned and, according to Rodick, influenced by a more experimentalist approach, 'a process of discovery about local needs and capabilities'.[15]

However, procurement reforms being implemented across many countries are remarkably similar. This is because donors have focused on getting countries to introduce a standard law developed by the United Nations Commission on International Trade Law (UNICTRAL) and meet the indicators set out by the OECD DAC-World Bank procurement round table initiative.[16]

Successful reform is frequently measured by how far a procurement system complies with international best practice. For example, an OECD analysis of Kenya, Tanzania and Uganda found that the countries have 'recently undertaken important initiatives to make their public procurement systems more efficient and transparent in line with international procurement guidelines.'[17]

Too much, too fast

Governance reforms can take time – sometimes even decades – to produce results. But donors want to see rapid results. Merilee Grindle points out that countries such as the UK took centuries to evolve their own key institutions.[18] The effectiveness of donor support for procurement reform has been weakened by the tendency to step back once a new law has been introduced, considering the introduction of the law per se to be an end in itself. However, according to Chris Harvey, director of procurement consultancy services for Crown Agents UK, a development company that supplies governments, multilateral agencies and bilateral donors alike, countries may need up to ten years of ongoing support and engagement to be able to implement these laws fully and effectively.[19]

Grindle also questions whether it is possible for governments that are weak financially, politically, institutionally and in human resource terms to pursue all these institutional reforms simultaneously.[20] Procurement reform is not carried out in isolation, but is rather one of a standard menu of governance reforms that are introduced simultaneously. Some of those reforms risk contradicting each other: Chapter 2 shows how implementing a complex procurement system can actually undermine the drive to increase decision-making at local government level and below.

Political economy and poverty analysis

Political economy issues are rarely included in World Bank Country Procurement Assessment Reports (CPAR), which focus instead on the technical changes needed to align country systems with World Bank procurement rules. While they analyse the competitiveness and participation of the private sector in public procurement to a certain extent, there is no substantial analysis of potential poverty impacts.

There is a presumption that improved rules and greater competition will generate budgetary savings. In Afghanistan, for example, the World Bank predicted that a ' ten per cent increase in efficiency and value for money generated by procurement reforms would be equivalent to a 20 per cent increase in domestic revenues.'[21] The same report also analyses the potential risks of excluding certain eligible bidders from competing, and the unfair and inequitable treatment of suppliers and contractors. However, this is not balanced with an analysis of the impact on local firms losing contracts to foreign firms, which could lead to shut-downs and lay-offs. The Ghana CPAR notes that 'using a rule of thumb' most contracts are secured by local firms, but fails to provide a poverty analysis of the possible impact of changing this.[22]

A CPAR is not an automatic requirement prior to a country changing its procurement laws at the behest of the World Bank. However all administrative reforms – especially those that could have substantial economic impacts – need to be backed up by decent poverty analysis. Any procurement reform should be preceded by a CPAR that incorporates an upfront poverty impact assessment.

Conclusion

Effective donor support for procurement reform is fundamental in bringing about not only more robust public budget systems, but also strengthening the accountability between the state and its citizens. However, there has been a clear reliance by donors active in this sector – predominantly the World Bank – to externally impose reforms that are based on international best practice with scant regard to the local context. Furthermore, there is a lack of up-front analysis of the potential impact of procurement reform, particularly on those firms that rely on government contracts. Chapter 2 explores how these limitations have made it harder for donors to achieve the goals of more accountable and efficient procurement systems.

Chapter 2: Procurement reform and better governance

'People do not develop systems and structures based on what is possible. They don't take into account existing capacity nor invest enough in capacity building.'

Siafa Kamara, director of Christian Aid partner Social Enterprise and Development Foundation (SEND), Ghana[23]

This chapter explores how far procurement reform achieves better governance. Although rhetorically linked to the fight against corruption, the focus is on greater efficiency to be achieved through open competition. However, we find that the effectiveness of reform is often hampered by the failure to adapt it to the practical realities of each country context.

Efficiency and local government

Procurement reform is very much driven by concerns about efficiency, that existing rules were not enabling governments to get the best-quality goods and services and the best price. However, efficiency can also be looked at from another angle – the simplicity of the rules, the ease of use and cost and time implications. Before reform in Ghana, procurement was guided by many different rules, and government officials struggled to know which ones to follow. Having one set of rules to follow, at all levels of government, is a clear improvement.

However, one of our main findings in Ghana is that procurement reform can directly contradict the goal of increased decision making at local government level. Box 2 shows that this is largely because of a failure to consider how changes to the procurement system will play out at different levels of government.

Box 2: Local government and procurement reform in Ghana

Christian Aid partner ISODEC believes the new procurement rules have directly undermined good governance by weakening the ability of district and municipal councils to make spending decisions.

Siafa Kamara of SEND, a Christian Aid partner that supports community budget monitoring work, believes the law is a 'good thing' because it enables citizens' groups to see how far the rules are being followed when district councils purchase goods, works or services.

However, his concerns echo those of ISODEC – that many district councils are not able to create tender committee boards or tender review boards because they cannot secure professional participants (such as lawyers, MPs, procurement professionals and engineers), particularly in rural areas. When this happens, decisions are pushed up to regional or national bodies, directly contravening the drive to decentralise government as outlined in the Ghanaian constitution.

Even where bodies have been properly constituted – in cities such as the capital, Accra – the relatively low threshold on contracts worth more than US$100,000 for goods and US$200,000 for works mean that district-level contract decisions often go to regional or even ministerial level for approval.[24]

Kamara argues that the procurement law has 'strengthened the status quo', because the bodies below district and municipal level – unit committees and area councils – are not allowed to do any purchasing. Yet these are the governing bodies that hold the key to people's participation; as such, resources need to be allocated to and spent at this level.

The new rules are also very time-consuming. Lindsey Napier, a DFID-funded policy advisor based at Ghana's Ministry of Trade, described the 'laborious nature of the procurement process and the inherent capacity needs in government that are created by adopting such a comprehensive (and bureaucratic) system.'[25]

A lack of specialist training for staff in contracting government departments means that even major ministries are often unable to process all their procurements, or that 'the time taken to do that procurement is unacceptably long (we're talking about awarding of contracts taking over a year or so in many cases).'[26]

Fortunately Ghana's donors are not blind to this situation, and current budget support conditions require the government to roll out an extensive capacity-building programme aimed at thousands of people including public sector officials, local businesses, civil society, media and parliamentarians.[27]

Finally, procurement reforms are not always cost-effective, particularly because of the cost of creating a new cadre of procurement specialists. Ha-Joon Chang argues that this money could be better spent on 'training…school teachers or industrial engineers, which may be more necessary, given their stage of development.'[28] This reliance on using procurement experts not only increases the cost implications, but can further remove decision making from a local level. In Zambia, for example, local procurement was frozen because of a lack of local people with the internationally recognised procurement qualifications required by law.[29]

Of course, reform will have time and cost implications, but it is odd that an area so imbued with notions of efficiency is not more focused on adaptation to the local context. The evidence above shows that successful procurement reform needs more consideration of a country's political context and administrative capacity. This could lead to reforms that are not only more practical, but also integrate better with other goals – particularly that of increased decision making by local governments.

Fair competition and corruption

Procurement reform is seen as being a core part of the aid arsenal against government corruption. The existence of one set of rules that guide all purchasing is vital for accountability – particularly among civil servants, who know that they will be scrutinised and held to account on their adherence to those rules.

In Ghana, there was a strong consensus that introducing such rules would help prevent misprocurement and corruption. And there are already examples where these rules are helping people challenge parts of the government that have not been following the laws properly. Box 3 details a high-profile case where the government was found guilty of not complying with its new law.

Box 3: David and Goliath: local book publishers challenge Ghana's Ministry of Education

In October 2006, Accra's High Court found that the government had not been complying with its own new law. The Ministry of Education and Sports (MOES) did not follow the Public Procurement Act when it single-sourced Macmillan Books to supply secondary school materials worth US$28million, nor did the Public Procurement Board (PPB) when it approved this tender.[30]

The Ghana Book Publishers' Association took the case to court after the MOES sole-sourced this contract, in breech of the national text book development policy. This policy, agreed between MOES, local publishers and agents from international publishing houses, strives to 'upgrade local capacity in book development, publishing, distribution and printing and the book industry as a whole; the timely development and production of high-quality textbooks and other instruction materials; and cost-effective and sustainable procurement.'[31] The action was also against the principles of the Public Procurement Act.

The publishers managed to pull together US$20,000 to take their case to court and in October 2006, the High Court found that MOES had contravened section 40 of the Public Procurement Act in sole-sourcing from Macmillan Books, and the PPB had contravened the same section of the Act in approving it. The tender was then revoked.

There has been no inference of corruption, rather one of misprocurement, or not following the new rules. This is an example, then, that tighter rules can help reveal cases when officials fail to play by the rules. Such high-profile cases not only act as a disincentive to corruptly award contracts, but could be used by local firms as a tool to hold government to account when the rules are not followed. It is 'a positive test of the system', according to the World Bank's Ferdinand Tsri Apronti.[32]

This is a useful story in that it allows us to challenge some of the assumptions that underpin procurement reform – namely that with more open competition, procurement is better value, fairer and less corrupt. But this example also shows the flaw in assuming that the participation of international firms will bring about due process. Open competition is not a guarantor of greater integrity in the procurement system: there is a need for clear, well-publicised guidelines and punitive action when the rules are not followed.

Conclusion

Procurement reform currently focuses on getting countries to implement a standard procurement law and system. This approach is not sufficiently country-specific; it can result in reforms that are ineffective in terms of cost and time; and undermines decentralised decision making. The introduction of clear rules definitely contributes to greater integrity for government officials, who know their compliance will be scrutinised. However, it is important to disentangle this from an assumption that participation of foreign firms brings with it greater integrity and less corruption. The next chapter looks at the implications of the drive for greater openness.

Chapter 3: Procurement reform and economic development

'It is clear that these financial institutions, because of their role, have had (and will continue to have) an important role in furthering procurement liberalisation in these [aid-dependent] countries.'

Christopher McCrudden, professor of human rights law, Oxford University [33]

This chapter examines the goals that guide donors in relation to procurement and economic development. The main goal is to secure greater efficiency, narrowly defined as value for money. Procurement can be an important policy tool that governments can harness for economic development. However, the space to do so is limited, not only by trade agreements, but also through reforms driven by aid donors. Our analysis shows that this current bias can have negative consequences for local industry and argues that the goal of donors should be to support developing-country governments to consider procurement efficiency by maximum development impact.

Aid and procurement liberalisation

Both the OECD and World Bank clearly believe in the benefits of greater participation of foreign firms in government procurement.

OECD-World Bank round-table indicators reward non-discriminatory procurement systems with higher scores, which in turn increase the likelihood of their receiving budget support. The sub-indicator on participation rules argues that 'as a general principle, firms, including qualified firms, should not be excluded from participating in a tendering process for reasons other than lack of qualifications', as these exclusions 'may arbitrarily limit competition and may result in inefficient procurement and higher prices.'[34]

Furthermore, the indicators reward policies that do not require foreign firms to associate with local firms or establish subsidiaries. An annexed document entitled *Good practice for national competitive bidding*, claims that it is good practice if 'any firm, national or foreign, can participate in the tendering process except if the firms are excluded by legal provisions [including convictions or UN sanctions].'[35]

They do, however, recognise potential impacts on local industry, allowing price preferences, as long as they are kept 'reasonable', at below 15 per cent. Governments are also required to assess systematic constraints that may inhibit local private-sector access to the procurement market – such as access to credit, contracting provisions that fairly distribute risk and fair-payment provisions.

The World Bank compares national procurement policies to its own policy, which prohibits:
- restrictions on eligibility according to nationality
- any requirement that foreign firms enter into joint ventures with national firms
- preference based on region, locality, small size or ethnic ownership
- restrictions on sources of labour and material, unless they are for unskilled labour in the contracting country.[36]

The World Bank does not promote complete procurement liberalisation because it *does* allow price preferences to encourage local development. However, its bias towards open competition is clearly seen in Sierra Leone, whose 2008 budget support agreement includes a World Bank condition that calls for an increase in international competitive bidding for procurement.[37] Similar concerns about insufficient competition in government procurement in Afghanistan were a key World Bank concern, which was rectified in the new procurement law that modernised the procurement framework.[38]

Box 4: Procurement liberalisation in Ghana

The new law in Ghana automatically allows for international competitive bidding, whereby government tenders worth more than US$1.5 million for goods, US$2 million for works and US$200,000 for technical services are automatically advertised internationally. This means most large projects – especially expensive infrastructure projects – are likely to attract bids from foreign firms.

Originally, the government wanted to restrict smaller projects to local firms. The World Bank asked it to omit this requirement, because limiting participation by nationality 'undermines the principle of transparency and equal opportunity and may be a cause of abuse.'[39] The government agreed, and national competitive bidding (advertised nationally but open to all) is now used for tenders worth more than US$20,000 for goods and technical services and US$50,000 for works.

The reforms in Ghana do not reflect total liberalisation. The new law does allow purchasing entities to call for and assess tenders based on industrial policy objectives (such as local employment generation, technology transfer and local access). However, by having fully open competition as the default position under the new law, it only represents a partial liberalisation.

For many recipients, the requirement to use all their donors' different procurement procedures can be a real burden – a high transaction cost which reduces the effectiveness of aid. Increasing the use of country systems was therefore included as one of the commitments in the Paris Declaration on aid effectiveness, harmonisation and alignment.

This commitment to use country procurement systems is linked to recipients meeting certain pre-set standards, set by the OECD DAC's Joint Venture on Procurement Working Group, for their procurement systems. These standards include considerations of the degree of openness of a country's procurement market.

There are, however, difficulties putting this principle into practice, as some donors are loathe to relinquish control over who gets which contract. The World Bank is currently preparing pilot countries where it will use country procurement systems rather than its own, but is likely to set the bar so high that it low-income countries are very unlikely to qualify.[40]

Government procurement and economic policy

Facilitating the development of more competitive national businesses and small- and medium-sized enterprises (SMEs) in particular helps create jobs and reduce poverty. Because SMEs account on average for 50-60 per cent of employment at a national level,[41] consolidating and strengthening the sector is often recognised as an important economic development goal. As a result, various western countries have linked procurement policy to this objective in their own development. Examples include:

- the **US's** 1933 Buy American Act, which remains in place today requires preferences for local producers for small contracts
- **France** allows preferences for workers', artisans' and artists' cooperatives, and for groups of agricultural producers
- from 1976, **West Germany** allowed SMEs to 'step in' and secure a contract if they could meet the terms and conditions of the cheapest bid
- In the 1950s **Greece** used price preferences to favour firms from outside Athens
- in the 1970s, **UK** firms that inflated wages were blacklisted as part of a strategy to deal with inflation
- in the 1960s and 1980s, procurement in the **UK** was directed to stimulate technological innovation.[42]

Procurement, however, can and has been used to further socio-economic objectives. Examples where this has been done include:

- targeted procurement in South Africa has allowed the government to particularly support local black businesses[43]
- in its trade agreement with the Dominican Republic and Central America, the US negotiated an exemption in the procurement chapter to allow it to provide preferences to minority and small businesses
- countries like the UK are increasingly setting environmental guidelines for governmental purchasing.[44]

Box 5: Malaysia: public procurement and the Bumiputera[45]

In response to major riots between indigenous Malays (the Bumiputera) and Chinese Malays who dominating the market in the late 1960s, the Malaysian government used public procurement preferences for both Bumiputera businesses and other domestic providers.

Procurement preferences in Malaysia have been one aspect of a strategy to generate investment-led economic growth, which together with redistribution secured racial stability. Linking preferences to growth ensured that the Bumiputera businesses could be strengthened without squeezing out those belonging to Indian and Chinese minorities.

This strategy has been criticised due to evidence of political corruption by Malaysian officials in the awarding of contracts. This appears to be due to the lack of accountability, redress or transparency in the system rather than the policy per se. However, according to Janis van der Westhuizen, a southeast Asia expert, without this policy 'Malaysia's adaptation to the competition state model would have been even more difficult, complex and unstable'.

Malaysia has been at the forefront of developing country attempts to prevent an agreement on transparency in government procurement at the WTO. According to Christopher McCrudden, an expert on human rights and procurement law, 'Malaysia regarded elements of the proposed agreement… as tantamount to stripping it of its ability to use procurement as part of its development agenda, particularly in the context of redistributive policies directed at increasing the economic empowerment of… Bumiputera.'

The Malaysian procurement market is worth almost a quarter of its GDP. In 2003, Malaysia spent approximately US$26 billion on procurement.

Policy and practice around procurement reform are more focused on the goal of maximising greater efficiency – narrowly defined here as value for money. In this view, more competitors bring better value: allowing foreign firms to tender increases competition and thus brings greater efficiency. However, this is not the only way to assess effective procurement. Our earlier examples show that as the largest consumer in the country, many governments have used procurement to secure broader development goals. Donor aid practices, with their narrow definition of efficiency, can reduce the flexibility of developing countries to do likewise.

The impact of open procurement on domestic firms

The goal of value for money through more open competition has very real implications in countries reforming their procurement systems. Domestic firms, particularly those that previously relied on government contracts – such as the construction industry – often struggle to compete when procurement markets are opened up.

To mitigate the impact of open procurement on domestic firms, governments are able to offer them price preferences and training in the tendering process. However, an analysis of the structural constraints facing firms in Ghana casts doubts on how far the margin of preference will help local firms facing competition from abroad. Even if consistently applied, Cletus J Kosiba, executive director of Association of Ghanaian Industries believes that it is not in itself sufficient: 'It's just one ingredient. It probably addresses the cost differentials but there are other challenges that our industries face.'[46] Similarly, training in how to tender for government contracts will not in itself overcome the obstacles faced by firms in Ghana.

1. Tax

'One advantage of international firms is [that] the tax law favours them because machinery and other equipment brought into the country for purposes of the contract are exempted from tax.'

Dr Eric Oduro Osae lecturer at Ghana's Institute of Local Government Studies[47]

As in most developing countries, the high tax burden on local producers can undermine their competitiveness. In 2003, the Ghana CPAR recognised this issue, stating that the 'tax on raw materials renders local manufacturers uncompetitive against foreign competition.'[48] International firms are also frequently offered tax breaks by host governments and use a range of sophisticated accountancy practices that most developing country tax authorities are ill-equipped to address – for example, transfer pricing to help them avoid (and sometimes evade) the taxes they do face.[49]

Box 6: Tax, government procurement and the printing industry in Ghana

The local printing industry has been quick to challenge claims that they are highly non-competitive when compared with foreign printers. William E Turkson, managing proprietor of Turkprint and executive secretary of the Ghana Printers and Paper Converters Association, argues that while foreign printers already enjoy a competitive advantage, tax incentives benefit them to the detriment of local industry.

	Foreign-produced books (%)	**Locally produced books (%)**
Average customs duty	0	15
VAT	0	12.5
NHIL (health insurance)	0	2.5
Effect of VAT/NHIL	0	2.25
Economic Community Of West African States levy	0.5	0.5
Export Development and Investment Fund levy	0.5	0.5
Inspection fee	1.0	1.0
Processing fee	1.0	1.0
Total	**3%**	**35.25%**

Lobbying by local industry has managed to somewhat overcome this. Local firms can now claim back VAT on textbooks (as well as pharmaceuticals and agricultural machinery, inputs and tools), but this is still a cost as local firms obviously have to administer this process.[50]

Tax remains a problem in the construction sector. Samuel Obeng, an Accra-based construction engineer, recently imported some metal formwork from Spain, but complained: 'I'm supposed to pay VAT and import duties. It will enhance my capacity [having these items] but foreign firms are given tax incentives to bring in these items.'[51]

2. Other constraints
Local businesses quoted other major obstacles – such as labour costs, fuel costs, access to credit and delays in payment – which substantially reduce their competitiveness to foreign firms.

According to Aaron Anvuur, an expert on the construction industry in Ghana, government contracts are unpopular with the local construction industry. 'Government contracts are characterised by insecurity of funding, payment delays and extensive payment arrears…The result is that many projects are abandoned, many contractors (especially subcontractors) are forced into liquidation and the projects have to be re-tendered. It is a vicious cycle.'[52]

Samuel Obeng took out a loan to fund a bid, but then had to wait ten months for payment, during which he continued to pay interest on his loan, considerably reducing his profit margins.[53] Eliott Agyare, chief executive of a local publishers and publishers' representative said that they now have to pay US$5,000 to tender for a textbook contract, a cost most local firms would struggle to pay.[54]

The Ghanaian construction industry has a collective bargaining agreement with trade unions on wages in the sector. 'A few of the Chinese firms have signed up [to the bargaining agreement] but most don't.'[55] As such these low wages, combined with access to cheap public credit and raw material in China, allow Chinese construction firms to undercut local quotes. In the face of such major imbalances, it is unlikely that a margin of preference, even if applied, could level the playing field to help Ghanaian firms.

New directions: using procurement strategically

We have already seen that, despite donor bias towards open competition, procurement reform does not necessarily remove all policy space for governments to use procurement policy in the interests of local industry. However, the drive to more open procurement corresponds to a belief in the supremacy of foreign goods, as evidenced with the oft-quoted textile story in Box 1 (page 5).

The law in Ghana allows the government to restrict some tenders under national competitive bidding if there is a compelling case to do so. It did so recently when, following concerted lobbying by Christian Aid partner the Trade and Livelihoods Coalition and local producers, it agreed to use only 'made in Ghana' foodstuffs for a school feeding programme.

This approach could be used more consistently: it is partly in response to the industry-led 'Made in Ghana' campaign that the government is currently considering how to link procurement to their economic development strategy. The Ministry of Trade has developed a trade sector support programme which seeks to promote goods and services that are made in Ghana and 'establish a transparent procurement system that enhances competition *and promotes the use of local products and services to local industry.'*[56] The ministry is also leading the development of an industrial policy which recognises the importance of government procurement for priority sectors.[57]

OECD analysis of procurement in Kenya, Tanzania and Uganda also found that the participation of small and medium-sized enterprises (SMEs) has been limited, partially due to the constraints already outlined in this chapter.[58] The authors called for the countries to implement affirmative action programmes to assist SMEs. In all these countries, this does not mean automatically fencing off certain sectors, but rather considering how to strategically develop these key industries. However, Christian Aid believes that using procurement strategically and fencing off some sectors – like they did for the school feeding programme – could be beneficial and should therefore be considered as an option.

Conclusion

There is clearly an important role for donors here, in supporting governments to use procurement to achieve broader development goals and consider the trade-offs of doing so. However, donors are not playing this role well because they are too focused on securing efficiency, narrowly defined as greater value for money through open competition. Yet this focus is to the detriment of overall economic development – which could be achieved through more strategic procurement – and to domestic firms in particular.

Chapter 4: Conclusion and recommendations

This analysis of the theory and practice of procurement reform finds that it is heavily donor-driven, parcelled in the language of good governance and comprised of a strong bias towards liberalisation.

This is not to say that donor engagement in procurement reform is simply a back-door route to secure market access for foreign firms; but rather that it is motivated by a belief that maximum efficiency in a procurement market is secured by maximum competition.

In most developing countries, the government is the largest consumer. The impact of changes in procurement on local industry can therefore be substantial – a fact that the international best practice law favoured by donors is not necessarily blind to, allowing as it does countries to implement a margin of preference for local firms. In Ghana donors have required the government to provide capacity building for local firms, particularly targeting actions at the construction industry, which in many developing countries relies on government contracts and is thus particularly vulnerable to increased competition. However, Christian Aid is not convinced that these approaches, when fully implemented, would address the systemic constraints faced by local industries when competing against firms from elsewhere.

Procurement needs to be recognised as the important *economic development policy* tool that it is. We are not arguing for blanket protectionism, but rather for developing countries to be able to decide how to use this tool to secure their development objectives. There are pros and cons to allowing the participation of foreign firms: it can bring in much-needed goods at lower cost and technology transfer, but can also undercut local producers.

Unfortunately there seems to be a trend in procurement reform to mixing up the *process* with the *policy* – in other words the way in which procurement policies and decisions are made, monitored and challenged; and the extent of participation by foreign firms. Christian Aid believes that it is important to separate the two and focus entirely on the *process*, or *administrative aspects* of reform.

Christian Aid believes that, while donors should provide long-term technical support to increase accountability, the 'best practice' models they promote through conditionality are not appropriate. Improved procurement is a cornerstone of pro-poor budgeting, but the systems should be based on what *can* work in each country, informed by a thorough analysis of what *has* worked in other countries at comparative stages of their development.

Christian Aid believes that donors, including DFID, need to improve both aid effectiveness targets on the use of country systems and their support to procurement reform in recipient countries.

Aid effectiveness commitments need to be reformed to ensure:
- the criteria to evaluate country procurement systems focus only on accountability and transparency
- measurable targets on aid-untying hold donors accountable
- disaggregated individual donor performance on using country procurement systems

Donors engaged in **procurement reform** need to:
- limit their requirements entirely to changes that improve the accountability and transparency of government procurement to its own citizens
- ensure that such changes are tailored to each individual country context, taking government capacity and the workings of its political system into consideration
- provide long-term capacity development support to governments, to enable them to implement reforms
- immediately remove any requirement to partially or fully open up national procurement markets in return for aid or debt relief
- recognise the effectiveness of linking procurement to development objectives

- positively support developing countries to use government procurement flexibly to support their own economic development objectives – whether that is, for example, by directly building up the competitiveness of local firms or bringing in the expertise of foreign firms.

Appendix: Useful definitions

Government procurement is a very technical business, so an initial understanding of the different systems of procurement is helpful at the outset:

- **National competitive bidding**: the potential buyer invites tenders from as many suppliers as possible and awards contracts based on cost, quality or a mixture of the two. Invitations to tender are advertised in-country, and can be, but are not automatically, exclusive to national firms.
- **International competitive bidding**: as above, but advertised internationally to secure bids from foreign as well as local firms.
- **Sole sourcing**: the practice of using one supply source without a competitive bidding process for a justifiable reason.
- **Selective tendering**: when the buyer invites tenders from a few favoured suppliers only.
- **Price preferences:** when a government entity is able to select a higher-cost tender due to social, economic or environmental considerations. An additional percentage (normally ten percent or so) is effectively added to the bid of non-preferred bidders allowing the purchaser to accept bid on preferred bidder (if it falls within that margin of adjustment)
- **Local content:** cconditions on purchases to ensure that a certain degree of employment, goods and/or services for a specific contract come from the purchasing country.

Acronyms and abbreviations

CPAR	Country Procurement Assessment Reports
DFID	Department for International Development (UK)
GDP	gross domestic product
ISODEC	Integrated Social Development Centre (Christian Aid partner)
MOES	Ministry of Education and Sport
OECD	Organisation for Economic Co-operation and Development
OECD DAC	OECD’s Development Assistance Centre
PPB	Public Procurement Board
SEND	Social Enterprise and Development Foundation (Christian Aid partner)
SME	small- and medium-sized enterprise
UNICTRAL	United Nations Commission on International Trade Law

ENDNOTES

1 OECD, *Why is Procurement Important?: Factsheet*, December 2006.
2 Ibid.
3 Ibid.
4 Colin Kirkpatrick, chapter on procurement liberalisation in Action Aid, Christian Aid, Oxfam *EU Free Trade Agreement Manual*, February 2008
5 See *The Paris Declaration on Aid Effectiveness, Harmonisation and Alignment* for detail on all the indicators and measures. Available at www.oecd.org/dataoecd/57/60/36080258.pdf
6 Although the *Paris Declaration* has an indicator for aid untying, the measure is a rather weak 'continued progress over time'.
7 World Bank, *World Bank Review of Conditionality*, 2005.
8 This evidence comes from a scoping of World Bank procurement conditions, including: *Afghanistan, Public Procurement Law 2005; Bangladesh, Public Procurement Regulations 2003; Ghana, Public Procurement Act 2003; Rwanda, National Procurement Code 2004; Peru, Procurement Law December 2004; Sierra Leone, Procurement Law 2004; Tanzania Public Procurement Act and Regulations 2001; Uganda, Public Procurement and Disposal of Public Assets Act 2003*. Most countries had already changed their laws and those that had not – such as Nicaragua – were in the process of doing so.
9 Interview with Abraham Koomson, 17 July 2007
10 Peter Quartey, 'The textiles and clothing industry in Ghana' in Herbert Jauch and Rudolf Traub-Merz (eds) *The Future of the Textile and Clothing Industry in Sub-Saharan Africa*, Friedrich-Ebert-Stiftung, 2005, p 136.
11 See for example: Sue Unsworth, *Focusing Aid on Good Governance: Can Foreign Aid Instruments be Used to Enhance 'Good Governance' in Recipient Countries?*, Global Economic Governance working paper 2005/18, 23 February 2005; Merilee Grindle, 'Good enough governance: poverty reduction and reform in developing countries', Governance, Vol 17, issue 4 (October 2004); Dani Rodrik, *Institutions for High-Quality Growth: What They Are and How to Acquire Them*, paper prepared for IMF conference 1999, Ha-Joon Chang *Kicking Away the Ladder: Policies and Institutions for Economic Development in Historical Perspective*, Anthem Press, 2002.
12 Lucy Hayes, *Old Habits Die Hard: Aid and Accountability in Sierra Leone*, Eurodad, February 2008.
13 Interview with Dr Eric Oduro Osae, 19 July 2007.
14 Ha-Joon Chang, *Kicking Away the Ladder: Policies and Institutions for Economic Development in Historical Perspective*, Anthem Press, 2002.
15 Dani Rodick, *Institutions for High-Quality Growth: What They Are and How to Acquire Them*, paper prepared for IMF conference, 1999.
16 OECD, *Methodology for Assessment of National Procurement Systems* Version 4, 17th July 2006.
17 Walter Odhiambo and Paul Kamau, *Public Procurement: Lessons from Kenya, Tanzania and Uganda* OECD Development Centre, working paper 208, March 2003.
18 Merilee Grindle 'Good enough governance: poverty reduction and reform in developing countries', *Governance*, Vol 17, issue 4, October 2004.
19 Interview with Chris Harvey, 9 January 2008.
20 Merilee Grindle, 'Good enough governance: poverty reduction and reform in developing countries', *Governance*, Vol 17, issue 4, October 2004.
21 World Bank, *Afghanistan: Managing Public Finances for Development*, Main report, Vol I, 22 December 2005, p 58.
22 World Bank *Ghana Country Procurement Assessment Report* 2003.
23 Interview with Siafa Kamara, 20 July 2007.
24 Republic of Ghana, *Public Procurement Law 2003*
25 Personal communication with Lindsey Napier, 11 October 2007.
26 Ibid.
27 Interview with Chris Harvey, Crown Agents UK, 9 January 2008.

28 Ha-Joon Chang, *Kicking Away the Ladder: Policies and Institutions for Economic Development in Historical Perspective*, Anthem Press, 2002.
29 Interview with Chris Harvey, Crown Agents UK, 9 January 2008.
30 *Judgement for suit no AP 6/2006,* '*The Republic versus Ministry of Education and Sports, the Public Procurement Boards, the Get Fund Board – ex-parte Ghana Book Publishers Association',* Accra High Court, 18 October 2006.
31 Ghana Book Publishers' Association, 'The view of local publishers on the sole sourcing of supplementary readers worth $27,999,990 by the MOES from Messrs Macmillan', Statement, 20 October 2005; and interview with Stephen Brobby, Ghana Booksellers' Association, 24 July 2007.
32 Interview with Ferdinand Tsri Apronti, July 2007.
33 Christopher McCrudden, *Buying Social Justice: Equality, Government Procurement and Legal Change*, Oxford University Press, September 2007.
34 OECD, *Methodology for Assessment of National Procurement Systems*, Version 4, 17 July 2006.
35 Ibid.
36 For World Bank policy on assessing public procurement systems, visit http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentMDK:20105527~menuPK:84285~pagePK:84269~piPK:60001558~theSitePK:84266,00.html
37 Lucy Hayes, *Old Habits Die Hard: Aid and Accountability in Sierra Leone*, Eurodad, February 2008.
38 World Bank, *Afghanistan: Managing Public Finances for Development*, Main report, Vol I, 22 December 2005
39 World Bank Aide aide-memoir to Ghana Attorney General 2003 – in World Bank *Ghana Country Procurement Assessment Report: Main Report Volume 2* 2003, p 20
40 Details of the proposed criteria for piloting the use of country procurement systems were outlined in a recent consultation, which is available at: http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20266649~menuPK:538163~pagePK:41367~piPK:51533~theSitePK:40941,00.html
41 W Luetkenhorst, 'Corporate social responsibility and the development agenda: the case for actively involving small and medium enterprises', *Intereconomics*, May/June 2004.
42 All examples from McCrudden *Buying Social Justice: Equality, Government Procurement and Legal Change*, Oxford University Press, September 2007.
43 Ibid.
44 'UK government to set green procurement example', *Green Biz*, 11 October 2004.
45 Taken from Christopher McCrudden, *Buying Social Justice: Equality, Government Procurement and Legal Change,* Oxford University Press, September 2007.
46 Interview with Cletus J Kosiba, 14 August 2007.
47 Interview with Dr Eric Oduro Osae, 19 July 2007.
48 World Bank, *Ghana Country Procurement Assessment Report*, 2003.
49 This is demonstrated by various Christian Aid reports, including *The Shirts off their Backs; A Rich Seam; and Haemorrhaging Money*
50 Interview with William Turkson, 25 July 2007. Information in table is based on information provided during the interview.
51 Interview with Samuel Obeng, 25 July 2007.
52 Personal communication from Aaron Anvuur, 22 October 2007.
53 Interview with Samuel Obeng, 25 July 2007.
54 Interview with Eliott Agyare,, October 2007.
55 Interview with Samuel Obeng, 25 July 2007.
56 Ministry of Trade, Industry and Private Sector Development, *Trade Sector Support Project*, Government of Ghana, 2005.
57 Ministry of Trade, Industry and Private Sector Development, *Draft Industrial Policy*, 2007.
58 Walter Odhiambo and Paul Kamau, *Public Procurement: Lessons from Kenya, Tanzania and Uganda* ,OECD Development Centre, working paper 208, March 2003.