

Measuring Performance in Public Procurement

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The logo for The George Washington University, featuring the letters "GW" in a bold, blue, serif font. The letters are positioned between two horizontal gold bars.The word "LAW" in a blue, serif font, positioned to the right of a vertical gold line.

Measuring Performance in Public Procurement – Not a Simple Task

Measuring performance assumes a consensus about the *goal* of the public procurement system – so that we can measure performance toward that goal

But there is no consensus about the goal (or goals) of the public procurement system

The Multiple, Inconsistent Goals of a Public Procurement System

- “Normal” purchasing incentives to achieve goals of value for money and purchasing speed don’t function as well, so we impose process rules as surrogates for those incentives
- And we add further goals, due to concern about possible waste, fraud and abuse of public funds: competition, transparency, accountability
- And then many systems add additional goals of furthering public policies from outside the procurement realm: serving sustainability & other environmental needs; helping domestic businesses, domestic small businesses, and/or particular social or ethnic groups

Process rules are meant to ensure those various goals are served

Result: Tensions about Performance

Constant tension, in every system, between and among 3 points of view about performance:

- 1. Those saying that public bodies should buy just like businesses buy (“focus on outcome, not compliance!”)**
- 2. Those saying that public bodies must be transparent and accountable**
- 3. Those saying that public procurement must serve collateral socio-economic public policy goals**

Views on Performance in Public Procurement

1. Those saying that public bodies should buy just like businesses buy
 - Their performance metrics: price paid, quality obtained, time taken to sign the contract and then to deliver
2. Those saying that public bodies must be transparent and accountable
 - Their performance metrics: quantity & level of detail in laws, regulations, and rules; quantity of procurement information publicly released; number of reports, hearings, and other forms of oversight; and the extent of reported corruption
3. Those saying that public procurement is failing to serve non-procurement public policy goals
 - Their performance metrics: quantity & level of detail in rules calling for incorporation of collateral goals in contracts; number and value of contracts reflecting collateral goals

The Three Perspectives

1. Those saying that public bodies should buy just like businesses buy advocate giving public buyers the discretion and flexibility that businesses have, and they criticize the public procurement system's failure to meet the performance metrics of a private purchasing system: the slowness of public procurement, high prices paid, and low quality received

The Three Perspectives

2. Those saying that public bodies must be transparent and accountable are worried about giving public buyers discretion, because they worry about fraud and corruption, and personal & organizational conflicts of interest

The Three Perspectives

3. Those saying that public procurement is failing to serve non-procurement public policy goals advocate more and stricter rules to ensure purchases of environmentally preferable goods, procurement from domestic sources, and so forth

Recent International Developments

- **The UN Commission on International Trade Law (UNCITRAL) revised its Model Procurement Law in 2011 (and published an excellent Guide to Enactment in 2012)**
- **The WTO Agreement on Government Procurement was revised and is currently being adopted**
- **The European Union has just revised its Procurement Directives**

What is “Performance” in Public Procurement?

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 - Their performance metrics: quantity & level of detail in laws, regulations, and rules; quantity of procurement information publicly released; number of reports, hearings, and other forms of oversight; and the extent of reported corruption
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Eight Areas in Which The Tensions & Different Views about Performance Play Out

- 1. Use of Internet-based (e-) procurement, including electronic reverse auctions**
- 2. More inclusive assessment of price**

Areas in Which The Tensions & Different Views about Performance Play Out

3. Use of non-price factors

... including those rated on a sliding scale (not pass/fail)

... and allowing tradeoffs between non-price factors and price

4. Framework contracts

– Note link to aggregating demand, joint purchasing & use of a centralized purchasing agency

Areas in Which The Tensions & Different Views about Performance Play Out

5. Complaint mechanisms for vendors

- Difficulty of measuring & ensuring effectiveness**

6. Increased focus on the process for exclusion of bidders

- Issue of remedial measures and how (if at all) they should be taken into account**

Areas in Which The Tensions & Different Views about Performance Play Out

7. Permitting negotiations with vendors
8. Domestic preferences & preferences for (domestic) SMEs

Suggested Points of Consensus in Measuring Performance of Procurement Systems

In assessing performance of procurement planning:

- How often did the tender documents prove to accurately describe the government's needs?**
- Was there evidence of corruption or other impropriety in the procurement planning process, such as specifications written around one company's product?**
- How long did it take to write and issue the tender documents?**

Suggested Points of Consensus in Measuring Performance of Procurement Systems

In assessing performance of the contract award process:

- How often did the government do a direct award (= sole-source, or uncompleted contract)?**
- When a competition was conducted, how many bidders competed?**
- Was there evidence of bidder collusion or corruption in the award?**
- How long did the competition and award process take?**
- Did the government succeed, at least in the contract, in obtaining a reasonable price and the quality it was seeking?**

Suggested Points of Consensus in Measuring Performance of Procurement Systems

In assessing performance of the contract award process:

- How many contracts did domestic SMEs obtain?**
- What was the value of those contracts?**

Suggested Points of Consensus in Measuring Performance of Procurement Systems

In assessing performance of contract execution:

- Did the government obtain the quality promised in the contract, consistent with the contract schedule and price?**
- Was there evidence of corruption in the execution of the contract?**