

Transparency in Public Procurement: An Instrument for Fighting Corruption and Promoting Good Economic Governance in the Republic of Guinea

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Public procurement, because of their economic stake, represents an important pillar for the implementation of development policies. However, public contracts are very vulnerable to corruption. To eradicate this scourge, many advocate compliance with the principle of transparency in public procurement. This article is an analysis of the principle of transparency in the public procurement system in Guinea.

Keywords: transparency, competition, integrity, right of appeal, corruption, public procurement

Introduction

The Guinean State regularly concludes written administrative contracts, for consideration, with natural or legal persons, in order to meet its needs in terms of supplies, services, or works. The financial flows devoted to the granting, management, and monitoring of Haitian public contracts represent a significant part of public expenditure, on the one hand, and of the Gross Domestic Product, on the other. For example, the national budget for the fiscal year 2020-2021 represents an envelope of 254,704,000,000 gourdes, of which 33,571,764,826 gourdes are allocated to the acquisition of goods and services (Republic of Guinea, 2020). Either, to potential public orders. The economic importance of public contracts is a key issue for the implementation of tools and means to achieve sectorial objectives of the Guinean State in health, education, agriculture, infrastructure, and others. In this case, the efficient and effective management of these resources stands out as a major pillar of economic growth and national development.

Nevertheless, public procurement is highly vulnerable to corruption due to a series of factors related, among others, to the complexity and length of procurement procedures (OECD, 2007). In general, corruption in the public procurement system manifests itself in the form of embezzlement, influence peddling, conflicts of interest, favoritism, overcharging, unperformed contracts, bribes, illegal procurements audience. These acts of corruption not only have major consequences for the national economy, but they also promote the distrust of all citizens towards leaders and public institutions.

To fight against corruption, transparency is one of the most essential measures that have been recommended and implemented by government authorities. Indeed, according to the Organization for Economic Cooperation and Development (2007), transparency is one of the fundamental instruments for

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preventing corruption and promoting good governance and accountability in public procurement. In Guinea, with regard to Article 1 of Law L/2012/020/CNT of October 11, 2012, setting the rules governing the award, control and regulation of public contracts and public service delegations, transparency is combined with equal treatment, free access to public procurement, respect for ethics, and the efficiency of public expenditure as the fundamental principles to which public procurement is subject (Republic of Guinea, 2012).

However, in practice, transparency is often assimilated to a simple publication of information and it is, sometimes, more or less applied in public procurement processes. Added to this, the low availability and accessibility of updated data on public expenditure, in particular expenditure relating to public contracts. Thus, the role of transparency in the fight against corruption and by extension in the promotion of good economic governance is often neglected. As a corollary, we are witnessing, among other things, the weak involvement of civil society and citizens in the fight against corruption. These findings raise relevant questions on this topic: What is transparency? How does it help fight corruption? What is the principle of transparency in public procurement based on?

In order to provide some answers to these questions, we will first address transparency as a principle based on an efficient information system. Transparency is intimately associated with other key elements in public procurement such as competition, integrity, and the right to redress. Thus, advocating the principle of transparency in the fight against corruption is also advocating compliance with these essential measures mentioned above. As a result, it seems necessary to present, secondly, the field of application of these principles (competition, integrity, and the right of appeal) in the public procurement system, while trying to underline their connection with transparency. The participation of citizens and civil society in the fight against corruption makes a considerable contribution. To this end, we propose to briefly analyze lastly, transparency in public procurement as a tool for controlling public expenditure by the population. Moreover, given the fact that the award and management of public contracts in the country are governed by a regulatory and legal framework, we refer to it in large part.

Transparency: An Efficient Information System

Transparency in public procurement can be considered as full access to all information relating to public procurement: advertisements or public notices of calls for tenders, laws and regulations on the public procurement system, tender documents tenders, draft contracts and their award methods, reports, etc. Transparency, given its preponderant role in the public procurement system, must be applied in its entirety. In this sense, the Public Procurement Regulatory Authority, as a normative body for the regulation and control of the public procurement system in the country, is responsible for producing, processing, and disseminating (updated) information and/or data accessible to all on public markets (Republic of Guinea, 2012, Article 11, Article 12). But how does transparency apply in public procurement?

The Ethics Charter applicable to players in public contracts and public service work concession agreements, sanctioned by the decree of October 11, 2012 requires the person responsible for the contract or the contracting authority to put in place an effective communication and advertising system on public markets. Indeed, the necessary information must be easily available and accessible in good time for any interested candidate in order to formulate their offers or present their candidacies (Republic of Guinea, 2012, Article 22-Article 23). The publication of all information deemed useful must be carried out throughout the procurement cycle, i.e. from the call for tenders to the awarding of the contract.

To this end, for invitations to tender of national scope, these and general procurement notices must be published in a national daily and/or a local newspaper with wide circulation, on the radio, by display if necessary and on electronic media including the website of the contracting authority and the electronic Journal of the National Commission for Public Procurement. For those of international scope, notices of public calls for competition must be published in a newspaper with wide circulation. In addition, in the digital age, New Information and Communication Technologies as means of disseminating information can be recourse, if necessary.

What is more, the tender dossier, whatever the procedure chosen, must contain all the information and documents necessary for the tenderers: documents relating to the conditions of the call for tenders, the constituent documents of the future contract and other information that may be provided by the contracting authority to facilitate the preparation of tenders by tenderers (Republic of Guinea, 2012, Article 15).

And, at the end of the procurement cycle, information about the results of tenders must be known to all bidders. For open tender procedures with pre-qualification, unsuccessful candidates are informed by letter of the results of the analysis of pre-qualification requests. In addition, they can request the reasons for the rejection of their application from the person in charge of the contract. Those who are pre-qualified are sent a written tender dossier and an invitation to submit their offers.

On the other hand, although transparency is based on information, the information provided must not harm healthy and perfect competition. Thus, true transparency cannot be achieved without the other measures of competition, integrity, and the right to redress.

Transparency: A Measure Intimately Linked to Competition, Integrity, and the Right to Appeal

Transparency also revolves around respect for pure and perfect competition in public procurement. This means fair access to all candidates to be awarded a contract. In this sense, the public order is awarded by the person responsible for the contract, through a procedure characterized by the call for competition and the absence of any negotiations, to the candidate possessing the qualities to be eligible to participate in the contract and who presents the compliant offer. This offer is evaluated as the best bidder on objective criteria, understandable to all, quantified in monetary terms and known to the candidates before the submission of their offers (Republic of Guinea, 2012, Articles 10, 12).

Thus, it is necessary to take a look at the procedures for awarding public contracts. In fact, in the Haitian public procurement system, there are three procedures: general procedures (open call for tenders with or without pre-qualification), exceptional procedures (restricted call for tenders and voluntary by mutual agreement or by direct agreement), and the specific procedures (market for intellectual services, contract with orders, and the customer market) (Republic of Guinea, 2012, Chapter II, Section 2, Section 3, Section 4). We emphasize on the first two.

For general procedures, the call for tenders is said to be open when any eligible candidate can submit an offer. The open call for tenders may precede a pre-qualification phase if the needs for works, services, or supplies require a technical specification. The call for tenders can also be carried out in two stages. In the first stage, applicants are invited to submit technical proposals without indication of prices and in the second stage, successful bidders are invited to submit technical proposals with prices. As for exceptional procedures, the call for tenders is said to be restricted when only candidates invited directly by the contracting authority can submit

a tender. The market is said to be by mutual agreement or by direct agreement when, according to the Law of October 11, 2012, Article 11, “the contracting authority engages, without call for competition, the discussions which seem to him useful” with a person physical or moral identified in advance.

As a result, the award of contracts by mutual agreement or by direct agreement carried out without a call for competition is an exception which cannot be accepted under only four conditions provided for by the said law (Republic of Guinea, 2012, Article 10). In terms of public procurement, open bidding is the rule (Republic of Guinea, 2012, Article 11-1). Consequently, the contracting authorities must limit themselves to resorting to procedures by mutual agreement or by direct agreement.

Awardee of the contract. Therefore, public procurement legislation obliges the person in charge of the contract to treat candidates’ files fairly, in other words not to favor one bidder to the detriment of another. In this sense, at each procurement process, it is set up by the contracting authority, in transparency, in accordance with the law, of a Committee for the opening of bids and evaluation of offers (Republic of Guinea, 2012, Article 12-2).

In addition, to guarantee impartiality and transparency, the envelopes, received before the fixed deadline for the submission of tenders, are opened in public session on the date indicated in the presence of the tenderers or their representatives who will sign a register attesting to their presence. During this opening, the information deemed useful by the contracting authority, including the name of each bidder, the amount of each bid, is read aloud. At the end of this process, the members of the tender opening and evaluation committee and the tenderers or their representatives present countersign a report in which the said information is recorded. The tenderers or their representatives each receive a copy (Republic of Guinea, 2012, Article 15).

It must be said that free competition, by anyone, must not be hindered. The contracting authority has the obligation to avoid the intervention of higher public authorities and any other person not recognized by the regulations in public procurement procedures and to refrain from influencing the decisions of the actors through its involvement in the operations. As for the tenderer, he must show great loyalty by avoiding all crimes and misdemeanors that could harm competition (Republic of Guinea, 2012, Article 15).

Alongside pure and perfect competition, transparency is also linked to integrity and respect for the exercise of the right of recourse by a party who considers itself aggrieved. Indeed, integrity “denotes respect for ethical standards and moral values of honesty, professionalism and uprightness, and constitutes a cornerstone for guaranteeing fairness, non-discrimination and compliance in the procurement process public procurement” (OECD, 2016, p. 10). In this sense, the ethics charter cited above obliges contracting authorities and bidders to develop a culture of integrity in the public procurement process. Therefore, the agents of the national public administration must never exchange their services for earnings in cash or in kind as a result. They must, among other things, demonstrate irreproachable integrity and morality in the fair treatment of bidders’ files. For their part, bidders must not influence or attempt to influence public officials to obtain a contract (Republic of Guinea, 2012).

As for the right of recourse, allowing the control of the impartiality and the respect of the conformity, in the event of non-respect of the established procedures, the person responsible for the contract or the tenderer must use the channels of recourse provided for by the regulations relating to the procurement in order to settle disputes or disputes. A party who considers itself aggrieved may freely exercise its right of recourse. However, remedies should not be intended to prevent or delay performance of a contract to the detriment of the public interest (Republic of Guinea, 2012, Article 18).

Transparency: A Tool for Controlling Public Spending by the Population

It is undeniable that transparency in public procurement is based on easy, free access to all useful and necessary information. But transparency goes beyond simply publishing information. More specifically, transparency in public procurement also refers to the wide availability and accessibility of updated data or reports on the funds allocated by the public treasury to public contracts, as well as on the expenditure of these funds. This allows citizens and civil society to have knowledge of public expenditure relating to public contracts. Such knowledge is not without effect, since it allows the population, on the one hand, to know how the money from the public fund is spent and, on the other hand, to properly assess the impact or the effectiveness of these expenses.

In addition, if it turns out that civil society and citizens have a considerable role to play in the fight against corruption. It remains obvious that the level of citizen involvement results, in part, from the knowledge of citizens about the economic life of the country. As a result, transparency, that is to say easy access to data relating to economic life, proves to be an important instrument insofar as it promotes greater citizen involvement in the fight against corruption in empowering the different actors. Moreover, genuine transparency in economic life improves public confidence in leaders.

Conclusion

Corruption is a major handicap to the political, economic, and social development of any country. The eradication of this scourge requires the implementation of an effective policy. Transparency, being one of the important pillars of public procurement, is revealed on the one hand as a fundamental instrument that can help remedy this phenomenon and on the other hand as a tool for promoting good economic governance. Nevertheless, it must apply in its entirety.

Moreover, in the context of this text, it was a question of addressing transparency in public procurement as an instrument in the fight against corruption. It should be noted that public contracts, given their importance for public administration, are governed by regulations. Therefore, throughout this text we have tried to demonstrate to what extent transparency in public procurement helps to fight against corruption while emphasizing the legislation governing it. To do this, we first presented what we mean by transparency and how it applies in public procurement through legislation. Then, we discussed transparency as an articulation of three other important, interrelated pillars in public procurement, namely competition, integrity, and the right to redress. It seems obvious that the application of these measures in their entirety can greatly contribute to eradicating the phenomenon of corruption. Finally, by emphasizing the contribution of citizen participation, civil society, in the fight against corruption, we briefly approached transparency as a means allowing the population to have controls over public expenditure specifically on expenditure relating to public contracts and thereby to make the various actors accountable.

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Given the Constitution,

Considering Decree D/2011/117/PRG/SGG of April 14, 2011, on the powers and organization of the Ministry of Economy and Finance;

Having regarded to Law L/2012/020/CNT of October 11, 2012, setting the rules governing the award, control and regulation of public contracts and delegation of public service;

Having regard to Decree D/2010/009/PRG/SGG of December 27, 2010, Decree D/2010/016/PRG/SGG of December 30, 2010 and Decree D/2010/002/PRG/SGG of January 4, 2011, appointing minister;

Mindful of Decree D/2010/007/PRG/SGG of December 24, 2010, appointing the Prime Minister, Head of Government;

The Council of Ministers heard in its ordinary session on Thursday July 19, 2012.