

Reducing Costs of Exchange by Combating Corruption in Procurement*

Roderica Taduran Stamer**

Abstract

Corruption in government procurement is prevalent in many countries. It leads to inefficient contract allocation, lower quality of public infrastructure and a distorted composition of government expenditure. Further, costs of exchange increase when procurement is marked by corruption. But procurement reforms are under way. Since 1993, most developed countries and development banks undertook major reforms in their public procurement systems. Developing countries are likewise revisiting their own procurement practices. This paper examines the experience of a developing country in reducing costs of exchange by combating corruption through a reform of its procurement system. Specifically, it reports on the procurement reform initiatives implemented in the Philippines since 1999. It argues that the absence of a clear and comprehensive procurement law, matched by weak oversight, played a contributory factor to the inefficiency of the system. It discusses the reform efforts of the government, arguing that the potential savings that the government was not able to realize in the old procurement system was the primary ‘selling point’ for the passage of the new law. It then analyzes some of the law’s features in lowering costs by reducing opportunities for corruption. Lastly, the paper reports on early success indicators of the reforms.

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**the author is a PhD candidate at the University of the Philippines School of Economics. Comments would be very welcome and may be sent to rodericatstamer@yahoo.com. The author is grateful for helpful discussions on the on-going procurement reforms in the Philippines to Gladys Cagadoc (Dept of National Defense), Yvonne Chua (formerly Philippine Center for Investigative Journalism), Elmer Dorado (National Economic and Development Authority), Joele Eayte (Government Electronic Procurement System), Antonio Molano (Department of Public Works and Highways), Dondon Parafina (Government Watch), Cipriano Ravanes Jr (Procurement Watch Inc.), and for proofreading to Manfred Stamer.

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I. Introduction

Corruption in the Philippine public sector is deeply-rooted. Prior to 1999, people perceived corruption to be particularly pervasive in public procurement. Among its effects were the tremendously high costs of exchange. Investigative reports show that as much as 65% of project cost went to bribes. At that time, unclear, fragmented, and sometimes contradicting laws, rules and regulations governed public procurement. Oversight institutions were likewise weak.

In 1999, the government started reforming its procurement system. At a time when the highest office of the land was rocked by a serious corruption scandal resulting in the impeachment of the President, anti-corruption efforts were very much supported. In 2003, the Government Procurement Reform Act was passed and was hailed by politicians of the new administration as a successful first step in fighting corruption. Early success indicators of the procurement reforms being undertaken should already be seen.

Section II reviews the literature on the impact of corruption on the economy, concentrating on how it affects the costs of exchange. It goes further and looks more closely at how the phenomenon impacts on procurement. Section III talks about public procurement in the Philippines prior to the reforms. It argues out that the absence of a clear and comprehensive procurement law, matched by weak oversight, played a contributory factor to the inefficiency of the system. Section IV discusses the reform efforts of the government, arguing that the potential savings that the government was not able to realize in the old procurement system was the primary ‘selling point’ for the passage of the new law. It then analyzes some of the law’s features in reducing opportunities for corruption and presents some preliminary success indicators. Section V concludes.

II. Literature Review

The cost of exchange in the economy increases with corruption.

Institutions play a fundamental role in the economy. Whether formal (such as laws) or informal (such as norms), institutions affect the costs of exchange in an economy. Costs of exchange, as defined by Benham and Benham (2001), refer to the opportunity cost (money, time and goods) of an individual to obtain a specific good using a given form of exchange within a given institutional setting.

The cost of exchange or transaction cost literature has several subdivisions. For purposes of this paper, we shall take a look at non-market transaction costs. While other branches of the literature examine the effect of transaction costs on contractual arrangements of production, the non-market transaction cost literature looks into how transaction costs affect the amount and type of goods and services that are produced and available in the market. Examples of non-market transaction costs are the resources spent in waiting, getting permits, cutting red tapes, bribing officials, and so on.

De Soto (1989) documented the tremendous cost of doing business formally, i.e. the cost of meeting legal requirements for starting and running a business, and those of doing business informally in Peru. Stone, Levy and Paredes (1996) did a similar study for Chile and Brazil. Benham and Benham (2001) undertook comparative country studies to measure various costs of exchange and found that the variation in costs for the same good/service in different countries can be tremendously large. Emphasized in these works are the government-imposed

cumbersome rules and regulations, such as registration and licensing requirements, rules on sale or lease of real estate, export and import regulations, and taxes.

These barriers force entrepreneurs to conduct some or all of their business outside the official economy, i.e. they engage in corrupt transactions, or discourage them from entry altogether.

The conduct of business outside the official economy gives rise to another layer of transaction costs. Lambsdorff (2002) explains that the transaction costs of corrupt agreements result from a) searching for the appropriate partner; and b) designing an enforceable contract that will minimize opportunistic behaviour during and after the course of the corrupt transaction. Thus, the need to camouflage increases further the costs of exchange. It is then not surprising that Rose-Ackerman (1975), in modelling the behaviour of corrupt agents in public sector procurement, finds that corruption can lead to, among others, inflated costs of purchased goods and services. Finally, in constructing the Transactions Price Index covering 88 countries, Eigen-Zucchi (2001) observes that countries with the lowest transaction prices are also those that fair better in fighting corruption.

Corruption is prevalent in procurement.

Corruption pervades in various aspects of the economy. But is it particularly prevalent in procurement. The World Bank (Kaufmann, 2005) estimates the amount of bribery exchanging hands for public procurement bids to be in the vicinity of US \$ 200 billion per year. Even bolder, Transparency International (Eigen, 2005) reports that estimates of the amount lost due to bribery in government procurement put the figure at at least US \$ 400 billion per year worldwide.

Corruption alters procurement outcomes.

Apart from inflating the costs of exchange in procurement, corruption likewise alters procurement outcomes. The empirical works of Tanzi and Davoodi (1997) and of Mauro (1998) show that corruption alters government spending by favouring those spending sectors that present more lucrative opportunities for rents than other components of spending do.

In the first study, higher levels of corruption are found to be associated with a) higher share of public investment to total spending, b) lower productivity of public investment, and c) reductions in spending on categories outside public investments. The second study reports reduced government spending on education in corrupt governments, arguing that the sector provides limited opportunities for rent-seeking, because it requires widely available, mature technology.

Corruption tends to thrive more when there is a low level of competition among firms producing what the government purchases. Secondly, the illegal nature of corruption and the ensuing need for secrecy imply that corrupt officials will choose goods whose exact value is difficult to monitor. Thus, specialized high-technology goods and military aircrafts are particularly susceptible to corruption. Thirdly, corruption and weak controlling and auditing institutions tend to go hand in hand.

Procurement reforms are underway.

Recently, however, the major multilateral development banks (MDBs) – the World Bank, the African, Asian and Inter-American development banks, the European Bank for Reconstruction and Development – have all adopted new rules for procurement that apply to

projects they finance. To use funds from their loans, borrowers must follow the prescribed rules and the banks supervise their loans to ensure that the rules are properly applied.

In 1994, the United National Commission on International Trade Law (UNCITRAL) adopted a Model Law on Procurement of Goods and Construction as a guide for countries to follow for the evaluation and modernization of their procurement laws and practices.

III. Public procurement in the Philippines pre-1999

Corruption in the Philippines is pervasive, deeply-rooted and prevalent. In 1997, the Office of the Ombudsman estimated that some US\$ 48 billion have been lost to corruption over the preceding 20 years.¹ In June 1999, the President noted that a recent study by his economic advisers found that 20% of government funds for projects in 1998 had ended up as kickbacks.² The country has likewise been governed by two presidents who have been identified by Transparency International as among the ten most corrupt leaders ever worldwide (TI, 2004). Not surprisingly, the Corruption Perception Index (CPI) score of the Philippines in 1999 stood at 3.6 (TI, 1999), from a range of 1.0 (high perception of corruption) and 10.0 (negligible perception). Among the 99 countries covered by the index, the Philippines ranked 54th.

The perception of corruption in the country does not only come out in international surveys, such as those on which the CPI is based. It is likewise reflected in surveys conducted among the locals. Filipinos perceive a very broad extent of corruption in the public sector. They see it rampant in two specific areas: tax collection and procurement.

¹ Office of the Ombudsman, Republic of the Philippines, Annual Report, Manila, 1997, p.1

² These figures from President Joseph E. Estrada are cited in the Philippine Daily Inquirer, June 10, 1999, p.1.

In early 2000, when 51% of the respondents in the National Survey of the Social Weather Station (SWS, 2000) believed that there was a ‘great deal’ of corruption in the public sector³, they also said that among government activities, it is in the following activities that greater than 50% of funds are wasted on corruption:

- pavement of roads,
- tax collection,
- purchase of vehicles and equipment, and
- purchase of school textbooks.

Correspondingly, the government departments primarily responsible for these activities have been rated as most corrupt, namely: Department of Public Works and Highways (DPWH), Bureau of Internal Revenue (BIR) and Department of Education (DepEd). At the DPWH, outright pocketing of public funds and compromising volume and quality of materials, and at the DepEd, the overpricing of textbooks, were seen as the most prevalent corruption practices.

The business sector is even more critical than the general public. According to the 2001 Annual Enterprise Survey of SWS, 63% of respondents felt that there was ‘a lot’ of corruption in the government. A large majority of enterprise managers (67%) think that public sector corruption was found in ‘both revenue raising and spending.’ However, a leaning is observed with 27% thinking that corruption can be ‘found more in government spending’ compared to the 3% who said that it was ‘found more in revenue raising.’ Further, 55% of the respondents who mentioned the presence of corruption in the public sector also said that ‘almost all/most

³ 33% of the respondents said there was ‘some’ corruption in the public sector; 10% ‘a little’; 6% ‘none’.

companies' in their sector of business were involved in bribery to acquire government contracts, and that an average of 22% of the contract was said to be allotted as bribe.

As a consequence, the government departments largely involved in procurement are viewed as insincere in fighting corruption. The DPWH suffered from a Net Sincerity rating of -68 and the DepEd -9⁴.

Bribes eat up as much as 65% of project cost

As pointed out by Benham and Benham (2001), costs of exchange affect what is produced and what exchanges take place in the market. They affect which organizations survive and which rules of the game persist. So is the case with corruption in procurement. Corruption changes the goods and services purchased by the government. It affects which procurement projects push through and which are shelved. It dictates the rules of the game and therefore limit opportunities to only those suppliers/contractors who know them and are willing to play by them.

In 1998, an investigative report (Parreno, 1998) called the attention of the county to the massive corruption scheme involving projects funded by the so-called pork barrel funds of the legislators. The report painted a very disturbing picture by claiming that as much as 65% of contract cost is eaten up by bribes in the procurement of books and medicines, with 40-50% of the contract cost going to the pockets of legislators. For the construction of roads, school buildings, local halls, bribes eat up about 35% of project cost.

⁴ The score for Net Sincerity in Fighting Corruption ranges from -100 to +100.

These so-called pork barrel funds started to be instituted in 1990, when the Eight Congress gave each legislator in the Lower House an annual allotment of PHP 12.5 million and each senator PHP 18 million for infrastructure projects, purchase of equipment and materials, and other activities. Known as the Countrywide Development Fund (CDF), it is supposed to correct the failure in the proposed budgets of national agencies, which according to legislators, are not responsive to the needs of their constituents.

By 1996, the legislators have allotted themselves a yearly PHP 30 million each for the Public Works Fund (PWF). In addition, each lawmaker had at least PHP 15 million in Congressional Initiative Allocation (CIA). (For senior senators, this amount runs up to PHP 100 million.) These are budgetary items incorporated in allocations for various agencies over which legislators have the power to direct how, where and when they are to be disbursed. In 1998, CIA amounted to PHP 3 billion.

Projects funded by the pork barrel funds do not undergo the usual process of evaluation to determine their feasibility. Further, a special provision in the law, ensures that CDFs are automatically released once legislators submit to the budget department a list of projects and activities they want funded by their CDF allocations. Oftentimes, the proponent legislators themselves choose the contractors or suppliers for the projects.

More blatant, the report claims that the amount of bribes goes higher, depending on how goods are to be delivered: full, partial or ghost. For ghost deliveries, legislators get as much as 60% of the project cost. The implementing agency gets 25% since the paperwork for ghost deliveries is difficult to accomplish.

In a society where hierarchy is important and there is a strong tradition of deference to persons in authority, the poor constituents of these legislators see nothing wrong with the practice. Or at least calls for more transparency are not loud enough to effect material changes. Most of them see it as one of the perks of public office. As long as their congressional representatives do not turn them away when they need help for a wedding, a fiesta, or perhaps a burial, the legislators are seen as doing their jobs. Besides, the constituents can avail themselves of the temporary job opportunities offered by the infrastructure projects funded by the pork barrel funds.

Another investigative report (Chua, 1999) relates that it is not only in pork barrel funded procurement that corruption prevails. Focusing on the procurement of textbooks and supplementary educational materials, the report says that local education departments have access to other funds that may be used for procurement. In the case of textbook purchases, some 20% of the contract cost goes to bribes, with as much as the half going to the education regional director. For procurement of supplementary materials, suppliers are willing to pay bribes of 40% of contract cost.

Suppliers explain that the higher affordable bribe in the purchase of supplementary materials is due to price caps and relatively rigid conditions (paper specifications, relatively higher print runs, etc.) governing the purchase of textbooks. Thus, there has been an observed increase in funds going to supplementary materials, where more bribes may be extracted, and a reduction in the funds allotted for textbooks.

The local school board fund is another source of financing for books. Drawn from the proceeds of the real property tax levied by the local government, this fund is at the disposal of the local school board, which is co-chaired by the provincial governor and the school division

superintendent or the city mayor and the district supervisor. In some rich Metro Manila towns, this fund reaches about PHP 500 million each year. Bribes eat up 20% - 40% of contract cost, depending on the relative powers of the school division superintendent or the district supervisor. In any case, the provincial governor or the city mayor gets a share of 20%.

This situation of massive bribery in the purchase of educational materials was not always the case. In 1976, the government started the Textbook Project, whose aim was to provide textbooks to all public schools. In 1985, the government established the Instructional Materials Corp (IMC) to develop and distribute textbooks to all public institutions. In line with this, the IMC invited authors to submit manuscripts, which the education department reviewed and ranked. The rights of top-ranked books were bought by the government and were developed by IMC. The printing and distribution of these titles were bid out to private entities. During that time, the average price of textbooks was around PHP 30.

In 1995, Congress passed the Book Publishing Industry Development Act aimed at developing the book publishing industry. Thus, IMC was replaced by the IMCS which evaluated manuscripts submitted by Filipino authors, based on a list of competencies. The IMCS then came out with a list of approved books (Textbook Call) with their corresponding price ceilings, which in turn were set by the National Printing Office, education department and private publishers. Additionally, the local education department offices were advised to negotiate for discounts.

Under this system, school principals were asked to select books from the list, and these orders were consolidated at the division and regional offices. In practice, the regional directors made the final choice of titles to be procured, which in many cases did not correspond to the orders of the principals. Accusations of graft and corruption in procurement of textbooks were

rampant, and the average price of textbooks has risen to PHP 70 for grade school and PHP 120 for high school. The physical quality of books was likewise poor. Further, the textbook-pupil ratio in 1998 stood at 1:6 in the elementary grade schools and 1:8 in high schools. (DECS, 1998)

When the investigative report came out, flouting rules had already become common practice. Supplementary materials which are not in the list of titles approved by the education department were purchased. Overpriced materials were also bought, the prices of which are certified by the NPO and are supposedly based on lower print runs. Worst, ghost deliveries were likewise practiced.

Outdated and fragmented laws and weak oversight institutions governed Philippine public sector procurement

Prior to the reforms, public procurement was characterized by outdated and fragmented laws and a proliferation of uncoordinated executive issuances (WB, 2003). The basic regulation that governed the procurement of infrastructure projects was Presidential Decree (PD) 1594, a law passed in 1978 during the dictatorship and which remained unchallenged for more than 20 years. A partial survey revealed at least 40 legislative enactments, Executive Orders (EO), Administrative Orders (AO), PDs and issuances from government agencies. The numerous executive issuances were promulgated in order to plug loopholes in the system.

Uncoordinated and overlapping directives were the result. Oftentimes, a variety of procedures and requirements has been prescribed which later has been found to be inconsistent with each other. The Commission on Audit (COA) rules were likewise not always made consistent with most recent changes.

This labyrinth naturally led to ambiguity and uncertainty. Without an oversight body to regulate and monitor procurement activities, procuring entities, on whose shoulders the primary responsibility for the implementation and execution of laws and rules rest, performed their duties based on their own knowledge, understanding and interpretation of the laws and rules.

More problematic, procurement at the local government unit (LGU) level was subject to province or municipality specific regulation. Since the passage of the Local Government Code in 1991, primarily focused on decentralization, procurement rules were designed individually by each province and municipality. There was absence of check and balance, in that the local chief executive (such as the provincial governor or the city mayor) sat as the chairman of the bidding committee responsible for bid evaluation. The influence of the local chief executive in the bidding was so far reaching that effectively whoever he/she favours could win the contract.

The legal mess that governed public procurement was likewise matched by weak oversight and regulatory institutions. The COA is an independent agency created by the constitution to audit government revenue and expenditures. Although the COA has also been an important source of information on malfeasance committed by corrupt government officials, the extent of connivance of some government auditors with corrupt practices in other government agencies is likewise an issue.

The Office of Ombudsman is the lead agency to enforce public accountability. It has the power to investigate and prosecute violators of anti-graft laws. However, the rate of sanction is very low. The Office of the Ombudsman reports that in 1997, only 16% of reported

corruption cases were advanced for prosecution, and at best less than 2% resulted in conviction⁵. It likewise lacked resources to perform its duties. In 2002, the Office of the Ombudsman had only 32 full-time prosecutors handling more than 2,000 cases at the Anti-Graft Court; had 37 field investigators to watch over a bureaucracy of 1.5 million public officials and employees; had no training programs for prosecutors and investigators; and had no supervisory/monitoring/management system of cases and prosecutors' performance (Marcelo, 2004).

IV. Reforming public procurement in the Philippines⁶

In 1999, the government, with the help of the donor community and the civil society, started reforming its procurement system. At a time when the highest office of the land was rocked by a serious corruption scandal resulting in the impeachment of the President, anti-corruption efforts were very much supported. In 2003, the Government Procurement Reform Act was passed and was hailed by politicians of the new administration as a successful first step in fighting corruption. The potential savings that the government was not able to realize in the old procurement system was the primary 'selling point' for the passage of the law.

The Department of Budget and Management (DBM) took the lead in the reforms⁷. It secured technical assistance from the Canadian International Development Agency (CIDA) to help the

⁵ Cited in World Bank, May 2000, p.40.

⁶ A huge amount of information in relation to the passage of the law was taken from Campos and Syquia (2006), the most detailed and comprehensive documentation of the reform efforts in its early years.

⁷ In the process, the DBM sought the support of the other major spending government departments. It first convened an Inter-Agency Workshop to discuss possible reforms in procurement that may be pushed. The workshop concluded that the procurement process embody the principles of transparency, accountability, equity, effectiveness, efficiency and economy.

Government Procurement Service (GPS), an office under its supervision, develop an electronic procurement system.

Further, to rationalize the procurement system by having an all-encompassing law passed by the legislature, DBM sought technical assistance from the US Agency for International Development (USAID) to undertake an extensive analysis of the problem and then, based on the analysis, to prepare a draft bill that would address the system's weaknesses. Submitted in August 1999, the study revealed that opportunities for corruption in government procurement stems from three factors: 1) excessively strict pre-qualification process for prospective bidders; 2) excessive use of discretion in selecting the winning bidder; and 3) lack of transparency that accompanies the bidding process. The draft bill proposed a solution that emphasized deterrence and prevention.

Technical Working Group (TWG) discussions were conducted in August to October 2000 resulting in the following: 1) a new EO 262, amending the previous EO 302 for the procurement of goods, supplies and materials, and its accompanying Implementing Rules and Regulations (IRR), and 2) the revised IRR of PD 1594 for infrastructure contracts. The new IRR of PD 1594 took effect in August 2000, and EO 262 became effective in December 2000.

In addition to these outputs, the TWG likewise produced a draft bill, which the DBM requested the President to certify as "Urgent." In October 2000, the public furor over the President's activities – mostly related to corruption – was beginning to build steam. His staff saw the bill as one way of helping contain the growing discontent. Unfortunately, by the time the bill passed the Lower House and got to the Senate, the senators were already gearing up for the President's impeachment trial. Despite this disappointment, the reform coalition

realized that anti-corruption was an issue that could be used strategically to move a bill forward when the public cast a bright light of scrutiny on corruption.

In May 2001, a new president was sworn in, ascending on a platform of good governance and anticorruption with the support of many of the civil society organizations (CSOs) that clamoured for the previous president's impeachment. In her July 2001 State of the Nation Address, the new President stressed the urgent need for good governance and, considering the inability of the bill to pass the 11th Congress, set it as a top priority for her administration. In October 2001, the President signed EO40⁸ claiming it as an early achievement of her administration in the fight against corruption.

As the previous President was successfully impeached, the outrage of the public against public sector corruption started to dissipate. The reform coalition then formed a non-governmental organization specialized in procurement issues. Procurement Watch Inc. (PWI) was launched in February 2001. Its immediate daunting task was to recreate a semblance of the impeachment ambience that could focus the public's attention on corruption, at least to an extent sufficient to convince enough legislators to support the needed legislation.

PWI approached key CSOs and engaged vigorously with each to get their "buy in". Additionally, PWI worked on the media to raise the news profile of corruption in government procurement. A media team with considerable experience in public relations, advertising, and political campaigns was brought on board, whose campaign efforts was composed of four components: a) targeted use of AM radio; b) invitation to "60 Minutes"-type TV shows; c) regular but strategic news releases in print media, and d) an advertising campaign complete

⁸ EO 40 consolidated the new implementing rules and regulations of PD 1594, EO 262 and new rules for contracting consulting services into one document. Additionally, EO40 mandated that the country's electronic procurement system (EPS) shall be the single and centralized electronic portal for all types of procurement

with streamers, posters, stickers, and “give-aways.” Central in these media exposures is the emphasis on the proposed procurement reform bill as a necessary first step to address the corruption problem in the public sector.

Meantime, the DBM has convinced the Speaker of the Lower House to endorse the bill. In May 2002, the President certified the bill as “Urgent” –

“to address the public emergency borne out of the pervasive malady of graft and corruption that has long plagued the government procurement system, impaired public service efficiency, and stunted national capacity for economic growth.”⁹

In October 2002, the bill was brought to the Floor for a vote and passed with an overwhelming majority. At the same time in the Senate, the senator sponsoring the bill gave a speech to the Floor entitled “Building Honest Roads to Progress.” In urging his colleagues to certify the bill, he explained that the estimated 20% of procurement funds being wasted because of corruption (PHP 21 billion, using 2002 figures) can finance 520 million textbooks for public school children, the construction of 63,000 new classrooms, or the pavement of 1,500 kilometers of farm-to-market roads¹⁰. In December 2002, the Senate passed its version of the bill. The Consolidated Bill was eventually approved by both Houses. And on January 2003, the President signed the Consolidated Procurement Reform Bill into law as RA 9184 or Government Procurement Reform Act (GPRA).

The reform coalition was successful in using anti-corruption as an issue to strategically move the bill forward in the legislature. Anti-corruption is a platform that everybody supported.

⁹ Correspondence of President Gloria Macapagal-Arroyo to Speaker Jose C. de Venecia, Jr. (May 27, 2002) as mentioned in Campos and Syquia (2006).

¹⁰ As mentioned in Syquia (2003).

Nobody could be against it. Or at least, nobody would admit to be against it. In both Houses, apart from the original sponsors of the bill, a large number of legislators signed up as the bills' co-sponsors.

GPRA aims to reduce opportunities for corruption.

An examination of the GPRA and its IRR reveals a number of features directly aimed at reducing opportunities for corruption.

In order to attract more competition, the law requires that all procurement opportunities be advertised twice in a national newspaper and be posted in established websites, among which is the Government Electronic Procurement System (GEPS). Prior to the reforms, bidding was sometimes limited to only a few by posting advertisements in local newspapers of limited circulation. Further, the GEPS has a feature of automatically advising registered suppliers of procurement opportunities that match their products or services. This shift to maximum information dissemination should hinder bid orchestration. Additionally, to avoid tailor-fitting specifications of the required goods, the GPRA prohibits reference to brand names.

To simplify the process and avoid unnecessary delays, the GPRA streamlined prequalification into a simple eligibility screening using transparent and non-discretionary criteria. In the old system, prior to bidding and during the pre-procurement stage, each document submitted by each prospective bidder was checked and underwent a detailed validation procedure, which took time and resulted in an excessively long procurement cycle. With the new law, detailed verification and validation of submitted documents are done only in the post-qualification stage for the bidder with the Lowest Calculated Bid.

In order to enhance transparency, several new features are in place. First, all necessary information about the procurement opportunity are made public in the advertisements and the bidding documents, including the Approved Budget of the Contract (ABC). In the old system, this figure was kept confidential presenting the government official and the bidder/s to collude in the revelation of this inside information. Likewise, there was an observed high tendency of failed biddings due to all bids being higher than the allowable ceiling.

Second, all activities by the Bids and Awards Committee (BAC) from the pre-bid conference to the contract award are open to the public. CSO representatives, who are knowledgeable about the nature of procurement and the law, participate in the bidding activities as observers. They prepare a report of their observations which they may submit to the Office of Ombudsman in cases where prescribed bidding procedures are not followed.

Third, members of the BAC, its Secretariat and the TWG are prohibited from entertaining any form of communication from bidders.

Fourth, the new procedure for the opening of bids has several transparency-enhancing features which are primarily directed against bid rigging. All sealed bids are opened in public during the bid opening in the presence of all bidders and observers. Further, no previously-submitted sealed bid may be destroyed or retrieved.

In order to minimize discretion, the GPRA specifies that the Lowest Calculated and Responsive Bid be determined using an objective, quantifiable and non-discretionary criteria during the bid evaluation. In contrast, the old system allowed trade-offs between price and quantity. Worse, it was likewise vague on the difference between minor and major deviations. The new law, on the other hand, pegs the technical requirements to a minimum

and bidders compete on the basis of price alone. This system then removes the discretionary power of the BAC in deciding between a relatively high-quality high-priced bid and a relatively low-quality low-priced bid.

When the bid evaluation involves quality-based evaluation, as in the case of procurement of consulting services, the extreme scores (both lowest and highest) given by evaluators for each proposal are not taken into consideration in determining the mean scores of the proposals. This removes the possible distortion in quality ranking by limiting the possibility that a bribed member of the BAC can affect the result of the evaluation.

But like in any change of policy, there would likewise be losers. In a compromise deal to pass the procurement bill, the government had to accept a legislative insertion that gave preference to provincial bidders in the procurement of provincial projects. In cases where the lowest bid is submitted by a bidder not coming from the concerned province, the lowest bidder among the provincial bidders is given the right to match this lowest bid. This special provision, however, will only be effective for the first five years of the law.

Preliminary figures suggest gains are being made from the reforms.

More than three years after the passage of the GPRA, reform measures continue to be put in place (WB, 2005). Trainings are on-going to familiarize the government procurement personnel on the law, its rules and the corresponding bidding documents. PWI continues to train other CSOs in making them qualified observers and works with the Office of the Ombudsman for the handling and processing of various information and reports coming from the observers.

The experience of the DepEd provides an inspiring picture of what may be achieved from reforming procurement systems. Apart from being an active member of the reform coalition, DepEd likewise sought WB assistance in 1998 to address the problem of very low textbook-pupil ratios in the form of a US\$ 44 million loan under the Social Expenditure Management Project (SEMP) to procure textbooks (WB, 2004). The project delivered over 42 million textbooks to schools improving the textbook-pupil ratios to between 1:1 to 1:2 in core subjects. It improved the procurement and delivery of textbooks through the introduction of competitive bidding procedures resulting in significant cost savings. The average price of textbooks declined by 50% (to PHP 35 for grade school and PHP 60 for high school) in the first and second phase of the loan agreement, generating savings of US\$ 23 million for a third phase. Further, the DepEd involved CSOs in delivery monitoring. Better specifications and random monitoring at printing presses and warehouses and at delivery points improved the physical quality of textbooks and avoided ghost deliveries. The procurement cycle, which used to be 24 months from bid opening to final delivery, has been cut down to 12 months.

Meantime, other government departments are likewise reporting other success indicators. The DPWH says that the procurement cycle for infrastructure projects has been cut down by as much as five (5) months because of the shift from the tedious pre-qualification to the simple eligibility screening (Campos and Taningco, 2001). Further, because of the computerization of eligibility check, screening of bidders takes only as much as 12 minutes. Additionally, the department has reported an extremely large increase in the number of bidders joining. In one case, this figure had risen from 10 to 95 eligible bidders.

The GEPS, on the other hand, has started to calculate the savings that the government enjoys because of the less number of required advertisements in newspapers (compensated for by the mandatory posting at the GEPS website). For the first quarter of 2006, the GEPS claims

savings of PHP 20 million.¹¹ Further, the GEPS reports a continuous increase in the number of advertisements posted in the website from 2,064 in 2001 to 20,817 in 2003 to 86,496 in 2005 leading to more transparency in procurement. They admit though that more work needs to be done in ensuring that the results of the awards are likewise made public. To date, in only about 10% of the opportunities posted are results of bidding likewise publicized.

Survey results are reflecting these gains as well. There has been a marked easing in the perception of corruption in procurement. SWS reports that the proportion of managers saying that most or almost all companies in their sector give bribes to win public contracts has fallen to 46% from 2004's 52% and a high of 57% in 2002 (SWS, 2006). Zooming in to specific government departments, the DepEd seems to be doing well not only in the reforms, it is likewise able to communicate it to the public. While it suffered from a rating of -9 in Net Sincerity in Fighting Corruption in 2000, it enjoyed an impressive +65 in 2001 and has since then stayed in the positive territory.

V. Concluding Remarks

The selected evidence of the success of the procurement reforms reported above is still scant. Prior to the reforms, various sources reported extremely huge costs of exchange in procurement due to corruption. The absence of a clear and comprehensive procurement law and weak oversight institutions were contributory to this situation. The government successfully passed the GPRA, and in the process emphasized the unrealized savings in the old procurement system. Although the law has been changed, we realize that it would take time for the old norms to be replaced. Nevertheless, it would be advisable for the government

¹¹ The figures reported here in relation to the GEPS have been taken from the 2006 GEPS Status Report.

to conduct a systematic analysis of how much of the potential benefits have indeed been realized. While intermediate indicators such as shorter procurement cycles, higher number of advertisements, more CSOs trained as Observers, and the like, are all welcome signs, the lower cost of procurement would ultimately be the primary indicator of success. The GEPS, being the central procurement portal, should be the best starting point. Such information would be very encouraging to the rest of the public sector in embracing the reforms' implementation, to the donor community in continuing its support, and to the general public in playing its role as observers and monitors in the procurement process.

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