



Public Procurement Reform in Iraq: A Long and Difficult Road

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Introduction: Over the course of a six-year period from 2006-2011, the Government of Iraq (GOI), with support from the World Bank, undertook an ambitious effort to reform its public procurement system and legal framework. Among other actions, an Inter-Ministerial Task Force (IMTF) was created, consultations were held with civil society and the private sector, and a comprehensive new law was drafted based on international best practices. Yet, after years of work, change and implementation have proven elusive. This Quick Note aims to analyze *why* progress was limited in Iraq, and to offer recommendations for *how* the approach to procurement reform in Iraq, as well as in other challenging situations, can be adapted moving forward.

Preface: In some ways, the challenges to reforming Iraq's public procurement system mirror the usual obstacles in implementing public sector reforms. However, given the country context, this case also presents unique and important lessons that helped inform future-decision making on public procurement reform in other conflict states.

One key takeaway from the World Bank's early engagement in Iraq was the difficulty of trying to address public procurement reform in isolation. The experience showed that a complete reform and overhaul of a country's procurement function is unlikely without engaging issues of instability, corruption,



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and weak capacity. The future success of public procurement reforms in Iraq (and other conflict states) will depend on the country's willingness to build a foundation for change that addresses each of these factors in the governance environment.

A second lesson from Iraq was the critical role and influence of change agents. Subsequent reform efforts will benefit immensely from having a detailed stakeholder analysis, to help identify reform champions to guide reforms through the process from beginning to end.

Finally, the Iraqi experience showed the importance of adapting gradual fixes in tackling institution building. While maintaining a long-term vision is important, it becomes critical in a post-conflict environment to demonstrate early results.

Iraq's experience illustrates that the initial pursuit of smaller (and often easier) reforms like issuing new bidding documents is often more impactful than attempting to fix the whole system at once. This kind of measured approach, which prioritizes and highlights early successes, can help create broader demand for services over the long term that would facilitate larger reforms

Country Context: Home to the world's third-largest oil reserves, Iraq has a rich natural endowment and the potential to finance ample infrastructure, improve services, and promote shared prosperity. Yet, as numerous studies have found, poorly managed natural resources can actually hamper development by contributing to corruption, conflict, and poor governance. In Iraq, these kinds of challenges exist but are also compounded by over thirty years of war, sanctions, and instability.

It was within this challenging context that GOI found itself tasked with a massive reconstruction effort in 2003-2004. To ensure that the incoming aid and funds were spent effectively and efficiently, GOI needed to reform decades-old systems of service delivery, public contracting, and public financial management. Additionally, implementation of these reforms would require substantial enhancements in the capacity of public officials to both manage and oversee billions of dollars in reconstruction and development projects. Faced with these challenges, GOI reached out to the World Bank to reform the legal framework governing public procurement.

Public Procurement in Iraq: Public procurement in Iraq is a major component of the national economy, cutting across nearly every area of planning, program management, and budgeting. In 2013, Iraq's approved budget was valued at US\$118.3 billion, in addition to an expected US\$10 billion in supplementary budget items. Out of this total of nearly US\$ 130 billion, over 40% (or US\$51 billion) is to be spent through

the public procurement system. With Iraq's projected GDP valued at US\$221.8 billion for September 2013, public procurement is expected to represent about 23% of GDP for the year. As a rough proxy for the current magnitude of public procurement in the country, this figure shows the scope and power of procurement in the Iraqi economy.

Doing business with the GOI presents considerable challenges and high fiduciary risks. Issues with corruption and transparency in Iraq, as evidenced by the country's consistently low rankings in international surveys¹ have exacerbated these challenges. Existing institutional weaknesses have manifested themselves in particular in the governance and performance of the country's public procurement system. A 2012 World Bank report on Oil Revenue Management for Economic Diversification and Public Expenditure Review cited unsatisfactory procurement procedures as one of the main bottlenecks in budget execution in Iraq. The 2012 Investment Climate Assessment (ICA) for the country confirmed a similar finding, citing the widespread corruption in public contracting as a major contributor to the perceived weakness of Iraq's business climate. This is why the reform of the Iraqi public procurement system is especially needed and relevant, but it is also quite challenging.

The World Bank's Engagement in Procurement Reform in Iraq: World Bank engagement in public procurement in Iraq began in 2006 with a request from GOI to assist in reforming the legal framework governing public contracts. At the time of this request, public procurement in Iraq was based on outdated and sometimes contradictory rules. The procurement process was subject to vast discretion by procuring entities. The issuing of waivers and use of direct contracting were commonplace.

¹In its 2011 report on the Corruption Perception Index, Transparency International ranked Iraq 175th out of 182 countries. In 2010, Iraq was ranked 203rd out of 213 countries on the Control of Corruption Index.

Recognizing the negative effects of these poor practices, the Government solicited Bank support for a new law based on internationally recognized best principles, i.e. transparency, value for money, efficiency, competition, equity and accountability.

To manage the reform of the public procurement legal framework GOI formed a 25-member **Inter-Ministerial Task Force (IMTF)** including key ministries and representatives from the Kurdistan Regional Government (KRG), the Shura Council,²the Council of Ministers' (COM) Economic Committee, the Integrity Commission, the Board of Supreme Audit, and academia. In 2006, a team of international and local procurement lawyers were hired to assist the IMTF in drafting the law. Workshops were held in Baghdad, Erbil, Beirut, and Amman with participants from the public and private sectors with civil society representatives to raise awareness and discuss the process. Incorporating inputs from all stakeholders, the drafting of the new procurement law was completed in late 2007. The Shura Council approved it in December 2009, and submitted it to the COM for approval.

Stalled Progress: However, after these positive developments, progress stalled. The draft law remained in internal review with a Committee of the Council of Ministers (COM), for almost two years. Concerns were raised internally about the perceived lack of flexibility in the new law. Though the law had been drafted to allow officials the proper amount of flexibility, some policymakers were not satisfied since the new law did not explicitly authorize all of the "exceptions" that had been previously commonplace. Rather, some feared that the law would tie their hands and prevent the awarding of contracts on an exceptional basis.

²The Shura Council in Iraq is an administrative court which vets legislation to ensure constitutionality and conformity with the Iraqi legal system prior to the draft being passed to the Council of Representatives.

In October 2011, the Council of Ministers decided to delay the approval of the new draft law in favor of a set of regulations. During the same year, the Council of Ministers recommended abolishing the existing legal framework (i.e., CPA Order 87 of 2004) without passing any other law to replace it.

These decisions would create a legal vacuum in public procurement. With no legal foundation for procurement decisions, a highly disorganized system emerged where exceptions were encouraged. This left Iraqi procurement open to abuse, waste, and corruption. Efficiency of public expenditures and effective resource management suffered.

Prominent examples of bad practices include:

- An overreliance on uncompetitive procurement methods
- Waivers from the COM for procurement processes and contracts
- An administrative procurement complaints system established under the Ministry of Planning that is not operational nor independent
- Increased allegations of fraud and corruption cases
- The use of deferred payment methods that are not internationally recognized
- Collusion of bidders
- Illegal contract selling through 100% sub-contracting.

For the Iraqi public, these poor practices had tangible consequences. The system was in clear tension with the public's expectations for transparency, accountability, and efficiency. The lack of a clear legal framework for public procurement also discouraged foreign investment, since foreign investors were uninterested in coming to invest in Iraq if they had no type of legal assurance that bidding would be competitive, and that their bids would be treated equally and fairly.

The Gradual Approach: After the COM's decisions, the country went through several

conflicting and incompatible attempts by different stakeholders to develop different legal instruments. With an unclear legal framework, the reform strategy needed to be adapted to better fit the conditions on the ground. While the World Bank remained committed to the same goals of modernizing public procurement in Iraq, to succeed in its objectives, there was a need to adopt a more gradual approach. With this mindset, progress on other aspects of the reform has been achieved.

In 2010, the Government of Iraq developed standard bidding documents that were piloted in five ministries, and disseminated among all implementing agencies on the Ministry of Planning website in 2012. They also developed new sector bidding documents, aimed at ensuring fair, non-restrictive, clear and comprehensive bidding requirements. In 2013, a national implementation manual and a national training strategy were developed, and capacity building efforts in procurement ramped up. Further training and professional development were initiated to enhance performance through capacity building.

Recent reform efforts in Iraq have also featured a renewed focus on transparency. Iraq's Governance Action Plan for 2013-2014 calls for the creation of one single portal/gateway for procurement notices. The portal will enhance transparency in the government procurement system by providing more public information, both through the publication of bidding notices

and the announcement of bidding awards. While these reforms, with a focus on capacity building and transparency, are certainly not all-encompassing, they represent a viable path forward under difficult circumstances.

Concluding Thoughts: This case study illustrates the nature and complexity of procurement reform, particularly in a post-conflict state. Iraq will face serious challenges due to its political environment, conflicting vested interests in the executive branch, and weak credibility. These are compounded by a lack of top-level support for reforms.

Procurement reform also becomes particularly challenging since public procurement reform means tackling corruption. Thus, it is no surprise that procurement reform in Iraq require patience, deliberativeness, and tolerance. Prioritizing interventions, managing the political economy of reform with a focus on stakeholder analysis (who to engage in reform) will be key to success. Most prominently, reform will require strong political leadership and robust decision-making structures for policymaking, oversight and guidance. Reforms tend to take time in any environment (though especially in this one). There is a need to prioritize interventions, look for opportunities for success, and adopt gradual fixes. It is likely impossible to fix the whole system at once. Instead of trying for a one-stop fix, stakeholders should focus on translating reform's priorities into actionable implementation.

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