CAN THE PHILIPPINES IMPLEMENT THE OPEN CONTRACTING DATA STANDARD?

OPPORTUNITIES FOR OPEN CONTRACTING IN THE PHILIPPINES

RESEARCH NOTE

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Hivos
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1. Why does procurement need to be more transparent?

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Current practices in public procurement in the Philippines are governed by Republic Act 9184 (RA 9184), otherwise known as the Government Procurement Reform Act[1] which was passed 12 years ago. The Law consolidated previous legislations and executive policies, and was considered a hallmark reform in the country in terms of government procurement processes. The implementation of the Law is supervised by the Government Procurement Policy Board.

In 2007, the computerisation of public procurement started with the implementation of the Philippine Government Electronic Procurement Service (PhilGEPS). The system announces procurement opportunities and requires the company registration of potential tenderers. PhilGEPS also announces the name of the company awarded with the contract, the reason for the award, and the total amount of contract price that the awarded company is entitled. Additionally, it publishes procurement laws, regulations, and bidding procedures.

However, procurement compliance, particularly on the part of PhilGEPS, is far from perfect. According to a Sunlight Foundation study[2] (Sunlight Foundation, 2013), posting of information by procuring entities in PhilGEPS, from bid notices to notice of award, is below 50% for national agencies. This figure could be even lower at the level of local government units which are also required to post procurement documents on PhilGEPS. The same study also highlighted the need for more data openness so that citizen monitoring - currently restricted to attendance of civil society representatives in procurement activities - could be improved.

There are two of important factors to mention here:

1. The Philippines does not have a right-to-information (RTI) law, which could facilitate better access to contracting information by citizens.

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1 See: http://www.bsp.gov.ph/downloads/procurement/ra9184.pdf
2 See: http://sunlightfoundation.com/blog/2013/10/07/case-study-public-procurement-in-the-philippines/

2. What did we want to know?

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2. The General Appropriations Act authorising the budget of 2015[3] mandates the proactive disclosure of government data as open data, contracting data included.

Given this context, this research explored the opportunities for the Open Contracting Data Standard[4] (OCDS) to be used as a mechanism for more open and transparent procurement practices in the country. To promote greater transparency in public contracting, stakeholders from government, civil society and international organisations have created the Open Contracting Partnership (OCP). As part of this effort and with financial support from Omidyar Network and the World Bank, the Web Foundation has developed the Open Contracting Data Standard (OCDS) for the OCP to help governments publish procurement data (and associated documents) in a format that addresses the needs of a broad range of user groups, including civil society organisations (CSOs) and private companies. It is expected that this standard will enable governments to create a fairer system around government contracts, directly enabling more robust and reliable contract outcomes, as well as provide an opportunity to increase public trust and transparency. For CSOs, it would provide them with the opportunity to access the details of public contracting processes to better monitor spending, ensuring that citizens get the best value for money from public services.

2. WHAT DID WE WANT TO KNOW?

In this research, we wanted to answer the following questions:

1. What are the different steps in the **contracting process** and what kinds of **data** are collected, stored, generated or managed in which phase and by which government institution?

2. What is within the current **contracting systems and procedures** that would help **introduce and facilitate** the implementation of OCDS? What can potentially **hinder or block** the implementation of OCDS?

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3 See: http://data.gov.ph/news/guidelines-open-data-implementation-jmc-no-2015-01
4 See: http://standard.open-contracting.org/latest/en/

3. What did we find?

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THE LAW CLEARLY DEFINES THE PUBLIC CONTRACTING PROCESS

The Philippine procurement process, based on the GPRA, has at least five distinct steps consistent with the OCDS. Table 1 below maps the Philippine procurement process, together with the required documents and their responsible entity included at each stage of the process.

Phase	Brief Description
Planning	• The Procuring Entity (hereinafter PE) i.e., agency, department, Local Government Units (LGU), etc., prepares its proposed budget for the succeeding calendar year. The end-user units (work units within the PE) will prepare their respective Project Procurement Management Plan (PPMP) which details all goods, services, and infrastructure requirements based on the PE's Program, Projects, and Activities (PPA). • The PPMP is then submitted to the PE's budget officer,who evaluates each submitted PPMP and, if warranted, includes it in the budget proposal for approval by the Head of Procuring Entity (HOPE). • After the HOPE approves the budget proposal, the budget office of the PE submits a copy of the budget proposals, as well as corresponding PPMPs, to the BAC Secretariat for consolidation into the proposed Annual Procurement Plan (APP). • Budget hearings are then conducted in the legislative section of the PE, and the budget with the corresponding APP becomes the basis of the budget legislation. • Once the budget legislation is final, the end-user units revise and adjust the PPMPs to reflect the budgetary allocation for their PPA. The revised PPMPs are then submitted to the BAC Secretariat for the finalisation of the modes of procurement under the proposed APP. The HOPE or his designated representative approves the APP.
Tender	• The PE prepares the bidding documents for each contract to be procured. This includes the Approved Budget for the Contract (ABC), Invitation to Bid (ITB), eligibility requirements, instructions to bidders, scope of work, terms of reference, plans and drawings, form of bid, price form, delivery time or completion schedule. • Before disseminating tender notices, the HOPE conducts a pre-conference to discuss the details of the contract to be procured, the process to be employed, and other relevant contractual regulations.
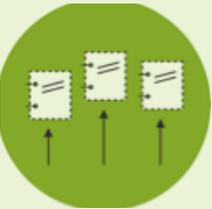
3. What did we find?

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- ITBs for contracts under competitive bidding are then advertised in a newspaper of public circulation if it qualifies. However, regardless of the amount of ABC, all ITB for competitive bidding contracts are required to be posted at the PhilGEPS website.

- For contracts to be bid with an approved budget of 1 Million Pesos or more, the BAC shall convene at least one pre-bid conference to clarify and/or explain any of the requirements, terms, conditions, and specifications stipulated in the Bidding Documents. For contracts to be bid with an approved budget of less than 1 Million Pesos , pre-bid conferences may be conducted at the discretion of the BAC.

- Bidders shall submit their bids through their duly authorised representative using the forms specified in the Bidding Documents in two separate sealed bid envelopes- a technical proposal and a financial proposal- submitted simultaneously.The BAC shall open the bids at the time, date, and place specified in the Bidding Documents. Bid evaluation will then be conducted by the BAC and the procedures will differ depending on the nature of the item bid out (See Rule IX of the IRR) but will be based on quality-cost criteria.

- The Lowest Calculated Bid/Highest Rated Bid shall undergo post-qualification in order to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents.

- Those bidders that pass the post-qualification process will be recommended to the HOPE for the issuance of contracts.
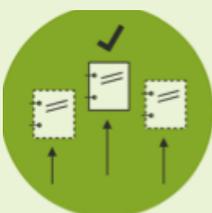
Award

The BAC recommends to the HOPE to award the contract to the winning bidder. If the HOPE approves the BAC's recommendation, the Notice of Award (NOA) is issued to the winning bidder. The relatred documents are then uploaded by the PE at PhilGEPS.

Contract

Within ten calendar days from receipt by the winning bidder of the NOA, the parties are expected to enter into contract, and the winning bidder is required to post a performance security. After contract signing, the Notice to Proceed (NTP) which indicates the contract effectivity date, is issued to the winning bidder.

3. What did we find?
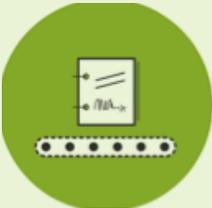
	The contractor will fulfil the conditions of the contract. Contract implementation monitoring is conducted by the end-user.
Implementation	

Table 1. Details of the Contracting Process

PUBLIC DISCLOSURE IS INSUFFICIENT

The PhilGEPS is the primary repository for government electronic procurement data in the country. It is the central portal of all public procurement activities from Invitation to Bids (ITBs), to Notices to Proceed (NTPs) for winning contractors. To strengthen transparency and efficiency in procurement, the PhilGEPS was established by GPRA and mandated by the IRR to create and manage an Electronic Bulletin Board to carry out the following tasks:

- Post procurement documents for the public;
- Maintain a registry of manufacturers, suppliers, distributors, contractors and consultants;
- Develop an electronic catalog of commonly-used and uncommon goods and supplies that procurement entities can procure.

Also, the PhilGEPS may serve as a virtual store, support e-payment functions, and electronic bid submission. If a procuring entity does not have Internet access, the Act establishes PhilGEPS Public Access Terminals in DBM-designated areas throughout the country.

PhilGEPS data can be accessed in two ways:

1. Through the Open Data Portal[5], which contains an open procurement API. This bulk data from the portal is used as a basis in mapping compliance of the data with OCDS standards. Information is necessarily limited to awards, bidders list, procuring entities, items bid, project location, and classification of supplier, among others.

2. Through the PhilGEPS website[6], which contains all necessary information on the procurement tender process, including historical procurement data.

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[5] Visit the Open Data Portal at http://data.gov.ph/catalogue/dataset/philgeps-public-data
[6] Visit the PhilGEPS website at http://philgeps.gov.ph/

3. What did we find?

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There are four levels of access to procurement data through the PhilGEPS website. This is described briefly below:

Access Level	Type of Access	Cost
Public	View bid abstracts, View all open opportunities, View procurement service catalogue of Common Use Supplies and Equipment (CUSE), View recently issued Notice of Awards (up to 100 only)	No cost, no registration
Red member	Same access as 1 to 3 above and single user access to the following: 4. View all award notices 5. View all closed bids/opportunities 6. Preview, order, and download bid documents 7. View and print bid response forms	No cost, requires registration
Blue member	Same access as red members and but available to two users	Approximately 68USD per year plus registration
Platinum member	Same access as red members, available to 4 users and the following: 8. Access to list of consultants 9. Uploading of product catalogues and advertisements 10. Uploading of on-going and completed projects 11. Submission of online bid	Approximately 114 USD per year, plus registration

Table 2. Access Levels to Procurement Data Through the PhilGEPS Website

As indicated above, there is public access to some procurement data but registration is required. However, even paid registered users have limited access to procurement data. The data that paid registered users are not able to access include procurement planning documents, list of bidders per tender, bid evaluation results, bid complaints and decisions, contracts and necessary annexes and contract progress reports. Generally, what is available are documents related to the tender phase. Nevertheless, open access to contracting data that would allow use and reuse is made available through the open data portal, through a bulk download. Still, information is limited to notices and awards; data is not available regarding contracts.

3. What did we find?

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DATA QUALITY REMAINS A PROBLEM

Document accessibility and quality are two different things. While a document may be available and accessible, this does not mean that data is of quality. A review of procurement documents indicates that several documents contain fields that are questionable, e.g. award notices indicate award dates in the future. A validation process at PhilGEPS is not yet in place, and data is the responsibility of the PE. If the PE uploads erroneous data, the system does not have the capacity to auto-detect it.

Data availability for public procurement is also not assured for all government agencies down to the local level. According to the ADB's assessment of public procurement[7], only 88.63% of national government agencies, 95.77% of government-owned and controlled corporations, and 17% of local government units have registered with PhilGEPS. The largest deficiency on local government units are the barangays, of which only 14.94% have registered, out of a total of 41,995. Almost all (above 95%) cities and provinces have complied with PhilGEPS registration, while only 81.44% of municipalities have complied with the registration process. Although the Philippines has reported 100% registration as part of its Open Government Partnership report for 2015, this was doubted by the independent reporting mechanism researcher.

What complicates further the completeness of PhilGEPS data is the level of compliance of registered agencies of the mandatory publication of bidding documents. Based on the internal estimates of PhilGEPS, only 50% of PEs registered are posting procurement-related documents as required by law. Unfortunately, the team running PhilGEPS has no mandate to enforce compliance. However, even when compliance is high, this still does not assure strength in the procurement process. According to community leaders interviewed, compliance with the Law regarding the publication of procurement data is typically done only to "check the box" without the overall intention of ensuring transparency in procurement processes. Hence, publication of procurement opportunities do not necessarily result in improved procurement performance, because collusion between supplier and buyer can still occur. A CSO representative, for example, mentioned that eligibility requirements for suppliers are sometimes written to favour a particular bidder, writing the tender documents as if it is directed towards the selection of one preferred supplier.

A deeper issue regarding compliance, which cannot be gleaned from data currently available in PhilGEPS, is the use of competitive bidding as a primary mode of procurement. As earlier indicated, alternative modes of procurement are allowed in certain circumstances. The APCPI, a tool to assess procurement compliance of a PE with the procurement law, sets the standard of contracting via public bidding: it should at least be 90% of the total value of procurement. However, for most PEs, especially the LGUs, alternative modes are the norm rather than the exception. In several cases, it is in the use of alternative modes of procurement that corruption occurs, or where the government does not get good value for money.

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7 See: http://www.adb.org/documents/philippines-country-procurement-assessment-report-2012

4. Can the Philippines Implement the OCDS?

Open Contracting is an extension of the Open Government movement aimed at increasing public participation and holding governments accountable for public resources through increased disclosure of government procurement information. Open Contracting provides national governments with a progressive guideline of commitments for achieving public contracting openness. The Philippines has been cited many times in Open Contracting documents as an example country for its commitments to Open Contracting and its improved processing times due to PhilGEPS, for providing government, civil society, and private sector procurement trainings, and for civil society participation in all levels of public procurement.

The OCDS is a defined schema of data points to which governments can align their data systems and, therefore, directly achieve four main benefits:

1. By consistently tagging data it becomes comparable and analysable, trends can demonstrate achievement of real value for money;

2. The ability to scrutinise data expands when data is linked throughout the process, which improves corruption and fraud detection;

3. Providing clear and complete public procurement information along with historic records informs the public and creates a competitive forward-looking bidding environment; and

4. In advanced stages of OCDS alignment, procurement data is linked to external datasets e.g., budget data, inventory data, spending data and on-the-ground results are also recorded and linked back to contract specifications, thus verifying quality and timeliness of procurement efforts.

The OCDS suggests uniquely identifying every contract and gathering all related documents underneath that contract identifier, and then tagging the available data with the matching predefined priority data fields.

The OCDS schema describes 55 priority data fields categorised into three publication levels, each graduating towards a more transparent procurement system:

• **basic level tags** describe commonly held contracting data;

• **intermediate level tags** describe data points that connect system procurement data, which can then be meaningfully traversed;

• **advanced level tags** describe data points that allow procurement data to share associations with external data.

Alignment with, and then graduation from each publication level, opens up the system and intensifies its practical usefulness.

4. Can the Philippines Implement the OCDS?

The OCDS further identifies at each stage of the procurement process (planning, tender, award, contract, implementation) the key documents that should be published according to each publication level. Table 3 below compiles the process map information together with the PhilGEPS Public Data Tables and then compares each item one-to-one with the OCDS.

	Aligned Elements	OCDS	
Data Points	24	55	43% Alignment
Priority Documents	2	35	5% Alignment
Best Practices	2	9	22% Alignment

Table 3. Philippines Procurement Process and Alignment Comparison - Summary of All Contracting Processes

As shown in Table 3, there is a low level of alignment between the Philippine procurement process and the OCDS for all the steps in the contracting process. This low level of alignment does not indicate the complete unavailability of contracting data, but does point to its limited accessibility to the public.

To illustrate this point in the tender or initiation phase of the contracting process, Table 4 shows the prioritised documents in OCDS, its availability within PhilGEPS and its accessibility by the public.

Prioritised Document	Available?	Publicly Accessible?	Comment
Tender Notice	Yes	Yes	
Bidding Documents	Yes	No	Requires log-in or registration
Technical Specifications	Yes	No	Requires log-in or registration
Evaluation Criteria	Yes	No	Requires log-in or registration
Eligibility Criteria	Yes	No	Requires log-in or registration
Clarifications to bidders questions	Yes	No	Requires log-in or registration
Shortlisted Firms	Yes	No	Information available internally
Provisions for management of risks and liabilities	Not clear	-	
Bill Of Quantity	Yes	No	Requires log-in or registration
Information on bidders	Yes	No	Requires log-in or registration, but only limited information
Conflicts of interest uncovered	Not clear	-	
Debarments issued	Yes	No	Information available internally

Table 4. OCDS Priority Document, Availability, and Accessibility - Tender Process

To a large extent, availability of data fields within PhilGEPS is high when we compare this with those that are necessary for OCDS to be implemented. The only problem is the fact that this data, although available, is not publicly accessible.

5. What needs to be done
to make open contracting happen?

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The following steps are necessary to undertake to see the Philippine government transition to open contracting:

1. **Work with PhilGEPS Management Office and data.gov.ph to provide full OCDS-compatible exports of PhilGEPS data.** This process can build on the existing data disclosed through the data.gov.ph platform, and should result in a range of datasets oriented towards different user groups - including developers and analysts. This work should build on engagement with users to identify the kinds of data extracts they need; for example, spreadsheet versions summarising upcoming and recent procurements by region, supporting CSO monitoring groups to be better informed. This, however, is an additional requirement to the already existing practice of bulk data.

   The OCDS help-desk can provide support for this process, though it should be led by an organisation in the Philippines working with PhilGEPS and civil society organisations to:

   - Identify additional data that can be disclosed, given legal limitations on disclosure and considering the peculiarities of business competition inherent in procurement processes;
   - Increasing the coverage of procurement data collection and aggregation of PhilGEPS, more particularly those related to contract implementation and monitoring;
   - Improving procurement data quality;
   - Developing user engagement strategies that will be used for different stakeholders in order to ensure wide dissemination of procurement data availability;
   - Publishing all procurement data to comply with the open data principles.[8]

2. **Implement a procurement dashboard** to monitor compliance with the law, improve data quality, and encourage increased disclosure of documents. By building a dashboard around the OCDS, a global standard for assessing data and document availability and quality can be applied, which can act as an advocacy tool for improved data publication. There is some initial work on open source dashboards underway, from which such an activity could build on.

   This would involve sponsoring or co-sponsoring the development of this tool, which would be built around substantial user engagement, and should be deployed with government and civil society buy-in.

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5. What needs to be done to make open contracting happen?

3. **Advocate with GPPB to strengthen the role of civil society in public procurement.** This can be in the form of strengthening civil society involvement in procurement planning, particularly in the preparation of PPMPs by PEs, and in the monitoring of contractual obligations of winning bidders. An area of work that can be explored is how to ensure that civil society is involved in the process of assessing PE procurement compliance through the APCPI, or having civil society as independent verifiers of APCPI ratings, as this is essentially a self-rating instrument.

4. **Build capacities of CSOs, media and academia on procurement laws, systems and processes.** It is quite apparent that there is low capacity of procurement data users regarding procurement processes, except for select organisations who are engaged in this thematic work. There is a very wide space to conduct these trainings, as procurement monitoring at local government levels is significantly low, if not absent. A strategic way to do this would be to:

   • Build models of delivering capacity building activities;

   • Test these models in select cities or municipalities where there is a relatively mature civil society;

   • Document these models into a how-to guide that can be used by various organisations;

   • Conduct a train-the-trainer process and lodge this at select Centres for Local Governance across the country.

In addition, capacity building is also needed on relevant approaches to analysis procurement data, including using visualisation and using big data analytics approaches to locate issues of interest across large quantity of procurement data.

If you have questions regarding this research note, visit our website at labs.webfoundation.org or get in touch with us directly at **info@labs.webfoundation.org**. Other related or similar media are also available in the resources section of our website.

↘ If you want to learn more about the OCDS Research Project, email us at **info@labs.webfoundation.org**

↘ If you want to look at other open data projects, see **labs.webfoundation.org**

↘ If you want to discuss the findings in more detail, contact us, let's talk!

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