

# **Introductory bibliography - Regulating public procurement: general issues and the UNCITRAL models on procurement**

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## **1. Introduction**

The following is a very short introductory bibliography listing key reading in the English language on *Regulating public procurement: general issues and the UNCITRAL models on procurement*, which has been produced by the Asia Inter University Network for Teaching and Research in Public Procurement Regulation. The bibliography is not intended to be comprehensive, but merely introductory. It does not at all with the detail of contract award procedures but only with certain selected general principles and problems. Apart from the section on procurement reform, and some pieces that present very general lessons, it does not include country case-studies of specific problems but only material of a general nature.

Separate bibliographies have also been produced on: i) European Union (EU) Public Procurement Law; and ii) Public procurement regulation within the WTO.

The Network consortium is in the process of producing a more comprehensive bibliography on these and other subjects in public procurement (including the laws of certain individual countries) – comprehensive as regards both topics covered (theoretical and practical) and works included. It is hoped will be published later in 2009 and regularly updated. This will provide extensive case studies of all aspects of public procurement from the experiences of national and regional procurement systems.

The list has been compiled based on materials used for teaching modules on public procurement in some of the partner institutions of the Asia Link project. It should be emphasized that the selection of materials for inclusion is in part influenced by the focus of these particular modules and by the availability of materials at the partner institutions.

The bibliography was last updated in April 2009.



These materials were produced with the financial assistance of the EU. **The contents of the materials are the sole responsibility of the University of Nottingham, member of the consortium involved in the EU Asia Inter University Network for Teaching and Research in Public Procurement Regulation and can under no circumstances be regarded as reflecting the position of the European Union.** The EU Asia Inter University Network for Teaching and Research in Public Procurement Regulation is led by University of Nottingham (Project leader: Professor Sue Arrowsmith) and the other consortium members are Copenhagen Business School, the Central University of Finance and Economics (Beijing), Xinjiang University, and the University of Malaya.

## **PART I: Regulating Public Procurement: General**

### **1. General works**

S. Arrowsmith and A. Davies (eds.), *Public Procurement Global Revolution* (London: Kluwer Law International 1998)

S. Arrowsmith, J. Linarelli and D. Wallace, *Regulating Public Procurement: National and International Perspectives* (London: Kluwer Law International 2000)

S. Arrowsmith and M. Trybus (eds.), *Public Procurement: the Continuing Revolution* (London: Kluwer Law International 2002)

N. Dimitri, G. Piga and G. Spagnolo (eds.), *Handbook of Procurement* (Cambridge: CUP 2006)

S. Kelman, *Procurement and Public Management* (Washington: AEI Press 1990)  
P. Trepte, *Regulating Procurement: Understanding the Ends and Means of Public Procurement Regulation* (Oxford: OUP 2004)

A. Kovacs, *Enhancing Procurement Practices: Comprehensive Approach to Acquiring Complex Facilities and Projects* (Boston: Kluwer Academic 2004)

G. Piga and K. Thai (eds.), *Advancing Public Procurement: Practices, Innovation and Knowledge-sharing* (Boca Raton: PRAcademics Press 2007)

K.V. Thai (ed.), *International Handbook of Public Procurement* (CRC Press; 2008)

### **2. Objectives of regulation and general principles**

#### **2.1. The objectives of regulation**

S. Arrowsmith, "National and International Perspectives on the Regulation of Public Procurement: Harmony or Conflict?", Ch. 1 in S. Arrowsmith and A. Davies (eds.), *Public Procurement Global Revolution* (London: Kluwer Law International 1998)

S. Arrowsmith, J. Linarelli and D. Wallace, *Regulating Public Procurement: National and International Perspectives* (London: Kluwer Law International 2000), Ch. 1, and Ch. 2 pp.27-32, 61-63 and 73-98.

S. Schooner, "Desiderata: Objectives for a System of Government Contract Law" (2002) 11 *Public Procurement Law Review* 103

P. Trepte, *Regulating Procurement: Understanding the Ends and Means of Public Procurement Regulation* (Oxford: OUP 2004), Ch. 1 and 2

## **2.2. Transparency as a means of achieving public procurement objectives**

S. Arrowsmith, "The EC procurement directives, national procurement policies and better governance: the case for a new approach" (2002) 27 *European Law Review* 3

S. Arrowsmith, J. Linarelli and D. Wallace, *Regulating Public Procurement: National and International Perspectives* (London: Kluwer Law International 2000), Ch. 2, section III ("Regulatory Strategy")

P. Bajari and S. Tadelis, "Incentives and award procedures: competitive tendering versus negotiations in procurement", Ch. 5 in N. Dimitri, G. Piga and G. Spagnolo (eds.), *Handbook of Procurement* (Cambridge: CUP 2006)

S. Kelman, *Procurement and Public Management* (Washington: AEI Press 1990), Chs. 1, 2 and 5

S. Kelman, "Remaking Federal Procurement" (2002) 31 *Public Contract Law Journal* 581

J. Pegnato, "Assessing Federal Procurement Reform: has the Pendulum Stopped Swinging?" (2003) 3 *Journal of Public Procurement* 145

S. Schooner, "Commercial Purchasing: the Chasm between the United States Government's Evolving Policy and Practice", Ch. 8 in S. Arrowsmith and M. Trybus (eds.), *Public Procurement: the Continuing Revolution* (London: Kluwer Law International 2002)

S. Schooner, "Fear of Oversight: the Fundamental Failure of Businesslike Government" (2001) 50 *American University Law Review* 627

S. Schooner and C. Yukins, "Model Behaviour? Anecdotal Evidence of Evolving Commercial Public Procurement Practices and Trade Policy" (2003) 9 *International Trade Law and Regulation* 4

J. Schwartz, "Regulation and Deregulation in Public Procurement Law Reform in the United States", Chap. 8 in G. Piga and K. Thai (eds.), *Advancing Public Procurement: Practices, Innovation and Knowledge-sharing* (Boca Rato: PRAcademics Press 2007)

P. Trepte, *Transparency and Accountability as Tools for Promoting Integrity and Preventing Corruption in Public Procurement* (2005) (paper to OECD Expert Group meeting on Integrity in Public Procurement)

C. Vacketta, "Lessons from the Commercial Marketplace" (2002) 11 *Public Procurement Law Review* 126

W. Wittig, "A Framework for Balancing Business and Accountability within a Public Procurement System: Approaches and Practices of the United States" (2001) 10 *Public Procurement Law Review* 139

### **3. Reform of regulatory systems in public procurement**

E. Agaba and N. Shipman, "Public Procurement Reform in Developing Countries: the Uganda Experience", Ch. 16 in G. Piga and K. Thai (eds.), *Advancing Public Procurement: practices, Innovation and Knowledge-sharing* (Boca Raton: PRAcademics Press 2007)

F. Anechiarico, "Reforms in Procurement Policy and their Prospects", Ch. 9 in S. Arrowsmith and M. Trybus (eds.), *Public Procurement: the Continuing Revolution* (London: Kluwer Law International 2002)

J. Edgardo Campos and J. Syquia, "Managing the Politics of Reform: Overhauling the Legal Infrastructure of Public Procurement in the Philippines" World Bank Working Paper No.70 (November 2006), available at <http://siteresources.worldbank.org/EXTDEVCOMMENG/Resources/Procurement-e-book.pdf>

C. Herbert, "Public Procurement Law Reform: Some design issues for small island States – a perspective from Trinidad and Tobago" (2003) 29 *Commonwealth Law Bulletin* 552

R. Hunja, "Obstacles to Public Procurement Reform in Developing Countries", Ch. 2 in S. Arrowsmith and M. Trybus (eds.), *Public Procurement: the Continuing Revolution* (London: Kluwer Law International 2002)

International Trade Centre UNCTAD/GATT, Guide No. 23, *Improving Public Procurement Systems* (1993)

D. Jones, "Public Procurement in South East Asia: Challenge and Reform" (2007) 7 *Journal of Public Procurement* 3

V. Mosoti, "Reforming the Laws on Public Procurement in the Developing World: the Example of Kenya" (2005) 54 *International and Comparative Law Quarterly* 621.

C. L. Pallas and J. Wood, "The World Bank's Use of Country Systems for Procurement: a Good Idea Gone Bad?" (2009) 27 *Development Policy Review* 215

E. Piselli, "The Establishment and Development of a Public Procurement System for Kosovo", Ch. 4 in S. Arrowsmith and M. Trybus (eds.), *Public Procurement: the Continuing Revolution* (London: Kluwer Law International 2002)

J. Schwartz, "Learning from the United States' Procurement Law Experience: On "Law Transfer" and its Limitations", (2002) 11 *Public Procurement Law Review* 115

J. Schwartz, "On Globalisation and Government Procurement", Ch. 3 in S. Arrowsmith and M. Trybus (eds.), *Public Procurement: the Continuing Revolution* (London: Kluwer Law International 2002)

K. Thai et al (eds.), *Challenges in Public Procurement: An International Perspective* (Boca Raton: PRAcademics Press 2005), Ch. 2-5

P. Trepte, "Procurement Regulation and Emerging Economies: The Examples of Laos and Bhutan", Ch. 6 in S. Arrowsmith and A. Davies (eds.), *Public Procurement Global Revolution* (London: Kluwer Law International 1998)

#### **4. Harmonisation of regulatory provisions on public procurement and the influence of international instruments**

A. Kovacs, *Enhancing Procurement Practices: Comprehensive Approach to Acquiring Complex Facilities and Projects* (Boston: Kluwer Academic 2004)

E. Nwogwugwu, "Towards the Harmonisation of International Procurement Policies and Practices" (2005) 14 P.P.L.R. 131

S. Schooner and C. Yukins, "Incrementalism: eroding the impediments to a global public procurement market" (2007) 23 *Georgetown Journal of International Law* 529

#### **5. Addressing corruption and conflicts of interest in public procurement**

##### **5.1. General**

F. Anechiarico, "Reforms in Procurement Policy and their Prospects", Ch. 9 in S. Arrowsmith and M. Trybus (eds.), *Public Procurement: the Continuing Revolution* (London: Kluwer Law International 2002)

F. Anechiarico and J. Jacobs, *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective* (Chicago: University of Chicago Press 1996)

S. Arrowsmith, J. Linarelli and D. Wallace, *Regulating Public Procurement: National and International Perspectives* (London: Kluwer Law International 2000), pp.32-61

International Trade Centre UNCTAD/WTO, *A Framework for Balancing Business and Accountability within a Public Procurement System*

International Trade Centre UNCTAD/GATT, Guide No. 23, *Improving Public Procurement Systems* (1993), Ch. 1

OECD, *Bribery in Public Procurement: Methods, Actors and Counter- measures* (OECD 2007)

OECD, *Fighting Corruption and Promoting Integrity in Public Procurement* (2005) Chs. 26-34

OECD, *Integrity in Public Procurement: Good Practice from A to Z* (OECD 2007)

S. Kelman, *Procurement and Public Management* (Washington: AEI Press 1990), pp.99-100

W. Kovacic, "The Civil False Claims Act as a Deterrent to Participation in Government Procurement Markets" (1998) 6 *Supreme Court Economic Review* 201

J. Linarelli, "Corruption in Developing Countries and Economies on Transition: Economic and Legal Perspectives", Ch. 7 in S. Arrowsmith and A. Davies (eds.), *Public Procurement Global Revolution* (London: Kluwer Law International 1998)

J. Linarelli, "Corruption in Developing Countries and in Countries in Transition: Legal and Economic Perspectives", Ch. 14 in S. Arrowsmith and A. Davies (eds.), *Public Procurement Global Revolution* (London: Kluwer Law International 1998)

S. Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform* (Cambridge: CUP 1999), Chs. 1-5

I. Shihata, "Corruption: a General Review with an Emphasis on the Role of the World Bank" (1997) 15 *Dickinson Journal of International Law* 451

F. Stapenhurst and P. Langseth "The Role of the Public Administration in Fighting Corruption" (1997) 10 *International Journal of Public Sector Management* 311

Transparency International Sourcebook, chapter 12 on Public Procurement; available at <http://www.transparency.org/publications/sourcebook>

P. Trepte, *Transparency and Accountability as Tools for Promoting Integrity and Preventing Corruption in Public Procurement* (2005) (paper to OECD Expert Group meeting on Integrity in Public Procurement)

W. Wittig, "A Framework for Balancing Business and Accountability within a Public Procurement System: Approaches and Practices of the United States" (2001) 10 *Public Procurement Law Review* 139

C. Yukins, "Integrating Integrity and Procurement: the United Nations Convention against Corruption and the UNCITRAL Model Procurement Law" (2007) 36 *Public Contracts Law Journal* 307

## **5.2. The OECD Anti-bribery Convention**

P. Asbo, "International Anti-corruption Instruments: Recent Developments in the Americas and the United States" (2002) 11 *Public Procurement Law Review* NA65

- B. Earle, "The United States Foreign Corrupt Practices Act and the OECD Anti-bribery Recommendation: When Moral Suasion Won't Work, Try the Money Argument" (1996) 14 *Dickinson Journal of International Law* 207.
- N. Ehlermann-Cache, "Fighting Corruption in International Business Transactions; Impact on Public Procurement" (2006) 15 *Public Procurement Law Review* NA195
- K. Elliott (ed.), *Corruption and the Global Economy* (Washington: Institute for International Economics 1996)
- D. Gantz, "Globalizing Sanctions against Foreign Bribery: The Emergence of a New International Legal Consensus" (1998) 18 *Northwestern Journal of International Law and Business* 457
- B. Harms, "Holding Public Officials Accountable in the International Realm: a New Multi-layered Strategy to Combat Corruption" (2000) 33 *Cornell International Law Journal* 159.
- M. Murphy, "International Bribery: An Example of an Unfair Trade Practice?" (1995) 21 *Brook Journal of International Law* 385.
- P. Nichols, "Are Extra-territorial Restrictions on Bribery A Viable and Desirable International Policy Goal Under the Global Conditions of the Late Twentieth Century?" (1999) 20 *Michigan Journal of International Law* 451
- P. Nichols, "Regulating Transnational Bribery in Times of Globalization and Fragmentation" (1999) 24 *Yale Journal of International Law Journal* 257
- P. Nichols, "The Myth of Anti-bribery Laws as Transnational Intrusion" (2000) 33 *Cornell International Law Journal* 627
- S. Salbu, "A Delicate Balance: Legislation, Institutional Change and Trans-national Bribery" (2000) 33 *Cornell International Law Journal* 657
- S. Salbu, "Extra-territorial Restriction of Bribery: A Premature Evocation of the Normative Global Village" (1999) 24 *Yale International Law Journal* 223
- S. Salbu, "The Foreign Corrupt Practices Act as a Threat to Global Harmony" (1999) 20 *Michigan Journal of International Law* 419
- K. Surjadinata, "Revisiting Corrupt Practices from a Market Perspective" 12 *Emory International Law Review* 1021
- R. Zedalis, "How does the New OECD Convention on Bribery Stack up Against the Foreign Corrupt Practices Act?" (1998) 32 *Journal of World Trade* 167
- R. Zedalis, "Internationalizing Prohibitions on Foreign Corrupt Practices" (1997) 31 *Journal of World Trade* 45
- N. Zucker Boswell, "An Emerging Consensus on Controlling Corruption" (1997) 18 *University of Pennsylvania Journal of International Economic Law* 1165



### **5.3. Role of the World Bank**

P. Chanda, "The Effectiveness of the World Bank's Anti-Corruption Efforts: Current Legal and Structural Obstacles and Uncertainties" (2004) 32 *Denver Journal of International Law and Policy* 315

I. Shihata, "Corruption: a General Review with an Emphasis on the Role of the World Bank" (1997) 15 *Dickinson Journal of International Law* 451

J-J. Verdeaux, "The World Bank and public procurement: Improving aid effectiveness and addressing corruption" (2006) 6 *Public Procurement Law Review* NA179

S. Williams, "The Debarment of Corrupt Contractors from World Bank Financed Contracts" (2007) 36 *Public Contracts Law Journal* 277

S. Williams, "World Bank introduces new measures to reduce fraud and corruption in Bank-financed contracts and in the administration of Bank loans (2007) 5 *Public Procurement Law Review* NA152

### **5.4. Conflicts of interest**

OECD, *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences* (2003)

H-J. Priess, "Conflict of Interest in Tender Proceedings: How to Deal with Conflicts of Interest (Family Ties, Business Links and Cross-Representation of contracting Authority Officials and Bidders)", (2002) 11 *Public Procurement Law Review* 153

## **6. Remedies and enforcement**

### **6.1. Supplier review**

D. Gordon, "Constructing a Bid Protest System: The Choices that Every Procurement Challenge System Must Make" (2006) 35 *Public Contracts Law Journal* 427.

R. Marshall, M. Meurer and J-F. Richard, "Curbing agency problems in the procurement process by protest oversight", (1994) 25 *Rand Journal of Economics* 297

A. Reich, "On Procurement, Protectionism and Protests: a Survey Among Canadian Procurement Officers" (1994) 23 *Canadian Business Law Journal* 107

S. Schooner, "Pondering the Decline of Federal Government Contract Litigation in the United States" (1999) 8 *Public Procurement Law Review* 242

X. Zhang, "Supplier review as a mechanism for securing compliance with public procurement rules: a critical perspective" (2007) 16 *Public Procurement Law Review* 325

## **6.2. Other national enforcement mechanisms**

P. Carrier, "Analysis of Public Procurement Authorities in Central European Countries" (2003) 12 *Public Procurement Law Review* 131

M. Lemke, "The experience of centralised enforcement in Eastern Europe", Ch. 7 in S. Arrowsmith and M. Trybus (eds.), *Public Procurement: the Continuing Revolution* (London: Kluwer Law International 2002)

<p><b>7. Industrial, social and environmental objectives in public procurement (horizontal policies, collateral policies, sustainable development, socio-economic policies, procurement linkages)</b></p>
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S. Arrowsmith, "A taxonomy of horizontal policies in public procurement", chapter 3 in S. Arrowsmith and P. Kunzlik (eds.), *Social and Environmental Policies in EC Procurement Law: New Directive and New Directions* (2009; CUP)

International Trade Centre, *Improving SME access to public procurement: the experience of selected countries* (2000)

C. McCrudden, *Buying Social Justice: Equality, Government Procurement, & Legal Change* (OUP; 2007)

OECD, *The Environmental Performance of Public Procurement: Issues of Policy Coherence* (2003)

## **Part II: the UNCITRAL Model Law on Procurement of Goods, Construction and Services and procurement reform and UNCITRAL instruments on privately financed infrastructure**

### **1. General works**

S. Arrowsmith, "Public Procurement: an Appraisal of the UNCITRAL Model Law as a Global Standard" (2004) 53 *International and Comparative Law Quarterly* 17

S. Arrowsmith (ed.), *Public Procurement Regulation in the 21<sup>st</sup> Century: Reform of the UNCITRAL Model Law on Procurement* (2009; West)

S. Arrowsmith, J. Linarelli and D. Wallace, *Regulating Public Procurement: National and International Perspectives* (London: Kluwer Law International 2000), pp.88-98

S. Arrowsmith and C. Nicholas, "The UNCITRAL Model Law on Procurement of Goods, Construction and Services: Past, Present and Future", chapter 1 in S.Arrowsmith (ed.), *Public Procurement Regulation in the 21<sup>st</sup> Century: Reform of the UNCITRAL Model Law on Procurement* (2009; West)

A. Beviglia-Zampetti, "The UNCITRAL Model Law on Procurement of Goods, Construction and Services", chapter 15 in B. Hoekman and P. Mavroidis (eds.), *Law and Policy in Public Purchasing* (Ann Arbor: University of Michigan Press 1997)

M. Dischendorfer, "The UNCITRAL Model Law on Procurement: How Does it Reconcile the Theoretical Goal of Total Objectivity with the Practical Requirement for Some Degree of Subjectivity?" (2003) 12 *Public Procurement Law Review* 100

R. Hunja, "The UNCITRAL Model Law on Procurement of Goods, Construction and Services and its Impact on Procurement Reform", Ch. 5 in S. Arrowsmith and A. Davies (eds.), *Public Procurement Global Revolution* (London: Kluwer Law International 1998)

J. Myers, "UNCITRAL Model Law on Procurement" (1993) 21 *International Business Lawyer* 179

D. Wallace, "The UN Model Law on Procurement" (1992) 1 *Public Procurement Law Review* 406

G. Westring, "Multilateral and Unilateral Procurement Regimes: to which Camp does the Model Law Belong?" (1994) 3 *Public Procurement Law Review* 142

## **2. Reform of the UNCITRAL Model Law on Procurement of Goods, Construction and Services**

S. Arrowsmith, "Electronic Reverse Auctions under the UNCITRAL Model Law", chapter 11 in S. Arrowsmith (ed.), *Public Procurement Regulation in the 21<sup>st</sup> Century: Reform of the UNCITRAL Model Law on Procurement* (Eagan: West 2009)

S. Arrowsmith, "Public Procurement: an Appraisal of the UNCITRAL Model Law as a Global Standard" (2004) 53 *International and Comparative Law Quarterly* 17

S. Arrowsmith (ed.), *Public Procurement Regulation in the 21<sup>st</sup> Century: Reform of the UNCITRAL Model Law on Procurement* (Eagan: West 2009)

S. Arrowsmith and C. Nicholas, "Framework Agreements under the UNCITRAL Model Law", Ch. 2 in S. Arrowsmith (ed.), *Public Procurement Regulation in the 21<sup>st</sup> Century: Reform of the UNCITRAL Model Law on Procurement* (Eagan: West 2009)

C. Nicholas, "Electronic Communication under the UNCITRAL Model Law", Ch. 8 in S. Arrowsmith (ed.), *Public Procurement Regulation in the 21<sup>st</sup> Century: Reform of the UNCITRAL Model Law on Procurement* (Eagan: West 2009)

C. Nicholas, "The UNCITRAL Model Law on Procurement - The Current Reform Programme" (2006) 6 *Public Procurement Law Review* NA161

SIGMA Paper No. 28, 2000, reproduced in (2000) 9 *Public Procurement Law Review* 287

D. Wallace, "UNCITRAL: Reform of the Model Procurement Law" (2006) 35 *Public Contracts Law Journal* 485

C. Yukins, "A Case Study in Comparative Procurement Law: Assessing UNCITRAL's Lessons for US Procurement" (2006) 35 *Public Contracts Law Journal* 457

## **3. The UNCITRAL instruments on procurement of privately financed infrastructure**

B. de Cazalet and J. Crothers, "Presentation of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects" (2001) 6 *RDAI/IBLJ* 699

D. Wallace, "UNCITRAL Draft Legislative Guide on Privately Financed Infrastructure: Achievement and Prospects" (2000) 8 *Tulane Journal of International and Comparative Law* 286