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Contracting
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**National-level procurement
of the Green Climate Fund**

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**Open
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Partnership**

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1. EXECUTIVE SUMMARY

In 2015, when countries signed the Paris Agreement on climate change, they committed to mobilising US\$100 billion¹ per year by 2020 to assist developing countries in adapting to and mitigating the impacts of climate change. This money will primarily be channelled through the Green Climate Fund (GCF) as the main financial mechanism under the UN Framework Convention on Climate Change.

Since the current level of global commitments and funding is unlikely to be enough to keep global warming below the two-degree limit, efficient spending and a high impact of GCF funds is critical. Safeguards needed to achieve this include transparent and accountable procurement. They also include contracting processes that allow sufficient public disclosure of project-related information, consultation with beneficiaries and space for civic engagement.

The GCF will undertake two kinds of procurement of goods and services: procurement for the GCF Secretariat itself and procurement for projects approved by the Fund in developing countries, particularly those in the renewable energy sector. In either case, the quality of the procurement of goods and services from private companies will play a big role in determining how effectively climate finance is spent overall.

This study is a collaboration between Transparency International and the Open Contracting Partnership. The first part of the study considered the robustness of the institutional procurement policies of the GCF itself.² This part assesses the public procurement standards related to GCF-funded projects. Understanding these standards is of critical importance as funding begins to flow out of the GCF. The study draws on past experiences of other similarly structured funds and current best practices in the field of open contracting to identify options for increasing the GCF's and its delivery partners' capacity to avoid corruption.

As such, this part of the study reviews the procurement standards that the GCF requires of its delivery partners as part of the process of accrediting them to receive project financing. It introduces and explains the Open Contracting Guidelines developed by the Open Contracting Partnership and applies these to two procurement case studies involving multilateral financed renewable energy projects in Kenya and Mexico.³ Based on this assessment, recommendations

are provided which are targeted at the GCF, recipient countries, civil society and businesses to support the development of GCF procurement standards and to improve national-level procurement processes.

This study reveals that, although the GCF has accreditation standards in place, including requirements on transparency and disclosure, these are limited in scope and do not cover the whole procurement process. There are extremely limited concrete provisions relating to consultation with beneficiaries or support for civic engagement during procurement processes. Furthermore, once an entity has been accredited and funding approval has been given, there are very limited provisions to follow up on compliance and thus no way to know if they are complying with transparency and disclosure commitments.

Additionally, the systems of the GCF and other multilateral climate funds dictate that, once accredited against the broader standards set by the Fund, the procurement process for projects is based on the systems of individual accredited entities. Therefore, many different systems operate in the GCF landscape: those of UN agencies, multilateral development banks, national implementing entities and others. Indeed, beyond the accreditation process itself, the GCF has limited influence on procurement processes for GCF-funded projects.

In order to understand the effects of this existing system on the standards of procurement in the context of the GCF, two case studies from Kenya and Mexico were assessed. These case studies show how much the institutional set-up and consequently the transparency and participatory nature of the resulting activities can vary. On one hand, in Kenya, where national procurement laws and systems need strengthening, international support and standards may be necessary to ensure transparency and accountability. Conversely, as seen in the Mexican case, where procurement

systems are advanced and offer a high level of transparency and open public participation, reliance on national systems may be preferred over standards applied by financial intermediaries. The latter may be less open and participatory.

FINDINGS AND RECOMMENDATIONS REGARDING THE GCF

Finding: The GCF's fiduciary standards include a range of requirements on accredited entities regarding transparency, disclosure and participation. The GCF may intend that these standards apply equally to procurement processes under the control of the accredited entity, but this is not specified and the requirements are so vague as to risk being overlooked.

Recommendation 1: The GCF should clarify whether the broad standards that it lays out in its fiduciary standards are equally applicable to contracting carried out by an accredited entity and also when it supervises contracting by a third party.

Finding: There is a gap in the accreditation standards of the GCF. Current GCF fiduciary standards do not include disclosure for all four steps of the procurement cycle (planning, contracting, execution and closing). Additionally, the current standards do not have any requirements specifically targeted at ensuring public participation in procurement processes.

Recommendation 2: The GCF Board should expedite its review of its accreditation standards as agreed at its 7th Board Meeting and adopt amendments to its basic fiduciary standards to be fully in line with the Open Contracting Principles (see Annex 1).

Equally, the GCF Accreditation Committee should incorporate requirements for greater disclosure and participation in its accreditation strategy, with the Open Contracting Principles being explicitly referenced as best practice for accredited entities.

Finding: National accredited entities currently carry out procurement in compliance with national laws and regulations while multinational entities operating in

project country jurisdictions apply their own institutional procurement regulations/guidelines. The case studies reveal, however, that exceptions can be made to this rule depending on which system provides the best standards in regard to open contracting and participatory monitoring rules.

Recommendation 3: The GCF should provide clearer guidance on what happens if there is a mismatch between the disclosure and participation requirements of accredited entities and those applicable in country. The GCF should urge application of the best policies and procedures, that is, those that provide for the highest level of disclosure and participation.

Finding: Beyond the accreditation process, the report finds that the GCF rarely promotes good practices to accredited entities despite the fact that their Accredited Master Agreement calls for the adoption of best practices. The case studies in this report from Mexico and Kenya show that, in practice, for funds operating through a similar implementation mechanism the on-the-ground experience of transparency and participation can vary greatly in terms of practices applied.

Recommendation 4: The GCF must make efforts beyond the initial accreditation of actors to promote best practice in procurement. The GCF should urgently develop guidelines for accredited entities that increase awareness about best practices in procurement disclosure and participation based on the Open Contracting Principles. They should strongly inform the updated Disclosure Policy that will be presented at the 21st Board Meeting in 2018.

Finding: The GCF Secretariat plays a role in reviewing project proposals and identifying risk areas in relation to public procurement. Recommendations are made based on proposal reviews, but no indication could be found that there is any follow-up on whether these recommendations are implemented. In addition, no information could be located to suggest that there are any plans to conduct results assessments looking at the extent to which the fiduciary standards and guidelines around procurement have been followed.

Recommendation 5: The GCF must ensure that its standards are translated into practice. It should ensure that its funded activity agreements are actively published to reveal the commitments of the accredited entity around disclosure and engagement. The GCF Board should ensure that the GCF Procurement Office is allocated adequate resources to carry out ongoing monitoring of accredited entities' progress and adherence to their fiduciary obligations.

Recommendation 6: The GCF's Independent Integrity Unit should monitor procurement undertaken by accredited entities and their executing entities and actively address disclosure of corruption and fraud at the project level. The Independent Integrity Unit should also consider developing arrangements with civil society, including Transparency International and the Open Contracting Partnership to identify red flags.

FINDINGS AND RECOMMENDATIONS REGARDING NATIONAL-LEVEL PUBLIC PROCUREMENT SAFEGUARDS

Finding: Contracting data is not always available at country level across all stages of the contracting process or in appropriate formats. Effective engagement with and understanding of the contracting process requires user-friendly, accurate and coherent information at every stage of the procurement process.

Recommendation 1: National procurement entities in GCF-recipient countries should take a decision to disclose data in standardised formats. To do so, they should adopt the Open Contracting Data Standards (OCDS).⁴

Finding: the Mexican government was able to use the national procurement process, which encourages a high level of disclosure and participation, thanks to the country's active civil society sector, which was able to institutionalise a "social witness" programme into the procurement process.

Recommendation 2: Civil society organisations, progressive businesses and others seeking to ensure the effective use of GCF funding must work together to highlight the importance of open contracting through a collective front. This includes holding the government to account for the commitments it has made.

Finding: The study has shown that country experience can vary a great deal. Some countries do not have the legal frameworks in place that will allow citizens to demand better public disclosure for public procurement, while other countries have policies that, while available, may actually work to prohibit open disclosure.

Recommendation 3: Civil society organisations, progressive businesses and others seeking to ensure the effective use of GCF funding must identify gaps within the legal system around public procurement and close them.

Finding: The Mexican case study shows that even if data is disclosed in the right formats by governments, this will not automatically lead to better results. Synthesising the information from the open data formats and translating this into adequate anti-corruption action is necessary.

Recommendation 4: Government, civil society and other interested actors must collaborate to create, or learn from and adapt to their context, innovative ways to capitalise on disclosed data. The Open Contracting Partnership can be a good first port of call in considering innovative options for different contexts.



2. INTRODUCTION AND PURPOSE

In December 2015, governments across the planet reached a consensus to tackle climate change in the Paris Agreement.⁵ Two years later, 197 countries have signed onto the Agreement and 175 have ratified its commitments.⁶ Climate finance, to which the developed world has committed US\$100 billion annually by 2020, is crucial for its successful implementation. This money – and how it is channelled and used – will play a major role in determining the extent of progress made in the struggle against climate change.

Various funding windows have been set up to channel climate finance to where it is needed. One of these windows is the GCF, a financial mechanism of the UNFCCC, which is responsible for the implementation of the Paris Agreement. The GCF's mission is to mobilise funding at scale to invest in low-emission and climate-resilient development.⁷ The Fund became operational in 2015 and has so far approved funding of over US\$3.7 billion for 76 projects.⁸ As many of these projects are infrastructure-heavy, large proportions of funding are likely to be spent through procurement processes.

Transparency and accountability in public contracting is essential to the effective delivery of climate change mitigation and adaptation projects, and in achieving long-term sustainable and transformational impact. Globally, governments spend an estimated US\$9.5 trillion on contracts, with developing countries on average spending significantly higher proportions of their budgets than the global average through contracts with businesses for the delivery of basic goods and services.⁹ In many cases, how these contracts are prepared and executed is, to a large extent, hidden from the public eye, allowing room for poor management and sub-standard delivery. Not only does this practice lead to corruption in the system but it also undermines the benefits that citizens should be deriving from such huge investment. Strong and effective procurement at all levels is essential to ensuring the funds committed are used for their intended purpose, and to maximising their impact.

The Open Contracting Partnership sets out global principles for transparency, accountability and openness in the public contracting process. The principles set standards for disclosure, consultation and engagement throughout the procurement cycle in four stages: planning, tendering, execution and closure. A separate report published by Transparency

International and Open Contracting Partnership looks at the procurement policies of the GCF Secretariat itself.¹⁰ The findings of that report represent a mixed picture of the GCF's overall performance. In particular, the study found room for improvement on transparency with significant gaps identified in terms of requirements on public availability of information for the whole procurement process.

Continuing with this collaboration, this current study examines the extent to which the GCF's policies and standards applicable to the Fund's accredited partners responsible for implementing projects measure up to the Open Contracting Principles. To what extent is adequate disclosure provided for? To what extent are civil society organisations, journalists and other frontline organisations enabled to play key roles in monitoring and translating contracting data and information into action?

Given that the GCF is in its early stages, significant experience is not yet available. Therefore, this assessment is conducted with projects funded by similar funding mechanisms where comparable rules are in place. Based on this approach, this study aims to provide considerations and recommendations to the GCF, its project implementing partners, and national-level governmental and non-governmental stakeholders that are intended to strengthen procurement safeguards in the delivery and implementation of GCF projects.

3. METHODOLOGY

THE OPEN CONTRACTING PRINCIPLES

The basis of this assessment is the Open Contracting Principles developed by the Open Contracting Partnership, and these are set out in Annex 1 to this report. The Open Contracting Partnership advocates for transparency and openness in the public contracting process to address challenges of accountability and trust. The Open Contracting Partnership has developed a set of global principles for disclosure and participation in public procurement through a collaborative process. Consultations involved nearly 200 members of the open contracting community from government, the private sector, civil society, donor organisations, and international financial institutions. These principles ensure a competitive and fair playing field for all public procurement contracting opportunities.

While respecting the legitimate need for confidentiality in exceptional circumstances, the principles are intended to guide governments and other stakeholders to affirmatively disclose documents and information related to public contracting in a manner that enables both efficient performance *and* accountability for outcomes. Although the principles were designed for governments, as the principal bodies responsible for establishing and implementing rules and systems for public contracting processes, the standards they enshrine have been adapted to inform and improve the practice of public international and non-governmental institutions alike, as they too conduct project- or programme-related procurement involving the use of public resources.

The Open Contracting Principles set standards regarding transparency and participation in procurement processes throughout the project cycle, i.e. planning, tendering and award, execution and closure as discussed further below. If carried out in the right spirit, these approaches guarantee not only accountability but also trust amongst all actors. They speak primarily to the scope of access to the necessary information – what information should be publicly disclosed and when – and to requirements of public engagement in participation, monitoring and oversight.

The principles that should apply throughout the procurement cycle are as follows:

- The right of the public to access information related to the formation, award, execution, performance and completion of public contracts should be recognised.
- Public procurement is to be conducted in a transparent and equitable manner, in accordance with publicly disclosed rules that explain the functioning of the process, including policies regarding disclosure.
- The publication of enough information about the formation, award, execution, performance and completion of public contracts should be timely, current and routine so as to enable the public, including the media and civil society, to understand and monitor as a safeguard against inefficient, ineffective or corrupt use of public resources.
- Systems should be developed and applied to collect, manage, simplify and publish contracting data regarding the formation, award, execution, performance and completion of public contracts in an open and structured format, in accordance with the OCDS, in a user-friendly and searchable manner.
- Contracting information made available to the public shall be as complete as possible, with any exceptions or limitations narrowly defined by laws, rules or regulations ensuring that citizens have effective access to recourse in instances where access to this information is in dispute.
- Confidentiality clauses should be precluded or drafted narrowly to cover only permissible limited exemptions, or including provisions within the contractual terms and conditions to allow for the contract and related information to be published.
- The right of the public to participate in the oversight of the formation, award, execution, performance and completion of public contracts should be recognised.

- An enabling environment should be fostered which may include legislation, rules and/or procedures that recognise, promote, protect and create opportunities for public consultation and monitoring of public contracting, from the planning stage to the completion of contractual obligations.
- The capacities of all relevant stakeholders to understand, monitor and improve public contracting should be developed and sustainable funding mechanisms to support participatory public contracting should be provided.
- Oversight authorities should be ensured and responsible for accessing and utilising disclosed information, acknowledging and acting upon citizen feedback, and encouraging dialogue and

consultations between contracting parties and civil society organisations in order to improve the quality of contracting outcomes.

- With regard to individual contracts of significant impact, strategies for citizen consultation and engagement in the management of the contract should be in place.

The meaning and impact of these principles are better understood in terms of how they are applied throughout the four stages of the procurement cycle. The following sections unpack the principles at each of the stages and discuss in greater detail the types of disclosure necessary to achieve accountability, trust and ultimately best value and impact for money results.

FIGURE 1: INTEGRATING OPEN PROCUREMENT WITHIN THE FOUR STAGES OF THE PROCUREMENT CYCLE



Source: Open Contracting Partnership



2.1 Planning

What it is: This stage involves ensuring there is clear demand and rationale for the specific activity or investment. It should be clearly embedded within the government's action plan prepared for the particular sector. This stage also allocates budget, develops procurement plans and identifies risks along with their mitigation measures.

Integrating disclosure and participation: Civil society should be allowed to review different documents associated with the planning stage. At a minimum, the following documents should be disclosed:

- related pre-studies, bid documents, performance evaluations, guarantees and auditing reports
- the planning process of the procurement
- the method of procurement or award and the justification thereof
- the scope and specifications for each contract

There should be mechanisms for consultation so that stakeholders have a strong say at the design stage. For example, Latin American countries have already developed laws that allow for citizens to play a role at the planning stage, particularly in infrastructure and extraction projects. These are generally open to public hearings and agreements with indigenous peoples.¹¹



2.2 Tendering and award

What it is: Once the planning cycle is complete, a tendering process then kicks off. It invites interested suppliers to submit bids that will be evaluated according to specific procedures and evaluation criteria as set out in the bidding documents prepared at the planning stage.

Bid tendering comes in varying types, ranging from completely open competitive bidding for anyone interested to compete on an equal footing to just 'shopping' (e.g. the three-quotation method, generally used for very small budget contracts). There are other methods also, such as closed group bidding, framework contracts and inverse auctions. Another tendering process called the direct contracting scheme is also widely used, and this basically entails contracting one company directly that has the specific expertise for

the piece of work or during emergencies. In any case, there must be a clear justification for direct contracting.

Integrating disclosure and participation: In general, citizens should be allowed to comment on the requirements and procedures before the bids are submitted. To enable this, sufficient information must be disclosed. This includes proactive disclosure of:

- the criteria for evaluation and selection
- the bidders or participants in the process, their validation documents, and any procedural exemptions for which they qualify
- any conflicts of interest uncovered or debarments issued
- the results of the evaluation, including the justification for the award
- the identity of the contract recipient and any statements of beneficial ownership provided

Once a successful bidder is selected through the pre-agreed criteria, and before the contract is signed, the unsuccessful bidders should be allowed to file complaints if they find that the process has not properly followed the established rules. Citizens should also be allowed to ask for detailed explanations such as on how the process was conducted once the evaluation decision is announced.



2.3 Contract execution

What it is: After the contract is awarded, signed and all contractual procedures completed, the execution of the contract starts. During this stage, the contractor must comply with the contractual and legal requirements. The public entity (i.e. government ministry or department) that is the contract manager for the assignment is also accountable for ensuring that execution is proper, timely and in compliance with contractual obligations, particularly in regard to the payment breakdown.

Integrating disclosure and participation: At this stage, citizens should have access to proper contract management procedures and the contracts themselves, and they should have the right to ask whether the milestones are being met regarding costs and times as outlined in the contracts. Any amendments need to also be communicated with clear justifications. A system of evaluating the quality of deliverables should also be included in the contract

execution stage. To aid this process, the contracting authority should make all information related to performance and completion of public contracts publicly available, including information regarding subcontracting arrangements.

Examples include:

- general schedules, including major milestones in execution, and any changes thereto
- status of implementation against milestones
- dates and amounts of stage payments made or received (against total amount) and the source of those payments
- service delivery and pricing
- arrangements for ending contracts
- final settlements and responsibilities
- risk assessments, including environmental and social impact assessments (ESIAs)
- assessments of public assets and liabilities related to the contract
- the provisions in place to ensure appropriate management of ongoing risks and liabilities
- appropriate financial information regarding revenues and expenditures, such as time and cost overruns, if any



2.4 Closing

What it is: The contract needs proper closure once all obligations have been fulfilled. Closure does not mean that the contractor does not have any continued responsibility towards the public, however. Some responsibilities remain even after the last payment has been made. For instance, if the contract was for building a public school and it is damaged due to sub-standard quality material after the contract has been closed, there should be a clear clause that explains how post-delivery issues will be addressed and how responsibilities will be divided for a certain timeframe.

Integrating disclosure and participation: The actual 'use' of many deliverables from public contracts such as roads, railways, power-plants and hospitals begins after the project is complete. Therefore, this is the most critical procurement step where a participatory process needs to be developed so that citizens can monitor the quality of deliverables/services. A robust system such as this is capable of driving positive changes, making sure a contractor assumes responsibility for their work and establishing fresh grounds for government to improve future contract planning.

THE RESEARCH PROCESS

This work applies the Open Contracting Principles as adapted to this study in a two-part approach. First, it assesses the GCF's current policies and standards relevant to project-level procurement, information disclosure and stakeholder engagement. The following standing and interim policies adopted by the GCF Board were reviewed:

1. Initial Fiduciary Principles and Standards (GCF/B.07/11)
2. Interim Environmental and Social Safeguards (GCF/B.07/11)
3. Initial Monitoring and Accountability Framework for Accredited Entities (Decision B.11/10)
4. GCF Accreditation Framework (Decision B.13/28)
5. Comprehensive Information Disclosure Policy (GCF/B.12/32)
6. Corporate Procurement Guidelines on the Use of Consultants and the Corporate Procurement Guidelines for Goods and Services (GCF/B.08/21)
7. Initial Best-Practice Options for Country Coordination and Multi-Stakeholder Engagement (GCF/B.08/45)

This first level of assessment examines where the GCF's policies align well the principles of open contracting and where they fall short.

The second level of assessment is to examine how the Open Contracting Principles are or are not operationalised in GCF financed projects. However, as the GCF is in its early stages of project implementation, case studies of GCF projects could not be undertaken. Instead, case studies were drawn from completed projects that have been financed through other comparably structured international climate trust funds.

Applying the Open Contracting Principles, a set of questions (included as Annex 2) was designed to explore the level of disclosure and participation at each of the four stages of procurement. According to those questions, the assessment examines procurement and public contracting processes in these two cases. Each case study provides an overview of public procurement in the country and an explanation of the national laws and regulations governing disclosure and stakeholder engagement in procurement processes. The project analysis examines how disclosure and engagement

during procurement processes were managed throughout the project cycle, identifying challenges, best practices and areas for improvement.

To ensure a reasonable level of comparability and coherence for this review, the two case studies selected involve similar large-scale renewable energy projects. These are the Menengai Geothermal Development Project in Kenya and the Efficient Lighting and Appliances Project in Mexico. The project countries were chosen because both involved places i) where Transparency International has chapters actively engaged on climate finance and ii) where GCF projects have been approved for implementation and where procurement safeguards will be important for their success.¹²

To conduct the first part of the assessment, a desk review was carried out and the GCF Secretariat was given a one month period in which to review the analysis and to point to any errors or omissions, supported by documented evidence. The GCF Secretariat chose not to input on this review and as such no adjustments were made based on their feedback. The second part of the assessment also began with a desk review of publicly available project information. A similar consultation process was conducted with national entities leading on project implementation to allow them to provide feedback. A face-to-face meeting was also conducted in Kenya.

RESEARCH LIMITATIONS

As noted above, given the very early stage of project implementation under the GCF, we were not in a position to carry out the analysis on completed GCF projects. Instead the study focused on projects that have been funded through a second international fund with a similar set-up in terms of funding being provided through accredited entities. As such, this report should not be understood as an assessment of GCF performance on the ground but rather as an attempt to assess in advance what kind of problems the GCF may need to consider and address at this critical stage of its development.

4. POLICIES AND SAFEGUARDS FOR PROCUREMENT PROCESSES IN GCF PROJECTS

The GCF was established to help developing countries to limit or reduce their greenhouse gas emissions and adapt to climate change. This support is channelled through a wide range of eligible international, regional, national and subnational (governmental or non-governmental) organisations that have been accredited by the GCF. So far, 59 entities have been accredited, of which 36 per cent are national and the rest regional or international.¹³

These organisations act as financial intermediaries and/or directly implement projects and programmes in countries. They are responsible for delivering GCF finance following a results-based approach. Each entity is legally and operationally in charge of procurement processes and the contracting required for financing and project implementation. This includes the further (sub) contracting of ‘executing entities’¹⁴ to carry out and in some cases lead projects.

To be accredited, an organisation must comply with numerous standards that the Fund sets out, including a full range of fiduciary, environmental and social safeguards. These standards, as well as a number of the Fund’s policies, cover procurement, transparency and stakeholder engagement policies and practices. Based on the Open Contracting Principles as introduced above, this section assesses the policies and standards relevant to project-level procurement and contracting processes throughout project cycles, asking what the Fund requires of its accredited entities. The assessment clarifies the scope and reach of GCF standard-setting to suggest where the GCF may wish to enhance its requirements regarding accredited entities or where accredited entities themselves could endeavour to strengthen their policies and practices.

PUBLIC INFORMATION DISCLOSURE

As discussed above, the Open Contracting Principles set standards for information disclosure and participation throughout the procurement process. On disclosure, they stipulate broad requirements relating to the publication of information, information

completeness and confidentiality, and information systems. The principles also provide a list of specific sets of information to be proactively disclosed.

The GCF’s leading policy on this matter is the Initial Fiduciary Principles and Standards.¹⁵ These standards set out transparency and accountability requirements for entities seeking accreditation and apply to the general operations, procurement and project implementation of these entities. The GCF’s fiduciary standards generally oblige accredited entities to be transparent and accountable; specifically, they **require that accredited entities maintain general management policies which “promote an organisational culture that is conducive to fairness, accountability and full transparency across the organisation’s activities and operations.”**¹⁶

The Fund does not explicitly require that its accredited entities have access to information policies in place.¹⁷ It does not require that the entities recognise the right of the public to access information related to the formation, award, execution, performance and completion of public contracts or that they ensure that citizens have effective access to recourse in instances where access to this information is in dispute.¹⁸ Stipulations are also lacking that state that entities bar confidentiality clauses, apply confidentiality narrowly allowing only limited exemptions or include provisions within the contractual terms and conditions to allow the contract and related information to be published.¹⁹ Furthermore, entities are not obligated to operate systems to collect, manage, simplify and publish contracting data regarding the formation, award, execution, performance and completion of public

contracts in an open and structured format in a user-friendly and searchable manner.

However, the Fiduciary Principles do go some way toward addressing the standards set out in the Open Contracting Principles. In harmony with the Principles, the Fund requires that entities seeking accreditation maintain written guidelines, policies, standards and procedures regarding procurement requirements, accountability and decision-making.²⁰ The GCF also requires that the procurement guidelines address different types of contracting, including consultancies and other services.²¹ Moreover, entities' procurement policies should be transparent and fair in line with international best practice. This includes ensuring that bidders are not discriminated against but treated fairly and that they may access dispute resolution procedures. Tendering procedures should be applied uniformly and should ensure awards based on best value for money.²²

Disclosure per procurement phase

Regarding the GCF's performance on ensuring disclosure in relevant formats related to the formation, award, execution, performance and completion of public contracts, the picture is mixed.

Contract formation

On contract formation of public contracts, the Fund's Information Disclosure Policy requires that accredited entities publicly disclose ESIs and/or Environmental and Social Management Plans necessary for and prior to project approvals depending on project size and risk.²³

Contract award

In terms of proactive public information disclosure specific to contract award, the GCF's fiduciary standards require that accredited entities publish awards and award beneficiaries.²⁴ They do not, however, explicitly set out how this should be published, i.e. in as timely, current, routine and complete as possible manner so as to enable the public, including the media and civil society, to understand and monitor as a safeguard against inefficient, ineffective or corrupt use of public resources.

Overall, the GCF's fiduciary standards require that accredited entities make procurement records easily accessible to *procurement staff*. However, no reference could be found to requirements to *publicly* disclose contracts, related pre-studies, bid documents, the planning process of the procurement, the method of procurement or award and the justification thereof, the method of award and the justification thereof, the scope and specifications for each contract, the criteria for evaluation and selection, the bidders or participants in the process, their validation documents, and any procedural exemptions for which they qualify, any conflicts of interest uncovered or debarments issued.

Contract execution and performance

With regards to execution and performance, following their accreditation accredited entities are required to detail procurement plans and methods in project proposals to be published on the Fund's website.²⁵ Proposal assessments (which often review procurement plans) by both the GCF's Secretariat and Independent Technical Assessment Panel are also publicly available as Board meeting documents.²⁶



Based on these assessments, the Board may decide on specific conditions regarding procurement and contracting in their approval of project proposals. Any such conditions should be reflected in the Funded Activity Agreement, i.e. the legally binding financial arrangements for projects concluded between the Fund and the accredited entity. However, these documents are currently not publicly disclosed.

The GCF's fiduciary standards further require that accredited entities have in place transparent systems and procedures for disbursing funds.²⁷ Accredited entities are also expected to account for, report and administer transparently their financial incomes and expenditures. While this standard may include financial information related to contracting and financing arrangements with subcontractors, it currently does not specify that this is the case. The Fund also requests accredited entities publicly disclose their annual audit reports issued by an external auditor "on the financial statements and/or, as appropriate, on all financial resources received from the Fund and administered by the entity."²⁸ The disclosure of these reports may reveal key information required by the Open Contracting Principles regarding contract-related assets and liabilities, risk and liability management and other financial information regarding revenues and expenditure including time and cost overflows.

The GCF's fiduciary standards require that accredited entities publish their project monitoring results and disseminate their project evaluation reports widely.²⁹ While this standard could include the public disclosure of assessments and key information or results relating to procurement and contracting operations (e.g. implementation schedules, milestones, service delivery, contract closure, final settlements and responsiveness³⁰), it currently does not specify this.

As was the case at the earlier phases, no reference could be found regarding requirements for public access to a wide range of documents during the execution and performance stages, including general schedules, major milestones in execution, and any changes thereto, status of implementation against milestones, dates and amounts of stage payments made or received (against total amount) and the source of those payments, service delivery and pricing, and appropriate financial information regarding revenues and expenditures, such as time and cost overruns, if any.

Contract completion

With regards to contract completion, no reference could be found to requirements for public access to a wide range of documents around arrangements for ending contracts, final settlements and responsibilities, assessments of assets and liabilities of government related to the contract, and the provisions in place to ensure appropriate management of ongoing risks and liabilities.

Finally, it should be noted that, whilst accredited entities must show that they have rules in place compliant with the Fund's accreditation standards, no information could be located to suggest that there are any plans in place for the GCF to conduct results assessments looking at the extent to which the fiduciary standards and guidelines around disclosure (including in contracting) have been followed.

Other considerations

Whereas the above analysis focused on the policies and procedures in place from the side of the GCF, it should be noted, however, that this analysis does not rule out that the accredited entities themselves have policies, systems and practices that meet the Open Contracting Standards regarding information disclosure in procurement and contracting processes. According to the terms of the Accredited Master Agreement template, the GCF warrants that "*the procurement of Goods and Services for the Funded Activities, whether by the Accredited Entity itself, and the Executing Entity or by a third party, shall be done in accordance with the rules, policies, and procedures of the Accredited Entity to the extent and scope of its Accreditation.*"³¹ Given the diversity of different international, regional and national public, commercial and other non-governmental organisations that have so far been accredited, this means there will likely be considerable variance in standards and operations. Testing this assumption would require reviewing and assessing the policies and practices of each accredited entity. As the GCF does not disclose the accreditation assessment of entities on its website, the task involves digging into the files and records of each organisation, which unfortunately is an endeavour beyond the scope of this study. Nonetheless, to the extent that this assumption is true, there is also a strong likelihood that the fairness and transparency of procurement processes on the ground will be called into question – especially when accredited entities having different procurement standards are operating in the same country or region.

PUBLIC PARTICIPATION, MONITORING AND OVERSIGHT

In addition to information disclosure, the Open Contracting Principles set standards for monitoring and oversight of procurement processes with a significant emphasis on the role of public participation. They establish the right of the public to access information on public contracts, their right to participate in oversight and the need for enabling rules or procedures to enable participation and action to be taken on feedback. The question here then is to what extent the GCF's policies and safeguards applicable to accredited entities reflect those principles.

The GCF's fiduciary standards on procurement are somewhat aligned with the Open Contracting Principles on this point in that they require accredited entities to monitor and oversee procurement processes. However, they are less aligned when it comes to public participation. Further detail is provided on each aspect below.

GCF-accredited entities must ensure “specific procedures, guidelines and methodologies as well as adequate organisational resources for overseeing, assessing and reviewing the procurement procedures of beneficiary institutions, executing entities or project sponsors.”³² They are also obliged to monitor procurement performance “at periodic intervals” and to implement “processes... requiring a response when issues are identified.”³³ In response, accredited entities should provide for internal (and, as relevant, external) investigative, oversight, and audit functions.³⁴ While these standards aim to achieve effective oversight, they lack the depth and scope of the Open Contracting Principle, which demands that oversight authorities proactively “access and utilise disclosed information, acknowledge and act upon citizen feedback, and encourage dialogue and consultations between contracting parties and civil society organisations in order to improve the quality of contracting outcomes.”

In addition, no requirements could be found providing that accredited entities recognise the right of the public to participate in the oversight of the formation, award, execution, performance and completion of contracts; recognise, promote, protect and create opportunities for public consultation and monitoring of procurement processes throughout the project cycle; collaborate with private sector, donors and civil society to build the capacities of all relevant stakeholders to understand, monitor and improve public contracting; and to



However, the absence of common standards will likely result in unequal approaches to monitoring and oversight involving the public – leading to disparate accountability practices and impacting on the eventual quality of project delivery.

create sustainable funding mechanisms to support participatory public (or publicly financed) contracting or develop and implement strategies for citizen consultation and engagement in the management of individual contracts deemed to have significant impact.

However, as with its transparency policies, the Fund does stipulate generally that accredited entities conduct stakeholder consultations throughout project cycles. This could include but does not specifically address procurement processes. The GCF's Interim Environmental and Social Safeguards³⁵ do set out the need for accredited entities to engage with “affected communities or other stakeholders throughout funding proposal cycle ... (including) communications and grievance mechanisms.” The Fund's Initial Monitoring and Accountability Framework³⁶ also underscores that entities should “include participatory monitoring, involving communities and local stakeholders, including civil society organisations, at all stages of the project/ programme cycle from the beginning.”³⁷ The obligation to ensure stakeholder engagement at the project proposal development stage is further mandated in the Accredited Master Agreement template. In complying with these obligations, accredited entities should consider the Stakeholder Engagement Best Practices document.³⁸

As was touched on above, notwithstanding the limitations of the GCF's fiduciary standards, the accredited entities themselves may have operational policies for stakeholder participation in procurement and contracting processes. However, the absence of common standards will likely result in unequal approaches to monitoring and oversight involving the public – leading to disparate accountability practices and impacting on the eventual quality of project delivery.

5. CASE STUDIES ON PROJECT-LEVEL PROCUREMENT POLICIES AND SAFEGUARDS

As set out above, the precise procurement rules that will apply in the implementation of any GCF project will depend on the accredited entity in charge of implementing that project, albeit also interacting with the legal framework of the country in which it is operating. As the GCF is in its early stages of project implementation, case studies of GCF projects could not be undertaken.

Nevertheless, to understand some of the potential challenges that could face the GCF as this process plays out, two completed projects funded by the Climate Investment Funds (CIFs) (which operate a similar system of implementation) were assessed: the Menengai Geothermal Development Project in Kenya and the Efficient Lighting and Appliances

Project in Mexico. The case studies first set out the relevant country context, including identifying gaps in the national legal set-up, before using the questions derived from the Open Contracting Principles to look in more detail at experience with disclosure and participation at each stage of the procurement process.



CASE STUDY I: KENYA **THE MENENGAI GEOTHERMAL** **DEVELOPMENT PROJECT**

COUNTRY CONTEXT

The Kenya Vision 2030 highlights the various challenges the country will face in its quest to achieve its vision of Kenya as a globally competitive and prosperous nation. These challenges include scaling up the quantity and quality of infrastructure, especially the condition of roads, access to and reliability of water, affordable electricity and efficient port and rail services. Vision 2030 envisages raising the level of investments from an estimated 20 per cent of GDP in 2006 to 32 per cent for the 2014–2030 period.³⁹ At the same time, however, Kenya's Ethics and Anti-Corruption Commission estimated in 2015 that bribery was adding 10–20 per cent to total contract costs.⁴⁰

A 2015 study⁴¹ helped to lay out shortcomings in the country's procurement system, including lack of competition and high level of fraud. Since that point, legislative frameworks have been developed and reforms introduced (explained later in this section) with the aim of improving the overall effectiveness of public procurement investments in the country. This progress has been reflected in the scoring achieved in the World Bank 2016 Benchmarking Public Procurement exercise, where Kenya performed well on processes in place to submit bids but did still have some gaps relating to preparing bids and awarding and executing contracts.⁴²

LEGAL STRUCTURE

The 2010 Constitution of Kenya clearly sets out the highest level of standards for public sector performance. Article 10 provides for good governance, integrity, transparency, accountability and public participation as part of the national values and principles of governance. These principles bind all state organs, state officers, public officers and all other persons that make or implement public policy decisions. Article 227 of the constitution further mandates all state organs and public entities contracting for goods and services to do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. To specify even further, Article 201 identifies openness and accountability as core principles that should guide all aspects of climate finance.

In addition to this overarching cover in the country's constitution, Kenya also approved a Public Procurement and Asset Disposal Act in 2015.⁴³ The Act is designed to provide procedures for efficient public

procurement that are aligned with the principles in the relevant provisions of the Constitution. According to Section 96, the accounting officer of a procuring entity is mandated to take such steps as are reasonable to bring the invitation to tender to the attention of those who may wish to submit tenders. It sets out advertisement requirements for tenders of goods, works or services above threshold value and requires procuring entities to use Kenya's dedicated tenders' portal and any conspicuous place reserved for this purpose in the premises of the procuring entity. Section 138 also mandates the accounting officers of procuring entities publish and publicise all contract awards within a prescribed period. Moreover, publication of a notice of intention to enter into a contract is also required.⁴⁴ A copy of any publications made during the entire process should form part of the procurement records.

However, beyond the extensive provisions set out above regarding public disclosure around advertisement of the tender and public notice of the award, the Act does not provide for further disclosure. It does not provide any provision for public access to information on planning, execution, performance or completion of public contracts. On the other hand, Section 67 does prohibit any procuring entity, employee or agent of the procuring entity or member of a board, commission or committee of the procuring entity from disclosing the following: (a) Information relating to the procurement, the disclosure of which would impede law enforcement or whose disclosure would not be in the public interest; (b) Information relating to a procurement, the disclosure of which would prejudice legitimate commercial interests, intellectual property rights or inhibit fair competition; (c) Information relating to the evaluation, comparison or clarification of tenders, proposals or quotations; or (d) The contents of tenders, proposals or quotations.

The only conditions under which public contracting information can be disclosed, then, is if it is to an authorised employee or agent of the procuring entity or a member of a board or committee of the procuring entity involved in the procurement proceedings. In addition, there is one more clause (Section 68 (3)) that allows for provision of records of a procurement "to a person who submitted a tender, proposal or quotation, or any interested member of the public where such information held is aligned to the principle of public interest or, if direct procurement was used, a person with whom the procuring entity was negotiating after a contract has been awarded to any person or the procurement proceedings have been terminated."

There is no specific support from the Act to provide for any phase of public contracting to be conducted through public disclosure and participation. Only those in the tendering/procurement committees are involved in the decision-making process. Contracting is therefore carried out behind closed doors, and information on execution, performance and completion of public contracts is not readily available. Minimal information is provided on a quarterly basis on who receives the final award.

Furthermore, the government does not have a system which collects, manages, simplifies and publishes contracting data regarding the formation, award, execution, performance and completion of public contracts in an open, structured and machine-readable format. The Act does establish a Public Procurement Regulatory Authority, which is mandated to create a central repository of procurement information. It established a web portal that includes complaints made against procuring entities, a record of those prohibited from participating in tenders or those debarred and lists of state organs and public entities that are non-compliant with procurement laws. It also keeps track of market prices of goods, services and works, along with benchmarked prices. Moreover, it maintains statistics related to public procurement and asset disposal. A review of the web portal reveals that, while it does contain a record of the complaints made, information regarding market prices of goods and the debarment list are all out of date. Additionally, there are no details related to non-compliant public entities.

The above analysis therefore suggests that Kenya's Public Procurement Act does not include strong provisions for disclosure and participation relating to public procurement processes in the country. It should be noted, however, that there are legal developments underway that could open up procurement to improved disclosure and participation; details are provided at the end of this case study.

THE MENENGAI GEOTHERMAL DEVELOPMENT PROJECT

Kenya's energy sector has long been characterised by high costs and insufficient supply. At the time of the development of the Menengai project, nearly 80 per cent of Kenyans were living without access to basic energy services,⁴⁵ making it a top priority for the government to improve access to adequate and affordable energy supply. Existing energy supply was heavily and unsustainably dependent upon

hydroelectric power, and rapid growth in energy demand called for new solutions. Renewable energy resources were seen to offer one option. Geothermal energy was at that time and continues to be seen as a cornerstone of Kenya's green growth. In recognition of the importance and reliability of geothermal power, the government embarked on an ambitious generation expansion plan to substantially increase the national geothermal generation capacity.⁴⁶

The Menengai Geothermal Development Project (2011) was designed to play a key role in achieving the larger vision of meeting Kenya's rapidly increasing demand for power.⁴⁷ The project planned to develop the Menengai geothermal steam field to produce enough steam to enable electricity generation equivalent to the consumption needs of up to 185,000 households. Some of the beneficiaries were intended to be rural homes while others were small businesses. It was intended that direct access to modern electricity through this project would contribute to improved health, education and employment opportunities. Substantially increasing the provision of clean, reliable and affordable electricity to Kenyan households, businesses and industries, this project was also intended to avoid close to 540,000 tonnes of carbon emissions per annum.

All procurement of goods, works and acquisition of consulting services financed by the CIFs through the African Development Bank (AfDB) for this project was to be in accordance with the Bank's Rules and Procedures: "Rules and Procedures for Procurement of Goods and Works", dated May 2008; and "Rules and Procedures for the Use of Consultants", using the relevant Bank Standard Bidding Documents, and the provisions stipulated in the Financing Agreement. The Geothermal Development Company (GDC), a fully government owned company in the energy sector, was directly responsible for the procurement of goods, works, service contracts and consulting services. The next section of this case study looks at the experience with disclosure and participation at each stage of the process.

DISCLOSURE AND PARTICIPATION IN THE PROCUREMENT PROCESS

Planning

A public needs assessment is a critical part of any successful planning for a large-scale project. This project did not have a separate public assessment but based its needs on the approved Kenya Vision 2030, which sets the development agenda for the

country. The Vision clearly identifies energy as a key foundation and one of the infrastructural enablers upon which the economic, social and political pillars of the development strategy will be built.

For many years Kenya's energy generation has been predominantly based on hydropower, which has proven largely unreliable due to its sensitivity to climate shocks such as prolonged droughts. To fill the gap, the government has had to rely on providers of emergency generation capacity, which although relatively rapidly installed is very expensive and highly carbon intensive. Reliance on emergency power also pushed up operating costs and tariffs for businesses and households.

The Vision therefore set the pace for committing to generating more energy at a lower cost. Geothermal power generation was a preferred choice for the future as it is indigenous, clean and a relatively reliable and affordable solution. This project was therefore designed on the basis of this key area under the Vision. The Government of Kenya earmarked resources worth around US\$284 million for this.

Disclosure and participation: No evidence could be found that procurement planning was carried out in a participatory manner where public feedback is actively solicited and taken into account. Nevertheless, detailed ESIA's were conducted, which included a process through which the priorities and suggestions of affected communities were considered. Plans for taking mitigation actions against identified potential negative outcomes were also put in place.⁴⁸ It should be noted, however, that the ESIA reports are not actively linked to the relevant ongoing project on the GDC website, meaning follow-up on whether suggestions have been implemented is rendered difficult.

Tendering

Close to eight tenders were advertised on the GDC website for this project. These were also placed in leading newspapers and included a clear mention of a fee for obtaining the tender documents and other basic details (e.g. title of tender, address of procuring entity, timing, etc.). The tender documents themselves prescribed complete preliminary/technical and financial criteria for selection. The tender documents were made readily available and posted on the AfDB and GDC websites. The tender adverts made provisions for bidders to collect the bid document from GDC offices during working hours. In addition, according to documents from GDC,⁴⁹ tenders were opened in the presence of the tenderers or their representatives who

chose to attend. Anyone attending the bid opening signed a register and, following the opening, minutes were forwarded to those on the register.

Disclosure and participation: As noted above there was a degree of disclosure and participation to the extent that bidders that participated in the opening meeting of the bidding subsequently received the minutes. However, this limits the documentation to those willing and available to attend at the particular time, date and location provided for. In 2015, Kenya's Ethics and Anti-Corruption Commission commenced investigations into allegations of irregular procurement at the GDC. The investigations were reported in the media⁵⁰ and following the investigations the Commission recommended to the Director of Public Prosecution that the entire tender committee of the GDC including its CEO be charged with criminal offences relating to irregular procurement practices. The case was filed in court and referenced as Anti-Corruption Case No. 20 of 2015.^{51,52} The court, however, gave orders prohibiting the prosecution of eight accused persons.⁵³ Additionally, the prosecution of the company secretary and director for legal services was also prohibited by the court.⁵⁴ Furthermore, the GDC maintains that all financier rules and procedures and the applicable laws were followed. In the absence of more widespread disclosure of information around award and execution, the public and those with an interest in the work being completed had no avenue with which to look into the data and satisfy themselves of this point. Greater transparency and greater engagement with citizens could avoid such problems for the GDC in the future.

Contract execution and closure

The contracts for the tenders under this project are not publicly available. GDC's website⁵⁵ provides a basic list of all contracts awarded in a certain financial year but not the contract itself. Whilst this is in compliance with the current applicable law as set out above, it does represent a missed opportunity in terms of ensuring maximum disclosure. Furthermore, no information could be found regarding contract execution or closure.

DEVELOPMENTS SINCE PROJECT EXECUTION

This analysis of one project implemented with CIF funding indicates that, within the context at the time of project implementation, interaction of AfDB (as the accredited entity) policies with the national context presented significant challenges in ensuring full disclosure and participation around procurement practices involving international climate finance. However, national and institutional contexts are not static and in Kenya as in other GCF intended recipient countries changes are constantly underway that can both improve or further challenge the possibilities for successful GCF project implementation. In Kenya, there has been some progress since this project but also some remaining challenges that are worth noting.

Firstly, in 2016 the Government of Kenya passed an **Access to Information Act**⁵⁶ that provides a framework for public entities and private bodies to proactively disclose information that they hold and to provide information on request in line with the constitutional principles. It further promotes routine and systematic information disclosure by public entities and private bodies on constitutional principles relating to accountability, transparency and public participation, and access to information, as well as providing for the protection of persons who disclose information of public interest in good faith. This law, if effectively implemented, may pave the way for increasing transparency in public procurement processes in Kenya.

Secondly, in June 2016 the government developed its **National Action Plan for Open Government Partnership**.⁵⁷ Through this two-year plan, the government has committed to improve accountability through tackling corruption, working with non-state actors in improving government oversight and empowering citizens in governance. The government is increasingly committing itself to international norms of open government. In the same spirit, it was among the “top ten countries to join the Open Government Partnership (OGP), seeking to accelerate some of its key initiatives around transparency, fiscal prudence and public participation.”⁵⁸

This National Open Government Plan articulates eight commitments that signify Kenya’s “intention to deepen openness and thereby ensure that the democratic dividend flowing from transparency is sustained.”⁵⁹ Of particular interest to this study is Commitment 6: “create transparent public procurement process, public oversight of expenditure and ensure value-for-money towards citizen priorities”. It recognises that the current portal⁶⁰ does not conform to Open Contracting Standards, with key datasets required for transparent practices not

currently available on the portal. The Plan also recognises that there are several companies that keep getting government contracts despite delivering bad services or consistently failing to meet contractual obligations.

To address this, the Plan commits to creating transparent public procurement processes, ensuring public oversight of expenditure and ensuring value for money in regard to citizen priorities. It has set itself two deliverables: 1) mapping current disclosures and data collection against the OCDS as part of the preparation for the development of an Open Data Policy for the portal (by February 2018); and 2) Re-designing the Portal according to the OCDS (by June 2018). These dates represent an updated timeline after little progress was made against the initial timeline from the start of work in September 2016.

While there has been progress in Kenya on the legal and policy front, there are hindrances that still need to be overcome, to create the right environment for the implementation of the Act and the Plan. For example, while there is a clear need for greater civil society involvement in the procurement process, civil society is not organised in a way that can exert necessary pressure on the government to share information at the planning, contracting, executing or closing stage. There are different groups working on different aspects, with most working in isolation. There are no formal civil society coalitions on open contracting bringing together the relevant organisations already engaged or willing to be engaged in the process. Thus, unless the government sees that there is collective and sustained effort behind the call for open contracting in Kenya, it will continue to follow its own standards and processes.

In addition, there are other government entities set up that may be approached to register complaints if the need arises. These include the Commission on Administrative Justice (Ombudsman), the State Corporations Advisory Committee, the Public Procurement Regulatory Authority and the Ethics and Anti-Corruption Commission. Defining how they can become part of the open contracting solution remains a challenge.

This case study provides important insights into how GCF project procurement may play out when neither accredited entity nor national rules have strong provisions for disclosure and participation. Learning from this experience in Kenya, a set of recommendations has been developed that may be applied to other country contexts as well. In addition, lessons from this case have helped in shaping the policy recommendations for the GCF.

CASE STUDY II: MEXICO
**THE EFFICIENT LIGHTING
AND APPLIANCES PROJECT**

COUNTRY CONTEXT

In Mexico, the amount of resources purchased through public procurement is quite high, amounting to 22 per cent of the country's budget and about 8 per cent of GDP.⁶¹ While other countries' comparable percentage may be larger, Mexico is a G20 economy with a GDP of above a trillion dollars; this makes 8 per cent a significantly large amount. Given that public funds are involved, it makes it even more important to undertake contracting in an open and transparent manner, with the involvement of civil society organisations and the public in general. Creating a system of transparency improves trust in the government handling of public funds, and also significantly reduces opportunities for corruption.

LEGAL STRUCTURE

Article 134 of the Mexican Constitution⁶² establishes the clear need for contracting through public tenders and over recent years Mexico has made significant progress in opening its procurement process to public participation. To govern the process, and firmly establish participation, there are two further laws in place: the Federal Law of Transparency and Access to Public Information⁶³ (*Ley Federal de Transparencia y Acceso a la Información Pública*) and the Law of Acquisitions, Leasing, and Services of the Public Sector⁶⁴ (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*). Together the laws provide the right of the public to access information and the mechanisms of acquisitions and public contracting by the Mexican government. They have each undergone a number of amendments over the years to make them stronger.

The Law of Transparency and Access to Public Information developed in 2002 lays down the obligations of the government to make transparent its activities and the rights of the citizens to access this information. In particular, Article 1 and Article 3 aim to guarantee the right of access to public information that may be in the possession of any authority, entity, body or agency that receives public funds.

Prior to 2000, Mexico had a law on Acquisitions and Public Works (*Ley de Adquisiciones y Obras Públicas*). In 2000, however, two separate laws were created: one focused on public works, infrastructure and related services and the other on goods, services and leasing.⁶⁵ The latter regulates the planning and awarding of public contracts. Article 1 of this law states that all acquisitions, leasing contracts and disposal of all kinds of goods will only be awarded by tendering through public participation. Both these laws show

clear arrangements within the Mexican legislation concerning transparency and guaranteeing equal rights of participation in awarding public contracts. The Law on Transparency in Mexico not only recognises the right to public information but also ensures under Article 2 that all necessary information is verifiable and disseminated in a timely fashion. In addition, Article 21 of the Law of Acquisitions obliges governmental entities to publish all information about acquisitions, leasing contracts and services updated annually, which at least ensures disclosure of the information.

The mandate for public participation and disclosure as per the laws in Mexico took shape in the 'Social Witness Programme' designed and proposed by Transparencia Mexicana. Since 2004, the Federal Government of Mexico has made the involvement of social witnesses (individuals, organisations and experts) mandatory in public bidding for goods, works and services over a threshold value (US\$23 million for goods and services and US\$43 million for public works). At the time of the procurement, a non-government organisation or individual with relevant expertise is selected as social witness from a registry maintained by the Ministry of Public Administration. Their function is to propose strategies for improving transparency and impartiality as well as to monitor compliance with the legal framework. If any irregularities are detected during the procurement, an alert must be issued. Once the procurement proceedings conclude, the social witness issues publicly available reports including observations during the procurement process and, as appropriate, recommendations. The statement is posted on the government's central procurement website and in the file of the tender.

Whilst this is positive, one drawback is that the social witness only has access to the first two stages of procurement, i.e. to the planning and the tendering and contracting phases. Once the contract is signed, there is no institutionalised process that allows citizens to participate in the execution of public contracts. From that perspective, it becomes challenging to evaluate if the disclosed information is enough to monitor the efficient, effective and non-corrupt use of public resources because, even if the information concerning the execution, performance and completion of the contracts is accessible through an 'access to information' request, it is generally hard to access and is not always systemised or structured along all government agencies.

Nonetheless, this has been recognised as a challenge in Mexico and there is growing commitment towards having a system that collects, manages, simplifies and publishes contracting data at all stages of the public procurement cycle. This is reflected in the Law of Transparency, which clearly states as one of its objectives under Article 2 to consolidate the opening of the institutions of the Mexican State, through initiatives of open government, through the dissemination of information in open and accessible formats, as well as the effective participation of society.

In addition, Article 2 of the Law of Acquisitions mentions using an electronic system that collects, manages and simplifies the information about the contracting data. This is called CompraNet and is an existing governmental e-procurement system that all procurement-related documents are to be uploaded to. However, it provides information only until a contract is signed and does not share any information on execution, performance and completion of public contracts. In fact, most times data prior to contracting is not available either. A government official who was interviewed for this case study revealed that the reason for the high level of non-compliance is primarily because there is no penalty that will force government departments to efficiently share the required documents in a timely fashion.

THE EFFICIENT LIGHTING AND APPLIANCES PROJECT

The Efficient Lighting and Appliances Project was funded through international resources in the form of US\$50 million⁶⁶ from the CIFs. The project was also selected for the case study due to its heavy procurement component (the purchasing of 45 million energy-efficient bulbs under one component and of 1.88 million electrical appliances for home use under a second component). Furthermore, as the project is already complete, this helped in producing a comprehensive assessment.

To understand why the project was envisioned, it is worth reflecting briefly on the Mexican energy sector. Mexico is a major producer and exporter of energy, mainly in the form of crude oil. It is the 11th largest producer in the world and 13th largest in terms of net exports.⁶⁷ It also ranks as the 11th largest consumer.⁶⁸ Consequently, this sector is of strategic importance to driving economic growth in the country. Direct

exports of crude oil have also been a critical source of government revenue. However, due to a steady decline in oil production from 3.4 million barrels per day in 2004 to 2.6 million barrels by 2009⁶⁹ due to natural gas depletion from decreasing natural gas pressure⁷⁰ decision makers realised the need to improve the efficiency of use of energy resources, as well as expanding the use of renewable energy sources.

At the time the project was being developed, mitigating and adapting to the impacts of climate change also became important policy goals for the Mexican government. In 2008, Mexico realised that it was the 12th largest emitter of greenhouse gases globally. This led the government to commit to consciously reducing emissions to 50 per cent of its 2000 levels by 2050.⁷¹ Consequently, the government had to embark upon an ambitious programme of energy efficiency improvements linked to its climate change agenda. To support its energy efficiency and climate change mitigation goals, a national comprehensive energy efficiency strategy was developed.⁷²

The strategy estimated that Mexico's residential sector accounted for over 25 per cent of electricity consumption. Also, energy consumption in the residential sector was growing faster than the country's GDP, with air conditioning, home appliances, electronics, and lighting sharing equally in residential electricity consumption. The strategy responded to the dominant role of the residential sector in electricity consumption, developing programmes specifically targeting electricity consumption in the residential sector by using price incentives to replace inefficient lighting and appliances. It was these strategic policy decisions that set the national context for a complete energy efficiency operation and allowed for the Efficient Lighting and Appliances Project to be designed.

The planning stage of the project included background analysis and careful diagnostic of electricity consumption patterns in Mexico. The diagnostic clearly showed that, of the 25 per cent of total electricity consumption stemming from the residential sector, 70 per cent was due to the use of inefficient stoves, heaters, refrigerators and air conditioners. Together with lighting, this accounted for almost all residential electricity consumption. This analysis shaped the project scope and content, defining the development objective.

This Project formed part of two major existing nationwide programmes:

- 1. The Sustainable Light (*Luz Sustentable*) programme:** Phasing out all incandescent light bulbs by replacing them with compact fluorescent lamps.
- 2. Replace your old appliance with a new one (*Cambia tu viejo por uno nuevo*):** Providing a set of different financial incentives for consumers to replace refrigerators or air conditioners that were least 10 years old.

To align with these programmes, this project comprised three main components and a number of sub-components. The key features of each component are summarised below:

Component 1:⁷³ *Replacement of incandescent light bulbs with compact fluorescent lamps* for 11 million low- to middle-income households, involving the purchase and replacement of about 45 million compact fluorescent lamps and proper disposal of the replaced incandescent light bulbs.

Component 2:⁷⁴ *Incentives to encourage replacement of old and inefficient appliances in the residential sector:* Financing of vouchers for low-income consumers to pay for the replacement of 1.88 million old and inefficient appliances with more energy-efficient appliances, and provision of credits at favourable interest rates to low-income and other qualifying consumers to pay for the replacement of old and inefficient appliances with more energy-efficient appliances.

Component 3:⁷⁵ *Technical assistance and institutional strengthening:* Strengthening SENER's (*Secretaría de Energía* – the Secretariat of Energy) capacity to promote energy efficiency activities, and the ability of the different implementing agencies to carry out the Project.

DISCLOSURE AND PARTICIPATION IN THE PROCUREMENT PROCESS

Since the entire funding for this project was from international sources, the government was not required under the law to involve public participation in the procurement process. Instead, since the World Bank was financing this project, it was expected that the Bank's procurement standards would be followed. Nonetheless, the government still went ahead and opened up the process. According to the Transparencia Mexicana team, one of the reasons why

this may have been the case was that, as the project was intended to deliver directly at the household level, meaning coverage in the media and a high level of public attention, the government's actions were under public scrutiny anyway. Such visibility prompted disclosure and participation. Consequently, this project is a perfect example of how the government can take the lead on using its own tailored and more open procurement standards vis-à-vis those set by the donors. All procurement carried out for this project was the responsibility of SENER and FIDE (*Fideicomiso para el Ahorro de Energía Eléctrica* – the Trust Fund for Electricity Savings).

Planning

One of the most important steps in initiating any project is to conduct a careful needs assessment as well as market research on how the market works for a particular product, and therefore to determine how to carry out the procurement. This project was also based on two investigations carried out by the World Bank and the Government of Mexico. The first, MEDEC (Development of Studies for Low Carbon Use in Mexico), identified a list of projects, including a project for energy efficiency that helps to reduce carbon emissions in general for the future of the country. The second, DPL (Loan for Development of Politics), focused on "green growth" and supported the Mexican government's efforts to establish an orderly framework for reduction of emissions in transport and energy sectors.

A cost-benefit analysis⁷⁶ was also carried out, which established that the estimated cost for the substitution of incandescent light bulbs by compact fluorescent lamps, the acquisition and distribution of 45 million compact fluorescent lamps and the recollection and removal of the incandescent light bulbs totalled US\$70 million. This investment would benefit 11.5 million families (four people per household) representing 40 per cent of the households connected to the national grid. The cost benefits per month for Mexican households were estimated to be 28.07 Mexican Pesos (US\$1.50), representing 15 per cent of the average monthly bill.

Similarly, since the project was to reduce energy consumption, several environmental assessments⁷⁷ were also conducted. These concluded that compact fluorescent lamps would contribute 25–50 per cent to total savings of energy within energy savings programmes. In addition, it was also estimated that the project would contribute to the mitigation of greenhouse gases to the closer atmosphere of 7.4

million barrels of petroleum and 2.8 million tonnes of carbon dioxide. Taking into account all this information, the government also established timelines for the delivery of this project.

Disclosure and participation: The planning phase for any public procurement is of paramount importance and must seek to not only understand the need and how it fits with the larger strategic vision of a country but also have a clear perspective on how the procurement will be undertaken. For this project, since the government had already decided to use its own procurement standards, citizens had access to full details of the planning phase through the Social Witness Programme. The government was transparent in sharing the studies carried out for this project, ensuring greater ownership of the process and in turn success as well. Transparencia Mexicana reported that the government addressed most of the comments and recommendations provided for improving the procurement planning phase. Where recommendations were not followed, the governmental institution justified the decision to the social witness. As a result, the social witness was satisfied with the disclosure and did not report any particular issues.

Tendering

The project was openly advertised⁷⁸ in leading national newspapers as well as online to interested international bidders. The advert also included a clear set of documents⁷⁹ to be submitted. The criteria for contractor selection were that the company should have the experience and financial capacity to deliver the project. This involved delivery of the compact fluorescent lamps, distribution through major retail stores, the substitution of incandescent light bulbs by the compact fluorescent lamps, as well as the acquisition and its removals. The presentation and opening of proposals took place publicly.⁸⁰

For evaluation, a committee was formed by public officials of the tendering entity. In total, five companies submitted bids.⁸¹ As a first round, the committee did basic checks on the availability of documents requested in the tender (financial standards, audit reports, etc.) and compliance with all requirements of the selection criteria. The second step of the evaluation was to investigate if the offers were based on realistic prices. Following this, the offer with the lowest price was evaluated with a focus on the technical, administrative, operative, legal, and financial requirements. By following this methodology, Phillips was selected as the supplier for the project.

Disclosure and participation: With the involvement of the social witness in this procurement, the World Bank procurement standards were not followed blindly and wherever Mexico's existing procurement practices were of a higher standard the latter were adopted. For instance, the World Bank does not carry out a formal question and answer session with potential bidders after the tender has been launched. However, as a result of a civil society observation, this issue was taken on board and as per Mexico's procedures formal Q&A sessions were conducted after the launch of the call. This way, all potential bidders had access to the same level of information, securing a level playing field for all. As a second intervention, citizen participation was able to improve the evaluation criteria employed by the World Bank. The Bank largely used generic principles to evaluate bids but for this project, since the public were more aware of the utility of the project within their national context, they were able to suggest specific benchmarks for evaluation, which ended in the right selection of a credible supplier for national requirements. These benchmarks related to the inclusion of phases considered in the national legal framework such as the Q&A sessions with bidders, the testing of the products and the evaluation of proposals in the administrative, technical and price phases.

Contract execution and closure

As mentioned above, Mexico's public contracting is only open to participation until the contracting stage, not at the execution or closing stage. There was therefore no formal arrangement through which citizens could participate and monitor the progress of the project. Instead, the World Bank carried out its own review, stating that the procurement was well managed and rated as 'satisfactory' throughout implementation.

PROGRESS SINCE PROJECT EXECUTION

Despite challenges, significant efforts are underway by the vibrant network of civil society actors in Mexico who are actively engaging with the government to adopt the principles of making information accessible in open formats in line with the requirements of the Law. This section details how civil society and the government in Mexico have worked together to create opportunities for improving public participation in the national procurement process.

Firstly, the OCDS developed globally by the OCP in coordination with Transparencia Mexicana and others are being actively promoted. These standards not only mean that data will be made available but also that it will be in a format that is easily accessible and will help in allowing citizens themselves to directly monitor the implementation of public contracts. After several months of joint work between government and civil society,⁸² the government has agreed to upgrade CompraNet's database to comply with the OCDS. This process is expected to take over 17 months, to be complete by May 2018. For now, through this process, the push is for **disclosing** all data related to public contracting. Thinking around how the data will be analysed by independent organisations, and how exactly citizens can participate in monitoring these contracts, is currently evolving and improved versions of the Social Witness Programme are under consideration.

Meanwhile, as a first step the government has introduced the OCDS to the construction of the new airport in Mexico City, which is anticipated to become functional by 2020. This is the third largest infrastructure project under construction in the world and according to the master plan it could provide services to 120 million users a year, making it the busiest airport in Latin America and the fifth largest globally. If Mexico can achieve disclosing data according to the required standards for such a large public investment, the expectation is that this approach can also be applied to other contracts as well.

Secondly, to ensure complete transparency for the allocation of public funds, Mexico is ready to take a step towards also opening the implementation phase to public disclosure. This is welcome progress, but civil society organisations such as Transparencia Mexicana and others are aware of the importance of 'simplifying' the information so that interested citizens can follow progress and participate as well. Innovative ways of practically analysing and disseminating the information such that communities can easily play a monitoring role during the contract implementation phase are also underway, with Transparencia Mexicana experimenting with options.

For example, in regard to the procurement data for the new airport for Mexico City that is being disclosed through the data standards, there are attempts to link this data to a mobile application. By providing this convenient linkage, citizens can get a notification about any contract/sub-contract that they wish to follow and monitor progress on. This could become an extremely powerful public participation tool for projects that directly impact people's daily routines, such as road repairs, new public transport, schools and hospitals.

This case study provides important insights into how GCF project procurement may play out when national procurement standards strongly supporting disclosure and participation in large parts of the procurement process are used as a complement to those of accredited entities that may lack such strong provisions. Learning from this experience in Mexico, a set of recommendations has been developed that may be applied to other country contexts as well. In addition, lessons from this case have helped in shaping the policy recommendations for the GCF.



This project is a perfect example of how the government can take the lead on using its own tailored and more open procurement standards vis-à-vis those set by the donors.

6. FINDINGS AND RECOMMENDATIONS

This section provides a final summary of the conclusions drawn from the analysis above — of the rules in place from the GCF itself for the accredited entities charged with implementing projects with GCF funding, and of the on-the-ground experience of projects receiving funding from a multilateral fund with a similar set-up. The section further sets out recommendations suggesting improvements. These focus both on the existing set-up at the GCF level itself, so that, to the extent possible, transparency in public procurement may be internalised within the international climate finance system, as well as on actions that need to be taken at the national level to support this process.

FINDINGS AND RECOMMENDATIONS AT THE LEVEL OF THE GCF

Finding

The GCF's fiduciary standards include a range of requirements on accredited entities regarding transparency, disclosure and participation. This includes reporting and transparently administering its financial incomes and expenditures, having transparent systems and procedures for disbursing funds, on publication of monitoring results and consulting stakeholders throughout project cycles. The GCF may intend that these standards apply equally to procurement processes under the control of the accredited entity but this is not specified and the requirements are so vague as to risk being overlooked.

Recommendation 1: The GCF should clarify whether the broad standards it lays out in its fiduciary standards are equally applicable to contracting carried out by or under the supervision of the accredited entity.

Finding

There is a gap in the accreditation standards of the GCF. Current GCF fiduciary standards do not include disclosure for all four steps of the procurement cycle (planning, contracting, execution and closing). Additionally, the current standards do not have any requirements specifically targeted at ensuring public

participation in public procurement processes. To maximise opportunities for participation, every effort must be made to ensure disclosure across the whole procurement process and to open up spaces for public participation.

Recommendation 2: The GCF Board should expedite its review of its accreditation standards as agreed at its 7th Board Meeting and adopt amendments to its basic fiduciary standards to bring them fully in line with the Open Contracting Principles. In doing so, the Fund will be able to seize an important opportunity to strive for transformational impacts by improving policies, systems and practices in line with common, higher standards, such as the Open Contracting Principles.

Such a move would include requiring that accredited entities have in place:

- Information disclosure policies that recognise the right of public access to information, provide an information request and appeals procedure, limit the use of confidentiality clauses, and provide a list of documents and information which should be proactively disclosed following the Open Contracting Principles.
- Systems to collect, manage, simplify and publish contracting data regarding the formation, award, execution, performance and completion of public contracts in an open and structured format, in

accordance with the OCDS and in a user-friendly and searchable manner.

- Stakeholder engagement policies specific to procurement processes that ensure public participation and consultations in the oversight and monitoring of the formation, award, execution, performance and completion of GCF-related contracts and which provide for citizen consultation and engagement in the management of individual contracts deemed to have significant impact.
- Programmes to collaborate with private sector, donors, and civil society to build the capacities of all relevant stakeholders to understand, monitor and improve public contracting and to create sustainable funding mechanisms to support participatory public (or publicly financed) contracting.

Equally, the GCF Accreditation Committee, which has been requested to prepare an accreditation strategy that will “examine issues including efficiency, fairness and transparency of the accreditation process, as well as the extent to which current and future accredited entities enable the Fund to fulfil its mandate,”⁸³ should incorporate requirements for greater disclosure and participation in its recommendations. The OCDS should be referenced as a best practice for accredited entities.

Finding

Currently, national accredited entities must carry out procurement in compliance with national laws and regulations while multinational entities operating in project country jurisdictions apply their own institutional procurement rules. As revealed in the two case studies, the latter situation may be more or less preferable depending on whose rules (the national government’s or the implementing entities’) provide the best standards supporting open contracting and participatory monitoring rules. The GCF must make a contribution to promoting the use of best possible practices in place on the ground. The Accredited Master Agreement, as it currently stands, does not allow for such flexibility.

Recommendation 3: The GCF should provide clearer guidance on what happens should there be a mismatch between the disclosure and participation requirements of accredited entities and those applicable in country. The GCF should urge application of the best policies and procedures providing the highest level of disclosure and participation.

Finding

Beyond the accreditation process, the report finds that the GCF plays little role in promoting good practices to accredited entities despite the fact that the Accredited Master Agreement calls for the adoption of best practices. The case studies in this report from Mexico and Kenya have shown that, in practice, for funds operating through a similar implementation mechanism the on-the-ground experience of transparency and participation can vary greatly in terms of practices applied.

Recommendation 4: The GCF must make efforts beyond the initial accreditation of actors to promote best practice in procurement. As an immediate action, the GCF should develop guidelines for accredited entities designed to increase awareness about best practices in procurement disclosure and participation based on the Open Contracting Principles. The GCF should encourage accredited entities to draw on national standards during project implementation where these offer greater opportunities for disclosure and participation. This should include strong references in the updated Disclosure Policy being drawn up for presentation to the Board at its 21st meeting in 2018 to a proper disclosure of procurement processes at the national level by international entities.

Finding

The GCF Secretariat plays a role in reviewing project proposals and identifying risk areas in relation to public procurement. Recommendations are made based on proposal reviews but no indication could be found that there is any follow-up on whether these recommendations are implemented. In addition, no information could be located to suggest that there are any plans to conduct results assessments looking at the extent to which the fiduciary standards and guidelines around procurement have been followed.

Recommendation 5: The GCF must push to ensure that its standards are translated into practice. The push towards greater disclosure and participation does not end at the point of accreditation. The GCF should ensure that its funded activity agreements are actively published to allow for a complete understanding of the commitments of the accredited entity around disclosure and engagement. The GCF Board should ensure that the GCF Procurement office is allocated adequate resources to carry out ongoing monitoring of accredited entities' progress and adherence to their fiduciary obligations. More active engagement between the GCF and the accredited entities will ensure an ongoing conversation on best practices and improved standards.

Recommendation 6: The Independent Integrity Unit should monitor procurement undertaken by accredited entities and their executing entities and actively address disclosure of corruption and fraud at project levels. The GCF is unique amongst climate funds in setting up a fully independent integrity unit to protect the Fund against integrity violations. As the area of procurement represents an area of significant risk, it is important that the Independent Integrity Unit also plays a role here. To this end, the Unit should develop arrangements with civil society including Transparency International and the Open Contracting Partnership to identify red flags. Innovative ideas are being tested around the world where greater disclosure can lead to greater participation, and in turn identify corrupt practices under public procurement contracts. The Independent Integrity Unit must be open to engage with those knowledgeable on these actions and to take steps to incorporate lessons learned into its work plan.

FINDINGS AND RECOMMENDATIONS REGARDING NATIONAL-LEVEL PUBLIC PROCUREMENT SAFEGUARDS

It is important to clarify at the outset that the recommendations in this section are drawn out of the two case studies conducted for this study. These can be applicable to other countries that are on

similar trajectories to improve information disclosure and public participation in their public procurement governance structure. At the same time, there may be other solutions too that apply to specific local contexts.

By and large, different countries are at different starting points in relation to opening their procurement systems to public participation. There is a growing realisation that there is clear value for money in doing so, where it may lead to efficiency and delivery of quality products.

This section will set out a number of actions that need to be taken at the national level to support this process. Responsibility for these does not lie with any one player alone but will rather require efforts by civil society organisations as well as common citizens to show interest in monitoring public procurement processes and engaging meaningfully – only then will governments feel the responsibility to open their systems for disclosure and participation.

Finding

Contracting data is not always available at country level across all stages of the contracting process or in appropriate formats. Effective engagement with and understanding of the contracting process is dependent on having user-friendly, accurate and coherent information at every stage of the procurement process. Data therefore needs to be shared in standard, machine-readable formats so that public contracts can be easily monitored through a systematic process.

Recommendation 1: National procurement entities in GCF-recipient countries should take a decision to disclose data in standardised formats. To do so they should adopt the OCDS. The OCDS describes what, when and how to release data and associated documents at different phases of the contracting process. The standard enables developers to build tools that will deliver value-added services to the private sector, such as more efficiently matching small businesses with opportunities, and applications for citizens groups to monitor service delivery. It also provides a benchmark for good practice in disclosure, offering a framework for government to progressively collect and publish their information.

Finding

In the case of Mexico, the government was able to use national procurement processes with high levels of disclosure and participation and thanks to its active civil society was able to institutionalise a 'social witness' programme into the procurement process.

Recommendation 2: Civil society organisations, progressive businesses and others seeking to ensure the effective use of GCF funding must work together to highlight the importance of open contracting through a collective front. This includes holding the government to account for the commitments it has made. Unless this happens, this drive will only be restricted to a few civil society organisations, advocating in pockets, and therefore resulting in limited impact.

Finding

Some countries do not have the legal frameworks in place that will allow for citizens to demand better public disclosure for public procurement. However, in some countries where policies are available these may actually prohibit open disclosure. In the case of Mexico, the Law on Transparency provides a clear legal basis for public involvement, which could of course be further strengthened, and in the case of Kenya policies are in place that keep the process closed from public view.

Recommendation 3: Civil society organisations, progressive businesses and others seeking to ensure the effective use of GCF funding must proactively work to identify the gaps within the legal system around public procurement and work to close these gaps. To be able to demand improvements in national systems, it is essential to identify the legal framework at the country level (as was carried out for these two case studies) and clearly highlight where the hindrances are, so that legal options can be advocated to create an enabling environment for demanding greater transparency.

Finding

The experience from Mexico highlights a very critical factor: even if data is disclosed in the right formats by governments, it will not automatically lead to better results. There is still a need for a clear step that synthesises the information from the open data formats and translates this into adequate anti-corruption action.

Recommendation 4: Government, civil society and other interested actors must work together to create or learn from and adapt in their context innovative ways to use disclosed data to delivery social and economic benefits. Open contracting starts by enabling stakeholders to participate in the planning phase, analyse the tendering and awarding of contracts, and monitor implementation and delivery of public goods, works and services. Open contracting can enable local civil society groups to monitor progress on climate goals, raising the possibility of helping citizens to see the impact of GCF spending from budgeting to finished product. The Open Contracting Partnership is actively working to share such cases and can be a good first port of call in considering the options applicable in different contexts.

ANNEX 1: THE OPEN CONTRACTING PRINCIPLES⁸⁴

PREAMBLE

These Principles reflect the belief that increased disclosure and participation in public contracting will have the effects of making contracting more competitive and fair, improving contract performance, and securing development outcomes. While recognising that legitimate needs for confidentiality may justify exemptions in exceptional circumstances, these Principles are intended to guide governments and other stakeholders to affirmatively disclose documents and information related to public contracting in a manner that enables meaningful understanding, effective monitoring, efficient performance, and accountability for outcomes. These Principles are to be adapted to sector-specific and local contexts and are complementary to sector-based transparency initiatives and global open government movements.

AFFIRMATIVE DISCLOSURE

1. Governments shall recognise the right of the public to access information related to the formation, award, execution, performance, and completion of public contracts.
2. Public contracting shall be conducted in a transparent and equitable manner, in accordance with publicly disclosed rules that explain the functioning of the process, including policies regarding disclosure.
3. Governments shall require the timely, current, and routine publication of enough information about the formation, award, execution, performance, and completion of public contracts to enable the public, including media and civil society, to understand and monitor as a safeguard against inefficient, ineffective, or corrupt use of public resources. This would require affirmative disclosure of:

- a. Contracts, including licenses, concessions, permits, grants or any other document exchanging public goods, assets, or resources (including all annexes, schedules and documents incorporated by reference) and any amendments thereto;
- b. Related pre-studies, bid documents, performance evaluations, guarantees, and auditing reports.
- c. Information concerning contract formation, including:
 - i. The planning process of the procurement;
 - ii. The method of procurement or award and the justification thereof;
 - iii. The scope and specifications for each contract;
 - iv. The criteria for evaluation and selection;
 - v. The bidders or participants in the process, their validation documents, and any procedural exemptions for which they qualify;
 - vi. Any conflicts of interest uncovered or debarments issued;
 - vii. The results of the evaluation, including the justification for the award; and
 - viii. The identity of the contract recipient and any statements of beneficial ownership provided;
- d. Information related to performance and completion of public contracts, including information regarding subcontracting arrangements, such as:
 - v. General schedules, including major milestones in execution, and any changes thereto;
 - vi. Status of implementation against milestones;

- vii. Dates and amounts of stage payments made or received (against total amount) and the source of those payments;
 - viii. Service delivery and pricing;
 - ix. Arrangements for ending contracts;
 - x. Final settlements and responsibilities;
 - xi. Risk assessments, including environmental and social impact assessments;
 - xii. Assessments of assets and liabilities of government related to the contract;
 - xiii. Provisions in place to ensure appropriate management of ongoing risks and liabilities; and
 - xiv. Appropriate financial information regarding revenues and expenditures, such as time and cost overruns, if any.
4. Governments shall develop systems to collect, manage, simplify and publish contracting data regarding the formation, award, execution, performance and completion of public contracts in an open and structured format, in accordance with the Open Contracting Data Standards as they are developed, in a user-friendly and searchable manner.
 5. Contracting information made available to the public shall be as complete as possible, with any exceptions or limitations narrowly defined by law, ensuring that citizens have effective access to recourse in instances where access to this information is in dispute.
 6. Contracting parties, including international financial institutions, shall support disclosure in future contracting by precluding confidentiality clauses, drafting confidentiality narrowly to cover only permissible limited exemptions, or including provisions within the contractual terms and conditions to allow for the contract and related information to be published.

PARTICIPATION, MONITORING, AND OVERSIGHT

1. Governments shall recognise the right of the public to participate in the oversight of the formation, award, execution, performance, and completion of public contracts.
2. Governments shall foster an enabling environment, which may include legislation, that recognises, promotes, protects, and creates opportunities for public consultation and monitoring of public contracting, from the planning stage to the completion of contractual obligations.
3. Governments shall work together with the private sector, donors, and civil society to build the capacities of all relevant stakeholders to understand, monitor and improve public contracting and to create sustainable funding mechanisms to support participatory public contracting.
4. Governments have a duty to ensure oversight authorities, including parliaments, audit institutions, and implementing agencies, to access and utilise disclosed information, acknowledge and act upon citizen feedback, and encourage dialogue and consultations between contracting parties and civil society organisations in order to improve the quality of contracting outcomes.
5. With regard to individual contracts of significant impact, contracting parties should craft strategies for citizen consultation and engagement in the management of the contract.

ANNEX 2: LIST OF QUESTIONS BASED ON THE OPEN CONTRACTING PRINCIPLES

1. COUNTRY CONTEXT

- a. Does the Government recognise the right of the public to access information related to the formation, award, execution, performance and completion of public contracts?
- b. In general, is public contracting conducted in a transparent and equitable manner? Are there any publicly disclosed rules that explain the functioning of the process, including policies regarding disclosure?
- c. Does the Government require timely, current and routine publication of enough information about the formation, award, execution, performance and completion of public contracts to enable the public, including the media and civil society, to understand and monitor as a safeguard against inefficient, ineffective or corrupt use of public resources?
- d. Does the government have a system which collects, manages, simplifies and publishes contracting data regarding the formation, award, execution, performance and completion of public contracts in an open, structured and machine-readable format? Is there any awareness about the OCDS?

2. STAGE ONE OF OPEN CONTRACTING: PLANNING

- a. Was an assessment of public needs undertaken?
- b. Were the identified public needs prioritised?
- c. Was there an identification of resources required to meet the identified public needs?
- d. Were costs analysed in relation to the benefits?
- e. Were there any ESIA's conducted?
- f. Was the decision to fulfil a particular public need justified in relation to other competing public needs?
- g. Did the public body estimate the time it would take to deliver the project?
- h. Did the public body determine any risks associated with the project?
- i. Were the priorities and suggestions of the community taken into account in prioritising the relevant project and/or contract?

3. STAGE TWO OF OPEN CONTRACTING: TENDERING

- a. Was the tendering process advertised?
- b. Were the advertisements conducted through multiple channels?
- c. Did the advert contain clear criteria for contractor selection?
- d. Did the advertisement contain clear information on bid submission procedures?

- e. Were the bids opened in public?
- f. Was the winning bidder among the original pool of bidders?
- g. Was the final selection justified (taking into account the professional and technical experience of bidders, evidence of financial capacity, evidence of conducting similar projects, evidence of human resource capacity, evidence of sufficient equipment, prices quoted with relation to standard prices, etc.)?

4. STAGE THREE OF OPEN CONTRACTING: CONTRACT EXECUTION

- a. Once signed, was the contract publicly available?
- b. If not, are there any standard disclosure policies/ access to information legislation through which a formal request to the public entity could be made to access the contract document?
- c. If not, is the civil society organised in a way that can exercise due pressure on government to share the contract and its relevant details?
- d. If the contract was made available publicly/through standard request/through public pressure, was there a process in place through which citizens could monitor progress, and raise concerns in a systematic manner?
- e. If the contract was not available through any of the means above, were communities mobilised to perform social audits among beneficiaries to prepare an independent analysis of the project progress?
- f. Other than the public entity responsible for the contract execution, is there any other government entity that can be approached to register complaints?

5. STAGE FOUR OF OPEN CONTRACTING: CLOSURE

- a. Once the contractor delivered, and the contract was closed, was there a process through which citizens could launch a complaint in the event of any shortcomings from the contractor?
- b. If yes, what is the process?
- c. If not, does the country have an enabling environment for citizens to create a critical mass to raise concerns about the quality of delivery once the project has been closed?
- d. Is there a public authority that will cater to such concerns? If not, which is the most relevant authority to advocate with?

ENDNOTES

1. Transparency International takes “billion” to refer to one thousand million (1,000,000,000).
2. Transparency International, *Safeguarding Climate Finance Procurement* (Berlin, Transparency International, 2018). Available at: www.transparency.org/whatwedo/publication/safeguarding_climate_finance_procurement
3. Both countries have a project approved by the GCF: Project FP005: KawiSafi Ventures Fund, Eastern Africa (managed by Acumen), and Project FP006: Energy Efficiency Green Bond, Latin America (managed by Inter-American Development Bank, IDB).
4. <http://standard.open-contracting.org/latest/en/> The OCDS describe what, when and how to release data and associated documents at different phases of the contracting process. The standards enable developers to build tools that will deliver value-added services to the private sector, such as more efficiently matching small business with opportunities and applications for citizens’ groups to monitor service delivery. It also provides a benchmark for good practice in disclosure, offering a framework for government to progressively collect and publish information.
5. unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf.
6. http://unfccc.int/paris_agreement/items/9444.php
7. www.greenclimate.fund/about-gcf/global-context#mission.
8. www.greenclimate.fund/what-we-do/portfolio-dashboard
9. www.open-contracting.org/why-open-contracting/
10. Transparency International, *Safeguarding Climate Finance Procurement* (Berlin, Transparency International, 2018). Available at: www.transparency.org/whatwedo/publication/safeguarding_climate_finance_procurement
11. Open Contracting Partnership, *A Guide for Practitioners by Practitioners*, p. 17. Available at www.open-contracting.org/wp-content/uploads/2016/02/OCP2013_OpenContracting-Guide.pdf
12. The Fund has already approved projects for each country: KawiSafi Ventures Fund, Eastern Africa by the Acumen Fund, and Universal Green Energy Access Programme by Deutsche Bank in Kenya and the Energy Efficiency Green Bond, by the Inter-American Development Bank, IDB in Mexico. Project details are available at: <https://www.greenclimate.fund/what-we-do/projects-programmes>.
13. www.greenclimate.fund/how-we-work/getting-accredited/ae-composition
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16. Ibid.
17. Transparency International, *A Tale of Four Funds* (Berlin, Transparency International, 2017). Available at: www.transparency.org/whatwedo/publication/a_tale_of_four_funds
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19. Ibid.
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24. Ibid.
25. www.greenclimate.fund/what-we-do/projects-programmes
26. See, for example, www.greenclimate.fund/documents/20182/820027/GCF_B.18_04_Add.20_Rev.01_-_Consideration_of_funding_proposals_-_Addendum_XX__Secretariat_s_review.pdf/f2f2bec3-13fe-4351-8a79-a0da0db3b39f; www.greenclimate.fund/what-we-do/projects-programmes

- greencclimate.fund/documents/20182/820027/GCF_B.18_04_Add.21_Rev.01_-_Consideration_of_funding_proposals_-_Addendum__Independent_Technical_Advisory_Panel_s_assessment.pdf/efe7b196-4c5d-4dd7-b64a-548dc0a9ba6e.
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 28. www.greencclimate.fund/documents/20182/319135/1.6_-_Fiduciary_Standards.pdf/083cfe10-46f4-4a73-b603-8d7bfd2a35bd
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 30. www.open-contracting.org/implement/global-principles/
 31. www.greencclimate.fund/documents/20182/574712/Form_05_-_Accreditation_Master_Agreement.pdf/8c4f6cbf-ae17-4856-81c1-64ac8fbfa506
 32. www.greencclimate.fund/documents/20182/818273/1.6_-_Fiduciary_Standards.pdf/083cfe10-46f4-4a73-b603-8d7bfd2a35bd
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 43. <http://ppoa.go.ke/latest-news-updates/39-news/202-the-public-procurement-and-disposal-act-2015>
 44. In practice, GDC publicises the tender reference number, item description, successful company and amount of the award as a PDF on a three-monthly basis: www.gdc.co.ke/open_tenders_assets/CONTRACT%20AWARDS%20FOR%20PERIOD%20JULY-SEPTEMBER%202017.pdf
 45. Kenya Quick Facts, accessed from: https://www-cif.climateinvestmentfunds.org/sites/default/files/meeting-documents/srep_kenya_0.pdf
 46. Project Appraisal Report, accessed from: <https://www-cif.climateinvestmentfunds.org/sites/default/files/PAR%20Menengai%20Geothermal%20vSREP%20Final.pdf>
 47. The overall project was funded not just through CIF funds disbursed through the AfDB but also by other development partners including the World Bank, European Investment Bank, French Development Agency, Japan International Cooperation Agency, United States Trade and Development Agency, United States Agency for International Development and the Public–Private Infrastructure Advisory Facility.
 48. www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/Kenya_-_Menengai_Partial_Risk_Guarantee_Project_-_ESIA_Summary.pdf
 49. Accessed from www.gdc.co.ke/open_tenders.php and see, for example, www.gdc.co.ke/tenders/tender_for_hire_of_crane_services.pdf
 50. www.businessdailyafrica.com/EACC-probes-Sh10bn-GDC-deals/-/539546/2632766/-/97a8q4/-/index.html
 51. <http://kenyalaw.org/caselaw/cases/view/121020/>
 52. <http://kenyalaw.org/caselaw/cases/view/129682/>
 53. With respect to count 1 of the criminal case, which relates to wilful failure to comply with the laws relating to procurement contrary to Section 45(2)(B) as read with Section 48 of the Anti-Corruption and Economics Crimes Act No. 3 of 2003.

54. With regard to count 2 of the criminal case, which relates to inappropriate influence on evaluation contrary to Section 38(1)(b) as read with Section 38(2)(a) of the Public Procurement and Disposal Act.
55. www.gdc.co.ke/
56. www.right2info.org/recent/kenyas-2016-access-to-information-act-available-online
57. www.opengovpartnership.org/sites/default/files/Kenya_AP2_2016_0.pdf
58. Ibid.
59. Ibid.
60. Can be accessed from <http://bit.ly/1MntBgK>, managed by the National Treasury through the IFMIS Re-engineering Department.
61. <http://eleconomista.com.mx/sociedad/2016/04/14/contrataciones-publicas-consulta-sfp>
62. www.ordenjuridico.gob.mx/Constitucion/articulos/134.pdf
63. www.diputados.gob.mx/LeyesBiblio/pdf/LFTAIP_270117.pdf
64. www.diputados.gob.mx/LeyesBiblio/pdf/14_101114.pdf
65. Ibid.
66. Details on this particular funding component are available at: www.climateinvestmentfunds.org/projects/efficient-lighting-and-appliance-project
67. www.cia.gov/library/publications/the-world-factbook/geos/mx.html
68. www.theglobaleconomy.com/rankings/oil_consumption/
69. <http://documents.worldbank.org/curated/en/770671469672145946/Mexico-Efficient-Lighting-and-Appliances-Project>
70. <http://oilprice.com/Energy/Crude-Oil/Can-Mexico-Reverse-Its-Steep-Output-Decline.html>
71. https://dash.harvard.edu/bitstream/handle/1/4735391/RWP11-016_Bosetti_Frankel.pdf
72. World Bank, *Implementation Completion and Results Report* (World Bank, May 2016).
73. Total: US\$70 million (IBRD: US\$55 million; Government of Mexico: US\$15 million)
74. Total: US\$603 million ((i) IBRD: US\$195 million; (ii) CTF: US\$50 million; (iii) NAFIN: US\$127 million; (iv) Government of Mexico: US\$55 million; and (v) Consumers: US\$176 million, complemented by a US\$35 million Guarantee Facility, of which US\$30 million is funded by the Government of Mexico and US\$5 million by GEF.
75. US\$4.82 million (Government of Mexico: US\$2.7 million; GEF: US\$2.12 million).
76. Carried out by World Bank, FIDE and Aklara (Regional Market Makers de México, S. de R.L. de C.V.).
77. Carried out by the Australian Greenhouse Office and FIDE.
78. General advert of the acquisition on 23 November 2010 in the “Development Business” magazine. The tendering process was then advertised on 26 November 2010 in the Mexican newspapers “El Universal”, “El Financiero”, “El Economista” and “El Reforma”. It was also advertised internationally on 16 December 2010 on “UNDB online” and “dgMarket” (www.devbuisness.com).
79. Form with the official offer, letter of sincerity about US\$1,000,000.00, Constitution of the organisation and its legal situation, Financial statements and audit reports, Letter of commitment of the producers of the LCFs, Supporting documents proving the experience the agent has to show, and Technical annex (deliverables indicated in section VI of the “Documents for Tendering”).
80. On 24 February 2011.
81. RFL INGENIERÍA S.A. DE C.V. retired its offer. OSRAM presented an offer of about 716,432,080 Mexican pesos (US \$ 38,551,400), GE Comercial Materials, S. de R.L. De C.V. from the commercial chain OXXO S.A. De C.V. presented an offer of about 1,072,000,598 Mexican pesos (US\$ 57,684,600), ZHONGSHAN OPPLER LIGHTING C.O.L.T.D. presented an offer of about 1,099,215,663 Mexican Pesos (US\$ 59,149,000) and PHILIPS MEXICANA S.A. DE C.V. presented an offer of about 599,740,669 Mexican Pesos (US\$ 32,272,200).
82. Starting October 2014, a national coalition to adopt the OCDS was created. It is comprised of Mexico’s National Access to Information Institute, the President’s Office, Transparencia Mexicana and the World Bank.
83. Decision B.10/06, paragraph (r), available at: www.greenclimate.fund/documents/20182/24952/GCF_B.10_17_-_Decisions_of_the_Board_-_Tenth_Meeting_of_the_Board__6-9_July_2015.pdf/1238c5ad-8686-4cf9-a401-aa4893818215
84. Open Contracting Global Principles, available at: www.open-contracting.org/implement/global-principles/

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