

Parliament's Role in Defence Procurement

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This document is part of the DCAF Backgrounder series, which provides practitioners with concise introductions to a variety of issues in the field of security sector governance and reform.

What is defence procurement?

Defence procurement, also called defence acquisition, is the process by which national security authorities acquire the equipment and services necessary to fulfil their mission.

In terms of **equipment**, this includes items intended for military use only, such as weapons systems and ammunition, as well as those that are not explicitly military items, from food to boots. As concerns **services**, many tasks that were once performed by military staff, from food service and logistical support to intelligence collection and analysis, are now contracted out to private companies and also subject to the procurement process.

Procurement usually constitutes a significant portion of total defence expenditure. For instance, NATO countries allocated an average of 17% of their defence budget to procurement in 2003.

Though the defence procurement process may differ from country to country, it usually resembles a cycle that includes the following stages:

- assessment of the threat and operational requirements;
- specification of technical requirements;
- exploration of supplier options and/or solicitation of tenders;
- negotiation, evaluation and selection;
- delivery management; and
- review.

How does defence procurement differ from other types of government procurement?

In many ways, defence procurement is similar to any other type of government procurement: needs must be assessed, competitive bids are usually issued, options are evaluated and a choice of suppliers is made.

Non-military security procurement

Non-military security authorities such as intelligence services, police and border officials have some acquisition needs that may be comparable to those of defence. However, these agencies usually have far smaller procurement budgets than the military, and a lower percentage of total funds is spent on large weapons systems and other items that follow the patterns described above. In some cases, though, these organisations' acquisition practices may share some common features with those of the military. For instance, secrecy and transparency concerns are heightened in regards to intelligence procurement.

However, the acquisition of large weapons systems has a number of characteristics that distinguishes it from other kinds of procurement:

- **Long-term planning.** Not only do weapons systems tend to have long lead times, but force structures take years or even decades to develop. During planning, the entire life-cost of a project must be taken into account, including development, testing, production and maintenance, none of which are likely to fit neatly within yearly budgeting assessments.
 - **Research and development (R&D).** Since new weapons systems usually involve cutting-edge technology, they require a high rate of investment in R&D. The exact amount can be difficult to predict, which sometimes results in cost overruns or even project failure.
 - **Secrecy vs. transparency.** Defence procurement, as with defence planning in general, requires a balance between secrecy regarding technical and operational issues and the access to information necessary to ensure transparency and accountability.
 - **Public exposure and political sensitivity.** Because of its cost and importance to national security, defence procurement tends to attract the attention of the media and civil society, especially when large weapons systems are involved.
- Furthermore, defence procurement requires the consideration of a number of international dimensions that do not typically affect other types of procurement:
- **Concerns of other states.** Because procurement decisions about major weapons systems may provoke international concern, they need to be properly managed at the political and diplomatic level.
 - **Foreign military assistance.** States that receive loans or grants from other states are often required to spend this money in certain ways, such as on goods and services in the donor or lender country. For instance, in the 2004 financial year, 87% of US foreign military assistance was spent on US products and services. This can adversely affect domestic industry.
 - **Interoperability needs.** Security arrangements with other countries and the need for interoperability may influence the choice of weapons and suppliers.
 - **Project collaboration.** Some of the most costly and technically complex procurement involves international collaboration. This can require close cooperation with other participating nations as well as with private industry in order to coordinate development, production and funding.

- **International law and arms control arrangements.** International law prohibits or restricts the production, acquisition, transfer, stockpiling and use of certain weapons, such as landmines and chemical, biological, nuclear, radiological, laser and other weapons. Furthermore, in many areas of the world, arms control agreements regulate the deployment of military forces and equipment. Defence procurement authorities need to be aware of the legal commitments that their country has undertaken or is likely to undertake.

What actors are involved in defence procurement?

The relevant **statutory security forces**, particularly the military:

- consult with the ministry of defence (MoD) regarding their capability and procurement needs;
- assist the executive in producing budget proposals; and
- often handle their own procurement of many smaller items and services.

The MoD:

- prepares security budgets and procurement proposals (in cooperation with the military and other executive bodies);
- negotiates with domestic and foreign firms, as well as with foreign governments;
- may grant licenses for arms production, trade and exports;
- usually handles tender processes; and
- usually also produces an annual report for general public consumption as well as supplementary reports and documen-

The Tendering Process: To Compete or Not to Compete

Though there are many ways to solicit tenders and evaluate bids, defence procurement contracts are generally managed either by competitive bidding or single-source procurement. Competitive bidding is the general rule for public acquisitions. However, for a number of reasons, defence procurement is often conducted via single source (also referred to as sole source, non-competitive or no-bid) procurement, both in developing and advanced arms exporting countries.

The government may claim to award single source contracts only for reasons of expediency or where national security interests are at stake. National or regional preferences and established business relationships may also produce long-term agreements with preferred suppliers.

However, parliamentarians should keep in mind that defence procurement is one of the most corruption-prone sectors of international business because of the large amounts of money concerned and the fact that governments themselves are the enforcers of secrecy. Although non-competitive procurement is not itself an indication of corruption, where it is the norm, opportunities and inducements for corruption are likely to be significant.

The competitive process normally foresees that expert bodies, usually composed of both military and civilian experts, evaluate bids for quality and value. Ideally, parliament will also examine and approve large contracts. Such layers of oversight make corruption more difficult to conceal.

tation as needed or requested by parliament and others charged with defence procurement oversight.

Generally, the executive or the MoD will have a special unit focused on procurement issues.

In addition, several other actors have important roles:

- **national defence industries**, including all firms that produce military or security-related equipment;

- **academic and other research institutions**, with whom governments frequently cooperate to develop military technology;
- **civil society and media**, which scrutinize both specific procurement proposals and the overall distribution of resources;
- **foreign suppliers**, which virtually all countries use to some extent to meet their military needs, especially smaller countries that do not possess a full range of defence industries;
- **international organisations, defensive alliances and other cooperative security arrangements**, which may play a role in defence procurement through mechanisms such as arms embargos (e.g., the UN, EU or OAS), trading regulations (e.g., the EU's Code of Conduct on Arms Sales) and interoperability requirements (e.g., NATO).

In what stages of defence procurement may parliament intervene?

Parliament has a number of powers affecting defence procurement that may be exercised in plenum, in committees such as security and defence committees or budget and finance committees, or via the power of individual legislators.

Parliamentarians can:

- establish a **legal framework** for procurement;
- debate and approve both annual and supplementary **budget authorisations**;
- exercise **oversight** of the other governmental actors mentioned above by requesting reports from the executive,

hearing statements or testimony by government officials or directing questions and interpellations to the government; and

- in some cases, approve **procurement awards** above a certain amount.

Using such powers, parliament can play a role in each of the six stages of the defence procurement cycle referred to above.

Implementing long-term security planning. In many countries, parliament approves or is briefed on long-term programmatic documents such as a national security strategy, white papers or defence reviews that develop a threat and security assessment and define needed capabilities (see the [DCAF Backgrounder on National Security Policy](#)). If the executive does not usually produce such documents, parliament may pass laws requiring them.

Technical requirements. The MoD generally has primary responsibility for setting technical requirements for procurement. However, these requirements may be debated by parliament, especially in the defence committee, when they concern especially important or costly procurements.

Supplier options/solicitation of tenders. Parliaments are unlikely to directly solicit or negotiate tenders. However, they can be involved in these processes in several ways, for example, by

- **establishing the legal framework** for the solicitation of tenders, including whether this occurs through competitive bidding or at the discretion of security authorities;
- **approving procurement contracts** above a certain level of funding (e.g.,

in Germany and Netherlands, €25 million; in Poland, €28 million) or that concern certain types of weapons systems;

- playing a role in **selecting the vendor** (e.g., Czech Republic and USA); and
- **requesting reports** from or holding hearings with government and industry officials regarding specific tenders and contracts.

Delivery management. No parliament is directly responsible for managing deliveries, though they may deal with this issue if there are problems; for instance, they may need to withhold payment on late or unsatisfactory deliveries. Most parliaments also monitor offset clauses in procurement contracts to ensure they are respected (see Box on page 5).

Review. While the MoD usually has its own review process, parliament can also conduct evaluations of procurement as part of a larger defence review process. This should be conducted separately from the executive's own review so that it can provide an independent source of information on security sector activities.

What are the key challenges of defence procurement?

Because the number of actors involved and the many technical aspects of project design, the acquisition process is often criticised as complex, slow and costly. To a certain extent, this simply reflects the nature of the procurement process. Procurement contracts that have not been sufficiently scrutinised may waste money by proving to be too expensive or even technologically unachievable.

The challenges of procurement include:

Ensuring transparency. In countries that lack civilian control, military and defence

What are offsets?

Offsets or offset procurement is the practice of linking contracts with foreign suppliers to measures to benefit domestic industry. It can take a variety of forms:

- **Investment.** The foreign supplier agrees to invest a percentage of the contract in the purchasing country.
- **Local production.** As part of the defence procurement contract, the foreigner supplier agrees to produce or assemble at least a part of the product in the purchasing country, either through a local subsidiary or by subcontracting to a local firm.
- **Swap.** This is an agreement, whether contractual or simply informally agreed, whereby countries agree to make purchases from one another's suppliers.
- **Pre-offset.** This refers to an investment by a potential foreign buyer before the purchase occurs.

authorities often have the final say on what information about procurement issues is made public. However, even if some technical details of weapons programs must remain secret, parliamentarians should have access to this information.

This may require a vetting process to ensure their reliability (see the [DCAF Backgrounder on Vetting for the Security Sector](#)).

Establishing the proper role for the domestic defence industry. In many countries, governments try to favour domestic companies in defence procurement to benefit the national economy and maintain a degree of independence vis-à-vis foreign suppliers. However, such an approach can be compromised by several factors:

- national defence industries need a steady supply of work to remain economically viable, which may

encourage the government to purchase items it would otherwise not need;

- foreign suppliers may be able to meet the same requirements at less cost than domestic suppliers; and
- decisions to award contracts to domestic industry may be affected by political considerations or even corruption, though of course this may also occur as regards foreign suppliers.

In general, if a state continues to fund an inefficient domestic defence industry when a variety of reliable countries could also fill its procurement needs, it may be wasting domestic resources.

Preventing parochial concerns from harming the national interest. When domestic suppliers are involved, politicians may be tempted to secure funds for projects in their own districts or that otherwise benefit their own constituency or ethnic group at the expense of the national interest. An independent and vigilant press and civil society are the best means of preventing this practice.

Preventing corruption. According to an IMF report on corruption and military spending, “experts have estimated that bribes account for as much as 15% of the total spending on weapons acquisition.” Transparent, competitive procurement practices and strong parliamentary oversight are essential to countering corruption.

How to strengthen parliament’s role in defence procurement?

Parliament’s authority over defence procurement requires a proper **legal basis** for its involvement. Defence procurement should be **competitive** for all non-emergency purchases. Parliaments

The EU and Defence Procurement

For general government procurement, the EU has issued a number of directives that require its members to structure their procurement processes so that companies located in all member states can compete fairly for contracts. However, the EU procurement rules allow derogations from the normal competitive requirements when the good or service sought requires secrecy, necessitates special security measures, or concerns a state’s essential security interests. Many countries use these exceptions to continue old practices of granting preference to domestic companies or to require offset arrangements from foreign suppliers, even from other EU countries.

Since July 2006, new regulations have been in place that aim to increase competition in the European defence market. Notably, the Code of Conduct on Defence Procurement, which was passed by 22 of 24 members of the European Defence Agency (EDA), committed the signatory states to the following principles for defence procurement:

- voluntary, nonbinding participation in the regime;
- fair and equal treatment of suppliers from all signatory countries in terms of selection criteria, contract requirements and award criteria, as well as the obligation to supply feed-back to all unsuccessful bidders after the contract is awarded;
- mutual transparency and accountability in regards to reporting practices, including when certain exceptions to the general principle of competitiveness are made: these exceptions will need to be justified and if necessary, explained before the EDA Steering Board;
- mutual support to ensure supply to meet national needs; and
- mutual benefit for all signatories, including the expansion of opportunities for small- and medium-sized companies from across Europe to sell into a continental-scale market.

may want to also consider passing laws that require their **approval for defence contracts above a certain value.**

Nonetheless, a formalized process of scrutiny does not automatically translate into a meaningful role for parliament and its oversight committees. This also requires that:

- parliamentarians have **access to the necessary resources**, such as support staff and the possibility to call on independent expertise;
- parliamentary committees have relatively **stable membership** so as to help parliamentarians develop expertise for their review and oversight functions; and
- parliamentarians possess the necessary **motivation** and interest to perform their duties.

In short, parliaments must be both willing and able to assert their role in defence procurement.

What special issues are there in developing and post-conflict countries?

Many of the same issues concerning defence procurement also apply to developing and post-conflict states, for instance the **risk of corruption** and the **lack of transparency**. However, there are some other issues that may need to be addressed:

Poverty reduction vs. security provision.

A balance must be struck between development needs and security provision. But in developing countries and post-conflict situations, the main obstacles to meeting security needs are more likely to involve a lack of manpower or training than a lack of equipment. The procurement needs of developing and post-conflict countries will vary greatly depending on the government's threat assessment, which is why it is important for the government to conduct a transparent, inclusive security review as part of a broader national security policy, with external assistance if necessary (see the [DCAF Backgrounder on National Security Policy](#)).

Over-procurement. Developing countries may be tempted to purchase expensive weapons systems that do not correspond to their security needs, which may benefit more from investment in uniforms and training or simply better salaries for security forces. Again, a formal security review that can help to identify the major security threats to the population and the capabilities needed to address these threats can be helpful in avoiding this problem.

Under-institutionalized procurement process.

Countries may not have the institutional capacity to conduct a viable, competitive procurement process. However, while such systems do require individuals with a knowledge of procurement practices, they may be easier (and less costly) to implement than many individuals might assume. A lack of resources is thus a poor excuse for not implementing a competitive bidding process for defence procurement, especially since it can help reduce costs owing to competition among suppliers and a decreased likelihood of corruption.

Further Information

European Defence Handbook, 2006
www.defense-handbook.org

The Extent of Single Sourcing and Attendant Corruption Risk in Defence Procurement: a First Look
Wilson, Scott and Pyman, 2006
www.transparency.org.uk/PCOATdocs/Wilson%20Scott%20and%20Pyman%20%20June%20.pdf

The Parliamentary Dimension of Defence Procurement: Requirements, Production, Cooperation and Acquisition
Van Eekelen, 2005
www.dcaf.ch/_docs/op05_parliamentary-dimension.pdf

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