

**Global Dialogue Forum on Decent Work
in Local Government Procurement
for Infrastructure Provision**Geneva
17–18 February 2009

Background document

The main theme of the Forum is “Achieving decent work in construction through procurement and contracts”.

While the overall title mentions local authorities, it will also be important to discuss the role of other government authorities, as well as other players such as development banks and the Organisation for Economic Co-operation and Development (OECD). The role of private enterprises is also certainly significant, as they are on the receiving and implementing side of procurement and contracts.

The Forum will consist of a series of round tables, each with one or two short presentations (around ten minutes each) followed by discussion. Presenters will be chosen according to their knowledge of the themes.

The tentative timetable of the Forum – including the themes of the round tables – is as follows:

Day 1

09.00–10.00	Registration
10.00–10.30	Opening
10.30–12.30	Round table: ILO Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and the Decent Work Agenda
12.30–14.00	Lunch
14.00–15.30	Round table: World Bank procurement of work and the role of other multilateral development banks
15.30–16.00	Coffee break
16.00–17.00	Wrap-up discussion of the day

Day 2

09.00–10.30	Round table: International Finance Corporation performance standards
10.30–11.00	Coffee break
11.00–12.30	Round table: The role of local authorities
12.30–14.00	Lunch
14.00–15.30	Round table: The role of other actors
15.30–16.00	Coffee break
16.00–17.00	Wrap-up discussion of the day

Background

This Forum is the result of long-standing collaborative efforts by the Confederation of International Contractors' Associations (CICA) and Building and Wood Workers International (BWI) to examine social issues arising in the construction sector with regard to procurement and contracts. They issued a joint statement in November 2006, and the CICA provided a position paper on social issues to the World Bank in May 2005. In recent years, there has also been growing interest in the subject within the ILO itself, which now has a reference group on procurement.

Procurement in construction

Public procurement represents a sizeable part of the economy, accounting for 9–13 per cent of the gross domestic product (GDP) of developing countries, and approximately 20 per cent of GDP of OECD countries. Because 70 per cent of investment in construction is from the public sector, procurement policies and practices are a major concern.

It is often the lowest bid that wins the contract. As a result, the winning tender may well be the one which pays the lowest wages, fails to provide safety equipment or coverage for accidents, and hires the largest proportion of informal workers, for whom no tax or social security is paid, and who are not covered in practice by any legal or social protection. Public procurement policies that promote competition, at all cost, among potential contractors undermine decent work. The ILO's aim is to ensure that all bidders comply with the best locally established standards for working conditions, i.e. those set by collective agreement, arbitration award or national laws or regulations, rather than to allow unrestricted competition and downward pressure on standards to characterize public procurement policy. Experience shows the relevance of this concern. Labour problems are most acute where national laws fail to establish a relevant floor of binding labour standards.

Recent developments in public contracting as well as in the world of work have highlighted the need to discuss the labour aspects of procurement. These developments include: (i) the increasing importance of subcontracting, global sourcing and the complexities of supply chain management; (ii) the increasing availability and use of contractors that perform the work under the contract outside the borders of the country for which the work is being performed; (iii) the increasing use of concessions and other forms of public–private partnerships; (iv) the increasing devolution and decentralization of public procurement policy; and (v) the increasing use of service- or labour-only contracting, particularly in the context of privatization, with a view to cutting costs but with the effect of raising the risk of unprotected work.

Along with these developments are significant and growing international efforts to apply labour standards to public contracting, as well as to private contracting in public–private partnerships. Such initiatives go by a variety of names, including “sustainable procurement” or “social considerations in public contracts”. Some invoke the ILO's fundamental principles and rights at work, others provide more concrete, practical guidelines. Thorough discussion is needed in order to make the best use of such opportunities.

Clients, in this case governments, need to be convinced of the value of mandatory labour clauses so that social costs are no longer subject to competitive pressures. The construction contract can become a potentially important mechanism for the implementation of labour standards.

There is a clear need for clauses that relate specifically to labour standards to be included in bidding and contract documents. There should be a clear flow of responsibilities from the client, prime contractor, subcontractors to workers and all those on site.

The Global Dialogue Forum aims to explore the feasibility of using contractual provisions to ensure compliance with the social requirements of the procurement contract. These requirements should be included in both the technical specifications of the contract and in the bill of quantities in such a way that owners and engineers are contractually and financially committed to comply. The Forum will discuss some practical methods of ensuring this compliance. Emphasis must be put on the feasibility and practicality of the approach, keeping in mind that while the process may be long, progress can be achieved through incremental steps. The Forum will form one step along the path to improvement.

Round tables

The proposed themes of the round tables and their importance are presented below.

Round table 1: ILO Convention No. 94 and the Decent Work Agenda

The Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and Recommendation, 1949 (No. 84), are the main ILO instruments related to procurement. Therefore, the Convention and related Recommendation deserve to be discussed in the Forum. The objectives of the instruments are twofold. First, to remove labour costs being used as an element of competition among bidders for public contracts, by requiring that all bidders respect as a minimum certain locally established standards. Second, to ensure that public contracts do not exert a downward pressure on wages and working conditions, by placing a standard clause in the public contract to the effect that workers employed to execute the contract shall receive wages and shall enjoy working conditions that are not less favourable than those established for the same work in the area where the work is being done by collective agreement, arbitration award or national laws and regulations.

Although there are countries that have formally accepted Convention No. 94 and implemented it from the moment it came into force, there are others that have not fully complied with their obligations under the ratified Convention. Most significantly, several of these countries consider that the Convention is implemented by the mere fact that national labour legislation is of general application and thus covers work done in connection with the public contract.

These developments give cause for concern in light of the fact that ILO Convention No. 94 is the world's only binding, universal and systematically supervised instrument in the area of public contracting. In the face of the momentous changes taking place in public procurement, what should the ILO do?

The ILO recently carried out a General Survey on Convention No. 94 and its accompanying Recommendation. The Forum's first round table will be devoted to the discussion of the application of Convention No. 94 and the recent discussion of the General Survey carried out during the 2008 International Labour Conference.

Round table 2: World Bank procurement of work and the role of other multilateral development banks

The World Bank's public sector lending arms, the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA), have included core labour standards as conditions for project funding. Also, some of the regional banks have already begun their own procedures for adopting core labour standards as a lending requirement for project funding. This is a very important process, given that a sizeable amount of funding from the World Bank and regional banks is used by national governments – and increasingly also by local governments – for procurement purposes.

Round table 3: International Finance Corporation performance standards

The International Finance Corporation (IFC) is the private sector lending wing of the World Bank group. It introduced a new Performance Standard 2 in April 2006, which commits IFC clients to respect national law and international standards on:

- freedom of association and the right to collective bargaining;
- non-discrimination and equality of opportunity;
- freedom from child labour;
- freedom from forced labour;
- retrenchment – requirement to have a retrenchment plan;
- working relations – documentation and communication of conditions;
- working conditions – compliance with collective bargaining and national law on pay, hours, and occupational safety and health;
- grievance mechanisms – must be in place for workers;
- human resource policy – the client is also expected to have a human resource policy in place;
- the policy applies to non-employee workers, contract labour, subcontractors and suppliers.

Although most procurement takes place via governments, it is important to understand how the IFC undertakes procurement directly with the private sector, because of the international importance of the World Bank in general and the IFC in particular. Also, it is important to note that the IFC preceded the IBRD and IDA with regard to labour standards.

Round table 4: The role of local authorities

Local authorities are playing a burgeoning role in public procurement, due to the widespread trend towards devolution of authority from the central to local level. Therefore it is also important to discuss better procurement at the municipal level – an issue which would add to the ILO's recent efforts to build closer relations with local governments.

Round table 5: The role of other actors and/or related issues

The final round table will offer the opportunity to discuss a number of themes, such as the strategic roles of representatives of workers and employers, the set of International Federation of Consulting Engineers (FIDIC) standard bidding documents, and other topics proposed by participants.