

Public procurement and the Convention on the Rights of Persons with Disabilities: Rights in Practice

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International Disability Alliance

BACKGROUND PAPER

Promoting the
rights of one
billion persons
with disabilities

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Executive Summary

According to the World Report on Disability there are over one billion people with disability worldwide¹. People with disability face daily barriers ranging from inaccessible built environments, facilities and services to negative attitudes and assumptions. Using universal design and inclusive public procurement can remove these barriers and respect rights. Public procurement, or the way in which public authorities purchase goods, services, works or construction² can be and is used to implement the Convention on the Rights of Persons with Disabilities (“the Convention”). Making public procurement laws, policies and practices compliant with the Convention is a non-negotiable for the more than 150 countries³ that have ratified the Convention and is good practice, as outlined in Convention articles:

- Article 5:** Equality and non-discrimination
- Article 9:** Accessibility
- Article 13:** Access to Justice
- Article 19:** Living independently and being included in the community
- Article 20:** Personal mobility
- Article 21:** Freedom of expression and opinion, access to information
- Article 24:** Education
- Article 25:** Health
- Article 26:** Habilitation and rehabilitation
- Article 27:** Work and employment
- Article 28:** Adequate standard of living and social protection
- Article 29:** Participation in political and public life
- Article 30:** Participation in cultural life, recreation, leisure and sport
- Article 31:** Statistics and data collection
- Article 32:** Inclusive and accessible international cooperation efforts

Regardless of whether or not a country has signed or ratified the Convention on the Rights of Persons with Disabilities, there are opportunities to reduce discrimination and promote accessibility for all. Procurement policies and processes can require accessible information, products, community facilities and services. Procurement can promote opportunities for equal and equitable inclusion of people with disabilities.

¹ The 2011 World Bank/World Health Organization World Report on Disability

² The 2011 UNCITRAL Model Law on Public Procurement defines procurement at 2(f) as (j) “Procurement” or “public procurement” means the acquisition of goods, construction or services by a procuring entity.

³ 2015 UN Enable List of Ratifications at <http://www.un.org/disabilities/> accessed 15 March 2015.

Public procurement can set new and better standards and benchmarks so investments include people with disability. At least 5 to 20 per cent of Gross Domestic Product is usually allocated through public procurement⁴. In developing countries public procurement may be used more frequently.

Donors, countries and companies encourage innovation and competition through procurement. Procurement policies set standards which can impact on consumption trends and company profits. Given the economic flows and potential to influence markets, inclusive public procurement deserves priority attention, especially to promote:

- ✓ **Non-discrimination and equality** for people with disabilities in line with Article 5 of the Convention for example as a de facto equality measure to reserve contracts for disadvantaged groups such as persons with disabilities.
- ✓ **Accessibility** in line with Article 9 of the Convention through making online procurement portals accessible, adding technical accessibility standards to tender specifications so procured public services and facilities are accessible.
- ✓ **Universally designed** and environmentally sustainable products and facilities for example when building or renovating schools, making sure accessibility is incorporated, supporting the concept of 'build back better'.

Analysis of public procurement policies and practice

This desk review found procurement policies and approaches are diverse in different countries and contexts. There are however a number of trends.

1: Procurement and equality laws can promote opportunities for people with disabilities but implementation is often mixed. In the 2005 Philippines Disability Affairs executive order (# 417) requires 10 per cent of all government procurement to be from cooperatives including of people with disability and for the Philippines to employ people with disability. The Education department actively procured school desks and chairs from a cooperative including people with disability. The Constitution of South Africa similarly prioritizes procurement bids by organisations or people disadvantaged by unfair discrimination including people with disabilities. The South African 2000 Preferential Procurement Policy Framework Act (PPPFA) amended in 2011 allocates 10 out of 100 points to people disadvantaged by unfair discrimination.

⁴ [2014 World Bank Report](#) accessed 13 March 2015.

2: Online procurement systems are the norm and need to be accessible.

With the move to online procurement systems, the World Bank has created a procurement application to promote transparency⁵. Despite the shift to online platforms, so far only some portals meet the World Wide Web Consortium (WC3) accessibility standards, mandated in Italian law and United Kingdom procurement policies. India is moving towards online procurement systems but these do not yet appear to be accessible. Korea has centralized e-procurement to curb corruption without confirming accessibility. In the Philippines, Phil GEPS, the online procurement system, does not feature accessibility and therefore organizations run by people with disability may not yet be registered on the system.⁶ By 2018, all EU members will use online procurement. Global standards for accessibility⁷ need to be applied in practice.

3: Reforming procurement laws is ongoing. European Commission members are revising procurement laws to promote inclusion of people with disability. Most countries refer to the 1994 and 2011 UN Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Service⁸. Non-discrimination, accessibility for all and social inclusion are not yet part of the Model laws which has flow-on effects.

4: Participation of people with disability in procurement is mixed.

In Korea non-discrimination on the basis of disability is not yet a requirement for registered vendors. In contrast, the United Kingdom, public authorities have reserved participation for people with disability in employment programs. The United Kingdom 2010 Equality Act¹⁰ makes public authorities legally responsible for general equality in procurement. In the United States, accessibility standards in the Americans with Disability Act (ADA) are mandatory in public procurement with Section 503 of the Federal Acquisition Regulations having a seven per cent target of persons with disabilities in the workforce of all contractors¹¹.

⁵ World Bank procurement application

<http://www.worldbank.org/en/news/feature/2015/04/30/procurement-app-shows-the-power-of-transparency-and-simplicity> Accessed April 2015.

⁶ Transparency International (2011): APEC Procurement Transparency Standards in the Philippines, see <<http://www.transparency-usa.org/documents/PhilippinesAPECProcurementStandardsFinal.pdf>> accessed on 19 May, 2013

⁷ Accessibility requirements suitable for public procurement of ICT products and services in Europe (link to PDF of European ICT standards) accessed May 2015

⁸ UN: UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment : see <<http://www.uncitral.org/pdf/english/texts/procurem/ml-procurement/ml-procure.pdf>> accessed 12 May, 2013

⁹http://www.ppi-ebd-uncitral.com/images/stories/Files_repository/ML_Public_Procurement_A_66_17_E.pdf

¹⁰ <http://www.legislation.gov.uk/ukpga/2010/15/section/20>

¹¹ US Department of Labour: Final Rule: Section 503 of the Rehabilitation, see

Findings: The findings of the review point to seven areas for attention: i) political will to champion inclusion ii) engaging stakeholders to promote inclusion; iii) integrating accessibility and inclusion provisions into public procurement laws; iv) implementing positive or affirmative policies; v) developing and promoting accessibility standards; vi) training procurement staff and; vii) expanding the focus of review mechanisms beyond corruption checks to consider inclusion.

Recommendations

Building off the findings of the review, there are eight key recommendations for Disabled People's Organizations, donors, NGOs and policy makers:

- 1. Review and make laws, policies and public procurement practices** accessible and non-discriminatory to persons with disabilities.
- 2. Contextualize international and regional standards for accessible and inclusive procurement policies** to meet global good practice and local contexts.
- 3. Promote and conduct training** of procurement staff on inclusive and accessible public procurement.
- 4. Establish monitoring mechanisms** so that policies are implemented in practice and that checks and balances for non-discrimination in employment exist.
- 5. Add criteria in procurement tenders and reviews** to use, construct or renovate universally designed facilities and resources in line with accessibility standards including for buildings, transport and information communication technologies.
- 6. Donors can adopt accessibility standards** so that aid money spent does not discriminate against people with disabilities. Donors can review systems and also require in kind donations such as refurbished computers or transport vessels are accessible.
- 7. Organizations of people with disabilities (DPOs) can learn about, review and monitor** national or local public procurement approaches to promote non-discrimination, accessible and inclusive laws and policies.
- 8. Governments and organizations in charge of public procurement** can provide accessible information about procurement systems so people with disability can bid for tenders and achieve economic empowerment.

<<http://www.dol.gov/ofccp/regs/compliance/section503.htm>> accessed on May 20,2013

Introduction

Disability includes the intersection between long term impairments which may be sensory (like vision impairment) physical, intellectual or psychosocial and barriers which may be physical (like stairs) or attitudinal (like stereotypes). According to the 2011 World Report on Disability, around 15 per cent of the global population or more than one billion people have disability. Unfortunately, many environments and buildings including public facilities like courthouses or schools have not been built with inclusion in mind. As new buildings are going up and new technology being developed it is important that accessibility and inclusion barriers are removed and that new designs and investments are accessible from the beginning. With this in mind, public procurement processes and systems need to be urgently reviewed to create a 'barrier free world'.



Image 1: A world without barriers: International Disability Alliance

Public procurement is a process by which regional, national and local public authorities or bodies governed by them purchase goods, services and/or construction and works. Procurement is used to allocate large volumes of public spending each year. According to a 2014 World Bank evaluation, between 5 and 20 per cent of Gross National Income is generally spent through procurement systems. In the European Union, in 2011 member states were estimated to spend around 17 per cent of GDP through public procurement¹². This figure may be much higher in developing countries, particularly considering expenditure across levels of government, (Central/Federal to State/Provincial to towns and municipalities). A 2010 green procurement report suggests a much higher percentage of GDP of developing countries could be spent through procurement, citing figures of South Africa of around 35 per cent, India 35 per cent and Brazil 47 per cent of GDP^{13, 14}.

¹² See the EC document 2011 <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=978>

¹³ Perera O, (2010): Procuring Green in the Public Sector – A Checklist for Getting Started, IISD, see:

Public procurement can influence the market from an economic standpoint. Procurement specifications can set standards and impact production of certain types of goods. Based on the way guidelines are set, procurement can be used to promote products, infrastructure or services that are environmentally friendly or are universally designed. In international cooperation, aid known as official development assistance is often spent through public procurement systems. Donors offer contracts to large non-government organizations, consulting firms and development companies to meet development aims. For example, the United Nations procurement expenditure was over US\$3,207 million in 2014¹⁵.

According to the Convention on the Rights of Persons with Disabilities “**Universal design**” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed”¹⁶.

There are seven universal design principles: Equitable use, flexibility in use, simple and intuitive use, perceptible information, tolerance for error, low physical effort, size and space for approach and use.¹⁷ Procurement can promote innovative products, designs and services on a large scale and influence the price and standards (cost / quality) of goods, services and construction and promote universal design principles.

This paper reviews how public procurement has been and can be made compliant with the Convention on the Rights of Persons with Disabilities (hereafter “the Convention”). Part one explains what public procurement means and how it can be used to implement the Convention. Part two shows findings from a review of public procurement laws and policies in India, Korea, Nepal, Philippines, South Africa, United Kingdom and the United States of America. Part three discusses challenges in making public procurement compliant with the Convention. Part four provides recommendations for Disabled People’s Organizations, countries and donors.

www.iisd.org/pdf/2011/procuring_green_public_sector.pdf accessed on 15 Jan, 2014

¹⁴ United Nations Environment Programme, (2012) : Sustainable Consumption and Production – Handbook for Policy Makers: First Edition, Chapter 9: see <http://www.switch-asia.eu/fileadmin/content/PSC/SCP_Handbooks_Icons/Sustainable_Procurement_web.pdf> accessed on Jan 15, 2014

¹⁵ United Nations Procurement Division <https://www.un.org/Depts/ptd/statistics/2014>

¹⁶ <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

¹⁷ Accessibility Design Guide, DFAT ([Link to accessible PDF](#))

Part 1: Public procurement explained

What is public procurement?

Public procurement is the purchase of goods, services and works by public authorities.

Goods can include busses, dental chairs, bank automatic teller machines, computers and software, school equipment or office stationary.

Services may include customer services like ration card renewal counters, assistance at airports, legal or medical services.

Works may include public works such as constructing or renovating a school building, setting up a power plant or redesigning a railway station.

Unfortunately many buildings and services, including those provided by governments, have not been accessible for people with disabilities. To promote equity and prevent exclusion, services and facilities need to be procured and designed with accessibility and inclusion in mind. Public procurement is important as it i) uses taxpayer's money and ii) buys items and facilities at a large scale which can shape market trends.

Public procurement influences markets and standards contributing to policy and program outcomes. The private sector can be influenced by public procurement systems, as public procurement policies and laws set standards and expectations. Procurement laws and policies also set broader frameworks for quality, standards and transparency, including eligibility criteria for which organizations or individuals can submit proposals to win contracts.

To provide equal opportunities for people with disabilities, equity measures need to be considered. Governments use purchasing power when designing and advertising procurement in promoting cost effectiveness, innovation, competition and when setting or maintaining standards. For example, Australia requires implementing partners and contractors for the aid program to have child protection policies. People with disability can demand accessibility for people with disability procurements which use public money. Procurement designs can specify the construction and operational requirements, for example for a hospital to meet universal design standards.

Public procurement can be used to counter disadvantage by encouraging or prioritizing contracts for small and medium enterprises, companies run by women, indigenous people and/or people with disabilities, through ‘positive discrimination’ to promote equity.

Foreign aid and multilateral funds are often spent procuring goods and services from private or not-for profit companies and organizations. Donor agencies also establish contracts with companies, organizations and individuals to evaluate how effectively projects are being implemented which can effectively promote accessible and inclusive procurement for all.

Transparency and accountability of public procurement is a major priority because of the large amounts of public money spent. Good public governance includes a well-developed, transparent and efficient system of procurement, providing value for money.

Public procurement systems are often structured to include:

- **Financing agencies:** Treasuries, finance departments or donors.
- **Implementing agencies:** Plan and bid for tenders and contracts, implement and monitor at regional, national or local levels.
- **Executing agencies:** Fulfil contracts, potentially public sector, private sector enterprises and international companies.
- **Evaluating agencies:** Check compliance to laws, policies and contract specifications and may include national vigilance commissions or international cooperation evaluation mechanisms.

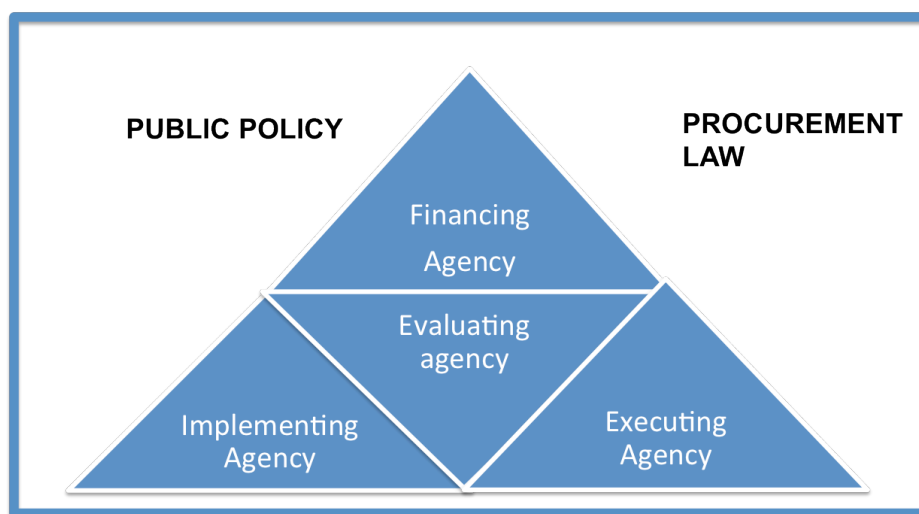


Figure 1: S Gupta.

What is CRPD compliant public procurement?

The Convention on Rights of Persons with Disabilities ('the Convention' also known as the CRPD) has been ratified by over 150 countries. Article 4 of the Convention outlines general obligations requiring States Parties to take measures to eliminate discrimination in the basis of disability from legislation, policy and practice including from 'any person, organization or private enterprise'¹⁸.

Public procurement can mainstream inclusion in many sectors.

Procurement can promote accessibility of community facilities and services in implementing the relevant Convention Articles. For example, Article 9 (accessibility) intersects with Articles 13 (access to justice), 19 (living independently), 20 (personal mobility) 21 (freedom of expression), 24 (education), 25 (health), 26 (habilitation and rehabilitation), 27 (work), 28 (social protection), 29 (political and cultural life) 30 (cultural life and sport) 31 (data) and 32 (international cooperation) in terms of access to facilities, services and information. Public procurement can promote de facto equality to accelerate inclusion of people with disabilities (Article 5) and can help fulfill Convention obligations. Yet more can be done. Even in countries with inclusive public procurement policies, implementation needs to be reviewed or improved.

Addressing discrimination on the basis of disability is a priority for public procurement policy and legal reforms. Non-discriminating public procurement means people with disabilities are not excluded or restricted from benefiting from procurement processes and outcomes on an equal basis with others.

In the United States: Non-discrimination is mandated in public procurement law through the Automated Directed System (ADS) in the United States Aid Agency (USAID). Chapter 303 requires grant and cooperative agreements to non-governmental organizations using aid money to have nondiscrimination policies for their operations.¹⁹

¹⁸ Convention on the Rights of Persons with Disabilities, Article 4.

¹⁹ USAID. ADS chapter 303 – Grant and Cooperative Agreements to Non-Governmental Organizations. Partial revision date 08/22/2013. see <http://www.usaid.gov/sites/default/files/documents/1868/303.pdf>

Making **public procurement processes** non-discriminatory needs:

- **Tendering specifications** including accessibility standards for goods, services and works procured for public use.
- **Tendering processes** including advertising, receiving bids and awarding tenders to be available in accessible formats so that persons with disabilities are not excluded.

Making **public procurement outcomes** non-discriminatory requires:

- **Standards** so products or services procured do not create new barriers for people with disabilities.
- **Services** procured to be accessible to people with disabilities on an equal basis with others.
- **Public services and facilities** outsourced to public or private enterprises provide reasonable accommodation to users with disabilities as appropriate.

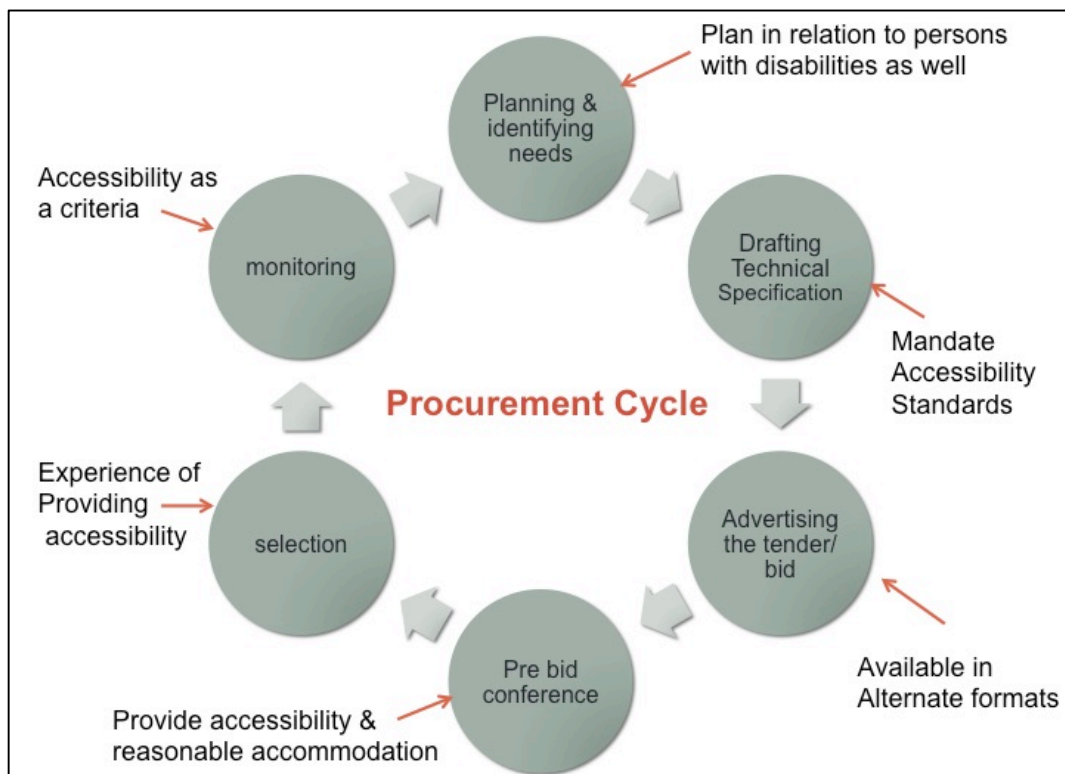


Figure 2: S Gupta. An example of an accessible public procurement cycle

Part 2. Using public procurement to implement the Convention

Public procurement can be used to promote human rights of people with disabilities. This part outlines how public procurement can improve accessibility (Articles 9 and 21) promote de facto equality measures to accelerate inclusion of people with disabilities (Article 5), and provides examples of inclusive procurement from international cooperation (Article 32).

i. Accessibility

Accessibility is a general principle of the Convention, detailed in Article 9. States parties are required to make physical environments, transport, information and communication, including new technologies, systems, and facilities and services accessible to people with disabilities.

Accessibility can benefit all. Accessibility is conceptualized in some reports as a “global public good as accessible and usable environments are non-excludable - accessibility benefits all - and non-rivalrous (as in use by one person does not detract from use by others).”²⁰ Making accessibility part of international development policy analysis, budgeting decisions, implementation and monitoring is not new but requires consistent application.

Turning accessibility policies into practice needs technical standards for accessibility to be integrated in tender specifications for products, services and works procured.

A Swedish report to the Committee on Rights of Persons with Disabilities noted Public Procurement Act states “technical specifications in tender documentation should, where possible, be determined with regard to the criteria in respect of accessibility for persons with disabilities or be formulated with a view to the needs of all users”.²¹

²⁰ UN DESA (2013): Accessibility and Development: environmental accessibility and its implications for inclusive, sustainable and equitable development for all; see <http://www.un.org/disabilities/documents/accessibility_and_development_june2013.pdf > accessed on November 20, 2013

²¹ UNCRPD (2012): Initial reports submitted by States parties under article 35 of the Convention – Sweden: see <http://www.ohchr.org/Documents/HRBodies/CRPD/Future/CRPD-C-SWE-1_en.doc> accessed on November 10, 2013

Standards may be voluntary or mandated by regulation. Standardizing organisations may be international, regional, national or local. The International Standardization Organisation (ISO) has standards relating to accessibility often adopted by countries as their national standards or referred to while developing their own standards.

European Union Directive 2004/18/EC Article 23 (1) states "... technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users"²². The Americans with Disability Act has accessible design standards²³.

Promoting and monitoring implementation of accessibility standards is a priority set out in the Convention (Article 9.2(a)). Without accessibility standards, buildings and services could become or remain inaccessible to persons with disabilities resulting in discrimination. Accessibility standards are vital to promote access to goods, services and works provided and procured by both the public and the private sector. There is more to be done.

The **2012 Information Communication Technology (ICT) accessibility progress report** indicates 67.4 per cent of States Parties do not define standards for ICTs and 73.3 per cent do not define public procurement rules promoting accessible ICT standards.²⁴

There is progress. In 2005 the **European Commission** mandated standards organisations CEN (European Committee for Standardization) CENELEC (European Committee for Electrotechnical Standardization) and ETSI (European Telecommunications Standards Institute) to develop accessibility requirements in public procurement for Information Communication Technologies (Mandate 376) and the built environment (Mandate 420).²⁵ In 2014 the new standard (EN 301 549) was adopted for accessible information communication technologies.^{26, 27} Procuring agencies use an online toolkit and²⁸ by 2018 EU members will need to use online procurement systems²⁹.

²² <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0018&from=en>

²³ Americans with Disability Act 2010 standards Accessed 16 March 2015

²⁴ G3ict & DPI (2012): Convention on Rights of persons with disabilities 2012 ICT Accessibility progress report: See < g3ict.org/download/p/fileId_936/productId_244> accessed on Jan 5, 2014

²⁵ European Policy Centre (2013): The Accessibility Act – Using the single market to promote fundamental rights: see

http://www.epc.eu/documents/uploads/pub_3393_the_accessibility_act.pdf accessed 5 Oct, 2013

²⁶ ETSI media release <http://www.etsi.org/news-events/news/754-new-european-standard-on-accessibility-requirements-for-public-procurement-of-ict-products-and-services> accessed May 2015

²⁷ The standards are very detailed, down to the requirements of providing clear names for documents and ways in which captioning should appear.

²⁸ CEN/BTWG 207 <http://ftp.cen.eu/CEN/Sectors/Accessibility/ReportAccessibilityBuiltEnvironment%20Final.pdf>

Accessibility does not just relate to audio online materials and information for people with vision impairment but also captioning or sign language for people with hearing impairments, and physical accessibility through ramps, elevators and adapted toilets or assistive devices for people with physical impairments.

In Brazil, a cooperative called Especial Coop Taxi¹² provides accessible taxi services for people with physical disabilities including having trained drivers³⁰.

Recommendation: Countries that do not yet have accessibility standards and can refer to regional or international accessibility standards especially for tender specifications in public procurement.

ii. Universal design and innovation

Universal design³¹ is at the heart of the Convention on the Rights of Persons with Disabilities and requires products, environments, programs and services to be designed in a way that they are useable by all people including people with disabilities (Article 2). Universal design in procurement laws alone is not enough. Some countries have low awareness of universal design in making facilities and information accessible from the start. For example, ramps and information can benefits not just people with disability but also people who are elderly, pregnant or illiterate.

States can invest in research and development and promote innovation for universal design. The Convention requires States Parties to promote research and development of universally designed goods, services, equipment and facilities (Article 4.1(f)). Apart from fostering inclusion, universal design can remove cost duplication and is generally cheaper when applied at a design stage. The Australian Accessibility Design Guide provides an overview of universal design for sectors such as health, education and infrastructure based on existing standards for resource-poor settings.

accessed April 2013

²⁹ See EC Public Procurement Directives Accessed May 2015 <http://www.publicprocurementdirectives.com/>

³⁰ See ILO Report on Cooperatives http://www.ilo.org/wcmsp5/groups/public/--ed_emp/--ifp_skills/documents/publication/wcms_194822.pdf Accessed May 2015

³¹ The CRPD, “Universal Design means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design.” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.”

More information on universal design and its principles can be seen at the web site of Center for Universal Design at http://www.ncsu.edu/ncsu/design/cud/about_ud/about_ud.htm

Incentives have been used to encourage green or environmentally sustainable products also known as 'green procurement'³² to achieve desirable environmental outcomes and are used in a number of sectors. Similarly, public procurement can encourage research in universally designed goods, services and facilities. Offering incentives, grants or prize money can be a powerful way to promote opportunities for persons with disabilities; expanding the market of users of products and services; and enabling the States to fulfill Convention obligations.

One incentive is pre commercial procurement (a research and development phase) before commercialization. Public authorities and industry share risks and benefits of research and development to develop innovative solutions for example by committing to buy a certain number of a specific product or service. This is called an 'advance market commitment'³³ and providing 'lead markets' can turn innovation into practice.

Markets can also stimulate innovation to drive inclusion. Innovation impacts on services, products, environments and contributes to improved quality of life for people with disability. Public procurement priorities are shifting from lowest price bids receiving the contracts to the bids that offer solutions of greatest advantage to users. For private companies and individuals, a commercial or public market for an innovative product or service like an assistive device such as a low cost, light wheelchair can provide an incentive to spend money on research and development.³⁴

³² United Nations (2008), Sustainable Development Innovation Brief (Issue 5), see

http://esa.un.org/marrakechprocess/pdf/InnovationBriefs_no5.pdf, : accessed on 27 April, 2013

³³ European Commission (2008): Pre commercial procurement – Driving innovation to ensure high quality public services in Europe: see <ftp://ftp.cordis.europa.eu/pub/fp7/ict/docs/pcp/pcp-brochure_en.pdf> accessed on 25 June, 2013

³⁴ European Commission, (2005): Public Procurement Research and Innovation: see

http://ec.europa.eu/invest-in-research/pdf/download_en/edited_report_18112005_on_public_procurement_for_research_and_innovation.pdf > accessed May 6, 2013

iii. Equality and employment opportunities

The 2011 World Report on Disability notes persons with disabilities experience a much higher unemployment rates than persons without disabilities. Article 5.4 of the Convention requires States Parties to take specific measures to accelerate de facto equality of disabled people with disabilities. Discrimination faced by people with disabilities in the labor market is common. Public procurement has been used to promote de facto equality through employment for disadvantaged groups including persons with disabilities, by reserving contracts. Some countries use procurement as a tool to create employment opportunities for persons with disabilities:

- **In Germany**, a 2005 Federal Decree required procurement agencies to reserve budget items for contracts to workshops for people with disabilities³⁵. Germany also requires companies with over 20 staff to employ people with severe disability or to pay compensation.³⁶
- A cooperative of people with disability in Addis Ababa, **Ethiopia** was contracted to manage over 30 public sanitation services as part of an outsourcing arrangement with the municipal government in 2003³⁷.
- In **Italy**, Law 381/91 promotes social cooperatives including of persons with disabilities under the preferential agreements³⁸ to provide building and maintenance services and provides training and work placements.
- In the **United States**, federal contractors were given a 7 percent hiring target for people with disabilities enforcing section 503 of the Rehabilitation Act, requiring federal contractors to promote equal employment opportunities without discrimination for people with disabilities.³⁹

35 See <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=978>

36 See German Report 2014 by Disability Council International

37 ILO A cooperative future for people with disabilities: , see

<http://www.ilo.org/global/publications/magazines-and-journals/world-of-work-magazine/articles/WCMS_081371/lang-en/index.htm> accessed on 10 May, 2013 the Ethiopian Federation of Persons with Disabilities (EFPD) was contracted to renovate and manage sanitary facilities and create jobs for unemployed people with disabilities in 2005. The City Administration and ILO partnered in the EFPD's submission. The project won a World Bank Development Marketplace Competition prize in 2003. The Cooperative provides jobs to 250 unemployed persons with disabilities. Cooperation Ireland provided training to cooperative members, which contributed to the project success.

38 SEL, Social Co-operatives in Italy, see <<http://www.sel.org.uk/uploads/SocialCooperativesInItaly.pdf>> accessed on 3 April, 2013 See also <http://www.disability-europe.net/content/national-law-and-strategy-13> for other laws and strategies and <http://www.ncbi.nlm.nih.gov/pubmed/24948479> for analysis of this law.

39 AAPD (2013): Press Release: see <http://www.aapd.com/resources/press-room/white-house->

Provisions in public procurement regulations are promising but require implementation and review to ensure consistency with Article 27 of the Convention on employment. For example, in addition to reserving a percentage of selected contracts for cooperatives of people with disabilities or Disabled People's Organizations (DPOs), assistance may be required for example training to build entrepreneurial and vocational skills.

Potential concerning areas for monitoring are poor implementation, promotion of sheltered workshops, especially where conditions are poor or below-minimum wages are provided and where employment programs push people with disabilities into specific vocations. Encouraging cooperatives and entrepreneurship is a provision in the Convention (Article 27.1(f)) however making sure procurement isn't allocating tasks based on disability constituencies may be an important challenge to address in some contexts.

In the United Kingdom, Italy, Germany and the United States, sheltered workshops provide employment. Sheltered workshops must comply with Article 27 of the Convention on the Rights of Persons with Disabilities⁴⁰.

The European Commission for social inclusion in Europe 2020 suggested increasing contracts' reserved to promote sheltered workshops which include businesses aiming for social or professional integration of people with disability and disadvantaged workers. For the European Commission, the minimum required percentage of people with disability or disadvantaged workers is 30 per cent.⁴¹

Public procurement laws that address disability sometimes encourage adapted or sheltered workshops. Sheltered workshops may segregate people with disabilities or pay less than the minimum wage regardless of skills or abilities. Procurement laws need to protect working conditions or countries need to move away from sheltered workshops so people with disabilities do not face discrimination and are not taken advantage of⁴².

announces.html> accessed on 19 October, 2013

⁴⁰ Europa (2011): Meno/11/931, Brussels

⁴¹ Europa (2011): Meno/11/931, Brussels

⁴² Sheltered workshops are controversial risking mistreatment of people with disability. Discussion papers on sheltered workshop and disability are available at

<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1559&context=gladnetcollect>

iv. International Cooperation

Article 32.1(a) of the Convention requires “international cooperation, including international development programs, are inclusive and accessible to persons with disabilities.” A report by European Network on Debt and Development estimates around 50 per cent of the total official development assistance (69 Billion USD) is spent annually via public procurement.⁴³ If around half of aid is spent through procurement it is a priority to reform procurement approaches to meet Convention obligations so services, goods and products procured are inclusive and accessible to people with disabilities.

Human rights and disability: Reporting in both the Universal Periodic Reviews and the Committee for the Convention on the Rights of Persons with Disabilities along with other human rights mechanisms will often consider how aid cooperation is contributing to human rights goals. Procurement can be a mechanism to promote equity and meet human rights obligations.

Aid effectiveness: The 2005 Paris Declaration on Aid Effectiveness, Accra Agenda for Action, 2008⁴⁴ and Busan partnership for effective development cooperation 2011⁴⁵ were endorsed by ministers of developing and donor countries and heads of multilateral and bilateral development institution. As part of the agenda for aid effectiveness, stakeholders committed to promote country ownership and effective development consistent with agreed international commitments.

Post-2015 goals: While disability was not explicit in the Millennium Development Goals, with an increased focus on equity, the Sustainable Development Goals will likely include disaggregation by disability.

The twin track approach: requires both targeted disability-related activities, and disability issues and concerns to be mainstreamed in sector-wide approaches.⁴⁶ Public procurement can be used as an effective mainstreaming tool for inclusion of persons with disabilities in development aid.

⁴³ EURODAD (2011), How to Spend it, see <http://eurodad.org/files/pdf/5284d26056f24.pdf> accessed on 8 April, 2013

⁴⁴ Accra Agenda for Action for Aid Effectiveness (2008): Ghana: see < <http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1217425866038/AAA-4-SEPTEMBER-FINAL-16h00.pdf>> accessed on 3 June, 2013

⁴⁵ Busan Partnership for Effective Development Co-operation (2011): Korea: see < www.oecd.org/dac/effectiveness/Busan%20partnership.pdf> accessed on 7 May 2013

⁴⁶ UN (2009): Mainstreaming Disability in the Developmental Agenda: E/CN.5/2010/6

Procurement also relates to disposal of waste, excess or inaccessible and outdated products. As countries progressively move towards accessibility, safeguards are needed so inaccessible goods that are replaced like public transport vessels, are not passed on to developing countries as aid unless they are refurbished to become accessible first.

Case Study: Australia developed an Accessibility Design Guide⁴⁷ to provide practical advice on how Australian aid activities involving the development of infrastructure (schools, health facilities, public buildings, roads and transport) can be more accessible to people with disability. The Australian Department of Foreign Affairs and Trade's website conforms to Australian Government standards and W3C web content requirements, ensuring that purchasing information is accessible to members of the public with disability. The AusTender website that provides tender specifications for major contracts is W3C standards compliant. Contractors have operated in line with the strategy *Development for all: towards a disability-inclusive Australian aid program 2009–2014* and the successive document which aims to meet the needs and priorities of people with disability in developing countries.⁴⁸

The World Bank has supported disability specific projects around the world and has guidelines for procurement.⁴⁹ However, the procurement guidelines do not address non-discrimination or inclusion of persons with disabilities.

The World Bank and OECD jointly developed a monitoring mechanism called **Methodology for Assessing Procurement Systems (MAPS)**⁵⁰ to evaluate the status of the public procurement system in a country to inform country procurement assessment reports. The MAPS does not include criteria for monitoring non-discrimination and inclusion of people with disabilities it does not get reflected in country assessment report.

⁴⁷ Accessibility Design Guide, DFAT ([Link to accessible PDF](#))

⁴⁸ AusAID (2008): Management & Accountability, Chapter 3: see http://aid.dfat.gov.au/anrep/rep08/pdf/anrep07_08section3.pdf accessed 12 May, 2013

⁴⁹ World Bank, Procurement Policies and Procedures: see <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentMDK:50002392~menuPK:93977~pagePK:84269~piPK:60001558~theSitePK:84266,00.html> accessed 11 May, 2013

⁵⁰ OECD & World Bank (2010), Methodology for Assessing Procurement Systems (MAPS), see <http://www.oecd.org/development/effectiveness/45181522.pdf> accessed 13 May, 2013

Part 3. Trends and findings

Procurement systems are rarely designed so that people with disabilities benefit on an equal basis with others. Procurement can effectively support implementation of the Convention on the Rights of Persons with Disabilities. As such, procurement laws are among the top priority laws to be modified to harmonize with the Convention (as outlined in Article 4.1a and b).

Different countries have different procurement approaches. Some are centralized, others decentralized. Procurement systems are complex with high stakes. However there are similarities, many countries have struggled with fragmentation, unclear or restrictive laws, implementing regulations and procedures. Procurement has long been associated with corruption charges, calls for transparency and review of procurement institutes, processes and staff. There are a number of trends related to Convention-compliant procurement based on the review of country procurement policies (Annex A):

Trend 1: Procurement and equality laws can promote opportunities for people with disabilities but implementation is often mixed

Trend 2: Procurement systems are increasingly online in countries like the Republic of Korea, the Philippines and Europe.

Trend 3: Several countries are reforming procurement laws.

Trend 4: There is mixed participation in procurement by people with disabilities

Given vast public money spent through procurement it is important to make procurement policies, systems, products or facilities procured compliant with the Convention on the Rights of Persons with Disabilities.

The concept of using public procurement as a tool to promote inclusion of people with disabilities is generally unexplored in developing countries which have mainly focused on ridding procurement systems of corruption. Therefore efforts have been made to build transparency and accountability into the system which can be expanded on to comply with the Convention on the Rights of Persons with Disabilities (CRPD).

There are broadly seven priorities to be addressed: i) political will to reform procurement systems ii) engaging stakeholders to promote inclusion; iii) integrating accessibility and inclusion provisions into public procurement laws iv) implementing positive or affirmative policies; v) developing and promoting accessibility standards; vi) training procurement staff and vii) expanding the focus of review mechanisms beyond corruption checks to review inclusion.

i. Political will is required to reform procurement systems

For countries to promote non-discrimination, or change systems to promote equity for people with disabilities in general, political will and leadership is needed. When it comes to procurement, challenges in changing systems are magnified, given the amounts of money involved. Making changes to promote inclusion and accessibility will often require marginal or moderate costs.

Public procurement can be politically influenced. Procurement systems with loose rules and poor enforcement provide opportunities for misuse through corruption therefore corrupt individuals or groups can have vested interests in systems remaining inaccessible or non-transparent. Vested interests can also manifest in various other ways when access to public contracts is seen as a reward to political supporters or individuals. Therefore political will is required, ideally at national and regional levels, to make procurement inclusive and transparent.

ii. Stakeholders need to be engaged in inclusion

The stakeholders engaged in public procurement are numerous and powerful. Stakeholders may include groups or organizations in the private sector, industry or trade associations, professional associations and businesses. Stakeholders have different interests and objectives. Some stakeholders lobby legislative bodies and procurement agencies to pass or change procurement laws, implementation processes, budget authorization and financing processes. Often well-resourced and organized, lobby groups can have stronger voices and more influence with governments than groups of people with disabilities. Therefore, it is important for people with disability to understand the positions of stakeholders and to work together including with government departments and donors in applying the twin-track approach to mainstream and target disability-inclusive initiatives to make procurement compliant with the Convention on the Rights of Persons with Disabilities.

iii. Inclusion and accessibility provisions need to be integrated in public procurement laws

In developing countries different departments responsible for disability policy may prescribe a separate provision for public procurement practices. For example the Executive Order 417 in the Philippines was issued by Disability Affairs and needs to be included in the main public procurement Act for streamlining the process rather than having it as a separate provision. A good example of this is the incorporation of the section 508 and section 503 of the Rehabilitation Act in the FAR in the United States. The 2014 accessibility standards are now being integrated into European Union laws but there is more to be done.

iv. Affirmative provisions need to be implemented and monitored

Implementing affirmative reservations in public procurement laws especially for people with disabilities requires implementation and adequate monitoring. For example in South Africa targeted procurement provides preferential public procurement for historically disadvantaged individuals. According to a 2002 ILO report little efforts had been made to realize targeted procurement in the case of persons with disabilities⁵¹ as documentation did not include specific reference to people with disabilities. In practice there had been misconceptions that people with disability might not be qualified. Further there was no data available to know the number of people with disabilities engaged. Monitoring and enforcement mechanisms affirmative provisions are often poor and there are no sanctions for non-compliance. Implementation and monitoring is therefore key to make sure that policy is turned into practice.

v. Accessibility standards are scarce and needed

In a number of countries accessibility standards do not exist. In countries where accessibility standards are mandated by law, there is greater implementation. In particular, a Public Procurement Act can have a positive impact on the implementation of accessibility standards.

⁵¹ ILO, Department of Public Affairs South Africa & DBSA (2002): Targeted Procurement in the Republic of South Africa - Independent Assessment, see <http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/---invest/documents/publication/wcms_asist_8369.pdf> accessed on June 5, 2013

vi. Procurement staff need inclusive and accessibility training

The capacity of the procurement workforce is a challenge faced by a number of countries. When procurement requirements add accessibility standards for people with disabilities, training is needed so procurement staff can understand the requirements. Training of procurement staff is not something that happens in all countries. For example in India public procurement is not seen as a specialized activity needing special knowledge or skills. Even critical and complex procurement may therefore be handled untrained staff even though procurement often deals with large amounts of public funds.⁵²

Capacity building of procurement officers is an important requirement for procurement reforms in all countries for better accountable and effective procurement processes. For compliance with the CRPD capacity building modules must incorporate aspects of non-discrimination and accessibility for persons with disabilities (article 8(d), 9.2(c)). People with disabilities need to be involved in preparing and delivering capacity building.

vii. Monitoring of procurement can be expanded

Procurement is largely monitored in terms of transparency and value for money and to curb corruption. The United Nations Convention against Corruption came into force in 2005 and has over 170 States Parties (countries that have ratified the text) at March 2015. Article 9 on public procurement and management of public finances is about ensuring non-corruption in the public procurement system.^{53 54} International NGOs such as Transparency International are working in many countries to monitoring transparency. According to Delphine Centlivres, Executive Director, Transparency International Switzerland issues of non-discrimination and social inclusion are not a part of their monitoring process.

⁵² Pratyush Sinha, CVC, 'Enhancing value in public procurement', Conference on Competition, Public Policy and Common Man, 16th November 2009, <<http://www.cci.gov.in/menu/speechesbypratyushsinhacvc.pdf>>

⁵³ United Nations (2004): UN Convention against corruption: see <http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/o8-50026_E.pdf> accessed on April 24, 2013

The **Methodology for Assessing Procurement Systems (MAPS)** developed jointly by the World Bank and OECD doesn't yet assess issues relating to inclusion of people with disabilities. However disability can be included in future reform efforts. Article 4.1 (d) of the Convention stipulates State Parties have 'to refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention.' When public expenditure through procurement does not include people with disabilities inconsistencies emerge in domestic or international cooperation contexts.

Part 4. Recommendations for action

i. For Disabled People's Organizations

Organizations of people with disability (DPOs) have not generally monitored or advocated for inclusive and non-discriminatory public procurement systems. Considering the amount of money spent through public procurement and the nature of goods, services and works procured it is an emerging priority. It is important for DPO's to be engaged both in public procurement processes and outcomes to ensure full participation and equal opportunities for people with disabilities:

- Review and advocate for non-discriminatory public procurement laws with all public procurement monitoring mechanisms to address non-discrimination and accessibility.
- **Collaborate with other organizations** advocating for change in public procurement. In the Philippines there is an organization called 'procurement watch inc.' that specializes in monitoring the public procurement. Transparency international monitors public procurement in various countries with a focus only on corruption. Networking with such organisations to include demands of people with disabilities in their work can make our voices louder.
- **Sheltered workshops** have been previously encouraged through public procurement in a number of countries. The European Commission for social inclusion in Europe 2020 suggested increasing the current contracts' reservation in favour of sheltered workshops, it is important that there is monitoring so good working conditions exist.
- **Review and learn about the tender processes and advertisements.** Tenders are opened on a regular basis and can be crucial for the inclusion of people with disabilities such as tenders to buy public buses to run on fixed routes, to renovate parks or construct polling booths for elections etc. it is important to monitor that the tendering specifications specify compliance with accessibility standards. If there is an absence of national standards then compliance may be with regional or international accessibility standards.

ii. For Governments

More than 150 countries have ratified the Convention on the Rights of Persons with Disabilities. Governments will need to review public procurement systems to align with the Convention⁵⁵. Priority action areas include:

- **Amending public procurement laws and policies across the board** to address non-discrimination, and promote accessibility for all. As public procurement is not always centralized or under a single agency, it is important for governments to ensure non-discrimination and accessibility laws and policies are addressed at all levels.
- **Including people with disabilities** in all consultations relating to development or improvement of the public procurement mechanism.
- **Adopting a monitoring mechanism** for public procurement that addresses non discrimination and accessibility.
- **For sheltered workshops or cooperatives of persons with disabilities** build non discrimination safeguards into the system, to ensure equal remuneration for equal work and equal opportunities to gain a living by work chosen freely by the individual
- **Promulgate and adopt accessibility standards** linked to the public procurement processes.
- **Train public procurement** personnel in evaluating contracts in terms of non-discrimination and accessibility.
- **Require universally designed products** and environments and use innovative public procurement mechanisms to encourage research and development of the same.

55 2015 UNEnable List of Ratifications at <http://www.un.org/disabilities/> accessed 15 March 2015.

iii. Donors

Article 32 of the Convention on the Rights of Persons with Disabilities, international cooperation efforts must include people with disability:

- **Review or write donor procurement policies** to ensure all procurement processes and outcomes are non-discriminatory and accessible to people with disabilities.
- **Establish safeguard mechanisms** to ensure compliance to with non-discriminatory procurement policies so aid investments 'do no harm'.
- **Provide training** including on accessibility standards.
- **Support improvement of public procurement laws** and enforcement mechanisms to compliant with the Convention on the Rights of Persons with Disabilities.
- **Establish and use accessibility standards** including when providing aid in kind such as public transport vessels etc.

Annex A: Procurement approaches

India

Budget: Figures on the total GDP spent through public procurement in India vary, constituting about 43 per cent⁵⁶ of GDP. Departments like Defense, Railways and Telecom, allocate 50 per cent of their budget to procurement. About 26 per cent of the health budget is allocated through procurement.⁵⁷

Structure: The public procurement legal framework in India is complex. Detailed rules and instructions relating to procurement by the Union Government (Ministry of Finance) are contained in General Financial Rules (GFR)⁵⁸, Delegation of Financial Powers Regulation (DFPR) and Manual on Policies and Procedures for Purchase of Goods. The Central Vigilance Commission (CVC) sets vigilance benchmarks in the procurement system.

Major ministries such as Defence, Railways, Public Works, Central Purchase Organisation (Directorate General of Supplies and Disposal) etc. have their own purchase procedures. These purchase procedures also draw from the guidelines contained in the GFR and DFPR. Apart from the major ministries, individual departments in the Government also have their own procurement policy. At state levels, multiple systems run at the same time.⁵⁹

India has no central authority exclusively responsible for defining procurement policies and for overseeing compliance with established procedures. The ministries or departments have full powers to make their own arrangements for procurement of goods. A ministry or department without the required expertise can procure goods through the Directorate General of Supplies & Disposals (DGS&D).⁶⁰

⁵⁶ Perera O, (2010): Procuring Green in the Public Sector – A Checklist for Getting Started, IISD, see: www.iisd.org/pdf/2011/procuring_green_public_sector.pdf accessed on 15 Jan, 2014 and United Nations Environment Programme, (2012): Sustainable Consumption and Production – Handbook for Policy Makers: First Edition, Chapter 9: see <http://www.switch-asia.eu/fileadmin/content/PSC/SCP_Handbooks_icons/Sustainable_Procurement_web.pdf> accessed on Jan 15, 2014

⁵⁷ Pratyush Sinha, CVC, 'Enhancing value in public procurement', Conference on Competition, Public Policy and Common Man, 16th November 2009, <<http://www.cci.gov.in/menu/speechesbypratyushsinhacvc.pdf>>

⁵⁸ Ministry of Finance: General Financial Rules, 2005: India: see <http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/GFR2005.pdf> accessed on 16 April, 2013

⁵⁹ Public Procurement Problems & Perspectives: Draft Discussion Paper: see <<http://nadfm.nic.in/learning/Research%20Cell/Public%20Procurement%20-%20problems%20and%20prospects.pdf>> accessed 27 April, 2013

⁶⁰ <http://www.dgsnd.gov.in/index.php?q=node/1>

Electronic procurement: There is a drive towards electronic system for procurement. The Central Public Procurement Portal (CPPP)⁶¹ exists to assist in the procurement of central government organisations. There are e-procurement portals for most state and union territory governments in India. To curb corruption and increase transparency the government has drafted the Public Procurement Bill 2012 to put in place a comprehensive public procurement system to be followed.

Inclusion measures: The public procurement system in India makes no reference to disability. There are no reservations in contracts for persons with disabilities. There is a provision for preferential treatment to earmarked sectors such as micro, small and medium enterprises (MSME). Small and Medium Enterprises (MSME) is in final stages of issuing a public procurement policy that is likely to make it mandatory for all ministries and public sector undertakings to procure 20 per cent of their total annual purchase volume from the micro and small enterprises.⁶²

Accessibility: In tender specifications, accessibility requirements are provided in tender documents but limited to tenders relating to building construction. India does not presently have accessibility standards for transport, information communication technologies etc. and tenders for these do not have any requirement to provide accessibility.

⁶¹ India's procurement system <http://eprocure.gov.in/cppp/>

⁶² Directorate General of Supplies & Disposals: see <<http://www.cci.gov.in/images/media/ResearchReports/Bid%20Rigging%20in%20Public%20Procurement.pdf>> accessed on 17 April, 2013

The Republic of Korea

Public procurement accounted for around 10 per cent of the GDP or around 100 Billion \$USD in Korea in 2011.⁶³

Authority: Korea established a Public Procurement Service (PPS) in 1949. The Government Procurement Act (Republic of Korea) 1994 clarified administrative and management of the Public Procurement Services (PPS) which is the central procurement agency. In 2002, the Public Procurement Services created an online procurement system called Korea ON-line E-Procurement System (KONEPS).⁶⁴ Local governments and public enterprises use PPS's procurement services on request.

Equality and sustainability measures: The Public Procurement Services has promoted social development by giving contracts to women headed companies, small and medium businesses. The Services has promoted green products and innovative high energy saving products. There is neither a legal provision nor documented evidence of the public procurement system being used to address equality and non-discrimination of people with disabilities.

Procurement system: The Korean online e procurement service KONEPS is a transparent and cost effective system of procurement. KONEPS processes procurement procedures through subsystems: e-bidding, e-contracting, e-ordering from shopping malls or factories and e-payment. KONEPS is used by 44,000 public entities except 20 public entities that have their own e-procurement system and 228,000 suppliers.⁶⁵ E-commerce has influenced public procurement positively and contracts awarded through the PPS have increased.⁶⁶ The system claims to have ended corruption, increased competition and influenced international trade by making real time tender information available. Accessibility of the online system for people with disabilities hasn't yet been considered. Registered suppliers are neither required to demonstrate non-discriminatory practices in the process or the outcome of providing services, works or goods.

⁶³ Kang H. I.(2012): e-Procurement Experience in Korea: Implementation and Impact: see <<http://www.europarl.europa.eu/document/activities/cont/201207/20120710ATT48620/20120710ATT48620EN.pdf>> accessed 19 April, 2013

⁶⁴ Public Procurement Service: PPS in History: see <http://www.pps.go.kr/eng/jsp/about/pps_history.eng>

⁶⁵ Kang H. I.(2012): e-Procurement Experience in Korea: Implementation and Impact: see <<http://www.europarl.europa.eu/document/activities/cont/201207/20120710ATT48620/20120710ATT48620EN.pdf>> accessed 19 April, 2013

⁶⁶ Public Procurement Service: Statistics: see <<http://www.pps.go.kr/eng/jsp/about/statistics.eng>> accessed on May 18, 2013

Nepal

Governance: The 2007 Public Procurement Act 2063 guides public procurement in Nepal.⁶⁷ The Public Procurement Monitoring Office (PPMO) referenced in the Act aims to establish and maintain economic considerations and non-discrimination and equality in public procurement proceedings of Nepal⁶⁸

Inclusion and sustainability measures: From the existing policies and practices it is not clear whether public procurement has been used as to promote non-discrimination and promote accessibility. The Nepal National policy and plan of action on disability does not address the public procurement system in its' action plan.⁶⁹

As per the Public Procurement Act 2063 technical specifications need to be examined to confirm standards of the goods, construction works or services procured. Accessibility standards need to be integrated in the standards checking or evaluation. In 2013 Nepal formally inaugurated and disseminated “*Guidelines for the access of persons with disabilities in physical environment and information & communication services - 2070*”⁷⁰ These guidelines are not yet mandated in law and therefore are not implemented.

⁶⁷ Public Procurement Act, 2067 (2007), Nepal, see <<http://pu.edu.np/university/wp-content/uploads/2013/06/the-public-procurement-act.pdf>> accessed on 19 May, 2013

⁶⁸ Public Procurement Monitoring Office, see <<http://www.ppmo.gov.np>>

⁶⁹ Government of Nepal, National Policy & Plan of Action on Disability 2006, see <<http://rcrdnepa.files.wordpress.com/2008/05/national-policy-and-plan-of-action2006-eng.pdf>> accessed on 17 May, 2013

⁷⁰ DPI-AP: Guidelines for the Access of persons with disabilities in physical environment and information and communication service – 2070, see <<http://www.dpiap.org/news/detail.php?typeid=1&newsid=0001033>> accessed on 18 May, 2013

Philippines

Budget: Procurement spending accounted for about 29 per cent of the Philippines budget in 2010. Five government agencies accounted for about half of the procurement: Public Works and Highways, Agriculture, Education, Health and National Defense.⁷¹

Governance: The public procurement system in the Philippines has multiple laws and regulations⁷². There are over 100 procurement laws, policies, executive orders governing public procurement. The Government Procurement Reform Act (GPRA) – Republic Act – 9184⁷³ lists principles of transparency, competitiveness, streamlined procurement, accountability and public monitoring.

The Philippines Department of Education promotes procurement of school furniture from cooperatives of persons with disabilities.

Phil GEPS in the online portal for procurement. The Government Procurement Reform Act requires all procurement opportunities, regardless of type or size to use the online portal. Information in supplementary bid bulletins, results and other related information are posted on Phil GEPS by the procuring entities. However, many of the local procuring entities are not currently registered or connected to the system.⁷⁴

The Department of Education since 1999 used public procurement to increase livelihood opportunities for persons with disabilities for example by sourcing furniture for schools from a cooperative of people with disability called NFCPWD, a federation of twelve primary cooperatives which mainly produce school chairs and desks. In 2005, the General Appropriations Act allocated 10 per cent of the budget for the Desk and Armchair Program to procurement desks and armchairs from cooperatives organized by people with and without disabilities.

⁷¹ Transparency International (2011): APEC Procurement Transparency Standards in the Philippines, see <<http://www.transparency-usa.org/documents/PhilippinesAPECProcurementStandardsFinal.pdf>> accessed on 19 May, 2013

⁷² Country Procurement Assessment Report by the World Bank in 2002

⁷³ Republic of the Philippines(2003), Republic Act no. 9184, see <http://www.lawphil.net/statutes/repacts/ra2003/ra_9184_2003.html> accessed on May 18, 2013

⁷⁴ Transparency International (2011): APEC Procurement Transparency Standards in the Philippines, see <<http://www.transparency-usa.org/documents/PhilippinesAPECProcurementStandardsFinal.pdf>> accessed on 19 May, 2013

In 2005, NFCPWD manufactured and delivered 48,460 desks and armchairs valued at P37.84 Million. This increased to 96,996 units of desks and armchairs worth P99.97 Million in 2006.⁷⁵

In 2005 the **National Council on Disability Affairs** issued an **Executive Order 417** for immediate effect with the National Anti-Poverty Commission (NAPC) as the lead. **The Executive Order** requires all government agencies, bureaus, state universities and colleges, government financial institutions and government-owned, local government units and controlled corporations to employ people with disabilities whenever applicable. It also requires institutions and the local government to use services of cooperatives of people with disabilities and organizations of people with disabilities by procuring at least 10 per cent of goods and services from cooperatives, where possible and applicable.

The Executive order 417 states “all Government Agencies, Bureaus, Offices, Instrumentalities, State Universities and Colleges, Government Financial Institutions and Government-Owned and Controlled Corporations” should “avail of the services of cooperatives of people with disabilities and organizations of people with disabilities by procuring at least 10% of their requirements of goods and services, where possible and applicable.”⁷⁶

In the Philippines there is an organization called ‘procurement watch inc’. Broader review of implementation is needed with provisions to be integrated into the broader procurement policies and legislation.⁷⁷

⁷⁵ Department of Education, Republic of Philippines (2007): DepEd contracts coop of differently abled persons to supply school furniture: see <<http://www.deped.gov.ph/index.php/news-updates/updates/73-deped-contracts-coop-of-differently-abled-persons-to-supply-school-furniture>> accessed May 1, 2013

⁷⁶ National Council on Disability Affairs, Executive Order. 417, <<http://www.ncda.gov.ph/disability-laws/executive-orders/executive-order-no-417/>> accessed April 25, 2013

⁷⁷ National Council on Disability Affairs, Executive Order no. 417, see <<http://www.ncda.gov.ph/disability-laws/executive-orders/executive-order-no-417/>> accessed on April 25, 2013

South Africa

Public procurement constituted 35% of GDP expenditure in South Africa⁷⁸.

Governance: In South Africa procurement is listed in the 1994 Constitution which requires government entities to comply with five key principles in public procurement (equitable, transparent, fair, competitive and cost-effective) at section 217(1). Section 217 requires government entities implementing procurement policies to preference categories of people disadvantaged by unfair discrimination.⁷⁹

The Preferential Procurement Policy Framework Act (2000, amended in 2011) (PPPFA) provided a framework for implementing Constitutional section 217 (2,3). The Act provides a system to evaluate the tender process with a goal to contract persons, or categories of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability. In evaluating a tender submission, of 100 points, 90 points are allocated to the tender price. 10 remaining points are allocated to the categories of preference as per the Constitution. Following amendment, the Act now applies to public entities in the schedules of the Public Finance Management Act and harmonizes with the 2003 **Broad-Based Black Economic Empowerment (BBBEE) Act** to favor persons covered by the BBBEE Act in the scoring system.⁸⁰ According to a 2002 ILO report the Act was limited in practice due to misconceptions that people with disability might not be qualified or lack of awareness of what working with people with disability means. There are international standards adopted by South Africa including national building regulations. Procurement regulations for departments, constitutional institutions and public entities require bid specifications to take into account any accepted standards such as those issued by standards of South Africa, the International Standards Organizations etc.⁸¹ South Africa has SABS 0246:1993 "Accessibility of buildings to disabled persons" and National Building Regulations 1986⁸².

⁷⁸ Perera O, (2010): Procuring Green in the Public Sector – A Checklist for Getting Started, IISD, see: www.iisd.org/pdf/2011/procuring_green_public_sector.pdf accessed on 15 Jan, 2014

http://giacc.org/papers/day2/ws2/dnld/d2ws2_vvittig.pdf from 1999 which suggests 9 – 12 per cent

⁷⁹ Constitution of Republic of South Africa no. 108 1996: see

<<http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>> accessed 1 June, 2013

⁸⁰ Barclay C. (2012): Preferential Procurement in the South African Context, see

<<http://whoswholegal.com/news/features/article/29829/>> accessed on 2 June, 2013

⁸¹ National Treasury (2012): Draft National Treasury Regulations for departments constitutional institutions and public services: see <

<http://www.treasury.gov.za/public%20comments/Draft%20Treasury%20Regulations/Draft%20National%20Treasury%20Regulations%202013.pdf>> accessed on 2 June, 2013

⁸² Part S - Facilities for Disabled Persons for accessibility in built environments. There are no mandatory

United Kingdom

Expenditure: The public sector spends over £150 billion a year on the goods and services needed to deliver public services.⁸³

Structures: UK Public procurement complies with relevant principles of EU treaties. Contracts with a value above certain thresholds are subject to the EU Procurement Directives, and the UK Procurement Regulations.

The 2006 Public Contracts Regulations⁸⁴ (regulation 7) and 2006 utilities Contract Regulation (regulation 10)⁸⁵ implement the EU procurement and utilities directives and have a provision for reserving contracts for supported businesses, factories or employment programs. Public authorities may reserve the right to participate in public contract award procedures. Supported employment program, factory or businesses are establishments or services “where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.” Supported employment programs are the same as ‘sheltered employment programs’ under the EU Directives.

Reserving the contract means only supported employment program, or business can bid for a particular project to promote equity. The contracting authorities need to indicate in the Official Journal of the European Union (OJEU) Contract Notice when a contract is “reserved for **sheltered workshops** under Article 19 of the Directive”: Before taking the decision to reserve a contract, contracting authorities should consult with the market to establish whether or not supported factories and businesses will be able to meet their requirements and provide value for money.⁸⁶ An online supported business directory is available⁸⁷ to be used by public authorities.

Where a decision is taken not to reserve contracts supported factories and businesses and contracting authorities can participate in the process.

standards that are complied with for web accessibility and other services and facilities.

83 Office of Government Commerce: An Introduction to Public Procurement: see <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62060/introduction-public-procurement.pdf> accessed on 5 June, 2013

84 Public procurement England & Wales: The Public Contract Regulations 2006, see <http://www.legislation.gov.uk/uksi/2006/5/pdfs/uksi_20060005_en.pdf> accessed on 2 June, 2013

85 Public procurement England & Wales: The Public Utilities Regulations 2006, see <http://webarchive.nationalarchives.gov.uk/20110601212617/http://legislation.gov.uk/uksi/2006/6/pdfs/uksi_20060006_en.pdf> accessed on 2 June, 2013

86 OGC: Supported and Businesses: see <[http://webarchive.nationalarchives.gov.uk/20110601212617/http://ogc.gov.uk/documents/Supported_Factories_and_Businesses\(1\).pdf](http://webarchive.nationalarchives.gov.uk/20110601212617/http://ogc.gov.uk/documents/Supported_Factories_and_Businesses(1).pdf)> accessed 3 June, 2013

87 BASE: Procurement: see <<http://base-uk.org/procurement>> accessed 3 June, 2013

Both the public contracts regulations and the utilities contract regulations in defining technical specifications of a public service contract or a public supply contract specifically mention conformity to design for all requirements (including accessibility for disabled persons) apart from other requirements.

The 2010 Equality Act, section 155 puts an equality duty on procurement functions. Public procurement functions according to the Act means functions which are regulated by the Public Sector Directive 2004/18/EC.⁸⁸ It requires public contracting authorities to follow a general equality duty for public procurement functions. The procuring authorities must have due regards for eliminating discrimination, advancing equality of opportunity and foster good relations between people requiring protected characteristics from other people.

The public authority is legally responsible for complying with the general equality duty in procurement. If an external supplier carries out the function, even then the public authority is responsible for compliance by building equality considerations into appropriate stages of your procurement processes. Organisations carrying out public functions on behalf of a public authority are also subject to the general equality duty when they carry out procurement for those public functions. Staff involved in procurement is required to have a good understanding of the equality duty.⁸⁹ All suppliers for a public contract are under scrutiny to comply and are required to have Equality Policies and Practices in place.⁹⁰

88 <http://www.legislation.gov.uk/ukpga/2010/15/section/155>

89 http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/essential_guide_update_nov.pdf

90 http://www.c2e.co.uk/downloads/Suppliers_Guide_equality_act_C2E.pdf

United States of America

Procurement spending: Expenditure through public procurement in the United States exceeded \$1.1 trillion in 2010 through contracts and grants.⁹¹ Top areas of expenditure included defense, construction services, buildings, energy generation, transmission, information technologies/telecommunication and transport infrastructure.

Regulations and laws: Federal contracting in the United States needs to comply with Federal Acquisition Regulations (FAR) which along with Section 508 of the Rehabilitation Act on public procurement, requires federal agencies to buy accessible information communication technologies. The Federal Acquisition Regulations Sub-section 8.7⁹² and the Javits-Wagner-O'Day (JWOD) Act, Title 41 of the United States Code⁹³ established a procurement program to increase employment opportunities for individuals considered blind or with severe disabilities. It required federal agencies to purchase some supplies and services from designated nonprofit agencies which employ people with disability. A "Committee for Purchase From People Who Are Blind or Severely Disabled" appointed by the United States President maintains a Procurement List of supplies and services to be purchased from the Javits-Wagner-O'Day participating nonprofit agencies. The fifteen member Committee decides on prices of commodities and services and may study problems related to the employment and the development and adaptation of production methods.⁹⁴ The committee works with Ability One to implement the provisions of the Act through various employment programs.⁹⁵

⁹¹ Schaus J & Gruenewald B. (2011): US Public Procurement Markets, paper prepared for the Brazilian Chamber of Commerce:

<[http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCUQFjAA&url=http%3A%2F%2Fbrazilcham.com%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Flegacy%2F35576.21_%40_brazilcham_public_procurement_summary_o.docx&ei=rBzmUoaol8WHRQeY-](http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCUQFjAA&url=http%3A%2F%2Fbrazilcham.com%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Flegacy%2F35576.21_%40_brazilcham_public_procurement_summary_o.docx&ei=rBzmUoaol8WHRQeY-YCICg&usq=AFQjCNEQR3TmiCGAVxi8MaWM9AsioEeFVw&bvm=bv.59930103,d.bmk)

YCICg&usq=AFQjCNEQR3TmiCGAVxi8MaWM9AsioEeFVw&bvm=bv.59930103,d.bmk > accessed on May 15, 2013 outlines the regulation approaches and noted that procurement requests are used through Requests for Proposals (RFP), Requests for Quotes (RFQ), Requests for Information (RFI), Sources Sought (SS), and Invitations to Bid (ITB).

⁹² FAR https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%208_7.html

⁹³ http://www.abilityone.gov/laws_and_regulations/jwod.html

⁹⁴ FAR Part 8 – Required Sources of Supplies and Services: see <www.acquisition.gov/far/97/pdf/o8.pdf> accessed on May 18, 2013 the fifteen representatives come from diverse departments including (A) The Department of Agriculture. (B) The Department of Defense.(C) The Department of the Army. (D) The Department of the Navy. (E) The Department of the Air Force. (F) The Department of Education. (G) The Department of Commerce.(H) The Department of Veterans Affairs.(I) The Department of Justice. (J) The Department of Labor.(K) The General Services Administration see also

http://www.abilityone.gov/laws_and_regulations/jwod.html

⁹⁵ Ability One Programme, USA, <http://www.abilityone.org> accessed on May 18, 2013

1998 Rehabilitation Act amendments: For electronic and information technology, binding and enforceable compliance to accessibility standards were inserted into Federal procurement regulations. Through the so-called section 508 federal employees and members of the public who have disabilities to have access and use of information and services comparable to Federal employees and members of the public without disability. When Federal agencies develop, procure, maintain, or use electronic and information technology, they must ensure that it is accessible to people with disabilities, except if it would pose an undue burden.

Federal agencies were required to audit electronic and information technology systems for accessibility, and report to the Attorney General. The Attorney General reports to the President on the extent to which the electronic and information technology of the Federal Government is accessible to individuals with disabilities. Because it is part of the FAR, procurement of accessible technology it is subject to compliance and enforcement mechanisms.⁹⁶

Section 508 applies to Federal departments and agencies. It does not yet regulate the private sector. In August 2013 the Office of Federal Contract Compliance Programs ("OFCCP") released Final Rules impacting federal contractor compliance obligations under the Section 503 of the 1973 Rehabilitation Act. Section 503 requires affirmative action and prohibits employment discrimination by Federal government contractors and subcontractors with contracts over \$10,000. The Final Rule strengthens affirmative action provisions and improves job opportunities for individuals with disabilities. The Final Rule made changes to the nondiscrimination provisions of the regulations to comply with the 2008 ADA Amendments Act from March 2014.^{97, 98} In 1997, 'USAID Disability Policy Paper', a nonbinding guidance note was issued with principle of nondiscrimination, as reflected in U.S. federal disability rights laws, with the objective "to avoid discrimination against people with disabilities in programs which USAID funds and to stimulate an engagement of host country counterparts, governments, implementing organizations and other donors to promote a climate of nondiscrimination and equal opportunities for people with disabilities."⁹⁹

⁹⁶ US Department of Education: Q&A Title Iv--Rehabilitation Act Amendments Of 1998, Section 508: Electronic And Information Technology, see <<http://www.justice.gov/crt/508/archive/deptofed.html>> accessed on May 20, 2013

⁹⁷ US Department of Labour: Final Rule: Section 503 of the Rehabilitation, see <<http://www.dol.gov/ofccp/regs/compliance/section503.htm>> accessed on May 20,2013

⁹⁸ Mondaq (2013): United States: OFCCP Issues Long-Awaited VEVRAA And Section 503 Final Rules: see <<http://www.mondaq.com/unitedstates/x/260954/Government+Contracts+Procurement+PPP/OFCCP+Issues+LongAwaited+VEVRAA+And+Section+503+Final+Rules>> accessed on May 20, 2013

⁹⁹ http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf

To strengthen the commitment to inclusive development, USAID established two Acquisition and Assistance Policy Directives (AAPDs) in support of implementing the Disability Policy. These directives provide guidelines for staff and partners in acquisition and assistance processes. One (AAPD 04-17) requires the contracting officers (COs) and agreement officers (AOs) to include a provision supporting USAID’s Disability Policy in all solicitations or requests for tender and when awarding contracts, grants, and cooperative agreements. For acquisitions (contracts), COs are required to include the provision “USAID Disability Policy-Acquisition” in all Requests for Proposals (RFPs).¹⁰⁰ AAPD 05-07, require compliance with accessibility standards and illustrates how to comply in new construction or alterations to existing structures, listing construction related activities that are exempt from compliance requirements. For procurement, COs must include the provision “Standards for Accessibility for the Disabled in USAID Construction Contracts (September 2004)” in proposal requests and contracts.¹⁰¹

The ADS chapter 302 USAID – Direct Contracting¹⁰² for the procurement of Federal electronic information technology (EIT) includes a variety of products, such as computer hardware and software, websites, phone systems, fax machines, copiers, and similar technologies, the CO must ensure that the purchase request conforms to the Section 508 of the US Rehabilitation Act. For compliance of accessibility standards in construction contracts, the CO is required to insert the clause “Standards for Accessibility for the Disabled in USAID Construction Contracts” when inviting bids for construction or renovation using Aid funds. A waiver to this can only be given on grounds where compliance with accessibility standards is technically infeasible or presents an undue burden. The contractor needs to get a waiver from the contracting officer. ADS chapter 303 – Grant and Cooperative Agreements with American Non-Governmental Organizations¹⁰³ using USAID money need nondiscrimination policies for their operations and agencies overseas are encouraged to follow nondiscriminatory policies.

The so-called “Final Rule” establishes an aspirational 7 per cent goal for qualified individuals with disabilities for each job group, except for contractors with less than 100 employees.

¹⁰⁰ USAID (2004): AADP 04-17: see www.miusa.org/idd/resources/dispolices/aapdo417/at_download/file

¹⁰¹ USAID (2004): AADP 05-07 : see

http://www.miusa.org/idd/resources/dispolices/aapdo507/at_download/file accessed on January 14, 2014

¹⁰² USAID, ADS chapter 302 USAID – Direct Contracting, see <http://transition.usaid.gov/policy/ads/300/302.pdf>

¹⁰³ USAID, ADS chapter 303 – Grant and Cooperative Agreements to Non-Governmental Organizations, see <http://transition.usaid.gov/policy/ads/300/303.pdf>

- For 3 years contractors are required to document and update quantitative comparisons for the number of individuals with disabilities who apply for jobs and the number of people with disabilities that are hired on an annual basis.
- Requires contractors invite job applicants to self-identify, both pre-offer and post-offer, as individuals with disabilities, protected under Section 503;
- Provides best practices guidance concerning "reasonable accommodations" for qualified applicants and employees with disabilities;
- Requires contractors permit the Office of Federal Contract Compliance Programs OFCCP to access documents for compliance and focused reviews;
- Aligns the concepts of "disability" and the other non-discrimination provisions of Section 503 Regulations with the Americans with Disabilities Act Amendments Act of 2008;
- Under title III, Part 36 relates to Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities consistent with minimum guidelines of the Architectural and Transportation Barriers Compliance Board.

In 1998 the United States required all information technology, hardware and software purchased by the government to be accessible, the procurement workforce found it challenging to comply as there was no training on the standards and definitions for acceptability under section 508 were not clear.¹⁰⁴

¹⁰⁴ Drabkin, D. & Thai, K. V. (2003): U.S. Federal Government Procurement: Structure, Process and Current Issues: A paper presented at the International Purchasing and Supply Education and Research Association's Comparative Public Procurement Cases Workshop, Budapest, Hungary
<http://www.toronto.ca/inquiry/inquiry_site/cd/gg/add_pdf/77/Procurement/Electronic_Documents/US_Jurisdictions/Fed_Govt_Issues.pdf> accessed May 6, 2012

Annex B: Useful documents and links

The **World Trade Organization** [Revised Agreement on Government Procurement](#) came into force in 2014 and will be subject to periodic review. The text makes amendments to consider the use of electronic procurement systems and has a number of clauses explicitly requiring information to be accessible to the public. The agreement also provides potentially limiting exceptions with regard to persons with disabilities and individuals in prisons.

The **OECD** defined public procurement in the [2011 Government at a Glance](#) as “the purchase by governments and state-owned enterprises of goods, services and works”.

The **World Bank and OECD** have a benchmarking tool which is used to develop ‘country procurement assessment reports’. Donors and disabled people’s organisations can encourage the tool to integrate indicators for disability inclusion and accessible procurement. The tool is based on the 2010 [Methodology for Assessing Procurement Systems](#) or MAPS for short.

The **United Nations** [Practitioners Handbook on Procurement](#), written in 2006 and revised in 2012 states on page 6: “UN goals of broadening participation in solicitations, particularly to disadvantaged groups, may benefit from smaller lots to increase local interest. It may require use of additional procurement resources for active market research, including outreach to find appropriate potential suppliers not previously on the roster, and evaluation of extra offers. This should be accepted as part of the normal process”. So the UN should aim to increase the procurement provided through groups like people with disability. An [accessibility toolkit](#) has been developed to support accessible information and communication and technologies in public procurement.

The [World Bank 2014 Report](#) notes in defining “value for money” that “Although there is no commonly accepted definition of value for money in public procurement, a typical one would be “what a government judges to be an optimal combination of quantity, quality, features and cost, expected over the whole of the project’s lifetime” (Burger and Hawkesworth 2011)”

A 2004 [Public Procurement Conference document](#) outlines a number of the definitions of public procurement and alternative terminology like ‘acquisition’ or ‘contracts’. It provides an analysis of the United States legislation.

Procurement is defined in a [United Nations Commission on International Trade Law \(UNCITRAL\) model law on Procurement of Goods, Construction and Services with Guide to Enactment](#) in 1994 stating that at Article 2(a): "Procurement" means the acquisition by any means of goods, construction or services. In 2011, the revised UNCITRAL Model Law on Public Procurement defines procurement at 2(f) as (j) "Procurement" or "public procurement" means the acquisition of goods, construction or services by a procuring entity.

In 2013 a consultant produced a book for on good practice for [procurement for the European Union](#).

A European Commission 2010 Document 'A Guide to Taking Account of Social Considerations in Public Procurement' outlines a number of social protection measures including consideration of people with disability.

The [Academic Network of European Disability experts](#) (ANED) was established by the European Commission in 2008 to provide scientific support and advice including for the EU Disability Action Plan and implementation of the United Nations Convention on the Rights of Disabled People.