

# Improving access of small local contractors to public procurement – The experience of Andean Countries

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Experiences of the ILO, the World Bank and the IADB<sup>1</sup> over the past ten years in various countries in Latin America, have demonstrated that improving access of small local contractors<sup>2</sup> to public procurement processes for services and works, favours the generation of local employment for both skilled and unskilled labour.

Initiatives to improve access seek to increase the private sector participation in public procurement, and to increase employment opportunities through the development of public investment policies that promote the use of labour-based technologies.

In a number of Andean countries such as Colombia, Peru, Ecuador and Bolivia, experience involving the private sector in public procurement has developed over the past years. From contracting of micro-enterprises for routine road maintenance in rural areas, to involving micro-enterprises in waste collection and street cleaning in urban areas. In all cases; a) the services are executed by small local contractors, b) the services provided are labour intensive, and c) the contractors enter into contracts with public institutions (ministries or local authorities).

## Results of a comparative legal study<sup>3</sup> in three Andean countries

A study<sup>4</sup> carried out by the ILO Sub Regional Office for Andean countries



Street cleaning

Source: A. Molz

in Bolivia, Peru and Ecuador, shows that access of small local contractors to public procurement is still very limited, due to the existence of a series of legal and institutional barriers. Participation is limited to petty contracts.

The general conclusion of the study is that no effective policies exist for the public procurement of services and works to small contractors, although there are a few regulations that could be oriented towards them. This is especially the case in Ecuador, and to a lesser extent in Peru and Bolivia, where certain favourable mechanisms do exist, although these are insufficient or are not being implemented.

The study did not include the new public procurement legislation being

prepared in Ecuador, the new regulation on public procurement of goods with small contractors approved in Bolivia in February 2004, nor the new law in Peru stipulating that 40% of all public procurement has to be with micro and small enterprises.

The barriers identified in the study can be summarised as follows:

- Competitive participation of small contractors is limited to petty contracts;
- There is a lack of access to information about tenders and few possibilities exist to participate in tendering;
- Requirements and conditions for qualification are hard to fulfil, especially in the higher contract categories;

<sup>1</sup> Inter-American Development Bank

<sup>2</sup> Small contractors include micro and small enterprises, community based organisations and NGO's

<sup>3</sup> José Yeng and Serge Cartier van Dissel. *Políticas de contratación pública y modalidades legales de organización para la pequeña empresa en los países andinos - Acceso de las micro y pequeñas empresas a los contratos públicos para obras y servicios en Perú, Bolivia y Ecuador*. ILO, Lima, Peru. November 2003.

<sup>4</sup> This study was followed by a series of seminars involving representatives from different countries.

d) The requirement to be registered in the national contractor register (Peru and Bolivia) or to be a “civil engineer or architect” (Ecuador) severely inhibits participation of small contractors, and

e) Obtaining performance bonds and guarantees for advances is problematic for small contractors.

The comparison of the three countries also identifies a set of favourable mechanisms and conditions, most of which are not sufficiently used though could be considered as legal tools for improving the access of small contractors to public procurement. These include:

- a) Possibilities of subcontracting, consortiums and associative contracts for contractor collaboration;
- b) Special contracting arrangements in projects receiving donor funding, *e.g.* the “Tarjeta Empresarial”<sup>5</sup> initiative in Bolivia;
- c) Preferential treatment of micro and small enterprises in public procurement in Peru; and
- d) Direct contracting (*i.e.* one bidder) for contracts of up to US\$ 140,000 as in the case of provincial governments in Ecuador.

The first barrier to be overcome to actually implement policies aimed at promoting an increased participation of small local contractors, is the “political barrier.” If no firm decision by governments exists to implement such policy, no substantive changes will be observed in procurement by public institutions, even when there are favourable legal regulations that are expressly aimed at promoting the participation of small local contractors.

A transparent information system about tenders also needs to be implemented to facilitate the participation of small contractors. The model of PROMPYME in Peru is a good example. PROMPYME is a government entity promoting small and medium enterprise’s (SME’s) access to

public procurement. All public entities provide PROMPYME information about forthcoming contracts, PROMPYME then makes this available to the SMEs through the internet, enabling them to bid. In line with this, amounts of different contract categories need to be made more flexible based on the needs of public institutions, especially for services and works geared towards facilitating the targeted procurement of small contractors.

In Peru and Ecuador, two alternatives are recommended to facilitate the participation of small contractors in public works:

- a) A “Small contractor card” with two possible modalities - an individual contractor card for petty contracts or a contractor association card for larger contracts; and
- b) A register for local contractors, enabling small contractors to carry out small and medium-sized works in the local area, after passing certain prerequisites and minimum qualification criteria.

To facilitate the attainment of guarantees by small contractors, the following measures are recommended:

- a) Promote the creation of “Guarantee funds” for public procurement;

- b) Decrease the required amounts of performance bonds; and
- c) Establish mechanisms of monthly payment retentions to replace performance bonds.

### Complementary policies

To further facilitate public procurement with small contractors, the following complementary policies are recommended:

- a) General procurement policies allowing small contractors to participate in larger contracts through either contractor consortiums/associations, or subcontracting.
- b) Special procurement policies establishing public procurement programmes that are aimed exclusively at the contracting of small contractors already operating in the marketplace.
- c) Temporary procurement policies establishing programmes based on targeted procurement of newly formed small contractors supported by these special programmes (*i.e.* for road maintenance, urban waste management, reforestation, *etc.*), plus a result-based evaluation system for contract extension or cancellation.



Source: A. Molz

Routine road maintenance by microenterprises

<sup>5</sup> This “Enterprise Card” offers the small contractor legal person, guarantees his participation in the tendering process with minimal requirements, and lowers the required percentage of performance bonds.



Source: S. Cartier

House construction by small contractors

### Municipal procurement with small contractors – The case of Cajamarca (Peru)<sup>6</sup>

No special regulations exist for public procurement at municipal level, making the national procurement legislation the norm to comply with. However, in 2003 the micro and small enterprise promotion law was passed, which stipulates that 40% of all procurement executed by public institutions must be carried out with these enterprises, as well as their preferential treatment in respect to larger enterprises and their access to information about upcoming tenders. This legal context greatly favours procurement with small local contractors.

In 2003, the Municipality of Cajamarca carried out all public

services through force account. In the case of public works, 39% was carried out using force account and 61% through public procurement. In the latter case, all 60 contracts were awarded to local micro and small construction enterprises, principally in street paving, representing an investment of over 1.5 million US dollars. This resulted in the generation of nearly 31,000 workdays, including both skilled and unskilled labour, and an estimated labour expenditure of US\$ 340,000.

However, the study observed a number of problems with respect to municipal procurement policies:

a) The existence of “bureaucratic” procurement systems;

- b) Lack of appropriate quality control in contractor selection as a result of the “lottery” system used in the case of equal bids<sup>7</sup>;
- c) Lack of technical capacity of the small contractors;
- d) Technical designs limiting the generation of employment (e.g. concrete or asphalt paving instead of stone or blocks); and
- e) Under-developed of public-private partnership mechanisms linking public procurement with employment generation and labour-based technologies. ☺

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<sup>6</sup> Jose Yeng, *Municipal procurement for infrastructure and services with small local contractors - Recommendations based on the case of the municipality of Cajamarca (Peru)*. ILO Subregional Office for the Andean countries, Lima, Peru. January 2004.

<sup>7</sup> As the minimum bid accepted is fixed at 90% of the engineers’ estimate, many bids are set at this same amount.