ANNEX 7: PRESENTATIONS FROM WORKING SESSION 4 –

CORRUPTION IN PUBLIC PROCUREMENT

“OECD Approach: Public Procurement Principles, Tools and Capacity Building”

Mr. János Bertók, Head of the Integrity Unit, OECD Public Governance Directorate

Procurement: Main risk of corruption

Frequency of bribery in procurement

Source: Kaufmann, World Bank (2006), based on Executive Opinion Survey 2005 of the World Economic Forum covering 117 countries. Question posed to the firm was: In your industry, how commonly firms make undocumented extra payments or bribes connected with permits/utilities/taxation/awarding of public contracts/judiciary?
Promoting good governance in procurement

- **Multidisciplinary efforts since 2004**

OECD analyses public procurement from public and corporate governance perspectives:

- **Competition**: Guidelines to Fighting Bid Rigging in Public Procurement
- **Aid Effectiveness**: Self-Assessment Methodology for Country Procurement Systems
- **Anti-bribery**: Typology of Bribery in Public Procurement

**Applying good governance in procurement**

Enhancing integrity to become part of efficient and effective public resources management

Review of policy & practice in the European accession process by SIGMA

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**The public governance perspective**

- **Mapping out concerns & good practices**
  
  OECD countries as well as Brazil, Chile, Dubai, India, Pakistan, Romania, South Africa

- **OECD Checklist & Principles**
  
  Policy guidance developed by a network of procurement officials

- **Consultation with stakeholders**
  
  Governments, private sector, civil society, academics, international organisations

- **OECD Recommendation**
  
  International instrument (October 2008)
OECD Recommendation on Enhancing Integrity in Public Procurement

The Recommendation comprises two components:

1. **Framework of 10 principles** anchored in four pillars:
   - Transparency
   - Good management
   - Corruption prevention
   - Accountability and control

2. **Checklist** on how to implement the framework through the procurement cycle from needs assessment to contract management and payment.

**Application of OECD Recommendation**

- **Peer reviews**
  Joint Learning Studies: Morocco (2008), Yemen
  Public Management Reviews: Greece, Mexico

- **Next steps to support implementation**
  A public procurement Toolbox

- **Reporting back on progress**
  OECD countries will report back on progress implementation in 2011
Public Procurement Toolbox

**What?**
- Living web-based document allowing for periodical updates to compile tools tested in actual practice
- It also contains tools to ensure integrity in accelerated spending, key concern in disbursement of fiscal stimulus packages

**For Who?**
- Government officials designing and developing guidance and procedures to enhance integrity in their procurement systems

**Why?**
- To facilitate the implementation of the OECD Recommendation
- To share and exchange practical ways to enhance integrity amongst procurement practitioners from both OECD and non-OECD countries

Public Procurement Toolbox

**Structure**

Tools follow the two dimensions of the Recommendation

...10 Principles
1. **Transparency**
2. **Good management**
3. **Compliance & monitoring**
4. **Accountability & control**

through the procurement cycle

<table>
<thead>
<tr>
<th>Pre-tendering</th>
<th>Tendering</th>
<th>Post-award</th>
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</thead>
<tbody>
<tr>
<td>Needs assessment</td>
<td>Invitation to tender</td>
<td>Contract management</td>
</tr>
<tr>
<td>Planning &amp; budgeting</td>
<td>Evaluation</td>
<td>Order &amp; payment</td>
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<tr>
<td>Definition of requirements</td>
<td>Contract award</td>
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<td>Choice of procedures</td>
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</table>
Public Procurement Toolbox

Example of Tool

Code of Conduct

<table>
<thead>
<tr>
<th>Procurement Cycle</th>
<th>OECD Principles on Integrity</th>
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</thead>
<tbody>
<tr>
<td>Pre-tender</td>
<td>Tender</td>
</tr>
</tbody>
</table>

- Pre-tender
- Tender
- Post-Award
- Transparency
- Good Management
- Corruption Prevention
- Accountability & Control

* = Applicable

Purpose

Description

Example of Generic Code of Conduct

Further Resources

Public Procurement Toolbox

Consultation Process

- **October 2009**: Public Procurement Toolbox internal review process is finalised.
- **November 2009**: Official launching of Consultation process with wide array of stakeholders. Open invitation to Astana Conference participants.
- **November 2009 – February 2010**: Receipt of comments and additional tools.
- **March – April 2010**: Toolbox is uploaded on OECD website.
Further information:
www.oecd.org/gov/ethics/procurement

Recent OECD publications:
- OECD Principles for Integrity in Public Procurement (2009)
- Keeping Government Contracts Clean, Policy Brief (2008 October)
- Checklist for Enhancing Integrity in Public Procurement (2008 August)
- OECD Joint Learning Study on Morocco (2008)
- Integrity in public procurement: Good practice from A to Z (2007)
“European Union and Member State Perspectives on Tackling Corruption: Risk Mapping”
Mr. Peter Reimer, Ministry of the Interior and Kingdom Relations, Netherlands

Introduction

Tasks of the Ministry of the Interior and Kingdom Relations:
- Constitutional affairs and legislation
- Public sector management and supervision of local government
- Public safety and security (police, fire brigade, secret service)
- Relations with the overseas territories of the Kingdom (Antilles and Aruba)

My function: Legal Adviser

My tasks:
- Advising on contracts and public procurement rules
- Dealing with infringement procedures of the European Commission against municipalities
- Membership of the (EU) Advisory Committee on Public Procurement

Corruption: a two sided story

Corruption occurs when:

1. The contracting authority is corruptible
2. The bidder makes use of illegal ways to influence the contracting authority

This assumption does not apply to bid rigging.

In a positive way policy measures has to aim on:
1. A honest government
2. Honest bidders
How to prevent corruption

Prevention needs a wide variety of measures

First of all you have to know the vulnerabilities in the procurement process
After that you can take adequate measures

Selection criteria

Selection criteria are intended to select economic operators who are reliable, financial standing and professional able. They form an instrument to check the integrity of the economic operator. By formulating disproportionate selection criteria an agent representing the c.a. can favour a special economic operator.
Specifications

It is not so difficult to define requirements which favour particular tenders. The easiest way is to refer to a trade mark. However, that is forbidden by the law. A smart solution is as follows:

Fire men have a preference for Mercedes cars. So they put in the bidbook the specification that the car must have a star on the front of the car.

It's a joke but illustrates how you can manipulate the result of a tender.

To avoid discriminatory specifications there is a general preference for the use of performance, output or functional specifications.

Award criteria

The lowest price is the most objective criterion. Corruption is difficult.

The economic most advantageous is not in all aspects quantifiable and therefore more suited for manipulating. The obligation to publish the weighting makes the awarding more transparent but not less subjective.
Evaluation of the offers

The evaluation of the offers is a process executed by human beings. Although the specifications can be objective there can be a conflict of interest relating the person who has to evaluate the offers. The specific tools used to guarantee accountability in procurement are the provisions relating to recording, reporting and the mechanisms for review and control.

Contract management

Contract management is the stage after the award of the contract. Especially contracts which are meant for a delivery of services or products over a certain time period have to be carefully monitored in order to get the services or products in conformity with the specifications and the pricelist.

In this stage there is no longer the transparency of the tender process. Now it depends of the quality of the internal organisation.
Measures to safeguard integrity

The question is how to avoid manipulating the tender as before described. Distinction has to be made between safeguarding the integrity of the government officials and checking the integrity of the bidders. Safeguarding the integrity of the c.a. is carried out by a wide variety of measures, some of them of a legal nature, others are instruments in the form of training and guidance. Checking the integrity of the bidders can be carried out by using the BIBOB law (explanation follows).

BIOS
(Bureau Integriteitsbevordering Openbare Sector)

The Dutch Government has developed a wide programme for safeguarding the integrity of all civil servants. Therefore is established the National Integrity Office (BIOS). BIOS has the intention to promote that governmental organisations carry out a broad, straightforward and effective integrity policy. Although BIOS has developed impressive tools there is not a specific guideline for the government officials working as procurement agents. Nevertheless as a form of general infrastructure every country should have a policy of permanent training and furthering awareness of integrity in all governmental actions.
Conclusions

Knowing the vulnerabilities in the procurement system it is possible to conceive more adequate measures to tackle corruption.

Be aware that there are two forms of measures required:
1. Measures aimed at safeguarding the integrity of the government officials
2. Measures aimed at screening of the integrity of the bidders
“Anticipation of Potential Problems in Public Procurement: Indonesia Experience”
Mr. Lambok Hutaruk, Director of Gratuities, Indonesian Corruption Eradication Commission

KPK - CEC
Komisi Pemberantasan Korupsi
Corruption Eradication Commission

Some features:
• Independent from the Executive, Legislative, Judiciary and any other powers
• Responsible to the Public
• Financially, KPK is audited by the Indonesian Supreme Audit Board (BPK)
• Established in Dec 29th, 2003
• Supervise AGO & Police in handling Corruption cases

Other features
• 5 Commissioners
• 2 (4) Advisors
• 550 officers (700 end of 2009)

The KPK’s Duties
(Article 6 Law No.30 year 2002)

Coordination
(Article 7)
Supervision
(Article 8)

Monitoring
(Article 14)
Pre-investigation, Investigation & Prosecution
(Article 11)

Duties of KPK
(Article 6)
Prevention
(Article 13)
WHAT IS THE INDONESIAN PROCUREMENT MARKET LIKE?

Public Procurement Philosophy

State/Local Revenue and Expenditure Budget

Public Capability

Instrument of Regulation (Presidential Decree No. 80 year 2003)

Procurement Based On:
- Accountability
- Transparency
- Fairness & Non-Discrimination
- Open & Competitive
- Efficient & Effective
What kind of Procurement Problems that occurred in Government & State Owned Enterprises?

Corporate

Government Officials

Corruption?

Private Sector

15 Stages of Indonesian Government Procurement

1. Procurement Preparation
2. Establishment of Auction Committee
3. Pre-qualification of Companies
4. Compilation of Auction Documents
5. Auction Announcement
6. Taking of Auction Documents
7. Estimated Own Price
8. Explanation (aanwijzing)
9. Delivery of Bid Price and Opening Bid
10. Bidding Evaluation
11. Announcement of Bid Price
12. Participants Disclaimer
13. Auction Winners Announced
14. Contract Signing
15. Delivery of Goods and Service (The Procurement Result)
PROCUREMENT PROBLEMS IN GOVERNMENT/STATE OWNED ENTERPRISES

PROBLEM 1

Un-openness Procurement Market

• Fragmented Procurement Market;
• Only a small proportion of business actors who have access to Procurement Market;
• Auction gathering;
• Dominance of business or business group on procurement market;
• Thuggery.

PROCUREMENT PROBLEMS IN GOVERNMENT/STATE OWNED ENTERPRISES

PROBLEM 2

Procurement Rules

• Presidential Decree No. 80 year 2003 votes many flaws;
• The Regulation on the State Procurement were not considered applicable (Non-Technical)
• Different Standard of Procurement Operation Procedures between State Owned Enterprises will occur
PROCUREMENT PROBLEMS IN GOVERNMENT/STATE OWNED ENTERPRISES

PROBLEM 3

Bad Governance

• Non-transparent and accountable Committee;
• Abuse of Authority for certain purposes;
• The Internal Oversight is not functioning much;
• Not effective and efficient;
• Accepting Bribes, etc.

PROCUREMENT PROBLEMS IN GOVERNMENT/STATE OWNED ENTERPRISES

PROBLEM 4

The Big Number of Corruption Cases

• Bribery;
• Receiving Kick Back;
• Wrong Procedures;
• Mark-up Price;
• Fictive Projects
• Auction Penetrating;
• State Losses;
Corruption Cases handled by KPK

- 15 Member of Parliaments
- 2 ministers/Head of Ministerial Level
- 1 Chief National Police
- 5 Province Governors:
  - 1 Governor of Central Bank, 4 Deputy Governor
- 15 Mayors and Head of Regents/District
- 6 Commissioners of General Election; Judicial, Anti-monopoly commissions
- 2 Ambassadors and 4 General Counsel
- 3 Senior judge and Prosecutor, including KPK’s investigator
- Many high ranking Gov Official echelon I & II (Director General, Secretary general, Deputy, Director, etc)
- High rank CEO private sectors involved in public corruption
ALTERNATIVE SOLUTION RELATED PROBLEM
RELATED TO MANAGEMENT OF PROCUREMENT

- ORGANIZATION SYSTEM
  - The separation of responsibility and clearer authority between users of Goods & Services Public Procurement / Procurement Committee & Officers;
  - The formation of the Procurement Services Unit (Procurement Unit)
  - SOP Creation
  - Adequate training and competence of Hard Soft Competence;
  - Procurement Certification;
  - Seeing the big risks related to the attention of additional honorarium to implementing the Procurement of Goods and Services

- HUMAN RESOURCE

- APPRECIATION

ALTERNATIVE SOLUTION RELATED PROBLEM
RELATED TO PROCUREMENT REGULATION

- President Regulation No. 80 year 2003
- Minister of State Owned Enterprise Regulation No 05/MBY/2008

- The Regulation need correction and improvement (submit by National Public Procurement Office/NPPO)
- Enhanced technical regulation issues of the public procurement of goods and services hence that State Owned Enterprise (SOEs) do not create difficulties in the SOP implementation
- Need uniformed procurement regulation in each SOE to avoid possibility of improperly SOP with the President Regulation
### ALTERNATIVE SOLUTION RELATED PROBLEM

**RELATED TO CREATION OF GOOD GOVERNANCE**

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<tr>
<th>ACCOUNTABILITY</th>
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<td>EFFECTIVE AND EFFICIENT</td>
<td>SUPREMATION OF LAW</td>
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<td>PUBLIC PARTICIPATION</td>
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- Public procurement must achieve physical, financial and procurement benefits and last can be accounted for.
- Announcement / procurement information that can be accessed by all parties through bulletin boards, websites, newspapers, e-enouncement and e-procurement.
- Procurement of goods and services carried out with limited resources, needs and produce exactly the objectives that has been set.
- Law Enforcement Section of corruption-related procurement, change rules that could accommodate the needs of the Procurement and Implementation of Rules of Procurement (Decree 80) by all concerned procurement parties.
- Following the auction process (Being Provider B / A), conduct oversight of the procurement activities.

### ALTERNATIVE SOLUTION RELATED PROBLEM

**RELATED TO CORRUPTION**

- Direct Supervisory/Oversight from supervisor
- Maximizing Internal Oversight Functions
- Opening access to inspection by the Supreme Audit Board, The Development Finance Comptroller (BPKP) and the Corruption Eradication Commission (KPK)
- Community involvement
- Procurement System reverse by the e-procurement
- Anti-Corruption Education
- Creation and implementation of Integrity Pact with the real condition
Public Procurement Reforms:

Manufacturing systems are expected to:
- Achieve efficiency;
- Eliminate / minimize corruption;
- Achieve a healthy competition that can push the nation's competitiveness.

Reform carried out through:
- Repair / improvement of rules Legislation (Regulatory Framework);
- Repair systems and institutions;
- Improving the quality / capacity of human resources.
“An Important Tool for Fighting Corruption – Independent Public Procurement Authorities”
Mr. Hüseyin Kaymak, Head of Department, Department of Review II, Public Procurement Authority, Turkey

Independent Administrative Authority

- Administrative units which;
- are established outside conventional administrative structure,
- possess, to an extent at least, administrative and financial autonomy,
- have the authority to regulate and audit a certain field of community life or a certain sector of economy

Emergence of IAAs

- need to regulate, audit and guide;
  - areas related to use of private rights and freedoms
  - economic activities pertaining to some sensitive sectors (such as communication, energy)
  - free from external influences
Emergence of IAAs

- conventional administrative structure lacks technical knowledge and expertise
- economic policy based on political preferences lead to instability
- conventional administrative units operate rather clumsy

Basic characteristics of IAAs

- Independence,
- Impartiality,
- Regulation task,
- Administrative authority
- Authority to impose sanctions.
Independence of IAAs

- Members of the decision making committees of IAAs can not be dismissed from their duties by an administrative decision,
- These members can not be elected or appointed for a second time.
- Sufficient financial sources needed for their operation is vital

Impartiality

- Standing impartial to the parties of the disputes
- To function properly, IAAs, having authority to regulate, are expected to;
  - Protect private rights and freedoms
  - Arbitrate between public interest and private interest,
  - should stand neutral to sides of conflicts.
Authority to impose sanctions

- IAAs are able to decide to impose sanctions varying from:
  - pecuniary punishment to
  - suspension of execution or
  - cancellation of decisions taken by other administrative organs.

Preventing corruption & public procurement system

- Need transparent and effective public procurement system
- For a good running public procurement system:
  - a sufficient institutional and administrative infrastructure,
  - a legislative framework supported by clear and well designed secondary regulations,
  - an effective complaints and accountability regime,
  - an effective sanctions regime,
  - and well educated or specialized staff.
How can IPPAs contribute to prevent corruption?

- IPPAs can;
- Make regulations and
- Ensure coherence in implementation,
- without being influenced by external factors, mainly political expectations.
- opportunity to prevent; waste of resources, biased and arbitrary acts, corruption.

How can IPPAs contribute to prevent corruption?

- Know-how support to the legislative organ
- That kind of support is significant due to the fact that primary legislation should comprise rules essential to secure;
- competition in the field and
- confidence in the public procurement system.
How can IPPAs contribute to prevent corruption?

- make secondary regulations to ensure implementation of laws
- prepare standard forms – model papers, standard tender documents, standard contracts to be used by tenderers and public authorities
- access to the procurement procedure is facilitated,

How can IPPAs contribute to prevent corruption?

- an opportunity to increase competition may arise,
- prospective disputes that may source from tender document can be eliminated.
- Through standard documents and implementations space for corruption might be diminished
How can IPPAs contribute to prevent corruption?

- Issuing guidelines about corrupt acts and behaviours
- It will be possible to raise awareness of procurement officials;
- On different types of corruption and
- On how to detect and prevent these corrupt acts.

How can IPPAs contribute to prevent corruption?

- To improve technical and judicial skills of procurement officials’ on fighting corruption;
- Training programs for procurement officials on public procurement legislation related to preventing corruption
How can IPPAs contribute to prevent corruption?

- To increase transparency in public procurement;
- Announcing information about specific procurement opportunities by proper means;
- Defining requirements for participation in specific procurement procedures beforehand;
- Giving potential tenderers sufficient time for preparing tender;

How can IPPAs contribute to prevent corruption?

- Universalization of electronic procurement, to;
  - eliminate negative external influences,
  - ensure efficient use of resources,
  - increase level of competition through facilitating access to information related to specific procurement processes,
How can IPPAs contribute to prevent corruption?

- reduce cost of carrying out the procedure and of preparing tenders,
- curb personal contact between procurement officials and tenderers which may otherwise lead to corrupt acts.
- Electronic procurement system can be established by IPPAs or IPPAs may promote establishment of these systems by the public authorities.

How can IPPAs contribute to prevent corruption?

- Through review mechanism.
- Confidence in the system is a prerequisite for providing competition atmosphere
- Building confidence through review of the decisions taken by public authorities
- Review mechanism should be operated by an independent, effective working organ.
How can IPPAs contribute to prevent corruption?

- IPPAs;
- have the authority to impose sanctions and to take executory decisions,
- are able to remain outside influences of external factors,
- possess sufficient judicial and administrative specialized and technical knowledge,
- thus have capacity to resolve disputes arising between tenderers and procuring agencies.
Conclusion

- Fighting corruption needs strong public procurement system
- Many instruments available in the hands of IPPAs
- Using these instruments, IPPAs play key role in preventing corruption