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**OECD GLOBAL FORUM ON GOVERNANCE
FIGHTING CORRUPTION AND PROMOTING INTEGRITY IN PUBLIC PROCUREMENT**

AGENDA

**29-30 November 2004,
Ministry of Economy, Finance and Industry, Paris**

The OECD Global Forum on Governance was organised in co-operation with the French Ministry of Economy, Finance and Industry. The Forum brought together over 200 participants from 58 countries, 12 international organisations -- both global and regional -- and businesses, trade unions, professional organisations, NGOs and think tanks.

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English - Or. English



**OECD GLOBAL FORUM ON GOVERNANCE
FIGHTING CORRUPTION AND PROMOTING INTEGRITY
IN PUBLIC PROCUREMENT**

AGENDA

PARIS, 29 – 30 NOVEMBER 2004

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

*in
co-operation with the*



OECD GLOBAL FORUM ON GOVERNANCE

FIGHTING CORRUPTION AND PROMOTING INTEGRITY IN PUBLIC PROCUREMENT

Objectives of the Global Forum and Thematic Focus

The Global Forum brings together participants from all over the world to discuss methods, conditions and approaches to preventing, detecting and sanctioning corruption in public procurement. Public procurement is a central area of public spending where corruption stakes are high. All forms of corruption thrive on secrecy and silence. This makes the role of transparency very central. Other means to fight corruption in public procurement include, *inter alia*, simplification of the tendering processes, reduction of agents' discretionary powers and regular changes in personnel to prevent development of corrupt relationships, adoption of codes of conduct, anti-corruption commitments by companies, and effective detection and sanctioning systems.

The two-day Forum will address challenges and solutions to those aspects of public procurement that relate to OECD anti-bribery instruments and the integrity and good governance initiatives. This includes:

- Identifying risks and vulnerable areas in the bidding process to prevent corruption;
- Promoting transparency in procurement procedures, particularly in the definition of needs and contract management phase and developing tools to make transparency happen;
- Ensuring accountability by supportive regulatory frameworks and control mechanisms for sound procurement procedures;
- Defining effective ways to sanction the giving and receiving of bribes and reviewing conditions for participating in public bids, including voluntary business integrity tools; and
- Supporting capacity building to improve integrity and prevent corruption in development assistance co-operation.

—PROGRAMME—

29 November 2004			
8h30–9h30	<i>Registration of participants</i>		
9h30–9h50	Opening of the Global Forum		
9h50–13h00	Plenary I: Fighting corruption and improving transparency in public procurement		
10h30–11h00	<i>Coffee break</i>		
13h00–15h00	<i>Lunch, hosted by France</i>		
15h00–17h30	Parallel Break-out Sessions: Workshops 1 and 2		
15h00–17h30	Workshop 1. Identifying risks in the bidding process to prevent corruption	Workshop 2. Improving transparency in public procurement	
16h15–16h45	<i>Coffee break</i>		
17h30–18h00	Plenary II: Reporting back from Workshops 1 and 2		
<i>18h15–19h30</i>	<i>Cocktail, hosted by France</i>		
30 November 2004			
9h30–12h00	Parallel Break-out Sessions: Workshops 3, 4 and 5		
9h30–12h00	Workshop 3. Ensuring accountability: Designing and controlling sound procurement procedures	Workshop 4. Compliance with anti-corruption laws through access to public procurement: sanctioning or voluntary self regulation?	Workshop 5. Development assistance co-operation: How building procurement capacities can help improve integrity
10h30–11h00	<i>Coffee break</i>		
12h00–12h45	Plenary III: Reporting back from workshops (Workshop Chairs and Rapporteurs)		
12h45–14h30	<i>Lunch</i>		
14h30–16h30	Plenary IV: Future direction to fight corruption and promote integrity in public procurement		
16h30	Close of the Global Forum		

29 November 2004	
8h30–9h30	<i>Registration of participants</i>
9h30–9h50	<p>Opening of the Global Forum</p> <p><i>Mr. François Loos</i>, Minister for Foreign Trade, France</p> <p><i>Mr. Richard Hecklinger</i>, OECD Deputy Secretary-General</p>
Plenary I	<p>Fighting corruption and improving transparency in public procurement</p> <p><i>Chair: Mr. Richard Hecklinger</i>, OECD Deputy Secretary-General.</p>
9h50–10h30	<p><i>Keynote speeches</i></p> <p><i>Professor Mark Pieth</i>, Chair, OECD Working Group on Bribery in International Business Transactions, University of Basel, Switzerland;</p> <p><i>Mr. Kyung-soo Choi</i>, Head of Public Procurement Service, Republic of Korea.</p> <p>The speakers will highlight the results of efforts to fight corruption and increase transparency in public procurement. How have different public and private initiatives fostered commitments to good governance and transparency? What are the economic impacts and consequences on management of public finances and accountability? How do the rule of law and implementation and enforcement of anti-bribery provisions help improve management of public funds, including in public procurement? How have non-governmental stakeholders responded to government efforts to improve public governance? Are the different actions complementary?</p>
10h30–11h00	<i>Coffee break</i>
11h00–12h00	<p>Panel discussion on fighting corruption and improving transparency in public procurement</p> <p><i>Chair and Moderator: Mr. Pierre-Christian Soccoja</i>, Service central de prévention de la corruption, France.</p> <p><i>Panellists:</i></p> <p><i>Mr. Roberto Anaya</i>, Undersecretary, Ministry of Public Administration, Mexico;</p> <p><i>Professor Frédéric Jenny</i>, Chair, OECD Competition Committee, France;</p> <p><i>Mr. Richard A. Kell</i>, President, International Federation of Consulting Engineers, FIDIC;</p> <p><i>Ms. Elena Panfilova</i>, Executive Director, Transparency International, Russia.</p> <p>The panel will discuss country experiences in public procurement reform and practice; and the challenge of curbing corruption in public procurement. A major thrust in recent public procurement policy has been to open up procurement markets to competition through increased transparency. The panel will address whether this has also increased the risk for corruption and criminal acts, such as corruption by natural and legal persons. In the latter case, the panel will ask if different stakeholders can develop and enforce strategies to prevent corruption. The panel may also discuss mechanisms that can help identify and sanction corruption. Drawing on concrete examples, the panellists will</p>

	highlight the issues at stake and directions to be pursued in the subsequent workshops.
12h00–12h45	General discussion
12h45–13h00	Practical information on the parallel workshops
13h00–15h00	<i>Lunch, hosted by France</i>
Parallel Break-out Sessions: Workshops 1 and 2	
Workshop 1. 15h00–17h30	<p>Identifying risks in the bidding process to prevent corruption</p> <p><i>Chair: Professor Giorgio Sacerdoti</i>, Bocconi University, Italy and Member of the WTO Appellate Body.</p> <p><i>Discussants:</i></p> <p><i>Mr. Jean-Pierre Bueb</i>, Service central de prévention de la corruption, France;</p> <p><i>Ms. Diana Kurpniece</i>, Head of Public Relations and International Co-operation Division Corruption Prevention and Combating Bureau, Latvia;</p> <p><i>Mr. Guillermo Haro</i>, Head of Procurement Standards, Mexico;</p> <p><i>Mr. Brig Nasir Mahmood</i>, Head of Department, National Anti-Corruption Strategy, National Accountability Bureau, Pakistan;</p> <p><i>Mr. Nicolás Raigorodsky</i>, Undersecretary and Director of Policies of Transparency at the Anticorruption Office, Argentina;</p> <p><i>Mr. Paul Lachal Roberts</i>, Adviser, Multi-Agency Investigations, OLAF (European Anti-Fraud Office), European Commission;</p> <p><i>Mr. A. Michael Stevens</i>, Principal Audit Specialist (Financial Investigator), Anticorruption Unit, Office of the Auditor General, Asian Development Bank.</p> <p>The workshop will seek to identify similarities between different legal systems and bidding practices related to fraud and public procurement. It will subsequently determine the characteristics of a mechanism to prevent corruption in public procurement, including transparency measures. The workshop will evaluate whether those mechanisms apply to all bids or whether specific provisions need to be developed to address international corruption in public bids. The importance of internal and external reporting as opposed to non-reporting will be discussed. This may lead to another related and underlying concern: the opposition to or desirability to protect those who blow the whistle. The practical and legal consequences of voluntary or mandatory declaration of suspicion of misdeeds in the bidding process between the different instances i.e. the public procurement agencies and the investigative and prosecutorial authorities, will also be explored.</p>

<p>Workshop 2. 15h00–17h30</p>	<p>Improving transparency in public procurement <i>Chair: Mr. Jacques Bayle</i>, Inspecteur Général des Finances, France.</p> <p><i>Discussants:</i></p> <p><i>Mr. Rob Burton</i>, Acting Administrator, Executive Office of the President, Office of Federal Procurement Policy, United States;</p> <p><i>Mr. Peter Trepte</i>, Barrister, Littleton Chambers, London;</p> <p><i>Mr. Claudio Weber Abramo</i>, Executive Director, Transparência Brasil;</p> <p><i>Mr. Ditmar Waterman</i>, Public Procurement Policy, European Commission;</p> <p><i>Ms. Åse Grødeland</i>, Norwegian Institute of Urban and Regional Research;</p> <p><i>Mr. Chun-Soo Hong</i>, Director, Department of Planning and Budget, Public Procurement Service, Republic of Korea;</p> <p><i>Ms. Carmel Madden</i>, Information Society Policy Unit, Department of the Taoiseach, Ireland.</p> <p>The workshop will review emerging practices and standards applied to promote transparency of steps taken in defining the needs, the bidding process and post-awarding/contract management phase. It will also address major challenges related to the close interaction with business. The main purpose is to examine how existing tools – such as the use of new technologies (e-procurement) and formal disclosure requirements – could improve transparency in public procurement procedures, in particular:</p> <ul style="list-style-type: none"> • How successful are measures in ensuring that conflicting private capacity interests of public officials are disclosed and resolved in a timely manner? • What mechanisms work to ensure transparency in the procurement procedures, in particular in the definition of needs and in the post-awarding process? • How successful have e-procurement strategies and practices been in improving transparency and reducing corruption? What are the limits (and/or failures) of e-procurement strategies?
<p>16h15–16h45</p>	<p><i>Coffee break</i></p>
<p>Plenary II</p>	<p>Reporting back from Workshops 1 and 2 (Workshop Chairs and Rapporteurs) <i>Chair: Ms. Birgitta Nygren</i>, Ambassador, Ministry of Foreign Affairs, Sweden.</p>
<p>17h30–18h00</p>	<p>The workshop Chairs and Rapporteurs will report on the main issues discussed in the workshops. They will summarise the key issues and viewpoints raised in the discussions and expose the ensuing conclusions reached in the workshops. Participants will be invited to comment on the main findings and possibly make suggestions regarding the follow-up.</p>
<p>18h15-19h30</p>	<p><i>Cocktail, hosted by France</i></p>

30 November 2004	
Parallel Break-out Sessions: Workshops 3, 4 and 5	
Workshop 3. 9h30–12h00	<p>Ensuring accountability: Designing and controlling sound procurement procedures</p> <p><i>Chair: Mr. Jonathan Denison Cross</i>, Procurement Policy Unit, International Office of Government Commerce, United Kingdom.</p> <p><i>Discussants:</i></p> <p><i>Mr. Wayne Wittig</i>, International Procurement Adviser, Jefferson Consulting, United States;</p> <p><i>Professor Yu An</i>, Tsinghua University, China;</p> <p><i>Mr. Eric Sitbon</i>, Administrator, European Commission, DG Internal Market, Public Procurement Policy Directorate;</p> <p><i>Ms. Tina Soreide</i>, Chr. Michelsen Institute, Norway;</p> <p><i>Mr. András Nagy</i>, Legal Advisor, Public Procurement Council, Hungary;</p> <p><i>Ms. Alina Hussein</i>, Adviser to the SCC President, Supreme Chamber of Control, Poland.</p> <p>The workshop will review country experiences in developing consistent legal, institutional and procedural frameworks for public procurement. More specifically, participants will discuss lessons learned on:</p> <ul style="list-style-type: none"> • Ensuring sound implementation and compliance with regulations through accountability and control mechanisms; • Dealing with delegated power in a devolved management environment that provides more autonomy for procurement officials in OECD countries; and • Establishing new procurement systems by adopting new laws and creating institutions and developing capacities for implementation in transition countries.
Workshop 4. 9h30–12h00	<p>Compliance with anti-corruption laws through access to public procurement: sanctioning or voluntary self regulation?</p> <p><i>Chair: Ms. Valérie Dervieux</i>, Magistrate, France.</p> <p><i>Discussants:</i></p> <p><i>Ms. Françoise Bentchikou</i>, Chief Counsel, Procurement and Consultant Services, The World Bank;</p> <p><i>Ms. Kirstine Drew</i>, UNICORN: Global Trade Unions Anti-corruption Project, University of Greenwich, United Kingdom;</p> <p><i>Mr. Jean-Pierre Méan</i>, General Counsel and Chief Compliance Officer, Société Générale de Surveillance, Switzerland;</p> <p><i>Mr. Michael Wiehen</i>, Transparency International, Germany;</p>

	<p><i>Ms. Simone White</i>, Principal Administrator, OLAF (European Anti-Fraud Office), European Commission.</p> <p>The workshop will address a wide range of issues. Is debarment from procurement of natural and/or legal person an appropriate sanction to fight corruption and what key elements need to be considered for this to be efficient and effective? Under what circumstances and according to which procedure is debarment imposed? On which basis is a bidder excluded from public tendering: its conviction, its pleading guilty or equivalent, indictment, the submission of uncontested evidence, etc.? How to ensure that the different agencies concerned are informed of a sanction imposed on a natural or legal person for bribery acts? What type of employee conduct engages the responsibility of the company? The workshop will also discuss the nature and severity of sanctions: duration and scope of debarment with respect to public entities and conditions for obtaining rehabilitation. Practical and legal questions regarding the transmission of data between national and international tendering, investigating and prosecutorial authorities will be addressed. The participants will also discuss questions relating to a level playing field between companies operating in different legal and political environments.</p>
<p>Workshop 5. 9h30–12h00</p>	<p>Development assistance co-operation: How building procurement capacities can help improve integrity</p> <p><i>Chair: Mr. Richard Manning</i>, Chair, OECD Development Assistance Committee.</p> <p><i>Discussants:</i></p> <p><i>Mr. Phil Mason</i>, Anti-Corruption Team Leader, Governance Department, Department for International Development (DFID), United Kingdom;</p> <p><i>Mr. George Carner</i>, Representative of the United States to the OECD Development Assistance Committee, Permanent Delegation of the United States to the OECD.</p> <p>Corruption is regarded as the biggest problem facing aid-funded public procurement. Donors can safeguard aid-funded procurement from corruption by:</p> <ul style="list-style-type: none"> • Fireproofing or protecting procurement directly; • Strengthening and protecting local procurement which is delegated to partners; • Harmonising systems and developing common approaches; • Using procurement rules as a level to ratchet up integrity (i.e. through sanctions, “blacklisting”, etc.); • Making partner country procurement systems more effective. <p>Based on case studies, the workshop participants will discuss the effectiveness of different approaches to ensure accountability, transparency and value for money of aid funded public procurement systems.</p>
<p>10h30–11h00</p>	<p><i>Coffee break</i></p>

Plenary III	Reporting back from workshops (Workshop Chairs and Rapporteurs) <i>Chair: Ms. Birgitta Nygren</i> , Ambassador, Ministry of Foreign Affairs, Sweden.
12h00–12h45	The workshop chairs and rapporteurs will report on the main issues discussed in the workshops. They will summarise the key issues and viewpoints raised in the discussions and expose the ensuing conclusions reached in the workshops. Participants will be invited to comment on the main findings and possibly make suggestions regarding the follow-up.
12h45–14h30	<i>Lunch</i>
Plenary IV	Future direction to fight corruption and promote integrity in public procurement <i>Moderator:</i> <i>Professor Mark Pieth</i> , Chair, OECD Working Group on Bribery in International Business Transactions, University of Basel, Switzerland.
14h30–15h15	Panel discussion on future direction to fight corruption and promote integrity in public procurement <i>Discussants:</i> <i>Mr. Rob Burton</i> , Acting Administrator, Executive Office of the President, Office of Federal Procurement Policy, United States; <i>Ms. Eva Joly</i> , Special Adviser to the Government, Ministry of Justice and Police, Norway; <i>Mr. Claudio Weber Abramo</i> , Executive Director, Transparência Brasil. The panel including government representatives from participating countries and civil society representatives will focus on the main risk areas identified at the Forum. The panellists will focus on the challenges identified in the workshop sessions and explore ways to deal with the identified risk areas. These challenges may result from changes in the economic context (e.g. how to combine economic efficiency with strict adherence to legality in procurement procedures). Growing emphasis on the definition of needs and contract management also indicate potential ways for follow-up. Another key emerging area is public private partnerships and how governments could provide a level playing field in new forms of co-operation with the private sector.
15h15–16h00	General discussion
16h00–16h30	Conclusions of the Global Forum <i>Ms. Odile Sallard</i> , Director, OECD Public Governance and Territorial Development Directorate; <i>Mr. Rainer Geiger</i> , Deputy Director, OECD Directorate for Financial and Enterprise Affairs.
16h30	Close of the Global Forum

I. Background

Public procurement is a central area of public spending where corruption stakes are high. Even though information regarding the size of public procurement markets is limited, public procurement accounts for a substantial share of Gross Domestic Product. Worldwide public procurement represented over 80% of world merchandise and commercial services exports in 1998¹. Public procurement in the European Union amounted to about €1500 billion in 2002² – this included the purchase of goods, services and public works by governments and public utilities. Developing and transition economies spend a larger share of government budget on public procurement than OECD countries on average.

Procurement of goods and services by central or sub-national governments and state-owned enterprises merits a lot of attention. Corruption in public procurement affects government revenues. It also tilts public spending towards projects that make it easier to collect bribes and may also affect the quality and security of products delivered.

The risk of corruption and lack of transparency in public procurement are major impediments to sustained economic growth through investment and trade. Reducing corruption-tainted public purchases is a central but difficult task. It will become more successful as fighting corruption becomes increasingly important a key policy concern in more countries.

II. A Global Challenge requiring International Efforts

Different regional and international agreements and initiatives have been developed over the last decade to promote integrity and fight corruption. These agreements and initiatives address public procurement and have consequences for all stakeholders. For instance:

OECD members and associated non-members negotiated and signed the “*Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*” (OECD Anti-bribery Convention) in 1997. The Convention, the centre of efforts to combat bribery in international business transactions, has been in force since 1999. Its 35 Parties commitment to criminalise the bribery of foreign public officials in international business and to strengthen national anti-corruption programmes attests their will to end large corruption payments.

The OECD Revised Recommendation on Combating Bribery in International Business Transactions, an associated commitment by Convention Parties, devotes particular attention to public procurement with Parties pledged to:

- Sanction natural and legal persons having bribed foreign public officials by suspending them from procurement competition;
- Prevent corruption in aid-funded procurement; and

¹ The Size of Government Procurement Markets, OECD 2002, also available at <http://www.oecd.org/dataoecd/34/14/1845927.pdf>

² A report on the functioning of public procurement markets in the EU: benefits from the application of EU directives and challenges for the future; European Commission, February 2004; also available at http://www.europa.eu.int/comm/internal_market/publicprocurement/docs/public-proc-market-final-report_en.pdf

- Support the World Trade Organisation (WTO) public procurement transparency efforts.³

Moreover, OECD's work on public governance assists member countries to develop and maintain effective frameworks for promoting integrity and high standards of conduct on the part of public officials. The 1998 "*OECD Recommendation on Improving Ethical Conduct in the Public Service*" provides for a set of management principles, including "clear guidelines for interaction between the public and private sectors". In addition, the 2003 "*Recommendation on Guidelines for Managing Conflict of Interest in the Public Service*" calls for review of "at-risk" areas, in particular the processing of "inside" information and contracts. It also requests a progress report on how the Guidelines are applied in public procurement and public-private partnership in a rapidly changing public sector environment.

Other regional and international organisations have also developed specific anti-corruption instruments and programmes, some of which touch upon public procurement as well. The Council of Europe, the European Union, the Organization of American States and the United Nations have adopted legally binding anti-corruption conventions. International financial institutions, including the World Bank, the International Monetary Fund and regional multilateral development banks, have included the fight against corruption in their development and funding programmes. They have also established new procurement rules and procedures to reduce the potential for misuse of funds and sanctioning them when occurring.

Transparency and accountability in government procurement is also being addressed in the World Trade Organisation (WTO) context, both by the 28 Signatories of the Government Procurement Agreement (GPA) as well as the participants in the multilateral Transparency Working Group, established at the 1996 Singapore Ministerial Conference to extend transparency in public procurement to all WTO Members.

This Global Forum will bring together major stakeholders to promote co-operation and foster mutual understanding of effective measures to fight corruption and promote integrity. This includes both national measures as well as regional and international ones. It also supports better understanding of consequences of international financial institutions' policies, including sanctioning bribing suppliers by excluding them from competitive procurement and bids financed by the institutions. Sharing of country experiences in this field can foster understanding of the need for more transparency in public procurement and further enforcement of efforts to fight corruption.

III. Participation in the Global Forum

The Forum will bring together government experts and policy makers from the 30 OECD member countries as well as from Asia and the Pacific, Central and Eastern Europe, Latin America, the Middle East and Africa. All participants will have experience in public procurement, corruption prevention, ethics and integrity management.

Business, trade union and civil society representatives are invited to the Global Forum, which provides an opportunity for all stakeholders to engage in a fruitful dialogue.

³ The OECD anti-corruption instruments can be consulted under <http://www.oecd.org/daf/nocorruption/>

IV. Organisation of the Global Forum Sessions

The Forum will alternate between plenary and break-out sessions in order to ensure good interaction between the participants.

In the plenary sessions, keynote speakers with wide-ranging experience develop the linkages between the different issues at stake. They will also highlight challenges in finding best-suited solutions to improve transparency in government revenues and expenditures as well as strengthened enforcement efforts against bribery and corruption. They will, in doing so, pay particular attention to the different stages of the public procurement process.

Parallel workshops will be organised during the break-out sessions. These workshops will allow participants to discuss best practices and whether these practices can be applied by all participating countries alike. Workshops will be led by discussants who present their views and experiences. They will engage all workshop participants by raising questions, outlining possible concerns regarding the approaches and suggesting practical solutions to the issues at stake. Participants with different backgrounds and diverse expertise should feel free to attend sessions on topics outside their normal field of expertise in order to enrich the debate.

Outcomes and recommendations from the break-out sessions will be discussed by all Forum participants during subsequent plenary sessions.

Brief presentations by workshop Chairs and rapporteurs -- limited respectively to 15 and 10 minutes -- will focus on main messages to launch discussion in the plenary sessions. Interventions from the floor should not exceed 5 minutes.

V. Detailed Programme Annotations

Plenary I. Fighting Corruption and Improving Transparency in Public Procurement

The session will address the impact and consequences of fighting corruption and increasing transparency in public procurement, namely purchase of goods and services by central or local governments or by state-owned firms.

Keynote speakers will lay out how different public and private initiatives have fostered commitments to good governance and transparency. They will address the overall economic impact as well as specific consequences on public financial management and accountability. They will also illustrate how the rule of law and particularly implementation and enforcement of anti-bribery provisions help improve management of public funds including in public procurement. They will furthermore describe non-governmental stakeholders reply to governments' sustained efforts to improve public governance and the particular attention public procurement may raise. In so doing, they will elaborate on the possible complementarities of different actions. Progress has been made. However, more must be done to improve the transparency and efficiency in public procurement as recalled by the Evian G8 Declaration on Fighting Corruption and Improving Transparency.

Building on the keynote speakers' interventions, the panel will discuss country experiences in public procurement reform and practices; and the challenge of preventing corruption in public procurement. A major thrust in recent public procurement policy has been to open up procurement markets to competition through increased transparency. Panel discussants will question whether this has also increased the risk for corruption and criminal acts, such as corruption by natural and legal persons. In case of the latter, we need to ask if different stakeholders can develop and enforce strategies to prevent corruption. The panel may

also address mechanisms that would help identify and sanction corruption adequately. Panel discussants will, based on concrete examples, help understand the different issues at stake and outline avenues to be further explored in the subsequent workshops.

Parallel break-out sessions (First day afternoon; Second day morning)

Break-out sessions will facilitate discussion between the different stakeholders. The sharing and exchange of experiences may help participants get a better understanding of participating countries' provisions and practices in public works and supplies in relation to bribery and corruption. It may also help in the assessment of the different tools put in place to improve the efficiency of public procurement methods as well as their adequacy to prevent, detect and sanction corruption. Exchange of views between experts from government, the private sector, trade unions and civil society can help identify best practices.

Discussions will build, inter alia, on the papers prepared by speakers and participants on their practice(s) and experiences. Findings of the mutual review process in the framework of the OECD Anti-bribery Convention⁴, which also reviews the public procurement provisions relating to the prevention and sanctioning of foreign public official bribery, will be taken into account. Other surveys, such as the recent OECD survey on Budget Practices and Procedures⁵ will also provide a basis for discussion. Representatives of the private sector, trade unions and civil society may comment the provisions and practices in member and non-member countries; they may also inform about complementary preventive actions initiated in reply to the regulatory environment.

Preventive provisions and measures to fight corruption and increase integrity will be reviewed in the first afternoon session. The legislative framework regulating public procurement rules and sanctioning bribery and corruption will be considered on the second day. Resulting voluntary integrity mechanisms developed by business and civil society will also be addressed.

The objectives of the workshops are described below. Specific questions to be considered by workshop participants are also outlined below.

Workshop 1

Identifying risks in the bidding process to prevent corruption

There are no statistics measuring corruption in public procurement. Typically, though, public procurement contracts may reveal errors, irregularities, corruption and fraud. Errors due to lack of training can be addressed easily. But can specific mechanisms be developed and put in place to prevent fraud and corruption and identify these misdeeds when they occur? This workshop will focus on the latter.

⁴ The OECD Working Group on Bribery in International Business Transactions is entrusted with the monitoring and follow-up of the Convention and the related revised Recommendation by Parties. According to the mechanism established, each Party's review results in a final country report, which contains an evaluation of the country's laws and practices to combat foreign bribery as well as recommendations to countries for actions. Country reports can be found under <http://www.oecd.org/daf/nocorruption/>

⁵ The survey on Budget Practices and Procedures was launched in collaboration of the World Bank, the Inter-American Development Bank and the International Monetary Fund in February 2003. The purpose of the survey was to create a database of Budget Practices and Procedures covering around 60 countries. More information on the database and the survey can be accessible at <http://www.oecd.org/gov/budget>

Before addressing the characteristics of mechanisms to prevent fraud and corruption, a better understanding is required concerning:

- methods used, at the different stages of the procurement procedure, to mask irregularities and provide the image of a legitimate operation;
- techniques to divert funds initially allocated to the operation for illegal purposes;
- manner in which the diverted funds are usurped; and
- existence of possible networks to facilitate such operations.

Workshop discussants and participants will seek to identify commonalities between different legal systems and bidding practices with regard to the questions raised. They will subsequently be able to determine the characteristics of a mechanism to prevent corruption in public procurement, including transparency measures. They will also evaluate whether those mechanisms would apply to all bids or whether specific provisions would need to be developed to address international corruption in public bids. The importance of internal and external reporting as opposed to non-reporting will be discussed. This may lead to another related and underlying concern: the opposition to or desirability to protect those who blow the whistle. The practical and legal consequences of voluntary or mandatory declaration of suspicion of misdeeds in the bidding process between the different instances i.e. the public procurement agencies and the investigative and prosecutorial authorities, will also be explored.

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Workshop 2

Improving transparency in public procurement

Transparency is considered as one of the most effective deterrents to corruption and a pre-condition for ensuring public officials' accountability. Transparency allows the public the widest possible access to documents that enables citizens and businesses scrutinise how the powers vested in public procurement officials exercise their authority. But what standards of transparency are needed to build and maintain confidence in public procurement procedures?

Workshop 2 will review emerging standards and practices applied to promote transparency of steps taken in the three phases of public procurement procedures, namely in:

- The definition of needs;
- The bidding process; and
- The post-awarding/contract management phase.

A key question is how to define the level of transparency required at the different stages of public procurement procedures (e.g. providing information on the criteria for decision-making, the results of the decision and the details of the process, such as when the decision was taken and by whom), and how to balance both stakeholders' interests and growing public expectations for equal access to public information. Workshop participants will be invited to share their experiences in emerging practices for ensuring transparency, specifically the lessons learned in involving the civil society and the business

community. On the other hand, the workshop will also address major challenges related to the close interaction with businesses, for example the experience in dealing with “informal networks” in procurement.

Providing information on conflicting private capacity interests of public officials is a precondition to ensure that these private interests do not influence decisions in public procurement. The OECD Guidelines on Managing Conflict of Interest in the Public Service⁶ provide the first international benchmark for developing and implementing a comprehensive conflict of interest policy. Participants will explore the application of a practical Toolkit developed for identifying and resolving conflicting private capacity interests of officials and exchange information on management practices to balance the demand for more transparency and the protection of privacy.

Procurement of goods through an Internet or information and communication technologies-based process (e-procurement) is emerging worldwide with the potential to standardise processes, increase their transparency, improve access to markets, and promote integrity in public bidding. In the broadest sense, e-procurement begins with contract establishment, but can also cover publicity of tenders, ordering, invoicing and payment. Efficiency needs are a driving force for e-procurement, but so are increased transparency and competition among suppliers. Access to information by citizens regarding government and administrative activities remains a basic precondition for transparency. The workshop will examine experiences of how the opening up of procurement processes can prevent corruption and reinforce ethical behaviour. Moreover participants will exchange views on the necessary conditions to ensure consistent application of laws and regulations through external scrutiny by citizens and the business community.

The main focus of the workshop will be to examine how existing tools – such as the use of new technologies (e-procurement) and formal disclosure requirements – could improve transparency in public procurement procedures, in particular:

- How successful are measures in ensuring that conflicting private capacity interests of public officials are disclosed and resolved in a timely manner?
- What mechanisms work to ensure transparency in the procurement procedures, in particular in the definition of needs and in the post-awarding process?
- How successful have e-procurement strategies and practices been in improving transparency and reducing corruption? What are the limits (and/or failures) of e-procurement strategies?

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Workshop 3

Ensuring accountability: Designing and controlling sound procurement procedures

Public procurement is an important economic activity in which governments are directly responsible for ensuring good governance in public markets. Developing a high-quality regulatory environment and ensuring its sound implementation is therefore essential to keep accountable officials in public procurement.

⁶ The Guidelines were approved in the form of Recommendation by the OECD Council in June 2003. The Guidelines and the Toolkit can be consulted at <http://www.oecd.org/gov/ethics/>

All countries share the policy goal of ensuring sound implementation and compliance with regulations through accountability and control mechanisms. Countries, however, are facing different challenges depending on their administrative context and conditions.

A growing number of OECD countries have established flexible regulatory frameworks and simplified procedures in recent years. The challenge for OECD countries has been to find solutions on how to harmonise the legal, institutional and procedural frameworks in public procurement while providing managers with sufficient flexibility. In addition, considering that flexible procurement systems imply a degree of uncertainty in control procedures, accountability practices have been evolving in order to verify whether relevant regulations and standards are being met. Co-ordinating different forms of control (local controls, accounting controls, controls made by fiscal authorities, external controls and audits) to fill-in gaps and maximise the use of information produced by different controls is a concern for OECD countries.

Other countries that introduced new procurement regimes in the last decade (e.g. transition economies) have confronted a variety of challenges related to the implementation of the enacted procurement laws. The workshop will highlight the lessons learned from introducing new procurement regimes in countries such as in Central and Eastern Europe. It will also look at mechanisms that have been successfully used to ensure the regularity, efficiency and effectiveness of the system.

Workshop 3 will review developments to develop consistent legal, institutional and procedural frameworks. More specifically, participants will exchange lessons learned on:

- Ensuring sound implementation and compliance with regulations through accountability and control mechanisms;
- Dealing with delegated power in a devolved management environment that provides more autonomy for procurement officials in OECD countries;
- Establishing new procurement systems by adopting new laws and creating institutions and developing capacities for implementation in transition countries.

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Workshop 4

Compliance with anti-corruption laws through access to public procurement: sanctioning or voluntary self regulation?

This workshop will review provisions regulating access to public procurement as a means to prevent and/or sanction corruption. Provisions regulating access to public tendering vary widely between countries. Some have laws or rules that provide for the denial of access of bidders convicted of certain offences; in certain circumstances those provisions extend to bribery.

An important part of the workshop will focus on denying access to bidders (natural or legal persons) as sanction and deterrent of corruption, including the bribery of foreign public officials. Exclusion from bidding may be governed directly by public-procurement laws or the penal code, or based on regulations and guidelines. Usually, formal exclusion procedures do not exist, and exclusion is at the discretion of the competent judicial or administrative authority which will result in so-called “blacklisting” of companies.

Denying access and “blacklisting” raise several questions related to implementation. Workshop participants will debate the pertinence of these practices with the aim to determine their effectiveness as means to prevent or sanction corruption.

Taking into account the experiences of some governments as well as some International Financial Institutions, workshop participants will address a number of questions, such as:

Is debarment from procurement of natural and/or legal person an appropriate sanction to fight corruption and what key elements need to be considered for this to be efficient and effective?

- Under what circumstances and according to which procedure is debarment imposed?
- On which basis is a bidder excluded from public tendering: its conviction, its pleading guilty or equivalent, indictment, the submission of uncontested evidence, etc.?
- How to ensure that the different agencies concerned are informed of a sanction imposed on a natural or legal person for bribery acts?
- What type of employee conduct engages the responsibility of the company?
- The nature and severity of sanctions: duration and scope of debarment with respect to public entities and conditions for obtaining rehabilitation.
- The right balance between transparency and open public procurement, and non-discriminatory treatment to suppliers in case of “blacklisting” and the rights of tenderers to participate in bids.
- The practical and legal questions regarding the transmission of data between national and international tendering, investigating and prosecutorial authorities.

Workshop discussants may discuss whether there are complementary or alternative approaches to prevent corruption. For instance, can access to procurement as an incentive -- the so-called "white list" -- be adequate to deter corruption? Indeed, some countries require that companies wishing to bid for public procurement contracts have to certify that they comply with all anti-bribery laws. However, this practice may also raise questions of potential discrimination and discouragement of small companies in this kind of bidding process. Furthermore, how are violations of commitments then sanctioned?

Workshop participants will also address questions relating to a level playing field between companies operating in different legal and political environments.

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Workshop 5

Development assistance co-operation: How procurement capacity building can help improve integrity

Over the years, donors have been confronted with many different forms of corruption, particularly in aid-funded public procurement. In fact, corruption is consistently rated as the number one problem facing aid-funded public procurement. To fully deal with corruption issues in procurement the complete chain of procurement activities must be considered, starting with the development of terms of reference and specifications through to the operational aspects of delivery and installation of goods or equipment, as well as services.

From a development agency perspective there is a variety of approaches to safeguard aid-funded procurement from corruption. These approaches are not mutually exclusive, but frequently one dominates the others:

- Fireproofing or protecting procurement directly;
- Strengthening and protecting local procurement which is delegated to partners;
- Harmonising systems and developing common approaches;
- Using procurement rules as a level to ratchet up integrity (i.e. through sanctions, blacklisting, etc.);
- Making partner country procurement systems more effective.

The lessons learned and best practices from strengthening procurement capacities can be summarised as follows:

- The majority of lessons learned and the ensuing improved procedures, manuals and best practices are at the project level. The entry point is usually improving the efficiency of the procurement system with increasing emphasis on greater transparency.
- An increasing number of projects focus on strengthening local level procurement capacity and put greater emphasis on improving transparency and citizen or civil society organisations monitoring. These pilot projects stand a chance to reduce corruption.
- There are many examples of the use of Integrity Pacts (or similar approaches), particularly in Latin America, which include ways to increase transparency, make procurement more effective, and reduce costs and corruption.
- Most success stories cite cost savings. It is not clear how much these are offset by increased supervision and how sustainable they are.
- The OECD/DAC and World Bank have been jointly supporting the development of country procurement systems. However, in general, there are still few examples of procurement improvement efforts in partner countries that have produced systemic or institutional results which are sustainable.

Based on case studies, the workshop participants will discuss the effectiveness of different approaches to ensure accountability, transparency and value for money of aid funded public procurement systems.

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Plenary II and III. Reporting workshops discussions and conclusions

The workshop chairs and rapporteurs will report back to the plenary sessions on the main issues discussed in the workshops. They will summarise the key issues and viewpoints raised in the discussions and expose the conclusions reached in the workshops. Participants will be invited to comment on the main findings and possibly make suggestions regarding the follow-up.

Plenary Session IV. Fighting corruption and promoting integrity in public procurement: Future directions

The final plenary session will focus on the main risk areas identified at the Forum. Participants will weigh up challenges reviewed in workshop sessions and explore potential ways to deal with identified risk areas. These challenges can result from the changing economic context (e.g. how to combine economic efficiency with strict adherence to legality in procurement procedures), but growing emphasis on the definition of needs and contract management also indicate potential ways for follow-up. Another key emerging area is public private partnership and how governments could provide a level playing field in new forms of co-operation with the private sector.

The session will start with a panel discussion between prominent representatives of the public sector and the civil society. The panel will provide a balance between the views of government and civil society on the challenges and measures to improve transparency and accountability in public procurement.

After the discussion, the OECD Secretariat will present the conclusions of the Forum.

VI. Practical Information

Documentation

Documentation, including copies of papers and presentations by speakers and discussants, will be distributed at the Forum.

Global Forum languages

The working languages will be English and French, with simultaneous interpretation.

Venue

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