

Fighting Bribery in Public Procurement: The work by OECD

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TOPICS TO BE COVERED

- I. OECD Anti-Bribery Instruments' procurement provision
- II. Typology on bribery in public procurement
- III. Key Findings of the typology
- IV. Conclusion

I. OECD Anti-Bribery Instruments

Procurement Provisions

1997 Recommendation of the Council on Combating Bribery of Foreign Public Officials in International Business Transactions

- » *Transparency and enhanced bribery prevention*
- » *Sanctioning bribery of foreign public officials*

The latter is part of a wider arsenal consisting of criminal as well as civil and/or administrative sanctions contained in Article 3 on Sanctions in the

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

- *Sanctions should be “effective, proportionate and dissuasive” ;*
- *criminal or non-criminal, including*
- *“temporary or permanent disqualification from participation in public procurement”.*

II. OECD Typology on bribery in public procurement

Typologie = decomposition of an offence into a series of constituents

- Public procurement is an important economic area for all countries – 15% of GDP and above
- Media reports on bribery allegations lead to believe that public procurement contracts lend themselves to bribery
- Need to better understand the different aspects of this criminal activity
- Experts from 12 countries and international organisations - with different qualifications - discussed anonymised cases

III. Key findings of the typology

- Public Procurement = a long and complex process where corruption can occur at all different phases
- Image of legitimacy to mask the irregularities
- No economy and no sector are free from risks
- Appears in association with other crimes

Public Procurement rules and procedures

- Public procurement rules do not specifically address bribery and corruption
- Absence of clear procurement rules; unclear regulations, ever-changing regulations
- Ignorance of procurement procedures may unwillingly or purposely lead to corruption

= Need clear procurement rules and procedures with bribery as one of the fundamental concerns

Risks all along the tendering process

Corruption risks at the stage of:

- Identification of needs & design of tenders
- Selecting a business
- Bidding procedure
 - *Non-competitive bidding;*
 - *Framework contracts;*
 - *Competitive bidding.*
- Contract Award
- Contract Execution

All economies and sectors are at risk

Contract size : large contracts versus subdivided projects

- High risks associated with sectors/projects for which evaluation and cost comparisons are difficult (information asymmetry).
This is generally the case for vast, highly centralised, capital intensive new projects involving high technologies or sophisticated materials.
- Smaller-sized contracts may result in high amounts when added together

Services: subjectivity and discretion leading to single source contracts.

Bribery and Corruption are not alone

Bribery and Corruption come in association with:

- ❖ Money Laundering
- ❖ Tax evasion
- ❖ Accounting crimes
- ❖ Fraud
- ❖ Collusion
- ❖ Political Party Financing
- ❖ Conflict of Interest
- ❖ Organised crime and blackmail

To fight corruption you need to introduce an arsenal of measures

Prevention

- Adequate legal frameworks
- Public notice and transparency
- Training procurement personnel
- Integrity measures
 - Clear lines of responsibility
 - Four eyes principle
 - Rotation of staff
 - Defining ethical standards
 - Integrity pacts

Accountability and control

- Internal controls
- External controls
 - External audit
 - Forensic auditors
 - Public scrutiny (public oversight bodies; parliamentary controls; direct social controls)

Detection

- Red Flags
- Reporting and recourse mechanisms
- Teamwork

Investigation and Sanctions

- Application of regulations & sanctions
- Multidisciplinary investigations
- International harmonisation and co-operation

Use of the typology

- Strengthen anti-corruption & procurement laws and systems
- Awareness-raising & Training material for both procurement and law enforcement agencies

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“Bribery in Public Procurement: Methods, Actors and Counter-Measures”

IV. Conclusion

- Fighting bribery is one of the OECD priorities
- The OECD Convention has brought about important advances in the global fight against bribery but many challenges remain
- Other international anti-corruption instruments exist which link the fight against corruption and public procurement leading to further changes
- Prevention and transparency are essential; effective enforcement of a clear regulatory framework is key

For More Information

www.oecd.org/bribery