Integrity in Public Procurement

GOOD PRACTICE FROM A TO Z

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Foreword

Public procurement is the government activity most vulnerable to corruption. Lack of transparency and accountability were recognised as a major threat to integrity in public procurement at the 2004 OECD Global Forum on Governance: Fighting Corruption and Promoting Integrity in Public Procurement.

To verify this hypothesis, the OECD Public Governance Committee has launched a survey primarily targeted at procurement practitioners in charge of designing, supervising and managing procurement processes in central governments. Auditors, members of competition authorities and anti-corruption specialists have also been involved. On the basis of the information collected, good practices were identified by government officials, representatives from civil society and private sector at the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement in November 2006.

This project maps out good practices, that is, successful measures for enhancing integrity in public procurement. It is a complementary part of multidisciplinary efforts in the OECD to improve public procurement systems, in particular:

- Assessments of public procurement systems in developing countries by the Aid Effectiveness and Donor Practices Working Party of the Development Assistance Committee[1];
- Analysis of bribery in public procurement by the Working Group on Bribery in International Business Transactions;
- Studies of the central procurement structure and capacity as well as review and remedies systems of the European Union Member States by

1. For further information, see the following webpage: http://www.oecd.org/document/40/0,2340,en_2649_19101395_37130152_1_1_1_1,00.html.

the Support for Improvement in Governance and Management Programme (SIGMA)[2].

The publication was prepared by Elodie Beth in collaboration with János Bertók of the OECD Public Governance and Territorial Development Directorate, Innovation and Integrity Division, under the leadership of Christian Vergez. The author wishes to thank the nominated experts on integrity in public procurement for their invaluable contributions, and in particular the chair of this expert group, Robert Burton, Deputy Administrator of the Office of Federal Procurement Policy in the Executive Office of the President of the United States. Special thanks go to Anikó Hrubi for her preparatory work in the identification of good practices and Marie Murphy for her assistance in finalising the publication.

2. SIGMA is a joint initiative of the OECD and the European Union, principally financed by the EU.

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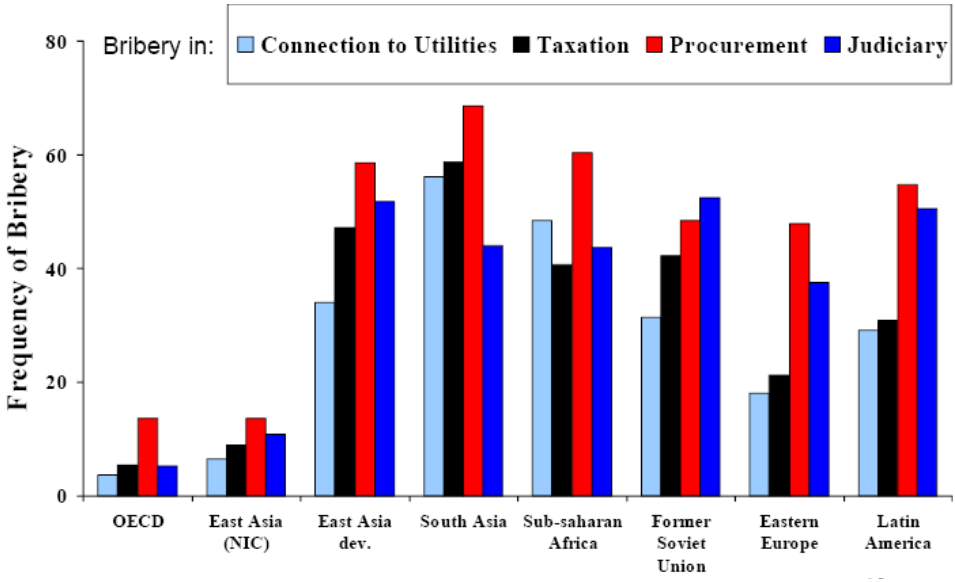
EXECUTIVE SUMMARY

PUBLIC PROCUREMENT: A BUSINESS PROCESS EMBEDDED IN A GOOD GOVERNANCE CONTEXT

The most vulnerable government activity

Public procurement has been identified as the government activity most vulnerable to corruption. As a major interface between the public and the private sectors, public procurement provides multiple opportunities for both public and private actors to divert public funds for private gain. For example, bribery by international firms in OECD countries is more pervasive in public procurement than in utilities, taxation, judiciary and state capture, according to the 2005 Executive Opinion Survey of the World Economic Forum (see also Annex A).

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?

Public procurement is also a major economic activity of the government where corruption has a potential high impact on tax payers' money. In the European Union, public procurement equalled approximately EUR 1.5 trillion in 2002[3]. In OECD countries, existing statistics suggest that public procurement accounts for 15 percent[4] of Gross Domestic Product. The financial interests at stake, the volume of transactions on a global level and the closer interaction between the public and private sectors make it particularly vulnerable to corruption.

Balancing transparency and accountability with other aims of public procurement

Corruption thrives on secrecy. Transparency and accountability have been recognised as key conditions for promoting integrity and preventing corruption in public procurement. However, they must be balanced with other good governance imperatives, such as ensuring an efficient management of public resources – "administrative efficiency" – or providing guarantees for fair competition. In order to ensure overall value for money, the challenge for decision makers is to define an appropriate degree of transparency and accountability to reduce risks to integrity in public procurement while pursuing other aims of public procurement.

Beyond the "tip of the iceberg": Addressing the whole procurement cycle

The bidding process has been the traditional focus of international efforts. However, this is only the "tip of the iceberg", the most well-regulated and transparent phase of the procurement process. At the 2004 OECD Forum[5] countries called for specific attention to grey areas that are less subject to transparency requirements and therefore potentially vulnerable to corruption. Grey areas include in particular:

- The **pre-bidding** and **post-bidding** phases, from needs assessment to contract management and payment;

3. This includes the purchase of goods, services and public works by governments and public utilities. For further details, please refer to *A report on the functioning of public procurement markets in the EU*, European Commission, February 2004.

4. The ratio indicates the total government expenditure, including compensation for employees and defence-related expenditure. For further detail, see *The Size of Government Procurement Markets,* OECD, 2002.

5. OECD Global Forum on Governance: Fighting Corruption and Promoting Integrity in Public Procurement.

- **Exceptions to competitive procedures**, that is to say special circumstances such as extreme urgency and low-value contracts.

DEFINING AN ADEQUATE FRAMEWORK FOR INTEGRITY IN PUBLIC PROCUREMENT

Providing concrete solutions, based on practice

If international efforts put forward common goals guiding public procurement reforms, that is, efficient, non-corrupt, and transparent procurement, little information is available on means and, in particular, on concrete solutions that countries can adopt to improve their public procurement systems.

In order to define an adequate framework for promoting integrity in procurement, the OECD has surveyed countries' experiences on effective practices in the full public procurement cycle. The publication maps out good practices for integrity in procurement "from A to Z". It addresses not only the bidding process but also grey areas that have been neglected by international reform efforts. It also takes a global view of procurement by including elements of good practice in OECD countries, as well as in Brazil, Chile, Dubai, India, Pakistan, Romania, Slovenia and South Africa. Identified good practices are measures that have been successful in promoting integrity in procurement in a given context.

Transparency, accountability and professionalism

The findings of the survey among procurement practitioners in central governments confirmed that transparency and accountability are key for enhancing integrity throughout the whole procurement cycle, including in needs assessment and contract management. It also revealed that public procurement is regarded increasingly as a **strategic profession** that plays a central role in preventing mismanagement and minimising the potential of corruption **in the use of public funds**.

Challenge 1: What level of transparency?

A key challenge across countries has been to define an adequate level of transparency to ensure fair and equal treatment of providers and integrity in public procurement:

- Transparency in public procurement bears an immediate cost both for government and bidders. However, it is a key element to support

fundamental principles of the public procurement system, especially competition and integrity. Governments need to find an **adequate balance** between the objectives of ensuring transparency, providing equal opportunities for bidders, and other concerns, in particular efficiency. The drive for transparency must therefore be tempered by making transparent what sufficiently enables corruption control. If the level of transparency is adequately defined, the benefits will outweigh the cost, especially when comparing the initial cost of transparency with the potential negative consequences of corruption on the use of public funds related to procurement and possibly on public trust.

- In "**grey areas**" in the public procurement process, countries may use various approaches and solutions to ensure integrity, ranging from minimum transparency requirements to additional control mechanisms. Exceptions to competitive procedures represent a "grey area", that is, vulnerable to mismanagement and potentially corruption because of limited competition. However, it is important to highlight that limited competition does not necessarily require less transparency. For example, countries may use specific measures (e.g. reporting requirements, advance contract award notice, risk management techniques, etc.) to enhance transparency and integrity while counterbalancing the lack of competitiveness in the procedures. Similarly, some countries indicated that the phases before and after the bidding are regarded rather as internal management procedures and therefore not subject to the same transparency requirements as the bidding process. This makes it all the more important to have effective accountability and control mechanisms in daily management to keep public officials accountable.

- If information is not disclosed in a consistent or timely manner (e.g. disclosure of information on other bids in the award in a context of limited competition), it might be counter-productive by increasing the opportunity of collusion between bidders who can identify their competitors early in the process and contact them. While countries are progressively disclosing more information on public procurement procedures and opportunities in accordance with Freedom of Information Acts, they are also selecting **what information cannot be disclosed**, at what stage of the process and to whom – bidders, other stakeholders and the public at large.

Challenge 2: How to turn public procurement into a strategic profession

If transparency is an integral part of good governance in procurement, it is a necessary but not a sufficient condition for integrity in procurement. Building professionalism among procurement officials with a common set of professional and ethical standards is equally important. Survey results highlighted that public procurement is a significant factor for successfully managing public resources and should therefore be considered as a strategic profession rather than simply an administrative function:

- Driven by considerations of value for money, governments have put increasing efforts into rationalising and increasing efficiency of procurement. There has been recognition that procurement officials need to be equipped with **adequate tools** for improving planning and management and that their decisions need to be well informed. For example, countries have heavily invested in new information and communication technologies (e.g. through databases on goods' prices) to support procurement officials in their daily work and decisions. With emphasis being put on efficiency, some governments have faced difficult choices, with the reduction or stabilisation of the number of procurement officials while the volume of transactions has increased over the years.

- As most countries have adopted a more decentralised approach, enhancing **professionalism** in procurement has become all the more important. Efforts have been put into providing procurement officials with adequate skills, experience and qualification for preventing risks to integrity in public procurement. Procurement officials, who are increasingly required to play a role of "contract manager" in addition to their traditional duties, have begun to gain new skills, that is, not only specialised knowledge related to public procurement, but also project management and risk management skills.

- In a devolved management environment, procurement officials also need **ethical guidance** clarifying restrictions and prohibitions to prevent conflict-of-interest situations and, more generally, corruption. At the organisational level an emerging challenge is to ensure the separation of duties between officials to avoid conflict-of-interest situations while avoiding that these "firewalls" result in a lack of co-ordination between management, budget and procurement officials.

Challenge 3: Accountability to whom?

When defining priorities, policy makers need to decide what stakeholders public procurement primarily serves – end-users, government, the private sector, the media, or the public at large. Because of the important financial interests at stake and their potential impact on tax payers and citizens, public procurement is increasingly regarded as a core element of **accountability of the government to the public** on how public funds are managed.

- Governments have reinforced their control and accountability mechanisms on public procurement in recent years. A key challenge is to define a clear chain of approval and responsibility in the public procurement process in a context of devolved procurement. Furthermore, some countries have indicated the difficulty of co-ordinating internal controls and external audits in procurement. There has been growing recognition that internal controls and external audits should be based on a more **risk-based approach** in order to help prevent and detect corruption in procurement, based on the type of procurement (e.g. specificity, complexity, value and sensitivity) and the vulnerable points in the procurement process.

- Recourse systems for challenging government decisions have become a central mechanism for bidders and other stakeholders to verify the fairness and integrity of the public procurement process, both in the public and private sectors. Several countries have established **alternative resolution systems** to judicial decisions dedicated to procurement in order to promote an effective and timely resolution of bid protests and avoid the cost of litigation. In addition to bidders, procurement officials and other stakeholders have been involved in the control of public procurement through the establishment of administrative complaint systems. Whistleblowing has only been used in a few countries despite its potential for raising concerns about public officials' misconduct, including in public procurement.

- Although countries have various accountability and control mechanisms, they have increasingly involved bidders, other stakeholders and the wider public in monitoring the public procurement process through increased access to information and active participation. Some countries have also introduced **direct social control** mechanisms by involving stakeholders – not only private sector representatives but also end-users, civil society, the media or the public at large – in scrutinising the integrity of the public procurement process.

TAKING A PROSPECTIVE VIEW OF PUBLIC PROCUREMENT: EMERGING TRENDS

From a process-based towards a knowledge-based organisation

Procurement officials' role is shifting nowadays from a simple transactional role ("buy transaction") to a management role embracing the entire procurement process, from needs assessment to contract management and payment. In many countries, the procurement process has been delegated to departments and agencies while the central procurement authority has centralised more strategic functions such as the management of new technologies as well as the dissemination of knowledge and good practice. This could indicate an emerging trend to evolve from a process-based to a **knowledge-based procurement organisation**. Being less involved in the daily management, the organisation focuses on knowledge sharing among departments and provides an enabling environment for achieving value for money.

Survey results have confirmed that one of the most pervasive change factors for procurement is the use of **new information and communication technologies**. They have influenced policies and practices and revolutionised how goods and services are purchased. They have also become a central instrument for promoting transparency in procurement and keeping procurement officials and contractors accountable. In particular they have provided easy and real-time access to information, new ways for interaction between bidders and government officials, and facilitated the monitoring and tracking of information on procurement.

A convergence of integrity instruments for the public and private sectors

As public procurement officials are increasingly working closely with private sector actors to develop and deliver the solutions that promote value for money, they need adequate guidance. Enhancing professionalism requires not only management procedures but also a clear set of values and ethical standards clarifying how to achieve this objective. Countries expressed the need to develop a **model code of conduct** for procurement officials defining clear restrictions and prohibitions, as well as giving recommendations on how to handle their interaction with the private sector[6].

6. There was consensus on that issue at the 2006 OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement.

In light of increasing public expectations and potential reputation risks for individual companies and professions, **private actors** are also starting to take positive steps in this regard. They have developed integrity standards and instruments, for example with the adoption of quality management and integrity norms, codes of conduct or the certification and audit by a third independent party of their integrity systems. This raises the question of how governments could encourage these initiatives and under what conditions. When selecting a supplier, should the government include criteria linked to corporate social responsibility, and if so, how to ensure that these efforts are founded and that the criteria do not artificially reduce competition? With the convergence of integrity instruments used by public and private actors, partnerships between governments and potential suppliers could be further encouraged.

Exploring the conditions for public procurement to be a lever for wider economic, social and environmental change

Public procurement is increasingly recognised as an instrument of government policy and a lever for wider economic, social and environmental change. There is a debate in multilateral institutions such as the European Union and the World Trade Organisation on the extent to which international regulations allow for a wider view of public procurement than a business process. If countries are concerned about how **economic, social and environmental criteria** may be used in public procurement without harming the integrity of the process, few have tackled the issue. A challenge is to define how to possibly include economic, social or environmental considerations in the process while ensuring that government decisions are fair and transparent.

As public procurement has become increasingly global, it is turning into a global concern. Procurement decisions illustrate the challenges of achieving **sustainability** in a global economy. In particular, one of the difficulties for governments is to monitor the implementation of the contract by contractors and subcontractors that are often outsourced and ensure that labour and environmental standards are respected. It is the ultimate responsibility of governments to set and enforce clear public standards for both the main contractor and subcontractors, defining the parties' responsibilities for integrity.

POSSIBLE NEXT STEPS FOR THE OECD

Building on a better understanding of successful strategies and practices for enhancing integrity in public procurement, there is a new impetus for developing a non-binding policy instrument at the international level. At the OECD Symposium and Global Forum on Integrity in Public Procurement in November 2006, country experts called for a **Checklist** for enhancing integrity at all stages of public procurement, from needs assessment to contract management and payment. The Checklist could list the key building blocks, that is, policies and tools for promoting integrity, transparency and accountability in the public procurement process. In order to ensure that this policy instrument fits into different regional contexts, a series of regional dialogues will be organised to test the Checklist. This will involve all major stakeholders, in particular representatives from government, the private sector, civil society organisations and international organisations.

INTRODUCTION

Public procurement is increasingly recognised as a central instrument to ensure efficient and corruption-free management of public resources. In this context, the role of procurement officials has changed dramatically in recent years to cope with the demand for integrity in public procurement. Countries have devoted efforts to ensure that:

- Public procurement procedures are transparent and promote fair and equal treatment;
- Public resources linked to public procurement are used in accordance with intended purposes;
- Procurement officials' behaviour and professionalism are in line with the public purposes of their organisation;
- Systems are in place to challenge public procurement decisions, ensure accountability and promote public scrutiny.

The approach in this publication is to analyse public procurement from a good governance perspective, identifying the conditions under which elements of good governance – in particular transparency and accountability – contribute to integrity and corruption prevention in public procurement (see Survey Methodology in Annex B).

Considering that there is not a single "one size fits all" solution, this publication provides a comparative overview of solutions used by public organisations for ensuring integrity and corruption resistance at all stages of public procurement, from needs assessment to contract management. It also highlights elements of good practice to illustrate the range of policy options available to policy makers and procurement officials for improving public procurement systems.

In order to help central governments modernise existing procurement policy and practice, four issues are reviewed:

- **Risks to integrity at each stage of the public procurement process.** The publication starts with an inventory of risks to integrity that have been identified in countries at all stages of the public procurement process, that is, not only in the bidding but also in the pre and post-bidding phases.
- **Promoting transparency: potentials and limitations**. The second Part reviews the potentials and limitations of transparency in promoting a level playing field for bidders. It also maps out alternative solutions to competitive procedures used in countries to ensure integrity in public procurement.
- **Enhancing professionalism as a key element to prevent risks to integrity in public procurement.** The third Part highlights efforts to equip procurement officials with adequate skills and instruments to increase professionalism and value for money, as well as a clear set of ethical standards clarifying how to achieve these objectives.
- **Ensuring accountability and control in public procurement.** The fourth Part reviews existing and emerging mechanisms used for ensuring accountability and control in public procurement.

I. RISKS TO INTEGRITY AT EACH STAGE OF THE PUBLIC PROCUREMENT PROCESS

Based on the results of the survey questionnaire, this Part provides an inventory of the risks to integrity that have been identified in countries. It is important to recognise that risks may stem from a simple mistake in performing an administrative task to a deliberate transgression of relevant laws and related policies.

The inventory highlights that there are **critical risks to integrity at all stages** of the public procurement process, from the needs assessment through the bidding to contract management and payment. The following tables indicate the particular risks[7] for each stage of the public procurement process.

PRE-BIDDING: STARTING FROM NEEDS ASSESSMENT

In the pre-bidding, the most common risks include:

- The lack of adequate needs assessment, planning and budgeting of public procurement;
- Requirements that are not adequately or objectively defined;
- An inadequate or irregular choice of the procedure; and
- A timeframe for the preparation of the bid that is insufficient or not consistently applied across bidders.

7. These risks or concerns were mentioned by countries in the response to the OECD Questionnaire on Integrity in Procurement, as well as in discussions at the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement in November 2006.

Table I.1. Risks in pre-bidding

Pre-bidding	Risks identified
- Needs assessment, planning and budgeting	- The lack of adequate needs assessment, deficient business cases, poor procurement planning (e.g. in the Netherlands, New Zealand, Spain, Turkey); - Failure to budget realistically (e.g. in the United Kingdom), deficiency in the budget (e.g. in Spain); - Procurements not aligned with the overall investment decision-making process in departments (e.g. in Canada); - Interference of high-level officials (e.g. in the Czech Republic, Poland, the Slovak Republic) in the decision to procure; - Informal agreement on contract (e.g. in Brazil).
- Definition of requirements	- Technical specifications: a) Tailored for one company (e.g. in Belgium[8], Canada, Poland, Spain and the United Kingdom); b) Too vague or not based on performance requirements (in countries such as Chile and Germany). - Selection and award criteria: a) Not clearly and objectively defined (in countries such as Poland and Slovenia); b) Not established and announced in advance of the closing of the bid (for instance in New Zealand); c) Unqualified companies being licensed, for example through the provision of fraudulent tests or quality assurance certificates (for instance in the United Kingdom).
- Choice of procedure	- Lack of procurement strategy for the use of non-competitive procedures based on the value and complexity of the procurement which creates administrative costs (for instance in Canada); - Abuse of non-competitive procedures on the basis of legal exceptions (e.g. in Belgium, Finland, Netherlands and Slovenia) through: a) Contract splitting on the basis of low monetary value contracts; b) Abuse of extreme urgency; c) Abuse of other exceptions based on a technicality or exclusive rights, etc; d) Untested continuation of existing contracts.
- Time frame for preparation of bid	- A time frame that is not consistently applied for all bidders, for example, information disclosed earlier for a specific bidder (in countries such as Belgium and Norway); - A time frame that is not sufficient for ensuring a level playing field (for instance in New Zealand).

Sources: - Country responses to the OECD Questionnaire.
- Discussions at the OECD Symposium, Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement, November 2006.

8. For further information on the risks identified in Belgium and the responses developed, see Box IV.5.

In the needs assessment phase, risks have been recognised[9] as being particularly high, due to the potential **influence of external actors** such as politicians or consultants on officials' decisions. In the 2006 *Handbook on Curbing Corruption in Public Procurement*, Transparency International identified examples of the most usual manifestations of corruption in the needs assessment:

- The investment or purchase is unnecessary. Demand is induced so that a particular company can make a deal but the purchase is of little or no value to society.
- Instead of systematic leak detection or grid loss reduction (both of which offer little reward), new capacity is installed (which offers bribe potential).
- The investment is economically unjustified or environmentally damaging.
- Goods or services that are needed are overestimated to favour a particular provider.
- Old political favours or kickbacks are paid by including a "tagged" contract in the budget (budget for a contract with a "certain" pre-arranged contractor).
- Conflicts of interest are left unmanaged and decision makers decide on the need for contracts that have an impact on their former employees ("revolving doors").

This shows that procurement processes provide opportunities for political corruption[10] in the needs assessment. This may encompass a variety of situations, including the use of procurement as a public policy tool to pay back political support or ensure future support (e.g. political campaign financing, rewarding supporters, etc.) or in some cases directly finance politicians' own private benefits. If public procurement is used for supporting national goals (e.g. local industry, employment of targeted groups, etc.) without the necessary transparency in the procurement process, this may also possibly lead to corruption.

9. This was highlighted in the discussions at the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement, November 2006.

10. *Global Corruption Report, Special Focus: Political Corruption*, Transparency International, 2004.

BIDDING

In the bidding phase, countries indicated the following risks:

- Inconsistent access to information for bidders in the invitation to bid;
- Lack of competition or in some cases collusive bidding resulting in inadequate prices;
- Conflict-of-interest situations that lead to bias and corruption in the evaluation and in the approval process;
- Lack of access to records on the procedure in the award that discourages unsuccessful bidders to challenge a procurement decision.

Table I.2. Risks in bidding

Bidding	Risks identified
- Invitation to bid	- Information on the procurement opportunity not provided in a consistent manner; - Absence of public notice for the invitation to bid (e.g. in Finland); - Sensitive or non-public information disclosed (e.g. in Belgium, Mexico, the United Kingdom, the United States); - Lack of competition or in some cases collusive bidding that leads to inadequate prices or even illegal price fixing (e.g. in Austria, the United Kingdom).
- Award	- Conflict of interest and corruption (e.g. in Canada, Germany, New Zealand, Norway, the United Kingdom) in: a) The evaluation process (e.g. familiarity with bidders over the years, personal interests such as gifts or additional/secondary employment, no effective implementation of the "four-eyes" principle, etc.); b) The approval process: no effective separation of financial, contractual and project authorities in delegation of authority structure; - Lack of access to records on the procedure.

Sources: - Country responses to the OECD Questionnaire.
- Discussions at the OECD Symposium, Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement, November 2006.

The bid evaluation has been considered a particularly vulnerable step[11]. A key concern is the lack of transparency when using economic, social and environmental criteria to evaluate bidders (e.g. favouring bidders from

11. This was highlighted in the discussions at the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement and the back-to-back Global Forum, November 2006.

economically disadvantaged areas, using environmental-friendly materials, etc.). For countries that allow the use of these criteria, regulations do necessarily clarify how they may be used together with other evaluation criteria without harming the integrity of the public procurement process. Even when the evaluation criteria are defined in a transparent and precise manner, they usually offer discretion to evaluators. If bidders are to trust and respect the outcome, they need to know how discretion was exercised and how criteria were applied.

POST BIDDING: TAKING IN CONTRACT MANAGEMENT AND PAYMENT

In the post-bidding phase, the most frequent risks to the integrity of the public procurement process include:

- The insufficient monitoring of the contractor;
- The non-transparent choice or lack of accountability of subcontractors and partners;
- Lack of supervision of public officials;
- The deficient separation of financial duties, especially for the payment.

Table I.3. Risks in post bidding

Post bidding	Risks identified
- Contract management	- Failure to monitor performance of contractor (e.g. in Ireland, Norway, New Zealand, Mexico, Slovenia, Spain), in particular lack of supervision over the quality and timing of the process that results in: a) Substantial change in contract conditions to allow more time and higher prices for the bidder; b) Product substitution or sub-standard work or service not meeting contract specifications; c) Theft of new assets before delivery to end-user or before being recorded in the asset register; - Subcontractors and partners are chosen in a non-transparent way, or not kept accountable.
- Order and payment	- Deficient separation of duties and/or lack of supervision of public officials (e.g. in Belgium, Italy, the United Kingdom) leading to: a) False accounting and cost misallocation or cost migration between contracts; b) Late payments of invoices, postponement of payments to have prices reviewed so as to increase the economic value of the contract; c) False or duplicate invoicing for goods and services not supplied and for interim payments in advance of entitlement.

Sources: - Country responses to the OECD Questionnaire.
- Discussions at the OECD Symposium, Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement, November 2006.

Several countries emphasised that the phases before and after the bidding are not regulated by procurement laws but rather by civil and contract law. Therefore they are often less subject to transparency and accountability requirements, which entail risks to integrity in public procurement.

Regarding the specific risk of bribery in public procurement, information can be found in *Bribery in Public Procurement: Methods, Actors and Counter-Measures*, OECD, 2007[12].

To address risks to integrity, the next Parts review the following issues:

- **The lack of transparency in procurement** – This may take various forms such as the provision of inconsistent or incomplete information to bidders, insufficient transparency in the use of non-competitive procedures, or procurement regulations and procedures that are unclear for bidders.
- **Insufficient professionalism of officials** – This may translate into poor planning, budgeting and risk management for procurement, leading to unnecessary delays and cost overruns for projects. In other words, public officials are not necessarily well prepared to keep up with professional standards. Furthermore, officials may not necessarily be aware that their acts are unethical or may bias the process which can lead to conflict-of-interest situations and sometimes corruption.
- **Inadequate accountability and control mechanisms** – Unclear accountability chains for officials, lack of co-ordination between different control mechanisms or insufficient supervision over contractors' performance might lead to mismanagement and even

12. The report describes how bribery is committed through the various stages of government purchasing; how bribery in public procurement is related to other crimes, such as fraud and money laundering; and how to prevent and sanction such crimes. The typical motivations and conduct of the various actors engaging in corruption are also highlighted.

corruption, especially in "grey areas" where there are fewer requirements for transparency.

The publication looks at approaches and solutions for promoting integrity in the full procurement cycle, from needs assessment, planning and budgeting, through the bidding to contract management and final payment.

II. PROMOTING TRANSPARENCY: POTENTIALS AND LIMITATIONS

Attracting a sufficient number of bidders in public procurement through processes that are open and fair is a key concern. To ensure a level playing field for bidders, all countries recognise the need to provide:

- Transparent and readily accessible information on general laws, regulations, judicial decisions, administrative rulings, procedures and policies on public procurement; and
- Equal opportunities for participation of bidders through a competitive procedure, and the provision of consistent information to all bidders on the procurement opportunity, in particular on the method for bidding, specifications, as well as selection and award criteria.

Transparency could be considered a public good[13] that bears an immediate cost for both government and bidders. A balance must be found between transparency and its contribution to corruption control with other considerations such as efficiency. In practice countries have adapted the level of transparency and openness of the procurement procedure according to a number of factors, including the sensitivity of the information and the **specificity and value** of the public procurement.

BALANCING THE NEED FOR TRANSPARENCY WITH OTHER CONSIDERATIONS

The sensitivity of the information

There are some restrictions on the information governments make available to protect:

- **Commercially-sensitive** information for bidders (e.g. content of competitive bids such as commercial secrets, individual prices, etc.); and

13. This concept was introduced by Steven Schooner, Keynote Speaker at the 2006 OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement.

- **Security-sensitive** information for the State (e.g. defence, national security) that could harm interests of the bidders or of the State.

For example, if the names of bidders are disclosed before the submission of the bids, this could encourage firms to co-ordinate their bids on procurement, leading to collusive price-fixing behaviour. Firms may agree to submit common bids, thus eliminating price competition or alternatively agree on which firm will be the lowest bidder and rotate in such a way that each firm wins an agreed upon number or value of contracts. The example below highlights the prevention measures that Japan has put in place in recent years to prevent bid rigging in procurement.

Box II.1. Bid rigging in public procurement in Japan: Prevention measures and recommendations

Bid rigging in the procurement process, when favoured bidders have the possibility to adjust their bids after receiving information about rival bids, is one of the most serious breaches of the Antimonopoly Act. Accordingly, the Japan Fair Trade Commission has taken proactive and strict measures against bid rigging.

The following table highlights the numbers of the Japan Fair Trade Commission's legal actions in recent years against antitrust violations as a whole and against bid rigging.

Fiscal Year	2001	2002	2003	2004	2005
Number of Legal Actions against Anti-trust	38	37	25	35	19
Of which Bid Rigging	33	30	14	22	13
Number of Entrepreneurs Object of Legal Actions against Anti-trust	928	805	405	472	492
Of which Bid Rigging	908	762	376	449	473
Amount of Surcharge (billion yen) against Anti-trust	2.2	4.33	3.87	11.15	18.87
Of which Bid Rigging	1.72	3.22	3.83	3.45	18.8
Number of Entrepreneurs Object of Surcharge against Anti-trust	248	561	468	219	399
Of which Bid Rigging	240	546	467	194	392

In addition, the recent amendments of the Antimonopoly Act – came into effect in January 2006 – introduced a leniency programme to give companies an incentive to voluntarily refrain from collusive bidding. It also introduced compulsory measures for criminal investigations and increased the surcharge rate to make the provision prohibiting bid rigging more effective.

Moreover, for the purpose of preventing procurement officials from getting involved in bid rigging, the Act on Elimination and Prevention of Involvement in Bid Rigging came into force in January 2003. This Act provides that the head of procurement institutions shall take action to

eliminate involvement if requested by the Japan Fair Trade Commission. The recent amendment enacted in December 2006 introduced criminal penalties against officials involved in bid rigging.

In order to promote competition and prevent cartels in public procurement, the Japan Fair Trade Commission made the following recommendations:

- For cases that should be subject to competition, open bidding should be the appropriate form.
- To prevent bid rigging, the names of designated bidders should be announced after the submission of bids, because the prior announcement of their names would enable those planning bid rigging to obtain information about candidate bidders, thereby making it easier for them to conduct bid rigging.
- It would also allow those planning bid rigging to obtain important information and would raise a contract price if the estimated price by a procurement institution is announced before the submission of bids. In view of this, the estimated price should only be announced after the submission of bids.

Sources: - Japan, response to the OECD Questionnaire.
- *Roundtable on Competition in Bidding Markets: Note by Japan,* discussion document, September 2006.

The specificity and value of the procurement

A balance must be found between the need for transparency and other considerations such as efficiency depending on the type of contract at stake. Therefore, the information made available and the means for its dissemination vary proportionally to the size of the contract and the specificity of the object to be procured. Box II.2 highlights an example of application of the proportionality principle in publicising procurement opportunities in France and how the discretionary power of official for low-value contracts has been balanced with stronger accountability mechanisms.

Box II.2. Applying the principle of proportionality in publicising procurement opportunities in France

The legal principle of proportionality requires administrative actions be proportionate in a reliable and predictable way with the objectives pursued by the law.

In procurement, the proportionality principle requires that information be made public according to the size of contracts. The Code of Public Procurement Contracts, which came into effect on 1 January 2006, stipulates the principle of proportionality for publicising bidding opportunities in France, namely:

- Public procurement procedures above the threshold defined by the European Directives must be published in the Official Journal of the European Union (OJEU), as well as in the procurement publications part of the official gazette of the French Republic (*Bulletin officiel des annonces des marchés publics*, BOAMP).
- Public bids above EUR 90 000 but under the European threshold are to be published in the BOAMP, and can also be published in specialised journals.
- The publication of bids below the value of EUR 90 000 must be adapted to the size and importance of the contract. Finding the most adequate solution for publishing is the responsibility of the procurement officer who has discretionary power to select the most adequate solution amongst available options, including the official gazette, regional or national bulletins, specialised journals or press. To balance this increased discretionary power of procurement officers, control has also been strengthened to detect mismanagement or abuse and transfer of such cases to court.
- Contracts below EUR 4 000 are exempt from mandatory publication.

Source: France, response to the OECD Questionnaire.

For **major procurement projects**, governments may use additional requirements such as increased transparency, guidance or controls. For instance, in Poland, for contracts above a certain amount, an *ex-ante* control of the award of public contracts is carried out by the Public Procurement Office.

Box II.3. *Ex-ante* control of the award of major public contracts in Poland

With the 2004 Public Procurement Law, the *ex-ante* control of the award became mandatory for public contracts of high value in Poland. The mechanism is used for contracts above EUR 20 million for public works and EUR 10 million for public supplies and services.

The aim of this preventive mechanism is to avoid improper spending of public money and reveal possible infringements before the conclusion of contracts, such as:

- Negligent preparation of contract award procedures;
- Incorrect evaluation of submitted bids or requests to participate in award procedure;
- Definition of the terms of participation in the award procedure in a way obstructing fair competition;
- Failure of demand to submit documents necessary to evaluate whether an economic operator satisfied the conditions for participation in the award procedure;
- Failure to exclude economic operators from a procedure in a situation when the premises for exclusion existed;
- Failure to reject a bidder in a situation when the premises for rejection existed.

Awareness-raising and training activities were also carried out to reinforce the professionalism of procurement officials.

In case of major infringement of public procurement that influenced the results of the procedure or the selection of the bidder, the Public Procurement Office may recommend the re-evaluation of the bidders, or the cancellation of the whole procedure. When infringements of the Public Procurement Law are neither substantial nor had influence on the result of the procedure, the recommendations may concern future proceedings in the scope of confirmed infringements.

As a result of these reforms, the statistics below indicate the decline of the number of infringements:

Results of ex-ante controls carried out by the Public Procurement Office (in %)

	May 2004 – Jan. 2005	*Jan. – July 2006*
No infringements found	14	23
Recommendation to cancel procedure	18	3
Recommendation to re-evaluate bid	5	2
Minor infringements	63	72
Total	100	100

The findings of the *ex-ante* controls are published in periodic reports every six months and are widely distributed (e.g. on the website of the Public Procurement Office). The information included in those reports have a preventive effect as they draw the attention of awarding entities to the scale, type and weight of infringements found and, as a result, enable to avoid similar errors in future procedures.

Sources: - Case study provided by Poland for the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.
- Report on *Functioning of the Public Procurement System in 2005*, Public Procurement Office, June 2006.

BEFORE, DURING AND AFTER THE BIDDING: WHAT LEVEL OF TRANSPARENCY FOR EACH STAGE?

Another key factor for defining the level of information is **the stage** of the public procurement process. Contrary to the bidding process that is strictly regulated, the phases before and after the bidding are less subject to transparency and accountability requirements in a majority of countries.

Pre-bidding

In the pre-bidding, in **a third of countries** potential bidders and other stakeholders, in particular end-users have an opportunity to be associated in the drafting of specifications for the object to be procured. Governments consult stakeholders on the specifications of procurement items prior to the bid notice in order to engage in a dialogue with the private sector and encourage innovation, especially for complex contracts (e.g. technical issues, difficulty in estimating prices, etc.). This may take the form of an invitation to companies to submit suggestions on line, surveys among bidders or a market study.

A concern is to ensure that the process for integrating their views is **not biased** to avoid specifications being targeted at one company. Countries indicated the necessity to have a sufficiently large number of participants to represent the views of the industry, as well as clear criteria to select them to avoid potential conflict-of-interest situations. For instance, in Belgium, a pre-information notice may be used to invite all interested bidders to participate in the preparation of the market study and then the results of this consultation are reviewed in light of the initial market overview prepared by the procuring authority. In Germany, precautionary measures include a formal commitment by stakeholders not to commit misconduct and corruption, its exclusion from follow-up contracts and its potential liability for prosecution in case of breach.

More generally, it is increasingly recognised that the public sector needs to take a more systematic and **strategic approach** to managing major government markets and providing industry with clearer view of public sector demand in order to improve competition and long-term capacity. An emerging practice is to organise seminars together with bidders early in the process to increase the exchange of information between the public sector and companies and provide the opportunity for the industry to discuss possible solutions (e.g. in Belgium, Finland, Germany, Ireland and the United Kingdom).

Bidding

In the bidding process, three quarters of countries use **new information and communication technologies** (ICTs) in order to release information on procurement opportunities in an open and competitive manner. At the European level, one of the ambitious targets of the Action Plan is that by 2010 all public administrations across Europe will have the capacity to carry out a hundred percent of their procurement electronically, where legally permissible, thus creating a fairer and more transparent market for all companies. The example of Portugal below illustrates how countries are progressively moving the different stages of procurement activities on line, including contract management and payment, in order to enhance transparency and efficiency.

Box II.4. Implementing an online platform covering all stages of procurement in Portugal

The Portuguese e-Procurement Programme was launched in June 2003 as a priority target of the National Action Plan for the Information Society. This system, implemented by the Knowledge Society Agency (UMIC), was set up with the main objectives of creating a centralised and high-quality technological platform that promotes efficiency and competition through increased transparency and savings in the whole public procurement process.

The National e-Procurement Portal (http://www.compras.gov.pt) started as a portal only providing information, but now it also offers the possibility of downloading the whole bid documentation and specifications free of charge. Also, the portal automatically releases public bid announcements, allows public or restricted procedures, receives suppliers' queries and manages all communication and information exchange on line. The next steps include the implementation of a Contract Management Tool that allows consulting and monitoring of contracts concluded as well as enables e-invoicing. The Information Management System will also help collect, store and systemise information and statistics on the procurement process.

In order to aggregate at a central level the needs of public bodies, an Electronic Aggregation Tool was developed to promote standardisation of goods and services as well as to facilitate planning, management and control. In the near future, further tools will be implemented, such as the National Register of Suppliers, which is a central suppliers' repository, and the Central Electronic Catalogue with information on products and services from the registered State suppliers.

In addition to increased transparency, the acquired knowledge and proactive management orientation, the system has also produced significant cost and time savings as well as structural rationalisation. As a result, total savings reached EUR 7.8 million for a total negotiation of EUR 39 million since September 2003. Eight ministries have already adopted new procedures, 796 public bodies and 1389 people were involved in the project.

Successful implementation of the project requires an adapted human resource management approach in order to motivate and mobilise the stakeholders. It also necessitates further standardisation of processes on the one hand, and product and service codification and standardisation on the other hand.

Sources: - Portugal, response to the OECD Questionnaire.
- The Portuguese e-Procurement Programme, 2006.

In order to ensure a level playing field in the bidding process, a majority of countries have not only ensured the wide dissemination of the bid notice but also developed specific measures to ensure that bidders:

- **Receive clear documentation on the procurement opportunity** to ensure an accurate understanding by bidders. A vast majority of countries have devoted significant efforts in recent years to develop model documents (e.g. through template bid documentation, standard sets of clauses and conditions, standard procurement guidelines, etc.). In Hungary, a legality control before the publication of procurement notices has been established (see Box II.5);
- **Receive information early about evaluation criteria**, i.e. how bids will be evaluated in the process. In Pakistan, Letters of Invitation are often used for ensuring that the short listing of consultants is based on clear and objective evaluation criteria (see Box II.6). The criteria and relative weightings, if appropriate, must be published in a timely manner so that bidders are aware of them when preparing their bid, for instance in Mexico and Norway. In Mexico, criteria are included in the bidding conditions and may be revised by a Bidding Conditions Revising Sub-Committee as well as be subject to public scrutiny before the publication of the notice. In the United Kingdom, the software for bid evaluation requires that criteria are established early in the process and also records them to ensure the possibility of auditing them;
- **Receive information at the same time** when bid requirements change. This is done in a written form through online notification or additional information published on e-procurement websites (e.g. in Belgium, Canada, Ireland, Mexico and Norway). In addition, it may be published in an official gazette or posted by suppliers in query mailboxes, for instance in the United Kingdom;
- May ask for further **clarification** or information, keeping in mind that information on questions and answers should be consistently disseminated to all bidders. Countries usually organise information sessions and may provide a contact point for information (e.g. in Belgium, Canada, Germany and Mexico) that sends back information to all bidders. In Mexico an online module enables bidder to observe clarification meetings;
- Have **sufficient time to prepare bids.** For example, additional information must be delivered - at least twelve days in the Czech Republic - before the time limit for receiving bids.

Box II.5. *Ex-ante* legality control of procurement notices in Hungary

It is the task of the Public Procurement Council to monitor the public procurement processes in Hungary. The Council is an autonomous public body reporting directly to Parliament every year on public procurement. It contributes to the development of public procurement policy, and its recommendations also assist in preparing and amending legislation.

In addition to available *ex-post* control and remedy possibilities, a specific filter mechanism was established to check compliance of procurement notices with national legislation and to detect and prevent any unlawful element before the bidding process starts. The Public Procurement Council requires a legality control, by the Editorial Board, before the publication of all procurement notices. In case of non-compliance with the law, the Public Procurement Council calls upon the bidder to complete or modify the notice before submitting it for publication.

According to the statistics available to the year 2005, out of 25 000 documents, the Council had to call on nearly 75%, requesting that the procurement notices be adjusted before their publication. Once the Public Procurement Council has required precisions and modifications from public authorities, they have generally accepted to make changes in line with the legal requirements. If not, the President and the Members of the Public Procurement Council may initiate an ex officio proceeding of the Arbitration Board. This *ex-ante* filter mechanism has therefore helped prevent a high number of *ex-post* remedies.

In addition to *ex-ante* legal control, since 2004 the Public Procurement Act also requires the contracting authorities to publish a notice on the amendment and execution of the contract in the Public Procurement Bulletin. The provisions of the Public Procurement Act set out strict conditions for amending the contract. The provisions narrowed this possibility to such events that were not foreseeable and would jeopardise the legitimate interests of a party in case of executing the contract in its original form.

Source: Hungary, response to the OECD Questionnaire.

Box II.6. Definition of objective criteria for evaluation in Pakistan

In the last seven years Pakistan made various efforts to promote good governance and accountability in its government contracting system. In co-operation with Transparency International (TI) Pakistan, the government implemented **practical tools for increasing transparency,** particularly the Integrity Pact that was first applied for the project of K–III Greater Karachi Water Supply Scheme in 2001. This project consisted of two successive phases assisted and monitored by TI to help implement the Integrity Pact: the selection of consultants for the design and supervision; and the selection of contractors.

In the first phase of the project, the IP for contracts related to the K–III was signed by all consultants and contractors participating in the bidding. For the selection of the consultants TI Pakistan assisted in the transparent short listing of consultants based on **clear** and **objective evaluation criteria included in the "Letter of Invitation"**. The selection was based on the two-envelope system, that is, two separate envelopes; one for the technical and one for the financial proposals. Opening the envelopes with the financial proposals is preceded by the verification and approval of the technical proposal. This system ensures that the evaluation not only takes into account the price but also the quality of each bid. The contract was finally awarded to the proposal with the highest technical requirements and the possible best price for this technical level.

The second phase of the project, that is, the bidding process for the contractors was concluded in September 2003, and the overall cost attained nearly PKR 4 485 million (Pakistan rupee). TI Pakistan estimated the net savings at PKR 837 million.

Sources: - Case study provided by Pakistan for the OECD Global Forum on Governance: Sharing Lessons on Promoting Integrity in Procurement, November 2006.
- *Curbing Corruption in Public Procurement*, Transparency International, December 2006.

Countries have recognised the importance of **communicating award results** in a transparent manner. The objective is to create a relationship of trust with the bidder that the process has been conducted in a fair manner and improve value for money for future procurements by providing feedback and advice to bidders on how to improve their bids.

All countries provide at the minimum the name of the successful bidder and the reasons for the rejection of the offer to the unsuccessful bidder. However, the level of information provided varies significantly depending on the country. For instance in the United Kingdom, the Ministry of Defence has decided to publish on line information on contract award that it cannot reasonably expect to protect under the Freedom of Information Act. This information includes the contractor's name, nature of goods and services, award criteria, rationale for contract awards, headline price of winning bid, and the identities of unsuccessful bidders. However, no information should be released on the competitor's bid. On the contrary, in Finland, bidders may ask for the winning bid document after **confidential information** has been removed by the successful bidder (e.g. business secrets).

The provision of information is done in **three quarters of countries** through the publication of the contract award as well as a debriefing on request. Several European countries have a double publication at the national level and in the Official Journal of the European Union. More than half of countries use new information and communication technologies to communicate award results.

The debriefing is usually made in writing. Very few countries mentioned the procedure used for approving the debriefing reports. In Norway, all reports must be approved by the procurement division and normally also by a specific board. In a few countries there is a possibility to request an **oral debriefing** that is usually carried out after the award (e.g. in Canada, Ireland, the United Kingdom and the United States). However, in the United States the debriefing can also be requested before the award so that bidders who have been excluded in the pre-qualification receive information early in the process. Some countries have developed detailed guidance for procurement officers to ensure that they do not release commercial in-confidence information (e.g. business secrets) that could contribute to the collusion of bidders, and that they have necessary experience or sensitivity to carry out the interview with the bidder successfully. The example of the United Kingdom below illustrates the potential benefits of debriefing for both the procuring authority and the bidders (see Box II.7).

Box II.7. Debriefing in the United Kingdom

If regulations require departments to debrief candidates in contracts exceeding European thresholds in the United Kingdom, the Office of Government Commerce (OGC) also strongly recommends debriefing in contracts below thresholds.

Debriefing candidates not selected for a bid list and unsuccessful bidders is incumbent on the contracting agency or public organisation. Debriefing provides a valuable opportunity for both parties to gain benefit from the process, and thus it is considered a useful learning tool for the parties.

Debriefing is also useful **for the buyer** department or agency because it may:

- Identify ways of improving processes in the future;
- Suggest ways of improving communications;
- Make sure that good practice and existing guidance are updated to reflect any relevant issue that have been highlighted;
- Encourage better bids from those suppliers in future;
- Get closer to how that segment of the market is thinking (enhancing the intelligent customer role);
- Help establish a reputation as a fair, open and ethical buyer with whom suppliers will want to do business in the future.

Debriefing also has **potential benefits for the supplier,** as it:

- Helps companies to rethink their approach in order to make future bids more successful;
- Offers targeted guidance to new or smaller companies to improve their chances of doing business in the public sector;
- Provides reassurance about the process and their contribution or role (if not the actual result);
- Provides a better understanding of what differentiates public sector procurement from private procurement.

Debriefing discussions – either face-to-face, over the telephone or by videoconference – are held within maximum 15 days after the contract is awarded. The sessions are chaired by senior procurement personnel who have been involved in the procurement.

The topics for discussions during the debriefing depend mainly on the nature of the procurement. However, the session follows a predefined structure. First, after introductions, the procurement selection and evaluation process is explained with openness. The second stage concentrates on the strengths and weaknesses of the supplier's bid to build a better understanding. After the discussion, the suppliers are asked to describe their views on the process and raise any further concerns or questions. More importantly, at all stages it remains forbidden to reveal information about other submissions. Following the debriefing, a note of the meeting is made for the record.

The most important result of an effective debriefing is that it reduces the likelihood of legal challenge because it proves to suppliers that the process has been carried out correctly and according to rules of procurement and probity. Although the causality between the introduction of detailed debriefing and legal reviews cannot be proven, there has been a sharp decrease in the last decade in the number of reviews (from approximately 3 000 in 1995 to 1 200 in 2005).

Nevertheless, debriefing contains risks and costs if it is not properly conducted. In particular debriefing should never be delegated to employees who do not have the necessary experience or sensitivity to carry out the interview successfully. Inaccurate debriefing led to complaints resulting in the European Commission beginning infraction proceedings against the United Kingdom and legal proceedings against the contracting authorities themselves in the High Court.

Sources: - United Kingdom, response to the OECD Questionnaire.
- *Supplier Debriefing*, OGC Publications.
- *Debriefing Unsuccessful Suppliers*, Environment Agency, United Kingdom.

To provide bidders with sufficient time to challenge the decision before the contract starts, most countries have a **standstill period** between the date of notifying bidders of their contract award decision and the date they may enter into the contract. This standstill period varies significantly in practice, for example 5 days in Portugal, 10 days in Korea, and 21 days in Finland. At the European level, the Commission has proposed an amendment to the Remedies Directive to include a mandatory standstill period of 10 calendar days. The introduction of a standstill period at the European level has been highly debated. If it does promote the fairness of the procedure by providing

a dedicated time for challenging the decision, it also has the potential of influencing decision makers towards systematically using competitive procedures to avoid their decision being challenged. This illustrates the difficulty in procurement to balance concerns of fair and equal treatment with efficiency concerns.

Post-bidding

The post-bidding phase is regarded as an **internal management process** between the administration and the supplier that is subject to less strict requirements for transparency. It is not covered by procurement laws and regulations but rather by contract law. Very few countries, such as Denmark and Sweden indicated that the contract should be open to the extent that it does not reveal secret information that could harm the interests of the contractor or the State.

In a vast majority of countries, the contract management is only known by the contracting agency and the contractor. As mentioned earlier, a core challenge is to ensure that the project is being carried out in accordance with specifications, in particular in terms of quality and quantity of materials used, timely provision of all components. Another common issue in the post-bidding process is whether the payment is carried out in a timely manner.

Therefore, it is all the more essential to strengthen **guidance and accountability** mechanisms for procurement officials and contractors to prevent risks to integrity in the post-bidding phase. Countries have introduced various measures, such as:

- **Adequate planning**. Having an adequate plan for public procurement can help the agency to analyse its need and select the best procurement option to prevent mismanagement and even corruption in procurement. The bid notice may include details on the way the contract is to be managed as well as the plan and method for payment, for instance in Canada, Ireland and the United Kingdom;
- **Risk management techniques**. An internal risk matrix for the administration helps ensure the involvement of specialist contract staff for high-risk contracts, for instance in Australia, New Zealand and the United Kingdom. In Canada, risk assessment and risk management plans are provided as part of the bidder's solution;
- **Restrictions and controls over change in the terms of the contract**. The procurement authority needs to justify variations, e.g. in Italy, Korea, Mexico and the United Kingdom. This may be subject to an internal or external review including a third party (e.g. involvement of

an unsuccessful bidder in the monitoring in the case of changes to the contract). Furthermore, the delegation of authority for approving technical or financial variations may also be done only up to a certain threshold, which requires that additional change orders beyond this threshold be approved by higher authorities;

- **Accurate and timely supervision** by managers, control agencies, with regular reporting on the progress of the project, for instance in Belgium. An emerging practice in countries such as Spain is for the government to use companies specialised in monitoring;
- **New technologies to monitor** the progress of the contract and the payment, which are widely used in Mexico and Korea. In Portugal, a contract management tool will allow the change and validation of commercial aspects and the control of compliance to contract terms by suppliers. Box II.8 illustrates the experience of the Central Vigilance Commission in India, which has made risk management tools an integral part of the e-bidding and e-payment processes with the support of new technologies (e.g. automatic reports, exception alerts, etc.);
- **Shared** accountability. Countries often use models for risk sharing between the contracting authority and the contractor, such as performance bonds. For example, the government receives a substantial sum in the event of default in the execution of the contract in Japan. On the other hand, if invoices are not paid within the term established in the contracts, the government agency agrees to pay interest, which may be a cause of liability for the procurement officer in charge, such as in Mexico;
- **Public scrutiny**. A key condition of public scrutiny is the access of stakeholders and the public to records. In Norway archived contracts and all related documents are available to the press. This is all the more important if there have been changes to the contract, for instance all amendments are recorded in writing in the United Kingdom. In very few countries, public scrutiny is ensured through the involvement of stakeholders in the post-bidding phase (see Box II.9 on the experience of Korea in using new technologies to involve third parties).

Box II.8. Increasing transparency in vulnerable areas through new technologies in India

The Central Vigilance Commission is an independent central body in the Indian administration which was set up by the Government in 1964 with the objective of advising and guiding Central Government agencies in planning, executing, reviewing and reforming their anti-corruption efforts.

Following numerous complaints about the mishandling of administrative processes that may lead to corruption in the administration (e.g. delays and arbitrariness; non-adherence to the 'first-come-first-served' principle, etc.), the Commission decided that all organisations that deliver services or are at the interface with the general public or with private businesses, must increase the transparency and accountability of their activities through the use of new information technologies.

As far as the public procurement process is concerned, the Commission identified the following areas where information technology can promote efficiency as well as curb corruption through increased transparency:

- E-bidding, in particular with the mandatory publication of procurement opportunities and documentation on line;
- E-payment, which helps reduce transaction costs as well as curb corrupt acts that may accompany handing over cheques to contractors and suppliers.

With the support of new technologies risk management tools are made an integral part of the main processes. For example, the accounting software can be built in such a way that the computer system generates 'exception reports' and gives alerts wherever there are significant deviations from certain benchmarks and norms, and it can also make comparisons of expenditures on procurement items.

The extensive use of the website can be used both as a tool for communication with stakeholders and for curbing corruption through increased transparency in processes that are vulnerable, not only in public procurement but also in customs and in the collection of income tax.

Sources: - Case study provided by India for the OECD Forum on Governance: Sharing Lessons on Promoting Integrity in Procurement, November 2006.
- Circular N°40/11/06: Improving vigilance administration by leveraging technology, Central Vigilance Commission, Government of India, 2006.

Box II.9. Involving third parties to monitor on line the contract management in Korea

The nationwide integrated Korea Online E-Procurement System (KONEPS) enables online processing of all procurement from purchase request to payment. Through the digitalised system, customer organisations and companies are involved in scrutinising the way public funds are managed in the procurement process. The System covers all stages of the procurement process, from the pre-bidding to contract management and payment. For example, the Public Procurement Service releases specifications of procurement items on the KONEPS prior to the bid notice in order to encourage interested suppliers to submit suggestions.

The Korean experience illustrates how new technologies can support the involvement of a third party - an insurance company - that provides a guarantee for the contract between the administration and the bidder. The successful bidder and the contracting agency establish an e-contract through KONEPS, and in the process, a surety insurance company, as a third party, shares part of that information regarding the contract. In practice, the contracting official receives both the contract documents provided by the contractor and the written guarantee for the contract provided by the surety insurance company, and replies to the guarantee. The contracting officer drafts the final version of the contract after clarification and sends it to the contractor and the end-user organisations.

Another feature of the information system is that it helps monitor the payment and prevent risks to integrity during payment. The contractor submits a payment request and receives payment upon receipt, which is sent by an inspector from an end-user organisation. Since the e-payment is connected to the Finance Settlement, the end-user organisation, the contractor and the bank share information in the flow of payment. Payment is automatically completed on line within two working hours upon payment request to avoid overdue payment.

Source: South Korea, response to the OECD Questionnaire.

EXCEPTIONS TO COMPETITIVE PROCEDURES: HOW TO ENSURE INTEGRITY?

If open procedures are favoured in all countries, procurement laws and regulations define alternative procedures – restrictive/selective as well as negotiated/limited procedures that can be used under strict conditions. The method favoured is often based on the **type** of product or service and its **overall value**. At the European level a procedure, competitive dialogue, can also be used for complex contracts where the open or restricted procedure is not appropriate, but there are no grounds for using the negotiated procedure.

Types of exceptions

To ensure a level playing field, procurement laws and regulations define **a strict list of exceptions** to competitive procedures that are based on the following circumstances:

- Specific nature of the contract to be procured which results in a lack of genuine competition in the market (e.g. technical or artistic reasons, proprietary rights, etc.);
- Low value of the contract: the national thresholds under which direct purchasing is allowed vary across countries (e.g. equivalent to EUR 17 500[14] in Canada, EUR 6 000 in Poland, EUR 5 000 in Portugal);
- Commodity (e.g. goods that are traded at the same price);
- Exceptional circumstances such as extreme urgency. As a principle, factors giving rise to extreme urgency must be unforeseeable and outside of the control of the contracting authority;
- Confidentiality of the procurement to protect State interests, such as national security and other public interests.

Limited competition does not necessarily requires less transparency

A key challenge is to ensure equal and fair treatment for bidders, even when using procedures that are less subject to competition. Experience shows that limited competition does not necessarily require less transparency. In these circumstances, **alternative measures** have been used in countries for reinforcing the fairness and integrity of the procurement process, in particular:

- The **strict definition of criteria for using non-competitive procedures** and their application under verified conditions (e.g. impossibility to have follow on contracting for contracts of low value to avoid splitting of contracts);
- The **publication of an advance contract award notice** in order to provide an opportunity for potential bidders to participate in the procedure in cases where there is not absolute certainty that only one firm has the ability to perform the contract (in Canada, see Box II.10);

14. Calculated as an equivalent to CAD 25 000 in January 2007.

- The **opening of bids in an official manner**, involving several persons, especially for negotiated/direct procedures, supported by double signatures, for instance in Belgium;
- **Specific guidance** to procurement officials for ensuring the fairness of the procedure through directives and internal policies, in countries such as the Czech Republic and Ireland;
- **Additional controls to verify** the justification of the legal derogation in the approval phase by specific internal control agencies or departments (e.g. in Belgium, Canada, Ireland and the Netherlands). On the other hand, there may be a committee bringing together officials involved in procurement and representatives from internal control agencies for instance in Mexico;
- **Specific reporting requirements** for using exceptions to competitive procedures (e.g. in Australia, Belgium, Luxembourg, Mexico, Portugal, the Slovak Republic and the United States);
- The **verification of the justification** for using direct procedures by the Supreme Audit office, in countries such as Germany, Ireland, Norway and Portugal;
- **Minimum transparency requirements**. This can lead to the publication of the contract award notice to ensure sufficient publicity, for instance, in New Zealand and Korea. Other transparency requirements may include a written record on the justifications of derogation from competitive procedures for possible review, in countries such as Australia, Ireland and New Zealand. In a few countries, publicity rules apply for all procedures, only the means for communication vary, for instance in the Netherlands and Sweden (see Box II.11).

Box II.10. Ensuring a level playing field: The Advance Contract Award Notices in Canada

The Advance Contract Award Notice (ACAN) is an electronic bidding methodology that is normally used when there is a possibility that only one supplier can perform the work defined in the bid documentation. In circumstances where detailed market knowledge confirms this as fact then the contract should be awarded on a non-competitive basis with transparency achieved through a contract award notice.

The objectives of the Advance Contract Award Notice process are to:

- Provide a procurement process that is efficient and cost effective;
- Provide potential suppliers with the opportunity to demonstrate, by way of a statement of capabilities, that they are capable of satisfying the requirements set out in the ACAN; and
- Respect the principles of government contracting by enhancing access and transparency.

An Advance Contract Award Notice contrasts with non-competitive contracts in a number of ways. Notices provide all suppliers with an opportunity to signal their interest in bidding, through a statement of capabilities. They are posted for a minimum of 15 calendar days on the Internet on the government's electronic bidding service. The system operates 24 hours a day, 7 days a week. Notices open the process to additional electronic or traditional processes if a supplier's statement of capabilities is valid.

The Advance Contract Award Notices may be used when there is a justifiable reason not to call for bids, provided that the notice clearly explains the nature of the work to be done, the name of the proposed contractor, the estimated cost, why bids are not being called, and sufficient time (15 days) is allowed for potential challengers to come forward. If there is a valid challenge to the proposed contract award, it must not be ignored.

Sources: - Canada, response to the OECD Questionnaire.
- Guide for Managers – Best Practices for Using Advance Award Notices, http://www.tbs-sct.gc.ca

Box II.11. Ensuring transparency below the European Union threshold in Sweden

In Sweden, public procurement is regulated by the Public Procurement Act (LOU), which is based on the Directives of the European Commission. After 1992, when the Swedish Government implemented the Public Procurement Act, the share of openly advertised public procurement in the GDP[15] increased significantly at the European Union level (from 0.12% in 1993 to 3.4% in 2004). It is one of the highest among EU member states.

The Government took one step further in July 2001 by making the publication of notices below the European Union threshold mandatory in Sweden. Before this date, there were no laws regarding advertisement, only rules that the public bodies had to invite at least three bidders in an open procurement process.

The Swedish procurement procedures below European thresholds are very similar to the ones above the thresholds. Having one set of rules above and below the threshold helps promote transparency and equal treatment for bidders. In accordance with the Public Procurement Act, all three options that could be used for procurement procedures below the threshold ensure a minimum of publicity in procurement, namely:

- The simplified procurement procedure, the most commonly used procedure below the threshold, requires that notices be published through an electronic database readily accessible for all potential bidders.
- In a selective procurement procedure (the equivalent of the selective procedure in the case of procurements over the European threshold values), the notices must also be published through an electronic database accessible to all.
- Even in case of direct procurement procedures, the notice must be openly accessible to all stakeholders on the public procurement website.

Information on stages of the public procurement process from the pre-bidding, through the selection and award, to the debriefing of award results and contract management and payment are openly accessible on the procurement website.

Sources: - Sweden, response to the OECD Questionnaire.
- A Brief Description of LOU by the National Board for Public Procurement.
- Eurostat: http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,39140985&_dad=portal&_schema=PORTAL&screen=detailref&product=STRIND_ECOREF&language=en&root=STRIND_ECOREF/ecoref/er040.

15. Openly advertised public procurement refers to the value of public procurement that is openly advertised as a percentage of GDP. The nominator is the value of public procurement, which is openly advertised: for each of the sectors - work, supplies and services - the number of calls for competition published is multiplied by an average based, in general, on all the prices provided in the contract award notices published in the Official Journal during the relevant year. The denominator is the GDP.

Specific efforts for procurement projects at-risk

Some countries have made particular efforts to ensure the integrity of the process when using non-competitive procedures that are considered particularly at risk, especially low-value contracts, emergency procurement and defence procurement.

Low-value contracts

In the case of **low-value contracts**, a balance must be found between the need for transparency and other considerations, in particular efficiency. For example, at the European level, there are no mandatory rules for public contracts with respect to specific services ("IIB services") and for contracts with a low monetary value. However, following a notice of the European Commission in this respect (2006/C179/02) and a recent opinion of the Advocate General in the case Commission v. Ireland (C-507/03 and 532/03), some countries in the European Union have initiated efforts to address this issue. For instance, in the Netherlands, since 2006, contracting authorities publicly announce a request for competition regarding low-value contracts to ensure transparency while they have the flexibility to determine the medium through which contracts will be publicly announced. In the Czech Republic, a central register was created in 2006 for publishing above and below-the-threshold contracts in the form of a notice in the Information System on Public Contracts (see Box II.12).

Box II.12. Central register for publishing contracts in the Czech Republic

With the accession to the European Union (EU) in May 2004, the Czech Republic committed to enhancing transparency in public procurement.

Accordingly, the Act on Public Contracts which came into force on 1 July 2006 makes the publication of public contracts below EU thresholds mandatory both at national and EU levels. The contracting authority is obliged to publish contracts above and below the threshold in the form of a notice in the Information System on Public Contracts. This central register - a sub-system of the Information System on Public Contracts - was created and launched with the Act on 1 July 2006, and replaced the former publication system (the Central Address).

The data on public procurement is collected in the Information System on Public Contracts run by the Ministry for Regional Development. On the basis of this data it is possible to compare the proportion of above-the-threshold contracts or small size contracts or to verify whether negotiated procedures without publication are not excessively used or whether the contracting entities fulfil their duties concerning publication of contract notices. These findings can help prevent and detect irregularities in the system.

In accordance with the "National Plan for the Introduction of Electronic Public Procurement over the Period 2006-2010", the notification will be entirely in electronic form by 2010.

Sources: - The Czech Republic, response to the OECD Questionnaire.
- Case study provided by the Czech Republic for the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.

Emergency procurement

As for **emergency procurements**, derogations from competitive procedures offer the needed flexibility for procurement officials to order on-the-spot goods and services to face emergencies. However, there is growing awareness that emergency procurements hold important risks for mismanagement and possibly corruption resulting from the amount of funds that are transferred in a short period of time, the lack of a co-ordinated response from government agencies and the possible disorganisation of accounting systems. The example below illustrates the inherent difficulties in preventing fraud and corruption in emergency contracting and the lessons learned from the Hurricanes Katrina and Rita in the United States.

Box II.13. Emergency contracting in the United States: Improving transparency and accountability

The Federal Government's response to Hurricanes Katrina and Rita in August and September 2005 resulted in increased oversight of its contracting practices. The devastation of the Gulf Region and the unparalleled response and recovery efforts created significant challenges for public procurement officials.

During the emergency, communication among agencies was limited, authorities of the various response organisations were unclear, and contracting oversight was not commensurate with the risk inherent in the disaster. These factors adversely affected contracting transparency and raised questions regarding the scope of the contracts awarded and the work being done. The federal government saw the need to improve emergency communication plans, preparedness, and oversight and institutionalise improved emergency response capabilities.

Public procurement experts created an Emergency Response and Recovery Team to address issues that arose during Hurricane Katrina. The Team developed an Internet-based resource that includes checklists, existing contracts, samples, emergency field guides, training, best practices, and other resources.

The team surveyed personnel who were deployed to the Gulf Region and identified numerous lessons learned regarding transparency and accountability (see: http://www.acc.dau.mil/emergency response). Lessons learned are being shared government-wide and provided in training to improve emergency contracting in the future. Some of the lessons learned are listed below:

- Agencies should consider the creation of a risk mitigation board to control the increased risks during an emergency. Such boards allow for increased communication, clear policy direction, and effective resource utilisation. The board is most effective when integrated into the agency's management structure and when composed of key agency stakeholders, including contracting officers, procurement policy analysts, small business representatives, representatives from the Office of the Chief Financial Officer, representatives from the Inspector General's office, and technical experts, such as programme managers.
- Agencies should develop stewardship plans to review the results from an appropriate sampling of their emergency acquisitions. Reviews should give increased attention to

transactions that are conducted using emergency acquisition flexibilities, These transactions comprise increased thresholds sole-source transactions of a high-dollar value, and other risky acquisitions, including those involving complex technical requirements or marketplace solutions.

– Agencies should consider limiting the value and length of a contract to address only the most immediate emergency and should pursue firm-fixed price contracts whenever practicable.

Although significant efforts were made, the 2006 report of the Government Accountability Office (GAO) called for further efforts to reinforce more effective controls to prevent and detect fraud in emergency contracting. According to the GAO report, tens of millions of dollars have continued to be lost through improper and/or fraudulent payments following the hurricanes Katrina and Rita. Payments include rental assistance paid to individuals who had already been provided with free housing, duplicate payments to individuals who claimed damages to the same property from both hurricanes Katrina and Rita as well as financial support for foreign students, temporary workers and other individuals who were not eligible.

Sources - Case study provided by the United States for the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.
- *Hurricanes Katrina and Rita Disaster Relief – Continued Findings of Fraud, Waste and Abuse,* United States Government Accountability Office, 2006 (http://www.gao.gov/new.items/d07252t.pdf).

Defence procurement

Some countries have also initiated specific efforts to improve integrity in the area of **defence procurement**, which often requires the use of non competitive procedures to keep national security interests confidential. For instance, in Korea, the Defence Acquisition Programme Administration, based on the 2005 Law on Defence Acquisition, ensures that external experts are engaged in the decision-making process of major projects through a specific Committee aimed at strengthening transparency and monitoring of the procurement system. In Poland, the Ministry of Defence has co-operated with a civil society organisation to address risks in defence procurement (see Box II.14).

Box II.14. Partnering with civil society organisations to address risks in defence procurement in Poland

In 2004 Transparency International (TI) launched a project to reduce corruption and build integrity in defence and security institutions. As defence is a particularly sensitive sector, governments are aware of the potential costs of corruption in defence and are therefore willing to take preventive anti-corruption measures.

This project is based on several pillars. First of all, to build awareness and co-operation with key groups –exporting and importing governments, defence ministries, suppliers and international institutions such as the North Atlantic Treaty Organisation (NATO) – then build practical experience, and apply this in practical work with reform-minded governments. A crucial point is the political will and support of arms exporting governments. The support of NATO is also very important, considering its influence in many countries and its capacity to promote leadership training and education.

In Poland, anti-corruption efforts have focused primarily on more effective detection of criminal activity and subsequent punishment with the creation of a special secret service, the Central Anti-corruption Bureau. As a result of co-operation with TI United Kingdom, the Defence Ministry of Poland has also taken the following steps:

- Appointment of a Director to set up an anti-corruption policy;
- Efforts to eliminate conflicts of interests among members of bidding commissions;
- Limitations to the use of single-source procedures and promotion of competition;
- Prosecutions at high level (e.g. First General charged in a corruption case);
- Introduction of elements of Defence Integrity Pacts in bids for VIP aircraft and transport helicopters;
- Use of electronic auctions (30 in 2006, 400 planned for 2007) in the Defence Ministry.

Transparency International is assisting anti-corruption projects for defence procurement in other countries including Colombia, India, Latvia, Poland and South Korea.

Source: M. Pyman and M. Wnuk, *Reducing Corruption, Building Integrity in Defence and Security Institutions*, XIIth International Anti-Corruption Conference, November 2006. (http://www.transparency.org/content/download/12840/127158/file/12thIACC_Pyman-presentation.pdf).

III. ENHANCING PROFESSIONALISM TO PREVENT RISKS TO INTEGRITY IN PUBLIC PROCUREMENT

Public procurement is increasingly recognised as a profession that plays a significant role in the successful management of public resources. In the last decade reform efforts have often occurred in **cycles**, as public procurement has gone through substantial changes in terms of priorities, needs and capacity. In many cases these reforms been driven by *ad hoc* scandals.

As countries have become more aware of the importance of procurement as an area vulnerable to mismanagement and potentially corruption, they have recently initiated efforts to integrate procurement in a more **strategic view of government actions**.

This has also led some countries to recognise procurement as a **strategic profession** rather than simply an administrative function. This requires specific guidelines as well as restrictions and prohibitions to:

- Ensure that public funds are used for the purposes intended;
- Enable public officials to adapt in a changing environment;
- Minimise the potential for corruption.

USING PUBLIC FUNDS ACCORDING TO THE PURPOSES INTENDED

Public officials need to be equipped with **instruments,** as well as a range of procurement, project and risk management **skills** to properly plan and manage procurement processes, in accordance with the budget.

Planning

As part of an effort to adopt a long term and strategic view of their procurement needs and management, **more than a third of countries** have used annual procurement planning. Procurement authorities are required to

review their purchasing processes, and identify improvement goals, targets and milestones that closely link with their business plans, outputs and government objectives. Annual procurement plans may also be publicised so as to inform providers of forthcoming procurement opportunities (e.g. in Australia, Chile, Mexico, Poland). These plans usually contain a short strategic procurement outlook for the agency supported by details of any planned procurement, in particular the subject matter and the estimated date of the publication of the bid notice.

In addition, project-specific procurement plans can also be prepared for specific purchases of goods and services that are considered high value, strategic or complex in countries such as Australia, Finland and New Zealand. The purpose of project-specific plans is then to assist the agency to analyse its need and select the best procurement option for large-scale procurements that are particularly vulnerable to mismanagement (e.g. overrun costs, failure to complete work on time, defective product, etc.) and potentially corruption. The government of Australia has identified a Checklist of probity issues that can be used in the construction of a probity plan (see Annex C for details).

In order to ensure that public funds are used according to the purposes intended, annual procurement planning might encompass various aspects linked to the attainment of **government or department objectives**, in particular:

- **Financial and human resources requirements** for attaining objectives, initiatives and planned results - over a period of one year in Belgium and three years in Canada. For instance, in Belgium, it is necessary to justify not only the object but also the amount, and prove that the amount is based on a realistic price assessment.
- **Departmental or individual performance** to provide accounts of results achieved in the most recent fiscal year against performance expectations, for instance in Canada and Chile. Balanced scorecards are a tool used in countries such as Belgium and Korea that translate the strategy into action and provide feedback on a regular basis to improve strategic performance and results. To provide the right incentives for procurement officials and encourage them to improve value for money, individual performance appraisals should be carried out at different points of the contract, especially for multi-year contracts, and take into account criteria that are not only linked to timeliness but also quality.
- Some countries, have extended accountability from using expenditures for the "purposes intended" to **outcomes achieved with those expenditures**, for instance in Canada (see Box III.2). This approach can

help verify, for example, that transparency policies in procurement are defined in line with the government strategy and support it in practice. A specific process is used to justify the use of public procurement procedures and verify whether the aggregation of the benefits and costs - including overhead costs - of a procedure contribute to the overall value for money.

Budgeting

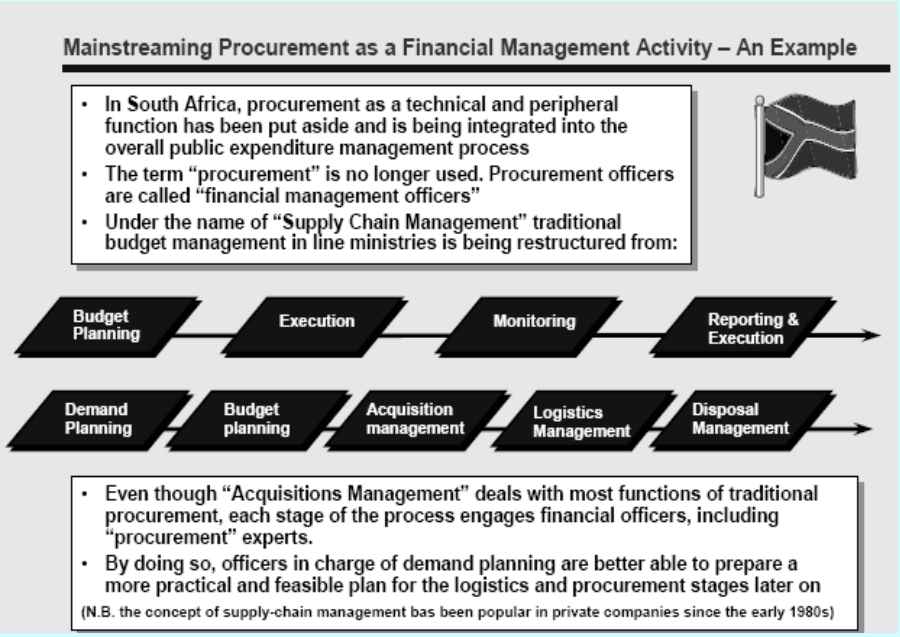
Appropriately budgeting procurement is a key element of transparency and accountability in the way public funds are managed. The budget is the **single most important policy document** of governments, whereby policy objectives are reconciled and implemented in concrete terms.

Budget transparency can be defined as the full disclosure of all relevant fiscal information in a timely and systematic manner. Countries have indicated that **financial commitments** need to be approved before starting the procurement. For instance, in Luxembourg, the first step is the control of the commitment and the order to pay all expenses, the verification of the availability of credits, the correctness of the budgetary commitment, the regularity of proofs and the correct execution of internal controls. Public agencies are also required to justify expense and show that they fit into the objectives of the budget allocated.

A growing concern is to ensure that **public procurement is an integral part of the public financial management**. Transparency and therefore visibility in management and financial performance begins with the budget process. It must be reflected throughout key management processes and practices to support investment decisions, asset management, procurement, and in the final results be reflected in sound corporate reporting. Transparency is an essential condition of integrity in the management of the entire life-cycle from expenditure planning to final results. Box III.1 illustrates the efforts in South Africa to establish strong integration across the budget cycle in order to make the entire public financial management system accountable for achieving results.

Box III.1. Integrating procurement in financial management in South Africa

A higher degree of integration of procurement and financial management has been achieved in South Africa since the change of regimes in 1994. Within this overall approach, procurement has been recast as a process of supply chain management – involving decisions to acquire assets, maintain assets, and sell off unnecessary assets. The scheme below represents the different elements of the South African system for managing public procurement.



As a consequence of this redesign, procurement is no longer treated as a purely technical process, and procurement specialists now work alongside other leading officials and participate in decision making on how agencies manage their assets and spend their resources. The designation of "procurement specialist" may have lapsed as a result, but the changes have served to highlight the importance of having professionals with wide-ranging skills in the planning and execution of procurement.

Source: *Harmonising Donor Practices for Effective Aid Delivery: Strengthening Procurement Capacities in Developing Countries*, OECD, 2005.

Similarly, strengthening **accountability for public expenditures** has been an important part of reform efforts in the last decade. This may take various forms:

- Providing the opportunity and the resources to **Parliament** to examine fiscal reports on public procurement;

- Making reports **publicly available**, for example, on the Internet;
- **Promoting an understanding** of the budget process by civil society organisations and the wider public[16].

Furthermore, some countries have put efforts into reinforcing internal **responsibility mechanisms**, in particular through a statement of responsibility by the senior official responsible, more stringent performance reporting in departments and improved systems of internal financial control. For instance, in Canada, the current reform has not only reinforced planning and budgeting reporting requirements but also created an integrated model linking appropriation, budgeting, investment, procurement and contract management processes, validated by a robust audit process (see Box III.2).

Box III.2. Promoting integrity in public procurement: Budgeting and financial management reforms in Canada

Canada's long-established Financial Administration Act requires that funds be used for the purposes intended as approved by Parliament. It is also the basis for ensuring an **appropriate segregation** whereby budget procurement, project and payment verification activities are conducted by individuals from separate functions and **distinct reporting relationships**.

Current reform efforts are underway to **extend accountability** from using expenditures for the "purposes intended" to "**outcomes achieved**" with those expenditures. In particular the Management Reporting and Results Structure Policy establishes more structured and detailed appropriations documents and performance reporting both in departments and to Parliament. An Assets and Acquired Services Policy Framework also requires since November 2006 that procurement activities be clearly aligned with expected results of key programme activities and demonstrate how they contribute to expected outcomes.

The 2006 Federal Accountability Act also seeks to reinforce citizens' confidence in procurement through:

- An overarching **statement of procurement principles** that commits the government to promoting fairness, openness, and transparency in the bidding process;
- The inclusion of **integrity provisions in contracts**;
- The creation of a **dedicated Procurement Auditor** to review procurement practices across government, handle complaints from potential suppliers, review complaints from contract management, manage an alternative dispute resolution process for contracts and submit an annual report to Parliament.

In addition to establishing the planning and budgeting reporting requirements, the new frameworks and supporting policies recognise the importance of:

- An **enabling environment** for contributing to realising outcomes that promotes governance and effective processes (e.g. management reporting, management capacity);

16. For further details, see the *OECD Best Practices for Budget Transparency*, OECD, May 2001.

- Having an **integrated model** linking appropriation, budgeting, investment, procurement and contract management processes, validated by a robust audit process. This is a significant departure from long-established practice of silo functions with limited financial management and performance information and a transactional approach to audit;
- **Building capacity** through training at all levels of management as well as greater reliance on professionally accredited or certified communities of practice and external recruitment.

Sources: - Canada, response to the OECD Questionnaire.
- Case study provided by Canada for the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.

New technologies may also be a tool for facilitating the integration of different processes linked to the procurement process. Box III.3 illustrates how Dubai has brought together in a mixed online system the budget, purchasing and payment processes, which helps reduce the duplication of procurement functions and promote a more unified flow of information within the administration.

Box III.3. Integrating processes on line for budget, purchasing and payment in Dubai

Dubai has established regulations to enable the development of an integrated e-procurement system, *Tejari*. *Tejari* is a government-initiated, profit-driven online marketplace that enables all phases of the negotiation to take place on line. In addition, government departments use an Enterprise Resource Planning system that can be used for making purchases requests since it is linked to the accounting and invoicing system. These systems are used together in an integrated manner. All government departments use a shared internal information system collecting all information together. Tejari consists of several purchase processes and functions:

- *e-Bidding: Tejari* collects and evaluates bids;
- *e-Cataloguing*: It gives the possibility of uploading and searching;
- *e-Ordering* for orders and invoices;
- *e-Auctioning*, including e-Marketplace, negotiation, reverse auctions;
- *Tejari Link:* This market-making facility supports small and medium-size businesses, where a company can log on to a national directory and view contracts, promotions and messages, as well as establish showrooms;
- *Tejari Expert:* This consulting service helps streamline the procurement process for large organisations.

In 2006 Tejari has more than 4 000 suppliers, and the vast majority are from the private sector. As the Government is the largest buyer in the region, 60% of the procurement spending comes from the government sector. Since the launch of e-procurement in 2000, the value of business through this system represents over two billion USD, and over 100 000 items in the catalogue are available.

With the introduction of Tejari, Dubai has benefited in particular from the reduced duplication of procurement functions and offices, and a more unified and user-friendly procurement system that brings together budget, purchasing and payment processes on line. Obstacles that still need to be overcome include the lack of adequate skills in the government and the need to ensure a wider participation by suppliers. Efforts have been initiated in that direction with awareness raising activities as well as training for both public sector employees and suppliers.

Online purchases were made in two important sectors in the public administration, the Armed Forces and the Ministry of Health. The government estimated resulting average savings of 40% on equipment and 14% on hardware compared to traditional purchasing modalities.

Sources: - Presentation of Dubai at the OECD High Level Seminar on E-procurement. Good Governance for Development in Arab Countries Initiative, Naples, January 2006.
- E-procurement in the United Arab Emirates, in *E-procurement for Good Governance and Development in Italy, North Africa and the Middle East*, Centre for Administrative Innovation in the Euro-Mediterranean Region.

Another related challenge is the difficulty of **defining a budget consistent with the expected costs of a solution** ensuring value for money. To develop a sound cost estimate for procurement based on a good

understanding of the market and solutions available, countries have used solutions, in particular:

- Making reference to established market prices – e.g. in the United Kingdom with commercial catalogues – or calculating the cost based on detailed market research, for instance in Turkey;
- Engaging with a representative group of suppliers to that market early in the process, in countries such as Belgium, the Netherlands and Turkey;
- Another common practice is to use knowledge of prior procurements of a similar nature, for example through a database or data mining.

A CHANGING ENVIRONMENT: ENABLING PROCUREMENT OFFICIALS TO ADAPT

From procurement officer to "contract manager"

Public procurement systems in countries have moved increasingly from a situation where procurement officers are expected to comply with rules to a context where they are given more flexibility to achieve the wider goal value for money. As countries have developed flexible regulatory frameworks and simplified procedures, a trend is to develop uniform documentation to ensure consistent implementation of rules. In order to raise awareness about evolving procurement standards, procurement officials have been involved – directly and/or through professional associations – in the **drafting or revision of procurement laws, regulations and guidelines**. More than a third of countries have consulted officials involved in the procurement process. Some countries such as Finland have even sought public comment to reflect the views of other actors, in particular of business and non-governmental organisations. This has contributed to building a mutual understanding among officials of expected standards and to facilitating their implementation.

Furthermore, most governments have provided increasing responsibility for procurement, daily management being passed to individual public sector entities, while overall oversight and co-ordination of public procurement activities has been concentrated in the central public procurement body. A report from SIGMA on *Central Procurement Structures and Capacity in Member States of the European Union* highlights the difference in the

central public procurement structure[17] between the group of recently acceded member states to the European Union that are centrally-driven and other countries in Europe. For countries in the process of building up their public procurement systems, the establishment of a strong focal point for public procurement at high central level, which is given a fairly wide scope of functions and responsibilities, has been seen as a vital measure. In other EU member states, the establishment of central procurement structures is the result of a peripherally-driven approach, where the pressure for strengthening certain, but not all functions at the central level could be regarded as an effect of changes in the external environment. These changes stem from different factors, such as the demand for more efficient government (e.g. through framework agreements, co-ordinated purchasing), technological changes (e.g. e-procurement), and external commitments (e.g. membership in the EU and the WTO).

More centralised procurement can contribute to efficiency in public procurement by improving management information through aggregation of demand, lowering prices through reduced production costs and transaction costs and enhancing the efficiency of the supply chain. It may also reinforce the **integrity and neutrality** of the public procurement system since:

- The central public procurement body often has a "firewall" position that avoids direct contact between the contractors and end-users;
- Promoting integrity and auditing actual practices is easier in a single entity than hundreds of government entities, and contributes to more uniform and professional working methods;
- Transparency and openness are often a key factor for the credibility of the public procurement body to achieve good results for end-users of the contract, in particular government agencies, in their negotiations with bidders.

For instance, in Finland, there is a central procurement unit that establishes framework agreements for procurements, which contributes to more efficient and transparent purchasing (see Box III.4).

17. The table in Annex D provides a comparative analysis of central procurement structures, capacity and their respective functions in the European Union. For further reference, see *Central Procurement Structures and Capacity in Member States of the European Union,* SIGMA Paper No 40, 2007.

Box III.4. Framework agreements: More centralised, efficient and accountable purchasing in Finland

Hansel Ltd is the central procurement unit of the State of Finland that aggregates the procurement needs from ministries and ministerial offices, as well as from state agencies and publicly-owned enterprises. Through competitive bidding it establishes framework agreements for procurement of products and services.

In June 2006, the Ministry of Finance reformed Hansel Ltd to promote more centralised procurement for goods, services and information technology systems that are widely used in government. As a result, some phases of the procurement process such as the bid notice and the contracting are done in the central procurement body, which produces framework agreements used by public authorities. The use of centralised purchasing is considered as:

- A more efficient and cost saving way to perform public procurement in areas involving large volumes or standardised products and services.
- An opportunity to advance the competence of its personnel as well as its internal communication to improve integrity and performance in government purchases.
- An easier way to keep accountable a limited number of procurement officials in their interaction with the private sector, while they make the link between multiple government agencies and private sector actors.

When using framework agreements, there are a number of advantages and costs to weigh up. In certain cases they may prevent entry of new players and reduce participation from small and medium companies, and possibly discourage innovation.

Sources: - Finland, response to the OECD Questionnaire.
- http://www.hansel.fi.

In a context of increased devolved management of the procurement process, officials who have never managed a contract are now required to do so in addition to their usual duties. This calls for adequate guidance for procurement officials to enhance management effectiveness in public procurement. Procurement officials also deal with a profoundly changed procurement process by the use of new technologies where basic tasks such as placing orders with suppliers have become largely automated. Therefore, the role of the procurement official now encompasses **new responsibilities** such as strategic sourcing and auctioneering, as well as negotiation management. There is growing recognition that organisations need to provide managers with the opportunity to acquire the necessary skills - such as negotiation, project and risk management skills - and personal attributes to adapt to this changing environment.

A particular concern in some countries is the lack of qualified staff to monitor the contract management phase. The commercial pressure to “buy” at the best value for money may lead to a resource shift away from the

contract management and to an **irresponsible delegation of governance to the private sector.** The risk lies in the contractor defining the level of quality for the contract rather than the public authority. This question is all the more difficult in a context of global procurement. Governments have difficulties monitoring contractors and subcontractors that are often outsourced and ensuring that integrity, labour and environmental standards are respected.

In order to provide staff with **up-to-date skills, experience and qualifications** for preventing mismanagement and potentially corruption, countries are starting to use:

- Certification requirements. For instance, in the United States, they have been harmonised in the Federal Government since 2005;
- Specific training linked to new technologies or to specific situations, such as emergency contracting, which hold important risks of mismanagement and potentially corruption.

Providing adequate skills

Procurement officials have to deal with a substantial amount of work - the number of procurements has significantly increased in recent years while the number of officials has often been stable or sometimes reduced. The issue of capacity, that is, the ability of people, organisations and society as a whole to successfully manage their affairs, is critical both in OECD countries and in developing countries. Although efforts in recent years have often focused on limiting the procurement workforce, countries are starting to invest **in human capital** to improve efficiency in procurement and potentially reduce the temptation for corruption.

Some countries have initiated efforts to **attract well-skilled professionals**, for example through **adequate incentives** in countries such as Chile and the United Kingdom. A key incentive is the provision of **salaries and bonuses** for procurement officials that are competitive with those in the private sector. In countries where salaries are particularly low, inadequate compensation may also increase the temptation for corruption. The example of Chile (see Box III.5) illustrates how performance indicators can be developed within a management improvement programme and linked to rewards at individual and organisational levels in order to enhance professionalism in procurement.

Box III.5. Establishing performance indicators in procurement in Chile

The Public Management Improvement Programme *(Program de Mejoramiento de Gestión)* is a national programme – run by the Directorate of Budgets of the Ministry of Finance – in order to achieve measurable improvement in key aspects of public management. In particular, the programme focuses on the following: human resources, customer assistance, planning and implementation, internal audit, financial management and quality of service. Public procurement is identified as an important issue in the programme, and the procurement goals are included in financial management.

The public procurement component of the management improvement programme specifies key performance indicators and establishes rewards at individual and organisational levels. In order to give recognition to the procurement function through adequate salaries and therefore improve capacity, the programme has included agency and employees' incentives linked to performance. Thus salary increases are tied to achievement of PMG goals. **Performance indicators,** among others, include:

- The rate of acquisitions made as an emergency purchase process;
- The amount of the acquisition's budget executed via public bids; and
- The difference between annual plan and actual acquisitions made during the year.

The agency responsible for fixing goals and evaluating improvement results in the field of procurement is the Directorate of Public Procurement Contracting (DCCP). By the end of 2003 some 131 agencies had included procurement in their PMG plans and nearly all of them had achieved a higher quality level in the procurement function. These results can be partly explained by the efforts devoted to training for employees, in which about 7 900 individuals were included until 2004, and by investments in information services.

Sources: - Chile, response to the OECD Questionnaire.
- Country Procurement Assessment Report of the World Bank on the Republic of Chile, 2004.

In the case of **e-procurement**, the enabling environment is key for successful implementation of the platform in government, in particular by:

- Providing adequate incentives for officials, for example, commitment from the political level, sufficient wages, etc.;
- While minimising the barriers for using the system, for example, through stable legal environment, training for officials and progressive implementation of the system.

Box III.6 below illustrates the current efforts carried out in Romania to implement a national single portal for the transmission of public procurement notices.

Box III.6. Incentives and results: Involving stakeholders in e-procurement in Romania

E-procurement in Romania started as a pilot project in March 2002, initially including 159 public authorities and 7 product categories. At present, the system assists 1000 public authorities, more than 3 000 supplier companies and 80 categories of goods. The extended version of the e-Licitatie (Extended Electronic System for Public Acquisitions – SEAP) is in compliance with the European Directives. Since 1 January 2007, http://www.e-licitatie.ro has been the national single portal for the transmission of public procurement notices to the EU Official Journal.

To ensure successful implementation and functioning of the e-procurement system, specific attention has been paid to involving all stakeholders and providing them with adequate incentives. Key components of the enabling environment include:

- Strong political commitment;
- Gradual implementation;
- Mandatory use of electronic means for specific procedures;
- Low tariffs;
- SME-user friendliness;
- Massive advertising campaigns;
- Constant training.

The deployment costs of the overall system exceeded EUR 4 million, while the total value of public acquisitions affected by the system is EUR 1 billion. Implementation revealed some deficiencies in the system, such as the lack of long-term procurement strategy, the lack of secure digital infrastructures and inefficient processes of knowledge sharing at national and international levels.

One of the most serious problems remains the low wages for public procurement officials. The Inspectorate is currently implementing a special incentive system for them, in which part of the money savings due to the e-Procurement system will be redistributed among officials.

Sources: - Presentation of Romania at the OECD Forum on Governance: Sharing Lessons on Promoting Integrity in Procurement, November 2006.
- E-Government Good Practice Framework, http://www.egov-goodpractice.eu.

Attracting professionals with adequate skills and in particular **commercial know-how,** for example, skills for negotiation, is a core challenge across countries. This makes it all the more important to the **cross-fertilise government and private sector talent**. Career movement between government and industry is critical to efficiency and to the evolution of procurement regimes. A key condition is that public service regulations and policies define the right balance between encouraging exchanges between the public and private sectors and preventing conflict-of-interest situations. For instance, in Brazil, the 2006 bill on conflict of interest expanded the "quarantine time" in which public officials are not allowed to work for the private sector from four months to one year and reinforced civil and administrative sanctions in case of non compliance (e.g. a fine up to 100 times the civil servant wage plus debt recovery, loss of

political rights, etc.). At the same time officials may obtain financial compensation under certain conditions to encourage movement between the public and private sectors (see also page 71, Preventing conflict of interest and corruption). Further efforts include making **job descriptions** in the public service more attractive, possibly by describing the positions as "contract managers" rather than simple administrative employees ("paper-pushers") to reflect the recent evolution in the tasks and responsibilities of procurement officials.

Furthermore, **retaining talent** is just as critical, for example by providing procurement officials with opportunities for growth and gaining new skills through training, coaching programmes or even lateral rotation. More generally, an environment that provides clear paths for career development and promotion for procurement officials is a key factor. Box III.7 highlights the prominent efforts of the Office of Government Commerce in the United Kingdom to provide guidance, disseminate good practice, as well as define possible career paths in senior management for procurement officials.

Box III.7. Centre for sharing expertise: the Office of Government Commerce in the United Kingdom

The Office of Government Commerce (OGC) is an independent office of the Treasury in the United Kingdom, created in April 2000. It helps departments achieve efficiency and promote value for money in their procurement activities. It supports initiatives that encourage better supplier relation, sustainable procurement, the benefits of using smaller suppliers and the potential of e-procurement, as well as promotes capacity building and professionalism.

OGC develops and publishes recommendations, guidance and best practices that cover a wide range of management practices, including programme and project management, procurement and service management. Best practices are available both on line (http://www.ogc.gov.uk), and in published form.

In addition to Gateway Reviews (see Box IV.3), the OGC introduced the following key initiatives to reinforce professionalism:

- *The Successful Delivery Toolkit* – an online guide which brings together procurement policy, tools and good practice for procurement, project and risk management;
- *The Successful Delivery Skills Programme and Project Management Specialism* – a scheme providing a career route into senior management through specialisation into professional delivery and project management; and
- The promotion of *Centres of Excellence* – within departments to support specific programmes and projects by providing oversight and advice, and working to enhance skills and capacities.

Following a review in 2004, OGC put more efforts into tailoring its engagement with departments to better meet individual requirements.

Source: *The impact of the Office of Government Commerce's initiative on the delivery of major IT-enabled projects*, Report ordered by The House of Commons, 2005.

Helping officials make informed decisions

There has also been an effort to equip procurement personnel with a number of tools and practices to help them make informed decisions regarding acquisition operations. In recent years several governments have developed internal information systems to support officials in making informed decisions about procurements. A key challenge for governments is to select procurement information that is accurate, objective and relevant for decision making, while not making it burdensome for procurement officials and bidders.

To help officials make informed decisions about procurements, internal information systems may provide data on:

- **Bidders/contractors**, in particular their potential or actual performance and integrity (e.g. technical capability of bidders, list of parties excluded, past performance, etc.), which is particularly useful in the process of selection, for instance in Ireland, Italy, Korea and the United States;
- **Former procurement contracts**, in particular on the types of goods and services and their individual prices. This helps define the needs in a realistic manner and facilitates the evaluation of procurements (e.g. in Belgium, Portugal, Turkey, the United Kingdom and the United States);
- **The execution of the contract**, in particular to monitor the progress and actual performance of the contractor, for instance in Korea and Mexico.

In a few countries, this information is also filtered and integrated at the government-wide level in a statistical report analysing **trends and patterns** in procurement, which is available to policy makers and the public at large. This may even be used at the supranational level. For instance, in Poland, the data entered in the Public Procurement Office database is processed in a national statistical report for the European Union. Box III.8 illustrates how the United States has used a variety of databases to support decisions of procurement officials by providing information on the performance of suppliers, and the details of products or services to be purchased.

Box III.8. The use of information systems to support decisions on procurement in the United States

"Acquisition Central" (http://www.acquisition.gov) seeks to provide a single-point-of-entry for government procurement in the United States on regulations, systems, resources, opportunities, and training. One of its features is to provide a link to the numerous databases that help collect, structure and communicate information about public procurement. The following information systems, among others, contribute to unifying and streamlining the federal acquisition process:

- The **Central Contractor Registration** (CCR) is the Federal Government's primary vendor database that collects, validates, stores, and disseminates vendor data in support of agency acquisition missions. Both current and potential vendors are required to register in the CCR to be eligible for federal contracts. Once vendors are registered, their data will be shared with other federal electronic business systems that promote the paperless communication and co-operation between systems (see http://www.ccr.gov).
- The **Excluded Parties Lists System** (EPLS) is a web-based system that identifies parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits. The EPLS is updated to reflect government-wide administrative and statutory exclusions, and also includes suspected terrorists and individuals barred from entering the United States. The user is able to search, view, and download current and archived exclusions (see http://www.epls.gov).
- The **Past Performance Information Retrieval System** (PPIRS) is a web-based, government-wide application that provides timely and pertinent information on a contractor's past performance to the federal acquisition community for making source selection decisions. PPIRS provides a query capability for authorised users to retrieve report card information detailing a contractor's past performance. Federal regulations require that report cards be completed annually by customers during the life of the contract. The PPIRS consists of several sub-systems and databases (e.g. Contractor Performance System, Past Performance Data Base, Construction Contractor Appraisal Support System, etc. (see http://www.ppirs.gov).
- The **Federal Procurement Data System** (FPDS) facilitates decision making of procurement officers by raising their knowledge and awareness on annual trends in government purchasing. The FPDS collects information from purchasing agencies concerning their number and value of bids awarded, the dates and conditions of the contracts, the contracting partners and methods, the form of payment, etc. The system structures and forwards the information to the President, the Congress, the Government Accountability Office, executive agencies and the general public, in order to measure and assess the impact of federal procurement on the nation's economy, the extent to which awards are made to businesses in the various socio-economic categories, the impact of full and open competition on the acquisition process, and other procurement policy purposes (see https://www.fpds.gov).

Although these databases have been useful in supporting decisions on public procurement, there is growing awareness that they may become burdensome if the information included is not appropriately selected and officials not sufficiently trained to use it. Furthermore, some concerns have been raised regarding the confidentiality and accessibility of the data for contractors.

Source: United States, response to the OECD Questionnaire.

Furthermore, some countries have also encouraged the exchange of information between government officials through the creation of **networks and centres of expertise in the administration** to identify and disseminate good practice. In the United Kingdom, the centres of excellence in the various ministries provide a detailed and constantly updated advice documentation regime, regular process quality assurance in conjunction with auditors and networking with departments and the Office of Government Commerce. In the Netherlands, a professional and innovative public procurement network for contracting authorities *PIANOo* was established in the Ministry of Economic Affairs to provide exchange of know-how and training among contracting authorities. Other ways to increase the exchange of information in the administration include the creation of multi-disciplinary committees involving representatives of various parts of the administration to review and discuss specific issues of concern related to procurement, for instance in Norway.

There has been a clear trend in countries (e.g. in France, Ireland, the Netherlands, New Zealand, Norway and the United Kingdom) to invest in the development of **good practice guidance** for procurement officials. This trend is illustrated with the examples of the Irish Government Contracts Committee, whose role has evolved towards a general guidance role on issues of concern for public procurement, and the recent creation of the Government Procurement Development Group in New Zealand to enhance professionalism in procurement (see Box III.9 and Box III.10).

Box III.9. From approval to guidance: An evolving role for the Irish Government Contracts Committee

Initially created to provide external approval for contract awards above EUR 25 000 that are not using competitive procedures in exceptional circumstances, the role of the Government Contracts Committee (GCC) has evolved since January 2003 towards a more general guidance role on issues of concern for public procurement.

The GCC is a committee of procurement officers from central government departments and agencies, which have a significant procurement function or have responsibility for key procurement sectors. The GCC therefore concentrates on advising on procurement issues of general concern to the State sector. It also has a role in developing, together with the National Public Procurement Policy Unit in the Department of Finance, good practice guidance for supplies, services and construction procurement. Departments benefit from guidance material to enable them to comply with fair and transparent public procurement rules and to secure value for money. The national public procurement website also plays an important role in disseminating guidance and relevant procurement information.

With the suppression of the approval by the GCC, internal control over non-competitive procedures was therefore strengthened to ensure the integrity and efficiency of those contracts being awarded under exceptional circumstances, such as extreme urgency, or when only one product or producer meets the contract requirements. A review should be completed within the department concerned, preferably by the Internal Audit Unit or by a senior official who is not part of the

procurement process. The reporting procedures were also revised with the completion of an annual report signed off by the Accounting Officer for these contracts, which should be forwarded to the Comptroller and Auditor's General Office, with a copy to the National Public Procurement Policy Unit of the Department of Finance. Each department should also maintain a central up-to-date register of such exceptional purchases and contracts.

Sources: - Ireland, response to the OECD Questionnaire.
- Circular 40/02: Public Procurement Guidelines - revision of existing procedures for approval of certain contracts in the Central Government Sector, 2003.

Box III.10. Enhancing professionalism: The Government Procurement Development Group in New Zealand

In July 2006 a Government Procurement Development Group (GPDG) was established in the Ministry of Economic Development (MED) in New Zealand. The mission statement is "to drive the best possible procurement outcomes for government, the taxpayer and business in New Zealand.

An important focus of its work programme is to spread and improve knowledge of procurement good practice by:

- **Raising the profile of procurement** – contributing to more widespread awareness of the benefits of good procurement practice; recognition by Chief Executives and Board level management of the value of and need for good practice within their agencies; increased demand for procurement professionals; and increased investment in staff training and education; and
- **Acting as a catalyst for learning and knowledge sharing** – contributing to increased training and education opportunities for agencies and industry; more active knowledge sharing (between agencies; the public and private sectors; and GPDG and its MED colleagues and overseas counterparts); and increased peer pressure.

The GPDG maintains an interactive electronic "Community of Practice" workspace as a vehicle for good practice promotion, advice and information sharing between public sector procurement practitioners. It also organises a regular programme of seminars, workshops, conferences and training courses on all aspects of the public sector procurement process.

Recognising the value of international benchmarking of procurement good practice and professional standards, the GPDG developed links with the Australian chapter of the Chartered Institute of Purchasing and Supply (CIPSA), and is collaborating with CIPSA on programmes to further develop procurement professionalism in New Zealand.

Source: New Zealand, response to the OECD Questionnaire.

Another emerging practice in countries such as Australia and Canada is the use of **applied procurement research** to help senior officials and policy makers take major procurement decisions. Contemporary procurement research is beginning to reveal increasing complexity within the supply environment, as procurement activities are related to many academic disciplines. This complexity is also the result of limited co-ordination of procurement knowledge between government agencies, such as between procurement, competition and audit, as well as with the private sector.

PREVENTING CONFLICT OF INTEREST AND CORRUPTION

In a devolved management context, enhancing professionalism requires not only management procedures but also a clear set of values and ethical standards clarifying how to achieve these objectives. Specific ethical guidance has been developed in several countries defining clear restrictions and prohibitions for procurement officials in order to avoid **conflict-of-interest** situations and prevent corruption both at individual and organisational levels.

Organisational measures

At the organisational level, there are requirements that are used across countries for ensuring the **separation of duties and authorisations**, in particular between:

- Entities: There is a separation between entities of the administration that require specific goods and services, and procuring entities, in countries such as Austria and Germany;
- Functions: Strategic planning, budget and performance programme, accounting and reporting, and internal control functions are clearly separated, for instance in Turkey;
- Stages of the procurement process: The approval of spending, the approval of key procurement milestones, the recommendations of awards and the payment should be conducted separately, for instance in the United States;
- Commercial and technical duties: The commercial and technical evaluations are conducted separately and information is brought together to independently inform the recommendation of award, for example in the United Kingdom;
- Financial duties: Ex-ante control in the financial services unit and the financial transaction process should be conducted separately. In particular, the duty of authorising officer and accounting officer cannot be combined in one person (e.g. in Ireland, Luxembourg and Turkey).

An emerging challenge is to ensure the separation of duties between officials to prevent conflict of interest and potentially corruption while avoiding that "**firewalls**" result in a lack of co-ordination between management, budget and procurement officials. In the United Kingdom, the Ministry of Defence has developed several preventative measures against fraud and corruption in procurement, including the effective separation of duties, rotation of duties, effective supervision, custodial controls over assets and records, prevention of accumulated backlogs of work, as well as systems built-in safeguards (see Box III.11).

Box III.11. Preventing fraud and corruption in defence procurement in the United Kingdom

From the early 1980s, the Ministry of Defence (MoD) in the United Kingdom adopted a commercial approach to procurement, aiming to increase competition for contracts. The Ministry identified various potential areas of risk for corruption or other types of fraud in the procurement system, including:

- Manipulating bids and collusive bidding (including cartels);
- Rigging specifications in favour of one supplier;
- Product substitution or sub-standard work or service not meeting contract specifications;
- Theft of new assets before delivery to the end-user and before being recorded in the asset register;
- Fraudulent (false or duplicate) invoicing for goods and services not supplied or for interim payments in advance of entitlement;
- Improper or unauthorised use of Government furnished equipment or information;
- False accounting and cost misallocation or cost migration between contracts;
- Goods ordered for personal use, including misuse of the Government Procurement Cards and e-procurement facilities;
- Provision of fraudulent test or quality assurance certificates;
- Corruption or attempted corruption of Crown Servants.

These areas of risk are made known to the MoD's acquisition staff through fraud awareness training. Moreover, the ministry informs Her Majesty's Treasury annually of all cases of suspected or proven frauds, including fraud perpetrated by, or suspected to have been perpetrated by, departmental staff or contractor or supplier frauds. The Annual Government Fraud Reports are available at: http://www.hm-treasury.gov.uk/.

Preventative steps against fraud and corruption in procurement fraud have been taken, including:

- Effective separation of duties preventing one or two individuals securing control over a whole system, particularly where computers multiply the volume of information available to one source;
- Rotation of duties, particularly in sensitive posts or those giving staff the opportunity for long term commercial connections, possibly in an environment of non-competitive procurement;
- Effective supervision, particularly where separation of duties is difficult to achieve or where staff work in remote locations. The delegation of authority should not be construed as a substitute for effective supervision;
- Effective custodial controls over assets and records that protect stores, cash, property, cheques, warrants, payable orders, confidential information and computer resource;
- Prevention of accumulated backlogs of work, guarding against short cuts to retrieve the situation or concealment of attempted fraud;
- Built-in safeguards against internal and external threats in the design of new systems.

Experience shows that the prime causes of fraud, theft and irregularity are the absence of proper control procedures. MoD relies on the vigilance of its acquisition staff to prevent corruption and has created a dedicated "hotline" for reporting fraud operated by the Defence Fraud Analysis Unit and the MoD Police. The Defence Fraud Analysis Unit uses the latest data mining and fraud detection techniques in a proactive response to fraud risk. Other detective techniques include reconciliation of accounts; physical verification of assets (e.g. stock checks, etc) and spot checks.

Source: United Kingdom's Ministry of Defence, response to the OECD Questionnaire.

In order to ensure that **interaction between officials and bidders** does not lead to bias and more generally corruption, measures have been set up to define clear restrictions for procurement officials in their interaction with bidders at different stages of the procurement, in particular during negotiations. In this regard, new information and communication technologies have increasingly played a role in ensuring that interactions are transparent and accountable. For example, e-auctions – a means of carrying out purchasing negotiations via the Internet – have been used in an increasing number of countries such as Brazil, Mexico and the United Kingdom. They are a real time event that occurs on line, allowing multiple suppliers in different geographic regions to place and modify bids simultaneously. Their main objectives are to:

- Reduce the overall cost of the procurement;
- Avoid direct contact between suppliers and with officials during negotiations, since processes take place electronically and in an anonymous manner; and
- Promote transparent negotiations, for example by providing citizens with the opportunity to monitor the procurement on line.

The first example below highlights the use of e-auctioning in the Federal Government of Brazil while the second example focuses on its application in a key government sector in the United Kingdom, the National Health Service (see Box III.12).

Box III.12. E-auctioning for transparent and cost-effective online negotiations in Brazil and the United Kingdom

Electronic auctioning has been increasingly used in recent years to identify the best price possible in an online competition, for instance in Brazil and the United Kingdom. This method is generally used for homogenous products, where the decision on purchasing is mostly based on the price factor.

E-auctioning in the Federal Government of Brazil

In Brazil, the electronic reverse bidding is regulated by the Law of July 2002. The complete procurement documentation is published on the Procurement Portal of the Federal Government – *Comprasnet* (http://www.comprasnet.gov.br), in the government's Official Gazette and is also broadly disseminated in newspapers, in 2004, BRL 8 billion (Brazil reals) was spent on consumer goods and services – contracted through reverse bidding, according to studies of the Ministry of Planning, Budget and Management of the Federal Government of Brazil. Considering that the total amount used in this area was BRL 15 billion, the share of reverse bidding accounts for over 50% of total spending.

Electronic reverse bidding reduced the cost of participation in competitions, as bidders are not physically required and only need to be connected to the Internet. One of the consequences is the higher number of suppliers. In the past four years there has been an increase of suppliers from 150 000 to 214 000, that is a 42% increase. Last year alone, 20 000 new companies became suppliers of the largest buyer in the country, the Federal Government. Electronic reverse bidding has also helped increase the transparency of negotiations. Contacts between suppliers and between the government and the administration have been avoided while citizens have monitored the procurement on line.

Applying e-auctions in the National Health Service in the United Kingdom

In 2005, the *OGCbuying.Solutions*, the Executive Agency of the UK Office of Government Commerce, used the key sector of national health as one of the pilots for e-auctions. It enabled specialists in the National Health Service (NHS) to source health framework agreements.

In 2006, the NHS Purchasing and Supply Agency completed an e-auction transaction of a GBP £1.2 billion worth of temporary agency staff cost. Following a five month bidding and evaluation process, 176 employment agencies were identified as being successful at the evaluation stage and were invited to participate in the e-auction. These suppliers were given the opportunity to participate and bid in a fully transparent environment, with multiple opportunities to revise their pricing, while gaining an insight into the current level of market pricing. 70,000 bids were placed during the event which ran over three days and resulted in significant savings for the NHS. The e-auction contributed to an additional 10.3 percent saving in addition to the savings provided under the Best and Final Offer in the initial bid.

Even if reverse e-auctions speed up the price-discovery process and improve market transparency, they require an important initial investment to set up the technological infrastructure and supporting legal environment.

Sources: - Brazil, response to the OECD Questionnaire.
- Case study provided by the United Kingdom for the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.

To avoid prolonged contact between government officials and bidders, some countries have encouraged the **rotation of officials** involved in procurement, rotation proved useful particularly in posts that are sensitive or involve long-term commercial connections where the number of suppliers is limited. Time limits may vary significantly depending on the post and the country, for example:

- Accounting-related officers in Korea are rotated every one to three years;
- Financial controllers every three to five years in Luxembourg;
- Commercial officials within a period of maximum five years in the United Kingdom;
- Procurement Commission members yearly in Brazil.

Another commonly used method for controlling risk internally is the application of the **four-eyes principle** which ensures the joint responsibility of several persons in the decision making - in particular through separation of various functions, double signatures, and cross-checking. For example, public bid committees are usually formed to balance the discretionary power of a single procurement official in the process. They may also benefit from the expertise from various specialisations, by involving accountants, economists, judges, etc. As the importance of the project increases, the number of officials involved may also increase. For instance, in Korea, for contracts of high value or difficult decisions, the responsibility is delegated to the Contract Review Committee, which consists of independent experts, including representatives from NGOs and academics. A key condition of the effectiveness of a committee is to define an appropriate organisation and composition, as well as clear obligations and restrictions for its members, in particular when involving experts from outside the government.

Defining ethical standards for public officials

At the individual level, core values provide guidance for the judgement of public servants on how to perform their tasks in daily operations. To put the values into effect, a vast majority of countries have legislated standards expected of officials across the whole public service, in civil service regulations or in specific conflict-of-interest regulations - most recent examples being the Slovak Republic and Spain. Two-thirds of countries have also put forward ethical standards in the form of a code of conduct or ethics for the public service. More than a third of countries have developed guides or guidelines as internal management instruments to help the implementation of ethical standards in the administration (see Table III.1).

Table III.1. Ethical standards for the public service - Rules and guidance

Laws and regulations	Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Spain, Turkey, the United Kingdom, the United States
Code of conduct, code of ethics	Australia, Brazil, Canada, the Czech Republic, France, Germany, Greece, Ireland, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Norway, Poland, the Slovak Republic, Spain, Switzerland, Turkey, the United Kingdom
Guides, guidelines	Australia, Canada, Denmark, France, Germany, Ireland, Korea, the Netherlands, New Zealand, Norway, the United Kingdom, the United States

Sources: - Based on *Trust in Government: Ethics Measures in OECD Countries*, OECD, 2000.
- OECD surveys on conflict of interest in the public service in 2002 and 2006.

Defining specific standards for public procurement

A more detailed description of the **standards of conduct** expected for procurement officials, in particular specific restrictions and prohibitions, helps ensure that officials' private interests do not improperly influence the performance of their duties and responsibilities. Potential conflict-of-interest situations may be in relation to:

- Personal, family or business interest, outside activities in particular in relationship to contract (e.g. in Chile, Ireland, Mexico, the Netherlands, New Zealand, Poland and Spain);
- Gifts and hospitality – in countries such as Belgium, Ireland, and Japan;
- Involvement in the activities of a political party, for instance in Turkey;
- Disclosure of confidential information, in countries such as Belgium, Mexico and Turkey;
- Future employment, for instance in the Netherlands and the United States.

In Spain, in the last two years the government has taken several measures to modernise expected standards of behaviour in the administration and prevent conflict of interest for officials who are particularly vulnerable to conflict of interest due to their position – high-ranking officials as well as procurement officials working at the interface of the public and private sectors (see Box III.13).

Box III.13. Preventing conflict of interest in public procurement: Recent reforms in Spain

Spain has recently introduced several measures to avoid conflict of interest, promote good conduct and improve transparency in public contracting. These measures aim at preventing conflict of interest generally for public officials, and also more specifically for procurement officials.

In February 2005, the Council of Ministers approved the Code of Good Governance, binding to members of Government and high-ranking officials of the General State Administration, which was an important declaration of values to set direction for public action in the future.

Furthermore, the Law on Conflict of Interest for Members of Government and High-ranking Officials of the General State Administration was approved in April 2006. This Law introduces requirements in the legal regime for high-ranking positions to avoid situations that put impartiality at risk:

- Absolute incompatibility with other positions;
- Requirements for high-ranking officials to abstain from intervening in procedures - including public procurement - where the companies they (or their family) managed or represented in the two years prior to their appointment in public office are concerned; and
- The obligation to declare assets and income.

Following the recommendations of the report on Study and Diagnosis of Public Contracting in Spain in 2004, the government has similarly clarified and made more precise the scope and requirements of incompatibility rules in the procurement legislation. The Spanish government approved a Project of Law for Public Sector Contracts in July 2006, which was sent to Parliament. This Project of Law strengthens the current prohibitions for officials in charge of public procurement to intervene in procurement procedures when they have an interest in the bidding company. In addition, companies are excluded from bidding or contracting with the administration when high-ranking officials or members of government have investments in over 10% of their capital.

To ensure the application and enforcement of these regulations, mechanisms have been set up in order to identify and manage conflicts of interests. The Office of Conflict of Interest is in charge of the management of the Registry of Activities, Goods and Patrimony, and responsible for the custody, security and integrity of the data and documents filed. In addition, financial assets of members of Government and certain high-ranking officials will be managed in a "blind trust fund", unknown to or not operated by interested parties.

The law also reinforced the sanctioning regime. In the event of incompatibility special sanctions will be applied and proceedings started, publication of which will appear in the Official Bulletin of the State and a special communication given to the business contractor of a high-ranking official. Those that infringe the regulation, if still in office, will lose the right to receive a compensatory pension. High-ranking officials infringing the regulation will also be disqualified from a public position for a period of five to ten years.

These measures are crucial steps for modernising expected standards of behaviour in the Spanish Administration and preventing conflict of interest for officials who are particularly vulnerable due to their position. A key challenge will be to implement them effectively, and, in particular ensure the impartiality of the Office of Conflict of Interest.

Source: Case study provided by Spain for the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.

Specific standards for public procurement may be described in:

- Formal laws and regulations, in countries such as Mexico, New Zealand, and the United States;
- Specific ethics codes or codes of conduct for procurement officials, in countries such as Austria, Belgium and Canada; and
- Guidance materials, for instance in Australia and Ireland.

In Italy, a binding code of ethics has been adopted by *Consip (Concessionaria Servizi Informatici Pubblici)* a private company in charge of e-procurement. The code applies to personnel as well as suppliers and stakeholders (see Box III.14).

Box III.14. Adopting and implementing a Company Code of Ethics for public procurement in Italy

Consip is a company entrusted with information technology activities for Italy's Ministry of the Economy and Finance (MEF) and responsible for the e-procurement system. It has recognised that public procurement is highly exposed to conflict of interest and corruption, and has thus introduced a Code of Ethics.

This Code of Ethics sets standards for *Consip*'s personnel as well as anyone who co-operates with the company, including employees, consultants, suppliers, the Ministry of Economy and Finance and other stakeholders. It provides general standards of behaviour which must be respected in activities with *Consip*.

The Code of Ethics contains several provisions for standards of behaviour in the following areas:

- General rules on ethics and behaviour and in relations with suppliers and stakeholders;
- Conflict of interest;
- Gratuities;
- Interaction with the Public Administration, civil society, politics and the media;
- Confidentiality of information and documentation.

The Code has put in place internal controls to evaluate the compliance with the Code and verify periodically that corporate procedures, organisation and management of the company are in conformity with existing laws and regulations. To support compliance and application of the Code, the Office of Compliance was established with the following functions:

- Communication and interpretation of the Code;
- Verification of the effective application of the Code, and in case of violations, recommendations of appropriate measures to comply with existing laws and regulations;
- Information to the heads of departments in case of inappropriate behaviour in order to allow for the adoption of adequate measures.

Sources: - Company Code of Ethics, Consip, 2005: http://www.consip.it/sc/pdf/Code_of_ethics.pdf.
- P. Magrini, *Transparency in Public E-Procurement: The Italian Perspective*, OECD, 2005.

A key challenge across countries is to find solutions to ensure the **protection** of officials involved in procurement **from any pressure and influence**, including political influence, in order to ensure the impartiality of decision making and to promote a level playing field for procurement officers. Key conditions for protection from political influence include:

- Clear ethical standards for procurement officials;
- An adequate institutional framework, budgetary autonomy, human resource management based on merit (e.g. appointment, selection and career development); as well as
- Working independence for procurement officials, where procurement officials are solely responsible for decisions.

Box III.15 describes the reform undertaken in 2002 in Turkey to prevent pressure from interest groups and set higher ethical standards for procurement officials.

Box III.15. Setting clear ethical standards for procurement officials: The 2002 public procurement reform in Turkey

The Turkish public procurement system underwent a major reform in 2002 in order to address shortcomings identified such as:

- Most public agencies were not covered by the law, and had the right to issue their own regulations on procurement. This resulted in a dozen of regulations covering different public agencies.
- Publication of notices was not required for all procurement methods and even when it was obligatory, announcement periods were too short to inform interested economic operators.
- Selection and evaluation criteria were not objectively determined and pre-announced.
- Unsuccessful bidders were not informed about the decision of the contracting entity.

With the 2002 Public Procurement Law (PPL), the Public Procurement Authority (PPA) was established as an administratively and financially autonomous entity at the central governmental level to regulate and monitor public procurement. In order to prevent problems encountered previously, measures were introduced by the law to prevent pressures from interest groups and set higher ethical standards for officials, in particular:

- The Authority shall be independent in the fulfilment of its duties. No organ, office, entity or person can issue orders or instructions for the purpose of influencing the decisions of the Authority.
- The Authority is comprised of the Public Procurement Board, the Presidency and service units. Members of the Public Procurement Board are appointed by the Council of Ministers and must fulfil criteria, including higher education, more than 12 years of experience in public institutions, and knowledge and experience in the field of national and international public procurement procedures. Candidates shall

have no past or present relationship of membership or task with any political party. Members of the Board are nominated for a five-year term[18] and, once appointed, cannot be revoked before the expiry of their term.

- Board members shall take an oath in witness of the First Bureau of Assembly of the High Court of Appeal that they will fulfil their duties in an honest and impartial manner, that they will not violate and let others violate the provisions of the PPL Law and related legislation.
- Members of the Board, except for some legally-defined exceptions, cannot be involved in any official or private jobs, trade or freelance activities, and cannot be a shareholder or manager in any kind of partnerships based on commercial purposes.
- The Board members are obliged to submit a declaration of property, within one month following the date of commencement and expiry of office, and every year during their service period.
- When executing their duties, the Board members and the staff of the Authority cannot disclose any confidential information or document concerning the related officials or third parties to any entity except for those authorised by law for such disclosures, and cannot use them for the benefit of their own or third parties. This liability of confidentiality shall also continue after they leave their offices.

Sources: - Turkey, response to the OECD Questionnaire.
- Extracts from Public Procurement Law no: 4734 of Turkey, 2002.

Applying standards

The application of standards of conduct starts with recruitment. Some countries have indicated that they take into account ethical considerations in the recruitment process by:

- Issuing security clearance for positions representing a potential risk to national security or other important national interests, for instance in the United Kingdom;
- Verifying the background of officials before their appointment. In Mexico, public officials, including procurement officials, must show evidence that they have not been barred or disqualified to hold positions in the Federal Administration;
- Going through a public selection based on objective methods of assessment of their capacity and knowledge in the field and then being subject to a three years probationary period of training. In Brazil, this

18. Among the 10 members of the Board, two of them were initially designated by the Council of Ministers and selected among the candidates proposed by the Ministry of Finance and the Ministry of Public Works and Settlement. These two members - the Chairperson and the Secondary Chairperson of the Board - are on duty for seven years.

applies to at least two of three members of Procurement Commissions who are permanent members of the Public Administration;

- Evaluating candidates' capacity to handle ethical dilemmas. This may take the form of certification process that assesses competence and skills as well as preparedness to handle ethical risks.

A growing number of countries use **training** to build public officials competence and skills for handling complex procurement procedures and to raise awareness of possible risks to integrity. Training on procurement and integrity issues may be induction, prior to joining the office, to raise awareness of ethical issues and/or offered on an on-going basis to tackle emerging issues or address specific risks linked to a position. In the United Kingdom, all commercial officers within the Ministry of Defence are required to undertake training courses before being issued with a commercial licence by a senior officer. Training may also be done on a voluntary basis – in Norway, open training programmes are offered to public officials by important agencies, the private sector and the National Public Procurement Board – or mandatory such as in the United States. Box III.16 illustrates how integrity training, together with measures such as staff rotation and counselling for officials, contributes to embedding a culture of integrity in the Federal Procurement Agency in the German Ministry of Interior.

Box III.16. Integrity training in Germany

The Federal Procurement Agency is a government agency which manages purchasing for 26 different federal authorities, foundations and research institutions that fall under the responsibility of the Federal Ministry of the Interior. It is the second largest federal procurement agency after the Federal Office for Defence Technology and Procurement.

The Procurement Agency has taken several measures to promote integrity among its personnel, including the support and advice by a corruption prevention officer, the organisation of workshops and training dealing with corruption and the rotation of its employees.

Since 2001, it is mandatory for new staff members to participate in a corruption prevention workshop. With the help of a prosecutor from the district prosecution authority, they learn about the risks of getting involved in bribery and the briber's possible strategies. Another part of the training deals with how to behave when these situations occur, for example, by encouraging them to report it ("blow the whistle"). Workshops highlight the central role of employees whose ethical behaviour is an essential part of corruption prevention. In 2005 the target group of the workshops was enlarged to include not only induction training but also on-going training for the entire personnel. About ten workshops took place with 190 persons who gave a positive feedback concerning the content and the usefulness of this training. The involvement of the Agency's "Contact Person for the Prevention of Corruption" and the Head of the Department for Central Services in the workshops demonstrated to participants that corruption prevention is one of the priorities for the agency.

Another key corruption prevention measure is the staff rotation after a period of five to eight years in order to avoid prolonged contact with suppliers, as well as improve motivation and make the job more attractive. However, the rotation of members of staff still meets difficulties in the Agency. Due to a high level of specialisation, many officials cannot change their organisational unit, their knowledge being indispensable for the work of the unit.

Source: Case study provided by Germany for the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.

Some governments have developed procedures that enable procurement officials to identify and **disclose relevant private interests** that potentially conflict with their official duties. It may be restricted to financial interests (e.g. shareholdings, investments) or also include other interests such as relationships and additional/secondary employment. Such disclosure is usually required to be provided periodically, generally on commencement in office and thereafter at regular intervals, usually annually, and in writing. Some countries have made it mandatory for senior officials involved in procurement to disclose relevant private interests (e.g. in Korea, Spain, Turkey and the United Kingdom). For this tool to be effective, the reliability and effective mechanism for verifying the reliability and completeness of the information disclosed must be verified on a regular basis.

In recent years a few countries have introduced specific restrictions and prohibitions for procurement officials not only for the time of their tenure but also for employment after leaving their public office. In the United States specific **post-employment** prohibitions have been developed for officials involved in procurement and contract administration for contracts over USD 10 million (see Box III.17). However, a key challenge is to enforce post-public employment provisions as well as detect possible breaches. For instance, in Brazil, the Office of the Comptroller General conducted a significant investigation as part of "the Sabujo project"[19]. It found that, despite prohibitions, 313 officials were owners and 2 479 were shareholders of 1 928 companies that had contracts with the Central Government and that between 2004 and 2006 these companies sold over BRL 407 million[20] in goods and services to the government.

19 The "Sabujo Project" is a search and data matching system used by the Brazilian Office of the Comptroller General as a decision making system.

20. Approximately EUR 145 million in January 2007.

Box III.17. Post-employment prohibitions for procurement and contract administration in the United States

In addition to the generally applicable post-employment restrictions for federal employees in the executive branch, there are certain post-employment prohibitions in place for those involved in procurement functions and contract administration.

Former officials may not accept compensation from a contractor for one year as an employee, officer, director or consultant of the contractor if:

- They served as a procuring/contracting official, or a source selection authority at the time a contract exceeding USD 10 million was awarded, or a member of the source selection evaluation board, or chief of a financial or technical evaluation team; or
- They served as administrative contracting officer, or programme manager or deputy programme manager for a contract exceeding USD 10 million; or
- They personally made a decision to award a contract, subcontract, task order or delivery order over USD 10 million, establish overhead or other rates in excess of USD 10 million; approve issuance of contract payment(s) in excess of USD 10 million, or pay or settle a claim for more than USD 10 million.

Partnering with bidders to prevent conflict of interest and corruption

Most countries require bidders to **demonstrate** at least that they have adequate financial resources to perform the contract. In Poland, bidders are required to make a declaration that they fulfil the requirements to participate in the public procurement. The requirements include: having the necessary authorisations, appropriate knowledge experience, technical and human capacity to perform the contract; being in a financial and economic situation to ensure the performance of the contract; and not being subject to exclusion from the award procedure. In Ireland bidders go through a selection process that verifies the company's tax law compliance, as well as its professional standing, financial capacity and expertise.

Furthermore, some countries use specific anti-corruption criteria for ensuring that bidders have a **satisfactory record of integrity**. Criteria for pre-selecting bidders may include the compliance with anti-corruption laws, no involvement in the past in corrupt activities or the implementation of an ethics code ("white listing"). For instance, in the Netherlands, a declaration of integrity was recently introduced, which requires a declaration by the Ministry of Justice that no objections have been raised against the economic operator on the basis of an investigation concerning the conduct of the economic operator in the past.

There is increasing awareness that the information provided by the prospective bidder must be systematically verified and the bidder kept

accountable for its performance and integrity. Box III.18 illustrates the key components of a sound policy for promoting an efficient and corruption-free interface with bidders, based on the recommendations from the United Nation's Procurement Task force.

Box III.18. Managing the relationship with bidders: Recommendations of the United Nation's Procurement Task Force

Based on a review of internal procurement procedures, the United Nations' Procurement Task Force of the Office of Internal Oversight Services developed a number of recommendations to help prevent corruption in the relationship with bidders, including:

- **Registration**: To be a supplier for the United Nations (UN), registration is required and based upon identified factors, including proven expertise in providing the goods or services, financial stability and capacity to undertake the particular project. However, the declaration is not sufficient if it is not followed by a thorough verification of the information provided by the prospective bidder and its comparison with other sources of information to verify its capacity to participate in the procurement process.
- **The periodic review of vendor status***:* A periodical review of bidders' status helps track whether circumstances have changed after the registration.
- **Assistance to the Investigation Office**: The bidder should be obliged to co-operate or risk breaching the contract or to be suspended if it fails to co-operate (e.g. through the inclusion of a specific clause in the contract of the UN).
- **Performance bond***:* It is a common feature of procurement contracts to lodge or pledge a substantial sum in the event of default in the execution of the contract. In the event of fraud, corruption or significant irregularity on the part of the bidder the performance bond should be automatically forfeited to the UN.
- **Financial disclosure***:* Financial disclosure obligations imposed on officials dealing with procurement should promote a culture of openness in the organisation, supported by a regular verification of the reliability and completeness of the information.
- **Black listing***:* Systems to ensure that adverse findings in relation to a bidder in one mission or duty station should be automatically disseminated widely among United Nation's agencies.
- **Commercial responsibility**: The UN should join proceedings more systematically when the integrity of a supplier is challenged by competitors, in cases when the organisation is a victim of corrupt acts and could therefore obtain damages.

Source: Presentation of the United Nations Procurement Task Force at the OECD Forum on Governance: Sharing Lessons on Promoting Integrity in Procurement, November 2006.

An emerging practice is to **deny access** to bidders in the public procurement process when irregularities or corruption have been proven to promote the integrity of the procurement process and discourage bidders from engaging in illegal or corrupt activities. For example, in Spain since 2005 central, autonomous and local governments are allowed to stop

working with business contractors employing a former high-ranking official who has infringed incompatibility rules. The basis for denial of access in a procurement procedure may take different forms, such as:

- The exclusion of a company to participate in a specific procurement, for instance in Belgium, the permanent or temporary disqualification for a firm to participate in future public procurements;
- Deletion from the list of entrepreneurs in the Slovak Republic;
- Disqualification based on criminal activities in the past that are not necessarily linked to procurement.[21]

A key question is **how this information is made available and shared** across the administration. For instance in Germany the list of registers is shared between *Länder* to facilitate information sharing.

Furthermore, there is a growing trend among companies to take **steps for voluntary self-regulation**, specific instruments against corruption at:

- The sector level - sector agreements such as Business Principles for Countering Bribery in Engineering and Construction Industry; or
- Company level - company codes of ethics or other guidelines for integrity in public procurement.

Guidelines or codes aim at enhancing the reputation of an industry or organisation as well as decreasing the risk of corrupt activities by raising awareness about specific prohibitions and restrictions. Another instrument that has been increasingly used is the **dispute board**, set up at the outset of a project, with the intention that it operates actively throughout the whole period of the contract, not only to resolve disputes, but also to prevent them. In 1999, the International Federation of Consulting Engineers (FIDIC) amended standard forms of contract to incorporate dispute boards as a first step in the contractual framework for the resolution of disputes between the employer and the contractor. In 2004, the International Chamber of Commerce published a set of rules for the operation of dispute boards, together with standard clauses that may be adopted for large infrastructure contracts. A more recent initiative by the FIDIC has been the development of a Government Procurement Integrity System (see Box III.19).

21. For further information on debarment, see *Fighting Corruption and Promoting Integrity in Procurement,* OECD, 2005.

Box III.19. FIDIC's Government Procurement Integrity Management System

The International Federation of Consulting Engineers (FIDIC) is the leading organisation representing the international consulting engineering industry. Since 1995 it has raised the importance for the private sector to take positive steps against corruption. A key initiative has been to develop a practical tool, namely a comprehensive Business Integrity Management System (BIMS) for consulting firms, which includes integrity as part of the ISO 9001-2000 quality management. It has proved to be an efficient standards-based approach for integrity assurance in private-sector procurement. A 2005 FIDIC survey revealed that since the creation of the tool, over 70 small, medium and large firms in 12 developed and developing countries have adopted BIMS.

Pursuant to this effort on the supply side of corruption, FIDIC's Integrity Management Committee was mandated to apply its experience to help develop a complementary preventive integrity assurance system for the demand side of corruption, and created in 2006 the Government Procurement Integrity Management System (GPIMS).

The principles identified for the Government Procurement Integrity Management System are the followings:

- **Leadership** – for example the commitment of the Director General of the Procurement Agency is crucial to the success of the GPIMS;
- **Involvement of staff** – in particular through effective communication and co-ordination;
- **A process approach** – each process performed by the agency must be accomplished with integrity;
- **A system approach** – identifying potential areas of corruption in the interrelated processes;
- **A documented process** – documenting and auditing information.

The GPIMS includes a voluntary set of good practices adopted by a government procurement agency as well as a checklist to help identify vulnerabilities in the procurement system.

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Sources: - Case study provided by FIDIC for the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.
- Government Procurement Integrity Management System, Guidelines, 2006, available at: http://www1.fidic.org/resources/integrity/.

Some governments have also created **partnerships for integrity with business and non-governmental organisations**. For instance, a public-private partnership in Denmark, in conjunction with Transparency International and the UN Global Compact, led to the creation of a Business Anti-corruption Portal that provides small and medium-sized companies with the necessary knowledge and tools to invest in emerging markets, including detailed information on the integrity of procurement practices.

Governments often require integrity pledges, where bidders must testify the absence of conflict of interest and corruption. On the other hand, the

Integrity Pact[22] requires a mutual commitment by the principal and all bidders to refrain from and prevent all corrupt acts and submit to sanctions in case of violations. Bidders pledge to disclose all payments to agents or any other third parties in connection with the contract in question, responding to the concern that independent agents and other intermediaries are frequently used by exporting companies to obtain contracts. The Integrity Pact binds bidders and contractors to refuse to pay or accept bribes or to engage in anti-competitive transactions. If a bidder acts in breach of the rules during the selection process, this can result in that bidder's exclusion from the process. Any breach after winning a tender can result in the annulment of the contract. Other sanctions could include the forfeiture of the bid or performance bonds, liability for damages and debarment regarding future contract opportunities for a period of time reflecting the seriousness of the violation.

Ideally the Integrity Pact is monitored by an independent expert Monitor, who may be provided by civil society or commercially contracted. The Monitor would have access to all documents, meetings and parties and could raise concerns first with the principal and, if no correction is made, with the prosecution authorities. An Integrity Pact was used recently for the major international airport project in Berlin Brandenburg in Germany. Considering the amounts involved - a total investment of EUR 2 billion is anticipated between 2005 and 2010 - the use of the Integrity Pact helps send a clear signal in support of fair competition, corruption prevention and against illegal transactions.

22. The Integrity Pact was developed by Transparency International. For further details on the application of the Integrity Pact in Korea, see Box IV.17.

IV. ENSURING ACCOUNTABILITY AND CONTROL IN PUBLIC PROCUREMENT

Within the public sector, procurement is seen as increasingly important in delivering value to governments and ultimately to tax payers and society. Procurement officials are **in the public eye** because of the significant impact of procurement on the economy.

The cornerstone of a public procurement system operating with integrity is the availability of mechanisms and capacity for ensuring effective internal control and audit. Furthermore, mechanisms for lodging complaints and challenging administrative decisions contribute to ensuring the fairness of the process. In order to respond to citizens' demands for greater accountability in the management of public expenditures, some governments have also introduced direct social control mechanisms by closely involving stakeholders – not only the private sector but also end-users, civil society, the media or the public at large – in scrutinising integrity in procurement.

ACCURATE RECORDS: A PRE-CONDITION FOR ACCOUNTABILITY AND CONTROL

Accurate written records of the different stages of the procedure are essential to maintain transparency, provide an audit trail of procurement decisions for controls, serve as the official record in cases of administrative or judicial challenge and provide an opportunity for citizens to monitor the use of public funds. Agencies need procedures in place to ensure that procurement decisions are well documented, justifiable and substantiated in accordance with relevant laws and policies in order to promote accountability.

Written records may be kept in paper and/or electronic form. Some countries have used information systems to coercively support the documentation of all steps of the public procurement process and to allow real-time monitoring of officials' performance and integrity (see the example of the Federal Procurement Agency of the Ministry of the Interior in Germany in Box IV.1).

Box IV.1. Electronic workflow: Processing and tracking information on public procurement in Germany

The Federal Procurement Agency in the Ministry of the Interior has set up an electronic workflow that helps centralise all information related to the procurement system and provide a record of the different stages of the procurement procedure. Employees are assisted by an electronic workflow, which leads through the process and coercively supports the application of the four-eyes principle. Each decision is to be well founded and documented along the milestones of the procurement procedure. All files are stored in a document management system.

The Federal Procurement Agency has also recognised the importance of accurate records for maintaining transparency and providing an audit trail of procurement decisions. In addition, supervisors may access any document at anytime. In case of suspicion the contact person of prevention for corruption may also have access to documents for inspection. This access is not visible for the official concerned. The department for quality management randomly examines documents in the system, while the internal audits review transactions of the previous year. These inspections are not exclusively used to prevent corruption, but also to ensure lawful and economically advantageous public procurement.

Sources: - Germany, response to the OECD Questionnaire.
- *Das Beschaffungsamt*, *A procurement agency that does more,* Bonn, 2004.

Information systems often have the advantage of recording information per user, which keeps officials accountable for their actions and can help track irregularities in the process. Information systems have been used to record and analyse data on:

- The **financial aspects** of procurement, in particular accounting records, for instance in Brazil and Italy;
- **Characteristics of procurement** processes, such as the criteria used, the frequency and reasons for using exceptions to competitive procedures, in countries such as Germany, Mexico, Portugal and Turkey;
- The number of **administrative complaints and recourse mechanisms**, for instance in Poland, Mexico and Turkey;
- The number and types of **controls** carried out on procurement in Poland, irregularities detected and sanctions applied in Mexico.

Keeping records depends on the objective sought. The most frequent objective of records is to provide an **audit trail**. The maintenance of proper accounting records is an important element of internal control. Records can also contribute to the safeguarding of assets, including the prevention and detection of fraud. The type of records, level of documentation and retention time on procurement may be proportionate to the nature and risk of the procurement. In particular, records will vary depending on the timeframe,

the complexity and the sensitivity of the purchase, as well as the procedure used. For example, records will be stricter for exceptions to competitive procedures.

In most countries, appropriate records are not only kept by the procurement agency and/or internal control agencies but also made available to the public. The objective is then to provide bidders and other stakeholders with the necessary information for **challenging the fairness of the procedure**. Records might cover part of the procedure - for example the contract award in Turkey - or the whole procurement process. In Norway, a recent reform introduced the obligation of documenting all steps of the procurement process for contracts above the national threshold. The records might be restricted to bidders, or on the contrary open to other stakeholders - for instance, in Italy citizens and consumer associations that have a concrete interest.

In a few countries (e.g. Brazil, Chile, Poland, Sweden, and the United States), records on procurement are publicly available. In Sweden anybody who has an interest can have access to records, which enables **the media, law-enforcement agencies and the public at large to uncover cases** of mismanagement and potential corruption in public procurement. More importantly, freedom of information acts as a deterrent since the risk of detection of illicit or questionable practices increases. In Brazil, it is mandatory for federal public administration bodies to disseminate through Internet all the information relative to budgetary and financial execution, including public procurements. This provides an opportunity for citizens to monitor the use of public funds. Another example is the General Controller's Office in Mexico that makes public the data on all administrative sanctions applied since 2001 to federal public servants, as a result of disciplinary investigations (see Box IV.2).

Box IV.2. Publicising information on sanctions related to procurement in Mexico

The Ministry of Public Administration – through its Unit of Normativity of Procurement, Public Works, Services and Federal Patrimony – gathers and publishes information regarding bidders, intermediaries and contractors, as well as public officials who have been sanctioned for breaches of public procurement laws and regulations. This information is made available to the public in the Report of Activities of the Ministry of Public Administration.

During 2005, 1 153 **bidders, intermediaries and contractors** were sanctioned with disqualification, debarment from participating in procurements and fines. The list of sanctioned bidders, intermediaries and contractors can be consulted on the Ministry's website (http://www.funcionpublica.gob.mx/index1.html).

In regard to **public officials**, 3 592 administrative sanctions were applied against 2 618 public officials between January and August 2005. Among the sanctions imposed, 2% were warnings, 27% were admonishments, 20% were suspensions, 7% were dismissals, 24% were disqualifications and 20% were economic sanctions for a total amount of MXN 3733.7 million (Mexican pesos).

Among the causes that motivated the imposition of administrative sanctions, 1 931 were due to administrative negligence, 1 193 occurred due to violation of laws or norms that regulate the Federal Expense Budget, 235 derived from non-compliance with procurement procedures, 174 were due to abuse of authority and 59 resulted as a consequence of acts of bribery.

The primary sources for revealing such breaches were unsuccessful bidders and other external stakeholders. Of the administrative sanctions imposed, 1 612 originated from a complaint or citizen accusation, 1 480 were the result of audits practiced at the agencies or entities of the Federal Public Administration and 500 emerged from internal investigations.

Source: Mexico, response to the OECD Questionnaire.

The retention time for general records also varies significantly among countries. In Australia, records have to be retained for at least three years and may be kept longer depending on the circumstances while in Korea and Japan they are usually kept for five years and in Sweden for ten years.

INTERNAL CONTROL: A MANAGEMENT INSTRUMENT FOR IMPROVEMENT

Without an adequate internal control system, an environment is created in which assets are not protected against loss or misuse; good practices are not followed; goals and objectives may not be accomplished; and individuals are not deterred from engaging in dishonest, illegal, or unethical acts. It is particularly important to have **functioning internal controls in procurement, including financial control, internal audit and management control.**

It is the **responsibility of procurement authorities** to set up effective internal control systems that monitor the performance of procurement officials, assist compliance with laws and regulations and help ensure the reliability of internal and external reporting. This responsibility is even more important in a context of decentralised procurement. For instance, in Brazil, the Internal Control of the Federal Executive Branch is carried out by the General Controller's Office through the Federal Secretariat of Internal Control and decentralised units. Decentralised units play a fundamental role in implementing control efforts.

A clear chain of responsibility

An important condition of accountability is to clearly define the **delegated levels of authority** for approval of spending and sign off and approval of key stages. The level of authorities responsible for the approval process may vary according to:

- The value of the procurement, for which a chain of approval hierarchies should be in place. In Portugal, the procedure might have to go through the authorisation of the Ministerial Council in certain cases;
- The business needs of the organisation and the official's experience. In the United Kingdom, the maximum value that commercial officers are able to contractually commit is determined by their grade and the estimated budget required in their post.

Managers have a crucial role in ensuring proper supervision over procurement. Internal procedures in agencies often require senior-level review of key decision points in procurement. For example, in the United States, the definition of evaluation criteria, evaluations and contract award selections are usually subject to senior-level reviews. Furthermore, internal guidance through policies and guidelines can help define the level of responsibility and the obligations for reporting to different authorities - for instance in Mexico and the United Kingdom. In Mexico, the policies and guidelines must be published on the website of each government agency.

There might also be **additional controls**, for example by a team of people independent of the acquisition team such as the Gateway Reviews in the United Kingdom (see Box IV.3) or by the internal audit of the authority, for instance in Belgium and Finland. More formalised reviews are usually required for projects of high value. In Ireland, independent peer review is required for information and communication technologies' projects of over EUR 5 million in regard to business case and good project management, which also includes a post implementation review.

Box IV.3. Independent examination of acquisitions: The Gateway Review in the United Kingdom

A Gateway Review is an examination of an acquisition project carried out at key decision points by **a team of experienced people, who are independent of the acquisition team**. There are five types of Gateway Reviews designed by the Office of Government Commerce (OGC) during the lifecycle of a project:

- Up to and including contract award: Gateway Reviews one to three (business justification, procurement strategy, and investment decision);
- Post contract award: Gateway Reviews four to five (readiness for service, and benefits evaluation).

The review is conducted on a confidential basis for the person who takes personal responsibility for the successful outcome of the project (the Senior Responsible Owner). This approach promotes an open and honest exchange between the acquisition team and the review team. The Gateway reports are frankly written and deal with the strategic, business and personnel aspects of the project, including instances of good practice that may be transferable to other projects.

Acquisition programmes and procurement projects in central civil government may be subject to the OGC Gateway Process without any minimum financial limits. However, the financial value is one factor to consider when deciding on the level of risk faced by a project, and it is recognised within the Risk Potential Assessment (RPA), which must be completed for each procurement project. The composition of the review team reflects the assessed potential risk of the project, namely in case of:

- **High risk projects**, RPA Score 41 or more: The Gateway Review is undertaken by an independent Review Team Leader (RTL who is independent from the department that carried out the project) with an independent Operations Team;
- **Medium risk projects**, RPA Score 31-40: The Review Team Leader is still independent from the department but the team members are provided by the department (independent from the project);
- **Low risk programmes**, RPA Score less than 31: All the team and the leader are resourced from the sponsoring department but all are independent from the project.

Each review takes about three or four days. At the end of their investigations, the review team produces a report summarising their findings and recommendations, together with an assessment of the project's status as Red, Amber or Green.

- "Red" status means that remedial action must be taken immediately; but not necessarily stop the project.
- "Amber" status indicates that the project should go forward with recommendations for actions to be carried out.
- "Green" status shows that the project is on target to succeed but may benefit from the uptake of recommendations.

The Gateway Review Process provides assurance and support for Senior Responsible Owners in discharging their responsibilities to achieve their business aims by ensuring that the best available skills and experience are deployed on the projects; all stakeholders are covered by the project; and the project can progress to the next stage of development or implementation.

From 2001 to the end of 2004, OGC Gateway Teams conducted over 800 OGC Gateway Reviews covering over 500 projects. The feedback from Senior Responsible Owners has been very supportive.

Sources: - United Kingdom, response to the OECD Questionnaire.

In addition to strengthening controls, some countries have ensured **enforcement** through effective, proportional and timely sanctions. In the United States, there have been numerous investigations in the last five years by Inspectors General into individual procurements, which have resulted in criminal convictions, penalties and loss of employment for public officials and contractor employees. In Norway, a contracting authority that conducts direct illegal purchasing may be subject to an administrative fine of up to 15% of the contract value since January 2007.

EXTERNAL AUDIT: AN INDEPENDENT REVIEW

Countries have recognised the essential role of audit in **detecting and investigating** fraud and corruption in procurement as well as suggesting systemic improvements. If internal audit is used in some countries - such as Belgium, Finland, Switzerland and the United Kingdom - the vast majority of countries use external audits conducted mainly by supreme audit institutions with jurisdiction over the whole public service. For instance, in Finland and Switzerland, the State Audit Office carries out external financial audits and performance audits of procurement.

Possible **criteria for selecting public procurement cases for audit** include:

- Total value and complexity of the procurement;
- New acquisition rather than routine procurements;
- Order value per contractor and number of orders per contractor (whether specific contractors receive unusually often or unusually large orders); as well as
- General aspects – such as critical statements of external and internal supervision authorities (e.g. Ministry of Finance, internal auditors), handling in political committees, coverage in the media, complaints, legal proceedings or professional experience of auditors.

Performance audits help provide information on the actual benefits of procurements, which contributes to improving operations, facilitating decision making by parties with responsibility to initiate corrective action, and enhancing public accountability. In Austria, the Court of Audits plays a key role in conducting external audits and **making recommendations for the improvement of processes**, in particular for public procurement (see Box IV.4).

Box IV.4. Recommendations of the Austrian Court of Audit for improving procurement

The administration of public procurement and contracts is considered by the Austrian Court of Audit as a particularly vulnerable area to mismanagement and corruption. Procurement audits are among the most important and discussed reports of the Austrian Court of Audit. The recommendations of the Austrian Court of Audit for procurement audits cover all stages of the procurement process.

1. General procedure:

Organisation: Organisational units responsible for different procurement aspects (e.g. definition of needs, specification, awarding of a contract, financing) should be separated organisationally. Dependencies as well as parallel structures should be avoided.

Documentation: The documentation of procurement procedures should be in writing and covering all important aspects. Internal procurement regulations should be binding and notified to the employees concerned.

2. Planning and preparation of procurements:

Planning concept: Planning should be completed before conducting a specific procurement procedure and should be updated on time.

Financing: Procurement preparation should include a statement of the prospective total expenses of the project and a long-term planning. The required funds should be guaranteed on time.

Analysis of demand: Preparation of procurement should also include cost-benefit and make-or-buy considerations. Core duties should be performed by public authorities. External experts should only be consulted if special knowledge or specialised technologies are not available within the awarding authority or if they substantially increase the quality of a project and the probability of success.

Time frame: Procurement planning should contain realistic time targets.

3. Execution of procurement:

Completion of the preparations: Procurement procedures should only be initiated and conducted after all necessary prearrangements have been completed (e.g. purchase of property in connection with construction projects).

Choice of and justification for the procurement procedure. Special attention should be turned to the choice of procurement procedures as they are often reasoned or justified by unfounded circumstances (e.g. urgency, demand for special abilities or experiences).

Specifications: Specifications should be neutral, based upon completed planning and defined standardised products, if possible. Off-the-shelf products should be preferred. The relevant documentation should be complete, clear, understandable and calculable.

Bidding period: When defining the bidding period the complexity of the specific procurement should be taken into account.

Opening of bids: At the opening of bids all formal requirements must be fulfilled. This must be documented sufficiently.

4. Evaluation of bids:

Evaluation catalogue: The evaluation catalogue must be completed and approved before the opening of bids. The evaluation catalogue should concentrate, if possible, on a limited number of

key criteria. Award criteria, which must refer to the demanded product, should not be mixed with qualification or selection criteria, which must refer to the bidders.

Weighting of award criteria: If standardised products are purchased, the price component must be weighted sufficiently.

Comparative bids: The price adequacy of the offered or awarded products must be evaluated in any case, also when applying the negotiated procedure.

Supplementary amendments: After the opening of bids, price negotiations or supplementary amendments of the specifications or the weighting of the award criteria must be avoided (except for the negotiated procedure).

5. Conclusion of the contract:

Performance requirements: The specifications of the invitation for bids and the contract should correspond.

Model contracts: It has been recommended to develop model contracts.

6. Contract management and payment:

Supplementary amendments: Supplementary amendments and extensions of contracts should be avoided.

Acceptance: The management of contracts requires accurate and timely supervision. Defects must be rejected immediately in writing.

Payment: Payment should be made punctually; early payments should be avoided.

Logistics: Logistics has to include timely provision of all components that are necessary for the operation and maintenance of the procured goods (e.g. training, documentation, servicing, special tools, and spare parts).

Stock management: Over-stocking should be avoided.

Source: Austria, response to the OECD Questionnaire.

In order to keep the public informed, information on external audits is routinely published in two-thirds of countries. Procurement expenditures are also usually reported to Parliament. For instance, in Canada, reports on plans and priorities, which are individual expenditure plans for each department and agency, are reported to Parliament by the President of the Treasury Board. In Slovenia, reports of the Court of Accounts and the Ministry of Finance are addressed to the Committee for Control of Public Finance, which has also the right to invite parties for hearings.

Co-ordinating controls

Public procurement operations are subject to various controls: local controls, accounting controls, controls made by fiscal authorities, as well as external controls and audits. As public procurement has become more decentralised, a key concern is the **lack of co-ordination** between various controls, which has led to some loopholes and overlaps in controls over the

procurement process. Only a few countries have mechanisms to ensure co-ordination of control. For example, the Austrian Court of Audit co-ordinates its audits at an early stage with other external audit institutions and internal auditors of procurement authorities through the review of their audit plans and results and through regular reporting on its own activities.

A related difficulty is to **maximise the use of information produced by different controls**. Some countries have developed solutions to address it. For instance, in the United States, while information related to internal audits is generally not released to the public, both internal investigations conducted by Inspectors General in procuring agencies and external investigations conducted by the General Accountability Office are usually released to the public and the Congress. These investigations have resulted in Congressional hearings and enactment of laws, primarily the procurement integrity statutory provisions.

TAKING A RISK-BASED APPROACH

There is growing recognition across countries that a sound system of **internal and external controls** therefore depends on a thorough and regular evaluation of the nature and extent of the risks to which the organisation is exposed. A specific focus has been to identify **risks to integrity** in the procurement process resulting from a simple mistake in performing an administrative task to a deliberate transgression of relevant laws and related policies. In order to prevent and detect individual irregularities and systemic failures in procurement processes, governments have increasingly mapped out risk factors and vulnerabilities to the integrity of the public procurement process (e.g. in Belgium, Brazil, France, Korea and the Netherlands). In Korea, *ex-post* audits focus on specific corruption-prone work areas that are identified through an annual internal survey on the level of integrity. This has helped raise awareness among auditors and public officials of the areas most prone to irregularities and corruption. In Belgium, internal and external control mechanisms have helped identify risks to integrity at different points of the public process and provide recommendations for tackling vulnerable points (see Box IV.5).

Box IV.5. Identifying risks and providing recommendations in Belgium

With the help of internal and external control mechanisms, the Belgian Federal Public Procurement Service has identified potential risks to integrity at various points of the public procurement process, including:

- **Definition of specifications**: The definition of specifications of a concrete project is adjusted in order to favour a specific bidder.
- **Selection procedure**: When using restricted procedures, the selection of potential suppliers is not based on objective criteria, with the risk of limiting the number of participating bidders.
- **Bids submitted after the delay of submission**: Bids are accepted after the delay of submission, including during the official opening of the submitted bids.
- **Change in bid description**: Certain elements of the initial contract notice are changed during the selection and award process, which can positively influence the matter of a privileged bidder.
- **Award**: When selection criteria are defined in too general terms, the risk of a subjective evaluation that favours a specific bidder is more common.
- **Contracts with low monetary value**: Overestimated prices are used for purchases of low monetary value, resulting in significant mismanagement of public funds.
- **Contract management**: Contracts are invoiced but not completed.

In order to reduce identified risks, several **recommendations** were elaborated by the Consultancy and Policy Office on Federal Public Procurement, including:

- In order to avoid bias in the definition of specifications, the public official who is responsible for the definition of specifications must justify that these are based on the results of a market study about the needs. The definition of specifications must be clear and detailed.
- To avoid modifications of the bid during the process, it was recommended to use the four-eyes principle, with several persons signing the bid project.
- Effective accountability mechanisms are necessary to balance the discretionary power of the public official responsible for inviting suppliers in a restricted procedure.
- Several public agents should attend the official opening of the submitted bids.
- A database should be created containing information on past purchases to be used as a price reference system.

Source: Belgium, response to the OECD Questionnaire.

Other experiences include the development of a **risk mapping methodology together with civil society –** for example national chapters of Transparency International – to identify vulnerabilities, point out aspects that need to be controlled in each process to lessen risks, and improve

procurement processes. Box IV.6 illustrates the recent development in Brazil of a methodology to map out risks of corruption in key processes of public institutions, and its pilot application for public procurement. Experience with the risk mapping exercise in countries in Central and Latin America – such as Argentina, Brazil and Colombia – has highlighted a number of conditions for it to be effective:

- **Involvement of stakeholders**: The methodology should be developed jointly with the actors directly involved in the public procurement process and therefore subject to those risks;
- **Comprehensiveness**: The analysis should cover all potential risks, including aspects linked to political corruption;
- **Action oriented**: Based on the findings of the risk mapping, practical alternatives and ways to protect procurement officials against the risks identified should be worked out together with the main stakeholders.

Box IV.6. Methodology for risk mapping in Brazil

In Brazil, the General Controller's Office and *Transparencia Brasil* have recently developed a methodology for mapping out **risks of corruption in key processes** of public institutions. The methodology focuses on a combination of activities involving the transfer of financial resources that receive input information and produce outputs according to a pre-established logic.

The methodological framework has been applied as a pilot for public procurement processes. It has reviewed key decision steps in procurement:

- Starting with **input** information (e.g. is the necessary information included in procurement regulations, is the information available timely?);
- Through the **decision itself** (e.g. do decision makers have the necessary knowledge, is the decision oriented towards economic efficiency?);
- To **outputs** (e.g. is the final procurement in line with the decision, is there a systematic recording of the process?).

To gain a better understanding of the public procurement process, performance indicators have been used such as the average time to complete the process, the average value of procurements, the percentage of procurement processes completed and the degree of compliance with regulations. Against these indicators, the results of the risk mapping have helped to identify dysfunctions and irregularities in the public procurement process and define solutions together with stakeholders to address them and improve the overall efficiency.

The methodology will be applied not only in public procurement but also in other processes that are vulnerable to corruption, that is processes involving substantial resources transfer, or direct contact with the private sector (e.g. provision of certificates or licenses for companies) or with citizens (e.g. taxation).

Sources: - Brazil, response to the OECD Questionnaire.
- Case study provided by Transparencia Brasil for the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.

Some countries have also started to employ a "**probity auditor**" **for conducting external audits** of procurements that are at risk because of their complexity, high-value or sensitivity. A probity auditor is an independent person who verifies that processes followed by an agency are consistent with Government regulations and good practice principles in terms of fairness, transparency and openness in procurement (e.g. in Australia, Canada and New Zealand). The objective of engaging a probity auditor is to provide:

- A level of independent assurance about the conduct of a bid process, in particular its openness and fairness to all parties concerned;
- Additional oversight of the procurement process, especially in contracts that are vulnerable to mismanagement and potentially corruption.

To be effective, the circumstances in which a probity auditor may be required should be clearly defined. One potential pitfall is that probity audits are used by agencies as an 'insurance policy' to avoid accountability for decisions made. Box IV.7 illustrates the guidelines developed in Australia for determining circumstances in which a probity plan could be used, as well as the criteria for selecting the probity auditor.

Box IV.7. Probity auditors in Australia: Independent review of projects at risk

The probity auditor is an independent auditor who confirms if a government procurement process has been conducted fairly through monitoring, assessing and, where necessary, correcting a bidding process. In Australia, all probity auditors' reports are made available in full for scrutiny by the Parliament, the Auditor-General and anyone else with an interest.

The probity auditor is responsible for providing an independent view of the procurement process with the provision of opinions, conclusions and findings that are impartial and are viewed as impartial by knowledgeable third parties. The probity auditor should possess adequate professional proficiency for the tasks required, including technical procurement abilities and a good knowledge of the government's probity framework.

The probity auditor should only be used in specific circumstances to verify that processes followed by an agency are consistent with Government regulations and good practice principles, in particular when the project is politically sensitive and potentially controversial; very complex; or has a significant financial impact.

This has proved particularly useful for projects where the integrity of the process may be called into question or to avoid perception of favouritism. However, there is a risk that this might be used as an 'insurance policy' to avoid accountability for decisions made, or become a substitute for good management practices. To avoid this risk, the Independent Commission Against Corruption in New South Wales has developed guidelines and criteria to be used by public sector agencies in determining whether and how a probity auditor should be engaged.

Sources: - Australia, response to the OECD Questionnaire.
- *Memorandum No: 98-12 to all Ministers on the Use of Probity auditors by public sector agencies and Whole-of- Government Contract for Probity Auditors*, ICAC, New South Wales.

In order to help prevent and detect irregularities and corruption in public procurement and constantly improve the system, there is growing awareness of the need to provide **specialised training for both procurement officials as well as investigators**. The objectives of module training may vary accordingly:

- For procurement practitioners, to introduce preventive and effective internal control procedures. The training may take the form of an analysis of existing laws and regulations, a typology of risks as well as proposals for improving internal controls.

- For control and investigation officers in charge of verifying procurement procedures, to help them detect fraud and corruption. This may be done through a list of indicators of fraud making it possible to identify, demonstrate and prove fraudulent arrangements.

In particular, the Central Service of Corruption Prevention in France has developed specialised training material for procurement practitioners, as well as control and investigation officers (see Box IV.8).

Box IV.8. Specialised training for public procurement in France

This case study is an example of training material for public procurement developed by the Central Service of Corruption Prevention, an inter-ministerial body attached to the Ministry of Justice in France. It illustrates the challenges faced by various actors at different steps of the procedure, from the mayor's verifications through internal control to the investigation carried out by the Ministry of Justice. It also highlights the **difficulty of gathering evidence** on irregularities and possibly corruption in procurement.

Issue at stake

Following an open invitation to bid, an unsuccessful bidder complains to the mayor of a commune accusing the bidding panel of irregularities because his bid was lower than that submitted by the winning bidder. How should the mayor deal with the problem?

Stage one: Checking compliance with public procurement procedures

The firm making the complaint is well known and is not considered « litigious ». The mayor therefore gives its claim his attention and requests the internal audit service to check the conditions of award of contract, particularly whether the procedure was in compliance with the regulations (the lowest bidder is not necessarily the best bidder) and with the notices published in the official journal. The mayor learns from the report prepared by the bidding committee that although the procedure was in accordance with the regulations, the bid by the firm in question had been revised upwards by the technical service responsible for comparing the offers. Apparently the firm had omitted certain cost headings which were added on to its initial bid.

Stage two: Replying to the losing bidder

The mayor lets the losing bidder know exactly why its bid was unsuccessful. However, by return post, he receives a letter pointing out that no one had informed the company of the change made to its bid, which was in fact unjustified since the expenditure which had purportedly been omitted had in fact been included in the bid under another heading.

Stage three: Suspicions

The internal audit service confirms the unsuccessful bidder's claim and points out that nothing in the report helps to establish any grounds for the change made by the technical service. It also points out that it would be difficult for an official with any experience, however little, not to see that the expenses had been accounted for under another heading. The mayor now requests the audit service to find out whether the technical service is in the habit of making such changes, whether it has already processed bids from the winning bidder and if contracts were frequently awarded to the latter. He also requests that it check out the background of the officials concerned by the audit. Do they have experience? Have they been trained? Do they have links with the successful contractor? Could they have had links with them in their previous posts? What do their wives and children do? Examination of the personnel files of the officials and the shares of the company which won the contract fail to find anything conclusive: the only links between the officials or their families and the successful bidder are indirect.

Stage four: Handing the case over to authorities of the Ministry of Justice

Having suspicions, but no proof, the mayor hands over information so that investigations can begin. The investigators now have to find proof that a criminal offence (favouritism, corruption, undue advantage, etc.) has been committed and will exercise their powers to examine bank accounts, conduct hearings, surveillance, etc. The case has now moved out of the domain of public procurement regulations and into the domain of criminal proceedings.

Conclusion

Unable to gather any evidence and with no authority to conduct an in-depth investigation or question the parties concerned, the mayor takes the only decision that is within his power, which is to reorganise internally and change the duties of the two members of staff concerned. However, he must proceed cautiously when giving the reasons for his decision so as to avoid exposing innocent people to public condemnation or himself to accusations of defamation while the criminal investigation is in progress.

The mayor also decides that from then on the report by the technical services to the bidding committee should give a fuller explanation of its calculations and any changes it makes to the bids, as well as inform systematically bidders of any changes.

Source: Case study for specialised training, Jean-Pierre Bueb, Counsellor, Central Service for Corruption Prevention, France.

CHALLENGING PROCUREMENT DECISIONS: COMPLAINT AND RECOURSE MECHANISMS

A sound procurement system uses the participation of bidders, public officials and other stakeholders as part of the control system by establishing a clear regulated process for facilitating the exposure of wrongdoing in the administration, as well as enabling the fair and timely resolution of bidders' complaints.

Reporting mechanisms for officials

Whistleblowing can be defined as a means to promote accountability by encouraging the disclosure of information about misconduct and possibly corruption while protecting the whistleblower against retaliation. If two-thirds of countries have developed procedures for public officials to facilitate the exposure of wrongdoing in the administration (e.g. complaint desk, hotline, etc.), **few countries have developed whistleblowing protection** in the public service (e.g. Canada, Korea, the United Kingdom and the United States).

There is growing recognition of the potential of this mechanism for **detecting large-scale irregularities** and corrupt acts in the use of public funds, including in public procurement, which would not have been identified by other control mechanisms (see below the example of Canada and the Gomery report). Another famous example is a whistleblowing case that revealed in 2004 that government contractors in Irak were using offshore companies in countries commonly known as "tax havens" to fraudulently overcharge on contracts of the government in the United States.

However, the **number of cases** of breaches detected through whistleblowing is **still limited**. One of the main reasons is that whistleblowers are often the target of retaliations such as harassment, intimidation, demotion, and dismissal. Other frequent barriers in countries include the duty of loyalty and fidelity to the employer as well as a cultural resistance from employees stemming from the assimilation of whistleblowers with "informants" or "denunciators" in past history.

Box IV.9. Reporting wrongdoing in public procurement: Whistleblowing cases in Canada

In the last five years, whistleblowing cases in Canada have been linked mainly to the following categories of misconduct:

- Violation of laws or regulations;
- Mismanagement;
- Harassment, abuse of authority, interpersonal conflict;
- Misuse of public funds and assets.

The following chart highlights the cases related to the misuse of public funds.

Whistleblowing cases reported in the government of Canada involving the misuse of public funds and assets (2002-2005)

	2002-2003	2003-2004	2004-2005	Total
Public Service Integrity Officer (PSIO)	6 cases (1/3 related to procurement)	6 cases (none of them related to procurement)	6 cases (1/2 related to procurement	18 cases
Office of Public Service Values and Ethics (OPSVE)	3 cases	3 cases	Not available	6 cases

A significant example of a whistleblowing case is the Sponsorship Programme and Advertising Activities: Public Works and Government Services. It illustrates the potential of whistleblowing for revealing major corruption scandals. In 1995, an employee disclosed his concerns regarding contracting irregularities within the Sponsorship Programme. After investigations it was found that funds disbursed through the Sponsorship and Advertising Programmes that were intended for the promotion of national unity and the enhancement of the image of the Federal Government had been diverted from their intended proposes, in some cases towards political activities, and spent regardless of economy and probity.

Following this case, the Auditor General's and the Justice's recommendations touched on several areas from required improvements to contracting control and documentation to political governance. A number of individuals involved in the mismanagement of the Sponsorship Programme's funds have been criminally charged. The Federal Accountability Act introduced several measures to reinforce citizens' confidence in procurement (see Box III.2).

Considering that the number of reported whistleblowing cases is still limited, efforts have been initiated to ensure a better protection of whistle blowers against retaliation with the approval of the Public Servants' Disclosure Protection Act[23] in November 2005.

Source: Case study provided by Canada for the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.

23. The Public Servants Disclosure Protection Act in November 2005 defines "protected disclosure" as a disclosure that is made in good faith by a public servant: in accordance with the Act; in the course of a parliamentary proceeding; in the course of a procedure established under any other federal statute; or when lawfully required to do so.

Encouraging employees to blow the whistle and protecting them from reprisals are two interconnected issues: any increase in protection has the potential to encourage people to disclose wrongdoing. This may take the form of measures to prevent reprisals or on the contrary compensation schemes where reprisals occur. A number of countries - such as Canada, Korea and Norway - have recently initiated reforms to introduce or **strengthen the protection** for whistleblowers in the public service, through legal protection, anonymity or the setting up of a protection board.

In Australia, various disclosure systems are used for ensuring anonymity. This includes systems that operate on the basis of anonymously provided information (e.g. on-going communication through anonymous email exchanges, special phone line), exclude the identity of the whistleblower as a subject of investigation, or impose a duty upon the recipient of the disclosed information not to reveal the discloser's identity. In the United States, whistleblowers receive further protection from the financial impact that their disclosure may have on their lives as a result of reprisals (e.g. reinstatement, difference between what the employee was paid and the amount that should have been paid, litigation costs, and attorney fees). An emerging approach is to provide incentives to **encourage whistleblowing**, for example through financial rewards or advantage in career progress. For example, this was introduced in Korea in 2003, and was proposed by the Federal Accountability Act in Canada, sent to Parliament in 2006.

Recourse systems for challenging procurement decisions

Recourse systems, like audit systems, fundamentally serve a procurement oversight function. They provide a means of monitoring the activities of government procurement officials, enforcing their compliance with procurement laws and regulations, and correcting improper actions. Furthermore, they provide an opportunity for bidders and other stakeholders to contest the process and verify the integrity of the award. For instance, in the United States, any interested party – actual or potential bidder – can file a protest with the Government Accountability Office.

There is common recognition that effective recourse systems for challenging procurement decisions should provide timely access, independent review, efficient and timely resolution of complaints and adequate remedies. However, the practice varies significantly across countries.

Timely access to recourse mechanisms

Both the procurement and the recourse system itself must be organised in a manner that permits bidders to initiate recourse before the contract starts. Following the European Court of Justice case law Alcatel[24], several countries have recently introduced a **mandatory standstill period** between the contract award and the beginning of the contract to provide the bidder with a reasonable opportunity for the award to be set aside - for instance in the Netherlands, Norway and the United Kingdom. In Portugal, a report with the intention of award is sent to all bidders after evaluation by the committee so that suppliers may question the results (that is procedure, applicability and choice of solution for procurement) and challenge procurement actions accordingly in the following five days.

While countries generally provide a recourse mechanism after the award, bidders are also able in some countries to challenge procurement decisions at other stages of procurement, and even sometimes after the end of the contract. In Sweden, there is a possibility to make a complaint at **any stage of the procurement** process and even after one year through a claim for damage in civil court. The records for the procedure are made available not only for bidders but also for other interested parties.

Independence of complaint and review systems

In order to avoid litigation and provide an opportunity for contracting authorities to make the necessary adjustments, a vast majority of countries encourage and in some cases, for instance in Germany, make it mandatory for bidders to submit their complaints directly to the **procuring authority**.

A complaint to the contracting authority may offer clear advantages, especially in cases when a genuine or obvious mistake rather than a deliberate breach of public procurement law is the reason for the dispute or when the case involved "delicate" interpretations of the law. Furthermore, the bidder can **avoid confrontation** with the contracting authority as well as the costs involved when using quasi-judicial or judicial review.

On the other hand, time-consuming complaint proceedings can **prolong the overall review procedure** if it only the prelude to quasi-judicial or judicial review. Another concern is to ensure that the decision is not **biased** by the public official or the procuring agency's interests. For instance, in

24. In its Alcatel judgment (Case C-81/98), the Court of Justice stipulated that Member States were required to set up review procedures permitting a decision awarding a public procurement contract to be suspended and annulled at a stage where the infringement can still be rectified. For further details, see: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998J0081:EN:HTML.

Belgium, the heads of procuring agencies rather than contracting officers determine whether protests have merit in order to avoid individual conflict-of-interest situations. Furthermore, recourse is also available to Mediators that provide independent oversight over actions of the Belgian administration.

Efficient resolution of complaints

Several countries introduced a **specific public procurement mechanism** to improve the efficiency of the resolution of complaints (e.g. in Austria, Canada, Denmark, Germany, Hungary, Japan, Norway, Poland, the Slovak Republic and Slovenia). This contributes to reinforcing the legitimacy of decisions that are grounded on specific professional knowledge and reducing the time for resolving complaints. In Japan, members of the Government Procurement Review Board are scientists, scholars and other experts with relevant experience in government procurement (see Box IV.10).

Box IV.10. The Government Procurement Challenge System in Japan

In 1995, the Japanese Government established a complaint mechanism tailored to public procurement. This mechanism combines and strengthens the voluntary measures which Japan has previously taken. It is applied to all central government entities covered by the WTO Government Procurement Agreement (GPA).

The review mechanism of complaints is incumbent on two entities:

- First, the *Office of Government Procurement Review* that has adopted the "Complaint Review Procedures for Government Procurement". It details the process to be followed.
- Secondly, the *Government Procurement Review Board*, which receives and reviews the actual complaints. Any supplier may file a complaint with the Board, who believes that a government entity has behaved in an inappropriate manner, or was inconsistent with the GPA. The Board is composed of 23 members. The Board is responsible for reviewing complaints filed by suppliers with regard to procurements by central government entities and central-government-related entities. Members of the Board are scientists, scholars and other experts with relevant experience in government procurement.

The Board must prepare a written report on his findings within 90 days after the complaint has been filed. In this report, it must state whether or not the procurement was inconsistent with the GPA or the government entity has behaved in an inappropriate manner. In case of inconsistence or inappropriateness, the Board must recommend remedies. Furthermore, in its report, the Board is authorised to consider additional factors. These include the seriousness of deficiencies in the procurement process, the good faith of the complainant and the entity concerned, as well as the impact of the recommendations on the operations of the entity. Information on regulations and past

complaints is available in English on the website of the Office for Government Procurement Challenge System (http://www5.cao.go.jp/access/English/chans_about_e.html). If the entity does not comply with the recommendations, it must report its reasons to the Board.

Since the establishment of the Board in 1995, only six complaints have been filed, while other inquiries have been resolved through consultation.

Sources: - Japan, response to the OECD Questionnaire.
- J.H. Grier: An Overview of the Japanese Government Procurement System. *Public Procurement Law Review*, Issue 6.

In a growing number of countries – including Austria, Denmark, Luxembourg, Norway, Sweden, and Switzerland – there is a body for dispute resolution to encourage **informal problem solving.** Box IV.11 on the experience of the Public Procurement Board in Norway illustrates the potential advantages in terms of efficiency and lowering the costs compared to formal litigation. Other countries, such as Finland, Germany and the United Kingdom, have set up contact points that render advice and assist companies facing problems specifically in cross-border cases. The national ombudsman may also play a role in public procurement disputes between bidders and contracting authorities, for instance in Belgium, Luxembourg, and the Netherlands.

Box IV.11. Efficient and timely resolution of complaints: Informal problem solving in Norway

In Norway, dissatisfied suppliers in a public procurement procedure have had the choice to take a formal complaint to ordinary courts since 1994. This formal review has been available to secure correct and effective application of procurement rules, as required by the Remedies Directives of the European Commission. The courts have had the power to suspend procurement process before awarding the contract and also grant compensation for damages (e.g. loss of expenses, profit, etc). However, the courts have received only very few complaints in the past ten years.

In January 2003 an **advisory complaint board** – the Public Procurement Complaint Board (KOFA) – was created with the objectives to:

- Make the enforcement of the public procurement regulations more efficient;
- Solve disputes in a faster and more flexible way (e.g. lower the litigation costs); and
- Increase the level of competence on public procurement (e.g. through publishing the opinions and clarifying the interpretation of the rules and principles).

The Public Procurement Complaint Board is an independent advisory body that consists of ten highly qualified lawyers. Three members of the Board participate in the handling of each complaint. Although its decisions are not legally binding, due to the high quality of its recommendations, the Board's opinions are followed by the parties in nearly all cases. The Board's activity has led to a noticeable increase in knowledge of the application of public procurement rules.

The public procurement legislation grants involved bidders the right to complain after a contract has been awarded. The complaint must be submitted to the Complaint Board within six months after the contract has been signed.

When the complaint is submitted within the standstill period the Complaint Board asks the contracting authority to postpone the signing of the contract until the case is closed. Furthermore, the Board gives priority for reviewing those complaints where the contracts are not yet signed. By January 2006 the average time for decisions was:

- 51 days in case of contracts that had not been signed; while
- 224 days in case of already signed contracts.

The Board has handled approximately 850 cases since its creation in 2003.

The Norwegian administration has not experienced any major problems related to this public process of handling complains, which is also open to media oversight. The principle that all written information is recorded in public archives, also apply in this field. However, the Freedom of Information Act provides exceptions from this principle.

Furthermore, a procedure was set up in 2006 to handle cases when contracting authorities disregard the rules as a whole by not advertising competition. For direct illegal procurement, an **administrative fee** can be levied by the complaint board (up to 15% of the contract value), which is a legally enforceable decision.

An evaluation of the Public Procurement Complaint Board is under way by an external firm to assess whether the original objectives have been achieved or adjustments are necessary to accomplish them, for example in the Board's composition, competence, cost, and the capacity in the Board and its Secretariat.

Sources: - Norway, response to the OECD Questionnaire.
- Report concerning the Study on Pre-Contract Problem-Solving Systems, August 2002.

Other solutions include the possibility of a decision in a shorter period of time if the complaint is related to the award. For instance, in the Netherlands, in case of urgency (e.g. pending the procurement process), an action can be brought before the president of a district court in **a summary injunction procedure**, where the annulment of the award decision and the order of a new public procurement process for the public contract can be requested.

Adequate remedies

A core element of the integrity of a procurement system is the availability of remedies that can be awarded when an unsuccessful bidder considers that the process was conducted in an inappropriate manner or raises the possibility of violation of the procurement regulations. The recourse system must have the authority to define and enforce interim measures, as well as final remedies that correct inappropriate procuring agency actions and compensate bidders. In Ireland, a complainant may seek to have an award process suspended, an award decision rescinded or be awarded compensation for loss or damages. Box IV.12 illustrates the findings from a recent study of the Programme Support for Improvement in Governance and Management (SIGMA) that identified five main categories of available remedies in the European Union Member States.

Box IV.12. Remedy systems in European countries: Findings from a SIGMA study

The SIGMA Programme is a joint initiative of the OECD and the European Union (EU), principally financed by the EU, with the mission of providing support to partner countries in their efforts to modernise public governance systems. SIGMA carried out in 2006 a comprehensive study of the Public Procurement Review and Remedy Systems in the European Union. The study identified five main categories of available remedies:

Setting aside of public procurement decisions, including the award decision

This remedy is generally available in the EU as a decision prior to the conclusion of a specific contract. Individual award decisions to be set aside can concern an unlawful contract notice, discriminatory specifications or bid documents, an illegal qualification decision, illegal short listing decisions, and even the contract award decision itself. Moreover, review bodies may, for example, order the removal or amendment of specifications and other bid documents or the recommencement of the procurement procedure in total or from a specific point in time. The burden of proof is generally on the applicant.

Interim measures

In a limited number of Member States, filing a lawsuit has an automatic suspensive effect, interrupting the procurement procedure. In most countries bidders have to specifically request the review body to apply interim measures, for example the discontinuation of the procedure. The review body can then apply interim measures pending a final decision, taking into account the probable consequences of interim measures for all interests likely to be harmed, including the public interest, and decide against awarding such measures whenever their negative consequences would outweigh their benefits.

Annulment of a concluded contract

This remedy takes effect after the conclusion of the procurement contract and affirms its cessation. Without the possibility of annulment of an already concluded contract the only remedy remains the damages, so this remedy has particular importance. The annulment of a concluded contract is a widely available remedy in the majority of the EU Member States. However, in practice it is difficult to obtain the annulment of a concluded contract, if it is possible at all. To allow the setting aside of the contract award, many jurisdictions have introduced a standstill period of 7-30 days between the contract award decision and the conclusion of the contract, which is a period given to bidders to initiate review proceedings.

Damages

The requirements for the award of compensation for damages are usually the following: loss (pecuniary or otherwise) suffered by the claimant, a breach of the law by the contracting authority or entity, causality (that is that the loss must be caused by the breach of law). The bid costs are reimbursed in all EU Member States. Regarding damages for lost profits, it is very difficult in most Member States to provide the evidence required for damages for lost profits. Consequently, the number of requests for damages is relatively low in most countries, as are judgements in favour of the complainants.

Pecuniary penalties and periodic penalty payments

Payments are not available remedies for unsuccessful bidders, but form part of the public procurement remedy systems. They are applied in order to force contracting authorities and entities to comply with their judgments. Without acquitting the pecuniary penalties or the periodic penalty payments, the contacting authority cannot continue with the award procedure.

Sources: - Presentation at the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Procurement, November 2006.
- *Public Procurement Review and Remedies Systems in the European Union*, SIGMA Paper N°41, 2007.

Some countries do not provide an **automatic suspension** of the procurement procedure in case of review, which leads in practice to the fact that damages after the conclusion of the contract are often the only available remedy. In Slovenia, the submission of a claim to the National Review Commission has an automatic suspension effect (see Box IV.13). In the United States, when a bidder files a timely protest, the procuring agency is required to put the procurement on hold until the protest is resolved, whether the protest is raised pre- or post-award to the agency or to the General Accountability Office. If the negative consequences of the automatic suspension outweigh its benefits, some countries provide the possibility that the contracting authority asks the review body for **permission to continue** the procurement procedure, except for the conclusion of the contract. They may even allow the possibility of entering into the contract during review proceedings, for instance in Germany.

Box IV.13. Automatic suspension effect of procurement reviews: The National Review Commission in Slovenia

The Public Procurement Act in Slovenia sets up a two-stage review process for procurement decisions. The first procedure consists of a complaint filed directly to the contracting authority, which is a rather formalised procedure with an appointed Review Expert from a list maintained by the Ministry of Finance.

In the second stage, the bidder may initiate proceedings before the National Review Commission in case the bidder does not agree with the decision of the contracting authority or if the contracting authority does not decide in due time (15 days). The National Review Commission is an **independent body under the Parliament**, which was established in 1999 and is responsible for the review of complaints in public procurement. In addition to disappointed bidders, the Public Procurement Office, the State Attorney's Office and the Office of Competition have the right to file a complaint to the Commission.

The submission of a review claim to the Commission has an **automatic suspension effect**. In case of violation of the basic principles of public procurement the Commission examines all the relevant information and decides authoritatively. The National Review Commission consists of five members, of whom one acts as President and one as Deputy-president; all members are appointed by the Parliament. Expert support to the work of members is done through twelve consultants. Two types of decisions can be adopted by the Commission: the claim can be rejected or sustained. In the second case the procedure in question will partially or entirely be invalidated.

The National Review Commission only has the competences of an appellate body to annul decisions of contracting authorities. But the Commission can advise a contracting authority on how to implement the procedure regarding the invalidated element. Such advice can be binding on the authority and in case of a breach the Commission can report to the supervisory body of the contracting authority or to the Government.

The Commission reviews about 300 cases per year. It is obliged to give its judgment within 15 days from receipt of the claim, which can be extended by a further 20 days in justified cases. The average time for handling the complaints is approximately 20 days.

Sources: - Slovenia, response to the OECD Questionnaire.
- *Public Procurement Review: Slovenia,* SIGMA, June 2003.

ENSURING PUBLIC SCRUTINY

There is an emerging trend in several countries to involve more and more stakeholders – not only private sector organisations but also end-users, civil society, the media and the public at large – in the procurement process. Interestingly, in recent years some countries have introduced direct social control mechanisms by involving stakeholders in scrutinising integrity in public procurement.

Independent oversight bodies

In order to ensure public scrutiny, it is common for the legislative branch to undertake reviews of procurement activities, either through a permanent committee or an *ad hoc* committee for investigating a specific issue. Several countries formed a **parliamentary committee** to review projects, conduct investigations and/or organise hearings on large-scale procurements, which hold important risks for public funds (e.g. in Greece, Mexico, the Netherlands, Slovenia and Turkey). Countries that have established a parliamentary committee for procurement usually aim at preventing mismanagement and corruption by:

- Making the link between the procedures for financial planning and control for major public procurement projects;
- Providing the Parliament with a formal position in the agenda setting process; and
- Empowering the Parliament's budget's right.

Box IV.14 illustrates the results of a recent Dutch parliamentary inquiry in big infrastructure projects and the role of the parliamentary committee in reinforcing political control over major projects.

Box IV.14. Strengthening parliamentary control in big infrastructure projects: Findings of the Dutch parliamentary inquiry

Large infrastructure investments contain particularly high risks because of their long planning horizons where the budget scheduling may not be adequate for reasons such as unplanned events or the change of scope of the project.

In order to verify the integrity of decisions made on high-valued public investments, the Netherlands established a Parliamentary Committee to review the realisation of large infrastructure projects, The Committee showed that in **nine cases out of ten decisions about large infrastructure projects are misinformed** about costs and benefits, cost overruns and benefit shortfalls being the most common pitfalls. This is illustrated by two cases that have been investigated by the Committee:

- *The Betuwe Route construction:* This route is a 160 km long railway line that enables the growing flow of goods from the international seaport of Rotterdam to be transported via the European hinterland. In this special case, the analysis of the Committee showed that the budget for the project had doubled between 1983 and 2005 due to price increases (34% of the total cost increase) and to the change of scope (42% of price increase).
- *Reconstruction of the High Speed Line South:* this route between the Netherlands and Belgium is a project that showed a 43% difference between the original bidding price and the current costs for the budget.

One recommendation of the investigation of the Parliamentary Committee was that earlier involvement of the Parliament would have been necessary. Political control could be reinforced on government procurements through an explicit parliamentary agreement on the need for the infrastructure project. Furthermore, the Parliament should have put more effort into controlling government purchases and spending.

These conclusions indicate a possible shift in balance of power between Parliament and the administration in procurement to promote a higher level of transparency and better information sharing. The Parliament should be able to check crucial information about major projects involving important risks for public funds.

Source: Parliamentary Committee on Infrastructure Projects, Keynote speech of the Netherlands at the OECD Expert Meeting on Integrity in Public Procurement, June 2005.

Another common form of independent oversight is the Ombudsman/Mediator, who may conduct investigations into procurement activities and resolve matters by conciliation (e.g. Australia, Belgium, Brazil, Luxembourg, New Zealand and the United Kingdom). Last but not least, Supreme Audit Institutions also contribute to scrutinising government actions, with the preparation of reports for Parliaments. For instance, in Poland, the award of the contract is subject to control from the Supreme Chamber of Control, a constitutional body independent from the government administration that reports to Parliament. This scrutiny keeps public servants accountable for their actions, ultimately, to the public.

The international community also plays a key role in monitoring progress in public procurement reforms, in particular in aid recipient countries. In particular, the OECD Development Assistance Committee (DAC) Joint Venture for Procurement is working together with multilateral and bilateral donor members and partner countries to assess the performance and quality of public procurement systems in developing countries (see Box IV.15).

Box IV.15. Assessments in developing countries: The OECD-DAC Joint Venture for Procurement

The OECD-DAC Joint Venture for Procurement is developing with donor members and partner countries a common, country-led approach to strengthening the quality and performance of public procurement systems.

The latest version of the **methodology** has been developed to be the first test version of this "mutually agreed framework" for procurement systems. It consists of several instruments, in particular:

- **The Baseline Indicators** are made up of four "pillars": I – Legislative and Regulatory Framework, II – Institutional Framework and Management Capacity, III – Procurement Operations and Market Practices and IV – Integrity and Transparency of the Public Procurement System (see Annex E for details on pillar IV).

- **The Compliance and Performance Indicators** help identify areas of weak compliance or performance. Indicators are associated with the Baseline Indicators but are not scored at this point in time. As there are no agreed standards of performance, analysis of available data and information can determine the degree of compliance of the system with the country's own policies and regulations. The use of indicators has to be determined on a country-by-country basis taking into consideration the specific capacities and available data and information.

A pilot exercise involving 22 pilot countries in Africa, Latin America and Asia is starting up in 2007 by means of a series of regional orientation workshops; these workshops aim at raising awareness about the structure and the application of the latest version of the common methodology for benchmarking and assessing public procurement systems. The workshops will also focus on the country-led teams of development partners that are to plan and manage the pilot exercise process, including the diagnosis/assessment phase and the development of procurement capacity development Action Plans.

Issues such as transparency, fairness and accountability (to donor and partner parliaments) will be given special consideration in discussions between pilot country and development partner representatives about the validation of assessment results. The roles and capacities of civil society and the private sector in monitoring and supporting transparency and accountability will be examined in the different country contexts during the pilot exercise.

Direct social control

An emerging practice is the use of direct social control by involving stakeholders in scrutinising integrity in public procurement. The **involvement of stakeholders** – private sector, end-users, civil society, the media or the public at large – aims at ensuring integrity in procurement, either through monitoring of the process, as a simple observer, or direct participation of stakeholders at key decision-making points.

Although a majority of countries have strong accountability mechanisms, more and more countries have involved representatives from NGOs, academics, end-users organisations and/or industries to **scrutinise the integrity of the procurement process**. In particular Integrity Pacts have been used in various regions of the world to bind both government officials and stakeholders to ethical conduct, using civil society as an independent eye in the process. They have two main objectives, namely to enable:

- **Companies** to abstain from corruption by providing assurance to them that the competitors will similarly refrain from corruption, and the government agencies are also committed to prevent corruption; and
- **Governments** to reduce the high costs and the distortion effect of corruption in public procurement.

Stakeholders may be involved in monitoring the whole process from the pre-bidding to the contract management and payment, for instance in Mexico, or at specific vulnerable points in the process (e.g. observation of the opening of bids, of the negotiations, contract management, etc.). It is usually organised on an ad hoc basis (e.g. signature of a specific agreement between the procuring authority and the bidders) but may take a more permanent institutionalised form. For instance, in Luxembourg, members of the Chamber of Commerce and of the Association of Professions are systematically invited to attend the opening of bids.

Direct social control mechanisms have a potential not only to promote the integrity of the public procurement process, but also to improve overall efficiency. This has proved particularly useful in the contract management to help ensure the efficiency of the contract, for example, through social auditing or citizens' oversight. Box IV.16 illustrates how stakeholders, 'Social Witnesses', testify the integrity of the process, as well as provide recommendations to improve procurement processes.

Box IV.16. Direct social control in procurement: Social Witness in Mexico

The social witness is a representative of civil society, who acts as an external observer in a specific public procurement process. In order to promote transparency, diminish the risk of corruption and improve overall efficiency of procurement, this practice has been used for several years on a voluntary basis by public organisations in Mexico, following *Transparencia Mexicana*'s recommendation. The social witness not only provides a public testimony on the procurement process but may also provide non-binding recommendations during and after the process.

The social witness must be a highly honourable, recognised and trusted public figure who is independent from the parties involved in the process. The social witness has full access to the information and documentation in the procedure and also has the right to participate in critical stages of the procurement process, in particular:

- Checking the basis of the bid and the bidding notice;
- Observing all the sessions that are held with possible bidders to clarify any doubts they may have;
- Receiving the unilateral integrity declarations from the parties;
- Witnessing the delivery of technical and economic proposals;
- Observing the session in which the awarding will be announced.

Since December 2004, a strict regulation specifies the criteria for participation of social witnesses in procurement. In order to obtain a registration, they should in particular:

- Prove that they are not public officials;
- Have no penal antecedents nor have been sanctioned or disqualified;
- Declare formally that they will not participate in a procurement that could lead to a conflict-of-interest situation (e.g. family or personal relationship, business interest, etc.);
- Have knowledge of legal regulations related to procurement (if not they will attend a training session provided by the government).

In case of disrespect of ethical standards or disclosure of information on the procedure, the social witness is liable to sanctions.

The use of social witness has proved successful for the procurement of the *Comision Federal de Electricidad* (Federal Electricity Commission). The recommendations of the social witness have led to significant improvements, including an increase by 50% of the number of suppliers that have submitted bids, the expansion of the time limit for the presentation of bids and the provision of more precise and clear answers to the questions of bidders. The government estimated that the involvement of the social witness has led to a saving of USD 26 million in the overall cost of this procurement of hereditary insurances.

The actual list of registered social witnesses in Mexico can be found on the website of the Ministry of Public Administration (http://www.funcionpublica.gob.mx/unaopspf/unaop1.htm).

Source: Mexico, response to the OECD Questionnaire.

Alternatively, stakeholders may be actively **participating in decision-making points** of the public procurement process. Active participation means that stakeholders take a role in the exchange on policy making, for

example by suggesting policy options. In Belgium an advisory commission is used for important projects. In some cases, decisions are made in co-operation and consent between authorities and representatives of stakeholders, for instance in Korea and the United States. This is an advanced two-way relation between government and stakeholders based on the principle of partnership.

Participation is usually carried out on an ad hoc basis. For example, the procuring team in the United States balances many competing interests in the acquisition process, by involving not only representatives of the technical, supply and procurement communities but also sometimes the customers they serve, and the contractors who provide the products and services. Furthermore, in some countries, the participation is integrated in the review of complaints raised in the procurement process. For instance, two of the members of the Public Procurement Board in Turkey, which is the regulatory and review procurement body, are selected by the Cabinet among persons who have necessary qualifications and are nominated by the Union of Chamber of Commerce and Trade and the Confederation of Turkish Businessman Union.

A concern has been to ensure that the process for selecting stakeholders is based on sound criteria for selection (e.g. personal integrity of stakeholder, relevant expertise) and that clear restrictions are defined to prevent conflict-of-interest situations (e.g. absence of a relationship with contracting parties, etc.). The stakeholders monitoring the procurement process may be paid by civil society directly or possibly by the authority that is being monitored provided that the contract is transparent. Furthermore, both officials and stakeholders should be **liable for their actions**. In Korea, the Memorandum of Integrity Pact for suppliers, that is included in contract terms and conditions, includes the possibility of cancellation of contract, forfeiture of bond, liquidated damages and debarment of suppliers in case of proven corruption. Similarly, all employees from the Public Procurement Service who submit integrity pledges based on the Integrity Pact are held liable for compensation when they, on purpose or by mistake, cause damage to assets of government organisations. Box IV.17 highlights some of the results that have been achieved by the government of Korea.

Box IV.17. Adopting Integrity Pacts in Korea

An Integrity Pact (IP) is a multilateral and **mutual pact** against corruption among government organisations and bidders to prevent corruption in public procurement which establishes mutual rights and obligations.

In Korea, the Seoul Metropolitan Government adopted the concept of the Integrity Pact in July 2000, followed by the Public Procurement Service of Korea that implemented the Pact in March 2001. For the monitoring and full implementation of the Integrity Pacts, an IP Ombudsman System with five Ombudsmen has been introduced that organises **public hearings** at critical stages of the process for major construction, supply or consultant contracts. Experience indicates good acceptance and recognition by bidders of the benefits. For example, a survey by TI Korea in 2004 shows that after the adoption of Integrity Pacts, 91.4% of private sector respondents noticed a positive change in the attitude of public sector officials in connection with corruption; and 72.2% of public sector officials noticed a positive change in the attitude of private sector actors.

Since their original conception, Integrity Pacts have been used in 16 countries worldwide. They have proved to be **adaptable to different legal and economic** contexts from Colombia through Korea to Germany (e.g. the international airport in Berlin-Schönefeld) and have also been used for very sensitive purchases such as defence.

Sources: - OECD Symposium Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement, November 2006.
- Transparency International Integrity Pact and Public Contracting Programme.

More generally, experience with Integrity Pacts in various countries shows that the conditions for successful implementation include:

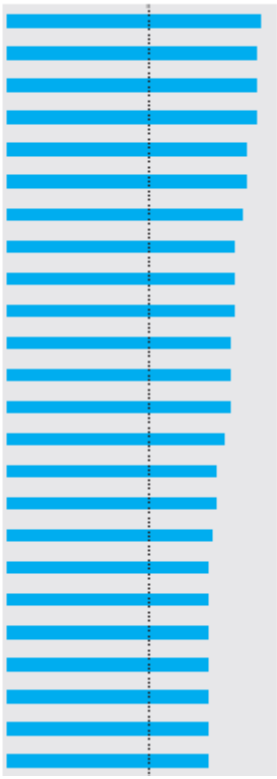
- Ensuring transparency at all steps of the process, from needs assessment to contract management and payment, through unrestricted access to all documents for the Monitor and for all activities, including when using consultants;
- Building a coalition of the main stakeholders with a strong commitment demonstrated by the public authority for the implementation of the Pact;
- Providing adequate incentives and sanctions for both the public authority and bidders;
- Ensuring independent monitoring of all phases of procurement that brings both policy and technical expertise to the project; and
- Helping provide the right conditions for detecting corruption, in particular through a whistleblowing system that both encourages and protects against potential retaliation.

ANNEX A

IRREGULAR PAYMENTS IN PUBLIC CONTRACTS

In your industry, how commonly would you estimate that firms make undocumented extra payments or bribes connected with awarding of public contracts (investment projects) (1 = common, 7 = never occur)?

RANK	COUNTRY/ECONOMY	SCORE	SD
1	Iceland	6.7	0.5
2	New Zealand	6.6	0.7
3	Denmark	6.6	0.6
4	Singapore	6.6	0.7
5	Finland	6.4	0.8
6	Sweden	6.4	1.1
7	Norway	6.3	0.7
8	Switzerland	6.1	1.0
9	United Kingdom	6.1	1.2
10	Australia	6.1	1.1
11	Germany	6.0	0.9
12	Luxembourg	6.0	1.4
13	Hong Kong SAR	6.0	1.4
14	Netherlands	5.9	1.2
15	Japan	5.7	1.5
16	Austria	5.7	1.2
17	Israel	5.6	1.3
18	Canada	5.5	1.3
19	France	5.5	1.5
20	Ireland	5.5	1.5
21	Slovenia	5.5	1.6
22	Portugal	5.5	1.4
23	United Arab Emirates	5.5	1.8
24	Chile	5.5	1.4



RANK	COUNTRY/ECONOMY	SCORE	SD
25	Taiwan, China	5.4	1.5
26	Belgium	5.4	1.4
27	Qatar	5.1	1.9
28	Bulgaria	5.1	2.0
29	United States	5.0	1.7
30	Spain	5.0	1.6
30	Uruguay	5.0	1.5
32	Barbados	5.0	1.5
33	Italy	4.9	1.9
34	Bahrain	4.9	1.8
35	El Salvador	4.8	1.8
36	South Africa	4.8	1.8
37	Malaysia	4.8	1.6
38	Moldova	4.8	2.3
39	Estonia	4.8	1.7
40	Peru	4.7	1.9
41	Costa Rica	4.7	1.8
42	Malta	4.7	1.8
43	Cyprus	4.7	1.7
44	Egypt	4.7	2.0
45	Jordan	4.6	1.9
46	Korea, Rep.	4.6	1.7
47	Lithuania	4.5	2.1
48	Tunisia	4.4	1.7
49	Ukraine	4.4	1.9
50	Kuwait	4.4	2.0
51	India	4.3	2.0
52	Brazil	4.3	2.2
53	Mexico	4.3	1.8
54	Botswana	4.2	1.8
55	Hungary	4.2	1.7
56	Latvia	4.2	2.0
57	Colombia	4.2	2.1
58	Kazakhstan	4.2	1.9
59	Croatia	4.1	1.7
60	Serbia and Montenegro	4.1	2.2
61	Poland	4.1	1.3
62	Greece	4.1	1.8
63	Panama	4.1	1.8

RANK	COUNTRY/ECONOMY	SCORE	SD
64	Turkey	4.0	1.9
65	Jamaica	4.0	2.0
66	Guatemala	4.0	1.8
67	Russian Federation	4.0	2.2
68	Slovak Republic	4.0	1.5
69	Namibia	4.0	1.8
70	Nicaragua	3.9	2.0
71	Thailand	3.9	1.7
72	Mauritius	3.9	1.6
73	Armenia	3.9	2.2
74	China	3.8	2.0
75	Timor-Leste	3.8	2.0
76	Georgia	3.8	1.6
77	Algeria	3.8	2.2
78	Czech Republic	3.8	1.8
79	Malawi	3.8	1.9
80	Ethiopia	3.7	1.8
81	Albania	3.7	2.3
82	Gambia	3.6	1.7
83	Honduras	3.6	1.9
84	Morocco	3.6	1.9
85	Azerbaijan	3.5	2.0
86	Burkina Faso	3.5	2.0
86	Tajikistan	3.5	1.9
88	Bosnia and Herzegovina	3.5	2.0
89	Lesotho	3.5	1.9
90	Mozambique	3.5	1.8
91	Dominican Republic	3.5	2.1
92	Suriname	3.4	1.9
93	Angola	3.4	1.8
94	Mongolia	3.3	2.1
95	Ecuador	3.3	2.0
96	Bolivia	3.3	1.9
97	Tanzania	3.3	1.5
98	Pakistan	3.3	1.2
99	Paraguay	3.3	1.9
100	Madagascar	3.2	1.4

RANK	COUNTRY/ECONOMY	SCORE	SD
101	Macedonia, FYR	3.2	2.0
102	Romania	3.2	2.1
103	Cameroon	3.2	1.9
104	Argentina	3.1	1.9
105	Trinidad and Tobago	3.1	1.8
106	Vietnam	3.1	1.8
107	Kyrgyz Republic	3.1	2.0
108	Sri Lanka	3.1	1.9
109	Zimbabwe	3.1	1.5
110	Kenya	3.1	2.0
111	Guyana	3.0	1.9
112	Philippines	3.0	1.8
113	Venezuela	3.0	2.0
114	Chad	2.9	2.0
115	Burundi	2.9	1.8
116	Nepal	2.8	1.6
117	Nigeria	2.8	1.7
118	Mauritania	2.8	1.8
119	Mali	2.8	1.7
120	Benin	2.8	1.4
121	Uganda	2.7	1.9
122	Cambodia	2.7	1.5
123	Zambia	2.7	1.2
124	Indonesia	2.5	1.0
125	Bangladesh	2.0	1.2

Source: World Economic Forum, Executive Opinion Survey 2006, The Global Competitiveness Report 2006-2007, Creating an Improved Business Environment (2006).

ANNEX B

SURVEY METHODOLOGY

In order to test the hypotheses put forward by participants at the 2004 Global Forum on Governance: Fighting Corruption and Promoting Integrity in Public Procurement, the OECD launched a survey collecting countries' experiences in promoting integrity in public procurement.

FOCUS OF THE SURVEY

The Expert Meeting on Integrity in Public Procurement on 20-21 June 2005 provided insights into countries' views on the relevant focus for launching the survey on integrity in public procurement**:**

- The survey focuses primarily on **practices** - but may also include relevant formal laws and institutions - for promoting integrity in public procurement at **all stages** of the procurement process. There is an increasing recognition that risks of corruption often lie before or after the bidding process, in the assessment of needs and the contract management.
- The Questionnaire aims at collecting information on OECD countries' experiences at the central level in **fostering transparency, integrity and accountability** in public procurement.

METHODOLOGY

Country experts have been nominated by the OECD Public Governance Committee delegates to take part in the survey. Nominated experts are primarily practitioners in charge of designing, supervising and managing procurement processes at the central level. In order to provide a full view of the public procurement cycle, auditors, members of competition authorities and anti-corruption specialists have also been involved in the survey.

The Questionnaire was developed and tested with an informal task force of volunteer experts of this network – from Canada, France, Germany, Korea, Mexico, Spain, Sweden, the United Kingdom and the United States.

It was then applied to 29 OECD countries and three observers, namely Brazil, Chile and Slovenia.

The findings and identified good practices were reviewed by nominated government procurement experts, as well as representatives from civil society and private sector at the OECD Symposium: Mapping out Good Practices for Integrity and Corruption Resistance in Public Procurement on 29 and 30 November 2006.

Furthermore, participants at the Symposium and the back-to-back Global Forum on Governance: Sharing Lessons on Promoting Good Governance and Integrity in Public Procurement, on 30 November and 1 December 2006 called for the inclusion of selected good practices from non-OECD countries in the report. The good practices from non-OECD countries that have been included are based on discussions at the Global Forum, as well as on results of former work by the OECD-DAC Joint Venture on Procurement.

QUESTIONNAIRE

In accordance with the focus of the Report, the Questionnaire helped to collect OECD countries' experiences at the central level on three key aspects:

I. Government practices that help **provide a level playing field for bidders through an adequate level of transparency** at all stages of the public procurement process. The first part of the Questionnaire explores recent trends in the information disclosed to bidders, potentials and limits of procedures for providing equal and timely access to information, as well as limitations to transparency.

II. Preventative mechanisms that help **identify and address risks of mismanagement and corruption** in procurement. The second part of the Questionnaire focuses on risk management instruments and techniques that increase the predictability, transparency and integrity of procurement processes.

III. Mechanisms to **ensure control and accountability**, from the assessment of needs (e.g. planning, budgeting) to contract management (e.g. payment). The third part of the Questionnaire reviews traditional as well as emerging mechanisms to keep public officials and bidders/intermediaries/contractors accountable.

The Questionnaire comprises 10 main questions. In addition, guidance is provided to help experts fill in the answers by clarifying the type of expected information.

I. Providing a level playing field for bidders through an adequate level of transparency in public procurement: From policy to practice

- How is information made available in practice to bidders/intermediaries/contractors at the different stages of the procurement process?
- What specific instruments and procedures are used for providing equal, timely and consistent access to information for bidders, and in particular what is the role of information and communication technologies?
- Under what circumstances are exceptions made to the general public procurement rules? In these circumstances, what are the measures available for ensuring a level playing field for bidders/intermediaries/contractors?

II. Preventative mechanisms to identify and address risks of mismanagement and corruption in public procurement

- Where have the risks for mismanagement and corruption been identified in the procurement process, from the assessment of needs and planning to contract management (e.g. payment)?
- What are the internal instruments and techniques for ensuring that public funds are used in public procurement according to the purposes intended, for minimising risks of mismanagement, and for improving value for money?
- What specific anti-corruption and conflict-of-interest policies help promote integrity in public procurement?

III. Mechanisms for ensuring control and accountability in the public procurement process

- What have been the developments in your country in the last five years to balance the discretionary power of public officials (e.g. procurement officers, elected officials, etc.) with the need for accountability?
- How are public officials and bidders/intermediaries/contractors kept accountable at all stages of the public procurement process?
- Have stakeholders – in particular private sector, end-users, civil society or the public at large – been involved in the procurement process, if so how?
- How do you ensure fair and timely resolution of formal administrative complaints related to the procurement process?

Additional information

- Please take this opportunity to share the document(s) that include good practices related to procurement that might have been developed in your country (e.g. guidebook, audit report, etc.). Please indicate how these good practices have been identified and the conditions for their effective functioning.
- In addition, please provide a description in a few lines of the relevant legal and institutional frameworks, including the legislative framework for public procurement processes (e.g. reference to relevant laws and regulations), the central institutions for supervising and monitoring public procurement, the mechanism for handling complaints, and the institutions and procedures for internal and external control and audit.

GUIDANCE FOR COMPLETING THE QUESTIONNAIRE

The sub-questions are intended to **help you fill in the answers** by clarifying the type of expected information.

The primary aim of the Questionnaire is to collect **good practices** at the **central level**, to be included in the Report. In order to gain a better understanding of the conditions for ensuring integrity in public procurement, you might also provide examples of problems, highlighting the reasons and factors for failure.

In your answers, please focus on the measures used in **daily practice.** You may also include information on formal laws and institutions when relevant.

1. How information is made available in practice to bidders/ intermediaries/contractors at the different stages of the procurement process?

Please use the **table** below to summarise:

a) How is **information** made available in: (a) assessment of needs/specifications; (b) selection and award/criteria; (c) debriefing of award results; and (d) contract management/payment.

b) **Who** can have access to the information (e.g. supplier, unsuccessful bidders).

c) To what extent procurement regulations define specific **restrictions on release of privileged information** related to procurement.

	How information is made available in practice	**To whom** (supplier/bidders /intermediaries/contractors)	**Specific restrictions on release of privileged information**
Assessment of needs/ Specifications			
Selection and award/ Criteria			
Debriefing of award results			
Contract management/ Payment			

2. What specific instruments and procedures are used for providing equal, timely and consistent access to information for bidders, and in particular what is the role of information and communication technologies?

Please specify in particular:

a) The main features of the **procurement information system** and in particular the contribution of information and communication technologies in providing a level playing field for bidders (e.g. an e-procurement system that provides a one-shop service, avoids

personal contact, etc.). Please provide the web link to the e-procurement system.

b) What instruments are used for ensuring timely and **consistent disclosure** of information (e.g. model bid documentation including terms and conditions of the contract), how they are tailored to the type of goods and services, updated to reflect the needs of stakeholders and communicated to them.

c) In case of **change in information,** or **demand for clarification** of information, what are the procedures for ensuring that the same level of information is provided to each bidder (e.g. criteria for defining how to disclose additional information, contact points for enquiries, etc.)

3. Under what circumstances are exceptions made to the general public procurement rules? In these circumstances, what are the measures available for ensuring a level playing field for bidders/intermediaries/contractors?

Please describe the circumstances and specify what precautionary measures ensure a level playing field (e.g. transparency, additional guidance, monitoring, etc.) in these circumstances, such as:

a) **When the procedure cannot be fully completed** (e.g. none of the bids fulfil the technical requirements as defined in the call for bidding, requirements turn out to be unrealistic in the contract management).

b) When general public procurement rules do not apply, in particular the difference between procurement procedures used above and below the threshold as well as the procedures used in specific circumstances (e.g. national security, emergency, etc.).

d) When using pre-qualification (e.g. restricted bid, agreed vendors' list, framework agreement etc.).

e) When taking into account economic and social considerations in procurement (e.g. favouring bidders from economically disadvantaged areas).

4. Where have the risks for mismanagement and corruption been identified in the procurement process, from the assessment of needs and planning to contract management and final payment?

Please specify in particular:

a) **What risks** have been identified in the procurement system, to whom these findings have been disclosed, and whether these findings have resulted in **recommendations** (e.g. suggested modifications in laws, development of specific preventative instruments, etc.).

b) How the risks have been identified: the **mechanism** used (e.g. government-wide spending control and public finance management programme, internal management accountability framework, audit, etc.), and the **technique** (e.g. random sample testing of risks in procurement)

c) The **focus** of the review, such as contracts below thresholds (e.g. the number of contracts per year just below approval thresholds, aggregated value of procurement contracts over a year to prevent "contract splitting") or circumstances that require exceptions to public procurement procedures (criteria used under the threshold, justification for invoking emergency in procurement contract variations, etc.).

5. What are the internal instruments and techniques for ensuring that public funds are used in public procurement according to the purposes intended, for minimising risks of mismanagement, and for improving value for money?

Please specify in particular:

a) The management mechanisms to ensure that public funds for procurement are **used for the purposes intended** (e.g. procedure for approval and monitoring of funding by government and within departments in accordance with laws and budget documents, ability to report publicly on procurement expenditures, etc.)

b) The main instruments for improving **the planning and implementation process** in public organisations – particularly in the case of decentralised units (e.g. annual procurement plans,

internal control based on materiality[25] and risk, procedures for management approval of business cases to justify major contracts, model for risk sharing between government and bidder, etc.).

c) Whether there is a **system/database for collecting statistical information** on public procurement (e.g. national statistical office), the main **objective** of the system (e.g. procurement planning, benchmarking, detection of possible corrupt practices, etc.), and how it is used in **policy making** (type of data collected, integration of data in financial reporting, capacity to analyse patterns and trends in a department or at a government-wide level, data reported publicly and fed back into the system).

d) The accountability chain for **officials working in vulnerable positions** in relation to procurement (e.g. general managers such as budget holder, procurement officials, etc.) and what **capacity-building measures** are in place to ensure **integrity** (e.g. professional training that includes integrity issues) and to respond to a potential need or dilemma (e.g. advisory service).

6. What specific anti-corruption and conflict-of-interest policies help promote integrity in public procurement?

Please specify in particular:

a) The general requirements for officials/contractual staff involved in procurement to prevent corruption in the process (e.g. clear separation of duties and authorisations between the individuals/bodies, rotation of officials, four-eyes principle, disclosure requirements such as declarations of financial interests, etc.), and the exceptions to their application (e.g. discretionary power below threshold).

b) What ethical standards, prohibitions and restrictions apply to officials/contractual staff involved in procurement as well as bidders/intermediaries/contractors, in what form (e.g. anti-corruption clause, integrity pact, code of conduct, Business Integrity Management Systems, etc.) and how they are communicated and enforced (e.g. condition for entry into an awarding procedure).

25. Materiality can be defined as the magnitude of an omission or misstatement of accounting information that make it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement. Therefore, risk is a measure of uncertainty, whereas materiality is a measure of magnitude or size.

c) Whether there are specific policies to establish or verify the integrity of bidders/ intermediaries/contractors (e.g. "white listing", assessment of integrity and/or financial competence, disclosure of commissions paid to individuals/firms for services provided in the procurement process) and whether they apply to all contracts.

7. What have been the developments in your country in the last five years to balance the discretionary power of public officials (including procurement officers, elected officials, etc.) with the need for accountability?

Please specify in particular:

a) In a context of delegated authority, how standards, incentives (e.g. staff performance evaluation process) as well as accountability mechanisms for procurement officers help find the right balance between flexibility (e.g. being rapid and responsive) and control (e.g. preventing and detecting corruption) in procurement.

b) How the integrity of public officials' decisions is verified at different stages of the procurement process (e.g. review of how criteria for the selection and evaluation of bids are determined, whether they are strictly applied in decisions, how selection requirements can be waived, whether specifications are defined in a non-discriminatory manner, reasons for delays in payment, etc.).

8. How are public officials as well as bidders/intermediaries/ contractors kept accountable at all stages of the public procurement process?

Please specify in particular:

a) The main accountability mechanisms for public officials and bidders/intermediaries/contractors, in particular in the contract management phase (e.g. policies for approving/monitoring/ recording/reporting contract variations, policies for ensuring due diligence in payment processes, etc.).

b) What internal control processes over individual transactions ensure the management of the procurement function, and how co-ordination is ensured between internal control and external audit of procurement processes.

c) Whether information is available on the number and type of breaches filed (for example, in 2005) and the sanctions applied for suppliers/intermediaries as well as public officials.

9. Have stakeholders – in particular private sector, end-users, civil society, the media or the public at large – been involved in the procurement process, if so how?

Please specify in particular:

a) Whether their role was rather advisory (e.g. consultation of private firms in the definition of needs through preparation of a study, etc.) or control-oriented (e.g. verifying the integrity of the process), and at what stage of the procurement process they were involved.

b) How you ensure that the process for integrating the views of stakeholders is not biased (e.g. criteria for selection, representative sample, identification of conflict-of-interest situations, etc.)

c) Whether independent watchdogs are also involved in monitoring the process (e.g. role of the legislative power in providing a framework for integrity in public procurement, for instance a Parliamentary Committee monitoring the management of large procurement projects).

10. How do you ensure fair and timely resolution of formal administrative complaints related to the procurement process?

Please specify in particular:

a) The internal and external complaint mechanisms, in particular whether a procedure to report mismanagement and corruption exists for procurement personnel, suppliers and other stakeholders.

b) What information is kept in the records, the protection available against retaliation when making a complaint, the precautionary measures to limit the number of unfounded complaints.

c) The institution(s) in charge of handling administrative complaints, the average time for resolution, and whether the procedure provides the possibility of challenging government actions prior to or after the award.

ANNEX C

PROBITY PLANNING CHECKLIST IN AUSTRALIA

The probity plan, in line with established probity guidelines and procedures, is mainly used in Australia when the procurement is of high value and in need of careful management, or if the procurement is likely to encounter ethical problems. Where utilised, probity plans carefully take into consideration the relevant characters of the procurement case, such as its size, complexity and risks. The following checklist of probity issues can be used in the construction of a probity plan:

PROBITY PLANNING	☑
Determine whether a probity auditor and/or adviser is needed	☐
Obtain conflict of interest declarations from team members	☐
Obtain confidentiality agreements from external participants	☐
Finalise the probity plan, if one is being used	☐
Consider confidentiality requirements	☐
Set up physical security procedures, such as the document register or data room	☐
Ensure team members are familiar with all relevant policies and documents	☐
Set up procedures so all potential suppliers have access to the same information	☐

PROCUREMENT PROCESS	☑
Review probity at the end of the bid preparation process	☐
Set up a process for receiving, recording and acknowledging submissions	☐
Set up a procedure for opening the bid box	☐
Document any changes that occur, and notify all potential suppliers	☐
Ensure evaluation of submissions is fair, consistent and competitive	☐
Review probity at the end of the evaluation process	☐
Notify the successful bidder as soon as possible	☐
Notify the unsuccessful bidders as soon as possible	☐
Debrief unsuccessful bidders	☐
Ensure all actions are documented, and the documents are stored appropriately	☐
Review probity at the end of the process	☐

Source: Australia, Guidance on Ethics and Probity in Government Procurement, Financial Management Guidance, N° 14, January 2005. (http://www.finance.gov.au/procurement/ep_appendices.html#ChecklistforProbityPlanning).

ANNEX D

Comparative Overview of Public Procurement Structures in EU Member States by SIGMA

Member State	Key Institutions	Number of Staff	Sub-ordination	Main Functions
1. Austria (Semi-centralised structure)	Section for Procurement Law	4	Federal Chancellor's Office	Drafting primary and secondary legislation; International co-ordination; Advisory functions; Monitoring and control; Information.
	Federal Procurement Ltd.	58	Ministry of Finance	Business development and co-ordination; Central purchasing.
2. Bulgaria (Centralised structure)	Public Procurement Agency	38	Ministry of Economy and Energy	Drafting primary and secondary legislation; Advisory and operations' support; International co-ordination; Monitoring and control; Publication and information; Professionalisation and capacity-strengthening.
3. Cyprus (Centralised structure)	Public Procurement Directorate	14	Treasury	Drafting primary and secondary legislation; Advisory and operations' support; International co-ordination; Monitoring and control; Professionalisation and capacity-strengthening.

4. Czech Republic (Centralised structure)	Public Investment Department	17	Ministry for Regional Development	Drafting primary and secondary legislation; Advisory functions; International co-ordination; Monitoring and control; Publication and information (partially).
5. Estonia (Centralised structure)	Public Procurement Office	19	Ministry of Finance	Advisory and operations' support; International co-ordination; Monitoring and control; Publication and information; Professionalisation and capacity-strengthening.
	State Aid and Public Procurement Unit, Public Governance Department	4	Ministry of Finance	Drafting primary and secondary legislation.
6. Finland (Decentralised structure)	Trade Department	4	Ministry of Trade and Industry	Drafting primary and secondary legislation; International co-ordination (shared); Advisory functions (shared). Monitoring and control; Information; Professionalisation and capacity-strengthening (shared).
	Budget Department	2	Ministry of Finance	Overall policy.
	Haus Ltd	2	Ministry of Finance	Professionalisation and capacity-strengthening (shared).
	Hansel Ltd	50	Ministry of Finance	Business development and co-ordination; Central purchasing.
7. France (Semi-centralised structure)	Public Procurement Department, Directorate for Legal Affairs	40	Ministry of Economy, Finance and Industry	Drafting primary and secondary legislation; Advisory and operations' support; International co-ordination; Monitoring and control; Information.

8. Germany (Semi-centralised structure)	BMWi	10	Federal Ministry of Economy and Technology	Drafting primary legislation; Drafting secondary legislation (shared); International co-ordination; Advisory functions; Monitoring and control; Information.
	Bundesverwaltungsamt (Federal office for administration)	9	Federal Ministry of Interior	Publication.
	Ministry of Transport, Building and Urban Affairs			Professionalisation and capacity-strengthening (shared with many).
9. Hungary (Centralised structure)	Public Procurement Council	35	Parliament	Advisory and operations' support; International co-ordination; Monitoring and control; Publication and information; Professionalisation and capacity-strengthening.
	Department of Civil Law, Codification and International Private Law	4	Ministry of Justice and Law Enforcement	Drafting primary and secondary (shared) legislation; International co-ordination.
10. Ireland (Semi-centralised structure)	National Public Procurement Policy Unit	12	Department of Finance	Drafting primary legislation; Advisory and operations' support; International co-ordination; Monitoring and control; Professionalisation and capacity-strengthening.
11. Italy (Semi-centralised structure)	Public Works Authority	237	Parliament	Monitoring and control.
	CONSIP (limited public company)	500	Ministry of Economy and Finance (owner)	Advisory and operations' support; Professionalisation and capacity-strengthening; Business development and co-ordination; Central purchasing.
	Council of Ministers			Drafting primary legislation.

12. Latvia (Centralised structure)	Procurement Monitoring Bureau	32	Ministry of Finance	Advisory and operations' support; International co-ordination; Monitoring and control; Publication and information; Professionalisation and capacity-strengthening; Complaints review and remedies.
	Ministry of Finance	3		Drafting primary and secondary legislation; International co-ordination.
13. Lithuania (Centralised structure)	Public Procurement Office	60	Office of the Prime Minister	Drafting secondary legislation; Advisory and operations' support; International co-ordination; Monitoring and control Publication and information'; Professionalisation and capacity-strengthening.
	Ministry of Economy	3		Drafting primary legislation; International co-ordination.
14. Luxembourg (Semi-centralised structure)	Ministry of Public Works	1		Drafting primary legislation; Advisory functions; International co-ordination; Monitoring; Information.
15. Malta (Centralised structure)	Department of Contracts	40	Ministry of Finance	Drafting primary and secondary legislation; Advisory and operations' support; International co-ordination; Monitoring and control; Publication and information; Professionalisation and capacity-strengthening; Business development and co-ordination; Central purchasing; Complaints review and remedies (Appeals Board).

16. Poland (Centralised structure)	Public Procurement Office	116	Office of the Prime Minister	Drafting primary and secondary legislation; Advisory and operations' support; International co-ordination; Monitoring and control; Publication and information. Professionalisation and capacity-strengthening; Complaints review and remedies (Bureau of Appeals) – PPO administers the system.
17. Portugal (Decentralised structure)	Directorate General for State Property; Directorate for European Affairs; Department for Public Procurement; Institute for Public Works	9	Council of Ministers	Policy functions and drafting primary legislation (government); International co-ordination; Business co-ordination; Central purchasing; Monitoring and control; Capacity-strengthening.
18. Romania (Centralised structure)	National Authority for Regulating and Monitoring Public Procurement	70	Office of the Prime Minister	Drafting primary and secondary legislation; Advisory and operations' support; International co-ordination; Monitoring and control; Information; Professionalisation and capacity-strengthening.
19. Slovak Republic (Centralised structure)	Office for Public Procurement	110	Council of Ministers	Drafting primary and secondary legislation; Advisory and operations' support; International co-ordination; Monitoring and control Publication and information'; Professionalisation and capacity- strengthening; Complaints review and remedies.

20. Slovenia (Semi-centralised structure)	Department for Public Procurement, Public Utilities and Concessions	8	Ministry of Finance	Drafting primary and secondary legislation; Advisory functions; International co-ordination; Monitoring and control; Information.
21. Sweden (Semi-centralised structure)	Board for Public Procurement	10	Ministry of Finance	Advisory functions; International co-ordination (shared); Monitoring; Information; Professionalisation and capacity-strengthening.
	Ministry of Finance	3		Drafting primary and secondary legislation; International co-ordination.
22. United Kingdom (Semi-centralised structure)	Office of Government Commerce	25 (500)	HM Treasury (Ministry of Finance)	Drafting secondary legislation; Advisory and operations' support; International co-ordination; Monitoring; Information; Professionalisation and capacity-strengthening (shared); Business development and co-ordination (shared)

ANNEX E

METHODOLOGY FOR ASSESSMENT: OECD-DAC JOINT VENTURE FOR PROCUREMENT

Pillar IV. Integrity and Transparency of the Public Procurement System

Pillar IV of the methodology developed by the OECD-DAC Joint Venture on Public Procurement covers four indicators that are considered necessary to provide for a system that operates with integrity, has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework and has appropriate measures in place to address the potential for corruption in the system. It also covers important aspects of the procurement system that include stakeholders as part of the control system. This Pillar takes aspects of the procurement system and governance environment and seeks to ensure that they are defined and structured to contribute to integrity and transparency.

Indicator 9. The country has effective control and audit systems

The objective of this indicator is to determine the quality, reliability and timeliness of the internal and external controls preferably based on risk assessment and mitigation. Equally, the effectiveness of controls needs to be reviewed in terms of expediency and thoroughness of the implementation of auditors' recommendations. The assessor should rely, in addition to their own findings, on the most current Country Financial Accountability Assessment (CFAA) or other analysis including PEFA/PFM assessment that may be available. This indicator has five sub-indicators (a-e) to be rated.

Sub-indicator 9(a) – A legal framework, organisation, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.

National legislation normally establishes which agencies are responsible for oversight of the procurement function. Control and oversight normally start with the legislative bodies that must review and act on the findings of the national auditing agency and legal watch dog agencies (e.g. the comptroller general reports, attorney general reports, etc.).

There should also be provisions for the establishment of internal controls such as internal audit organisations that periodically produce recommendations to the authorities of the individual agencies based on their findings. Internal audit should be complemented by internal control and management procedures that provide for checks and balances within an agency for processing of procurement actions. Internal audit and internal control procedures can assist external auditors and enable performance audit techniques to be used that look at the effectiveness and application of internal control procedures instead of looking at individual procurement actions.

Even though no single model exists, it is important that the basic principles of oversight and control exist in the legal and regulatory framework of the country and that they are of universal application.

Scoring Criteria	**Score**
The system in the country provides for: (a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function. (b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures. (c) Proper balance between timely and efficient decision making and adequate risk mitigation. (d) Specific periodic risk assessment and controls tailored to risk management.	**3**
The system in the country meets a) plus two of the above.	**2**
The system meets a) but controls are unduly burdensome and time consuming hindering efficient decision making.	**1**
Controls are imprecise or lax and inadequate to the point that there is weak enforcement of the laws and regulations and ample risk for fraud and corruption.	**0**

Sub-indicator 9(b) – Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.

The purpose of this indicator is to review the extent to which internal and external audit recommendations are implemented within a reasonable time. This may be expressed as a percentage of recommendations implemented within six months, a year, over a year or never implemented.

Scoring Criteria	Score
Internal or external audits are carried out at least annually and recommendations are responded to or implemented within six months of the submission of the auditors' report.	3
Audits are carried out annually but response to or implementation of the auditors' recommendations takes up to a year.	2
Audits are performed annually but recommendations are rarely responded to or implemented.	1
Audits are performed erratically and recommendations are not normally implemented.	0

Sub-indicator 9(c) – The internal control system provides timely information on compliance to enable management action.

The following key provisions should be provided:

(a) There are written standards for the internal control unit to convey issues to management depending on the urgency of the matter.

(b) There is established regular periodic reporting to management throughout the year.

(c) The established periodicity and written standards are complied with.

Scoring Criteria	Score
All requirements (a) through (c) listed above are met.	3
Requirement (a) plus one of the above are met.	2
Only requirement (a) is met.	1
There is no functioning internal control system.	0

Sub-indicator 9(d) – The internal control systems are sufficiently defined to allow performance audits to be conducted.

There are written internal control routines and procedures. Ideally there would an internal audit and control manual. Finally, there is sufficient

information retained to enable auditors to verify that the written internal control procedures are adhered to.

Scoring criteria	Score
There are internal control procedures including a manual that state the requirements for this activity which is widely available to all staff.	**3**
There are internal control procedures but there are omissions or practices that need some improvement.	**2**
There are procedures but adherence to them is uneven.	**1**
The internal control system is poorly defined or non-existent.	**0**

Sub-indicator 9(e) – Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance.

The objective of this indicator is to confirm that there is a system in place to ensure that auditors working on procurement audits receive adequate training or are selected following criteria that explicitly requires that they demonstrate sufficient knowledge of the subject. Auditors should normally receive formal training on procurement requirements, principles operations, laws and regulations and processes. Alternatively, they should have extensive experience in public procurement or be supported by procurement specialists or consultants.

Scoring Criteria	Score
There is an established programme to train internal and external auditors to ensure that they are well versed in procurement principles, operations, laws, and regulations and the selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits.	**3**
If auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.	**2**
There is a requirement that the auditors have general knowledge of procurement principles, operations, laws, and regulations but they are not supported generally by specialists in procurement.	**1**
There is no requirement for the auditors to have knowledge of procurement and there is no formal training programme and no technical support is provided to the auditors.	**0**

Indicator 10. Efficiency of appeals mechanism

The appeals mechanism was covered under Pillar I with regard to its creation and coverage by the legal regulatory framework. It is further assessed under this indicator for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system. There are five sub-indicators (a-e) to be scored.

Sub-indicator 10(a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.

This sub-indicator looks at the process that is defined for dealing with complaints or appeals and sets out some specific conditions that provide for fairness and due process.

(a) Decisions are rendered on the basis of available evidence submitted by the parties to a specified body that has the authority to issue a final decision that is binding unless referred to an appeals body.

(b) An appeals body exists which has the authority to review decisions of the specified complaints body and issue final enforceable decisions.

(c) There are times specified for the submission and review of complaints and issuing of decisions that do not unduly delay the procurement process.

Scoring Criteria	Score
The country has a system that meets the requirements of (a) through (c) above.	**3**
The country has a system that meets (a) and (b) above, but the process is not controlled with regard to (c).	**2**
The system only provides for (a) above with any appeals having to go through the judicial system requiring a lengthy process.	**1**
The system does not meet the conditions of (a) – (c) above, leaving only the courts.	**0**

Sub-indicator 10(b) – The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed.

This indicator deals specifically with the question of the efficiency and capacity of a complaints review system and its ability to enforce the remedy imposed. It is closely related to sub-indicator 10(a) which also refers to

enforcement. This indicator will focus primarily on the capacity and efficiency issues.

Scoring Criteria	Score
The complaint review system has precise and reasonable conditions and timeframes for decision by the complaint review system and clear enforcement authority and mechanisms.	**3**
There are terms and timeframes established for resolution of complaints but mechanisms and authority for enforcement are unclear or cumbersome.	**2**
Terms and timeframes for resolution of complaints or enforcement mechanisms and responsibilities are vague.	**1**
There are no stipulated terms and timeframes for resolution of complaints and responsibility for enforcement is not clear.	**0**

Sub-indicator 10 (c) – The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information.

The system needs to be seen as operating in a fair manner. The complaint review system must require that decisions be rendered only on relevant and verifiable information presented and that such decisions be unbiased, reflecting the consideration of the evidence presented and the applicable requirements in the legal/regulatory framework.

It is also important that the remedy imposed in the decision be consistent with the findings of the case and with the available remedies provided for in the legal/regulatory framework. Decisions of a complaints body should deal specifically with process issues and the remedies should focus on corrective actions needed to comply with process.

Scoring Criteria	Score
Procedures governing the decision making process of the review body provide that decisions are: a) based on information relevant to the case; b) balanced and unbiased in consideration of the relevant information; c) can be subject to higher level review; d) result in remedies that are relevant to correcting the implementation of the process or procedures.	**3**
Procedures comply with (a) plus two of the remaining conditions above.	**2**
Procedures comply with (a) above.	**1**
The system does not comply with any of the above.	**0**

Sub-indicator 10(d) – Decisions are published and made available to all interested parties and to the public.

Decisions are public by law and posted in easily accessible places (preferably posted at a dedicated government procurement website on the Internet). Publication of decisions enables interested parties to be better informed as to the consistency and fairness of the process.

Scoring Criteria	Score
All decisions are publicly posted in a government website or another easily accessible place	**3**
All decisions are posted in a somewhat restricted access media (e.g. the official gazette of limited circulation).	**2**
Publication is not mandatory and publication is left to the discretion of the review bodies making access difficult.	**1**
Decisions are not published and access is restricted.	**0**

Sub-indicator 10(e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints.

This indicator assesses the degree of autonomy that the complaint decision body has from the rest of the system to ensure that its decisions are free from interference or conflict of interest. Due to the nature of this sub-indicator it is scored as either a 3 or a 0.

Scoring Criteria	Score
The complaint review body is independent and autonomous with regard to resolving complaints.	**3**
NA	
NA	
The complaint review body is not independent and autonomous with regard to resolving complaints.	**0**

Indicator 11. Degree of access to information

This indicator deals with the quality, relevance, ease of access and comprehensiveness of information on the public procurement system.

Sub-indicator 11(a) – Information is published and distributed through available media with support from information technology when feasible.

Public access to procurement information is essential to transparency and creates a basis for social audit by interested stakeholders. Public information should be easy to find, comprehensive and user friendly providing information of relevance. The assessor should be able to verify easy access and the content of information made available to the public.

The system should also include provisions to protect the disclosure of proprietary, commercial, personal or financial information of a confidential or sensitive nature.

Information should be consolidated into a single place and when the technology is available in the country, a dedicated website should be created for this purpose. Commitment, backed by requirements in the legal/regulatory framework should ensure that agencies duly post the information required on a timely basis.

Scoring Criteria	Score
Information on procurement is easily accessible in media of wide circulation and availability. The information provided is centralised at a common place. Information is relevant and complete. Information is helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.	**3**
Information is posted in media not readily and widely accessible or not user friendly for the public at large OR is difficult to understand by the average user OR essential information is lacking.	**2**
Information is difficult to get and very limited in content and availability.	**1**
There is no public information system as such and it is generally up to the procuring entity to publish information.	**0**

Indicator 12. The country has ethics and anti-corruption measures in place

This indicator assesses the nature and scope of the anti-corruption provisions in the procurement system. There are seven sub-indicators (a-g) contributing to this indicator.

Sub-indicator 12(a) – The legal and regulatory framework for procurement, including bidding and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behaviour and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behaviour.

This sub-indicator assesses the extent to which the law and the regulations compel procuring agencies to include fraud and corruption, conflict of interest and unethical behaviour references in the bidding documentation. This sub-indicator is related to sub-indicator 2 b) on content for model documents but is not directly addressed in that sub-indicator.

The assessment should verify the existence of the provisions and enforceability of such provision through the legal/regulatory framework. The provisions should include the definitions of what is considered fraud and corruption and the consequences of committing such acts.

Scoring Criteria	**Score**
The procurement law or the regulations specify this mandatory requirement and give precise instructions on how to incorporate the matter in bidding documents. Bid documents include adequate provisions on fraud and corruption.	**3**
The procurement law or the regulations specify this mandatory requirement but leaves no precise instruction on how to incorporate the matter in bidding documents leaving this up to the procuring agencies. Bid documents generally cover this but without consistency.	**2**
The legal/regulatory framework does not establish a clear requirement to include language in documents but makes fraud and corruption punishable acts under the law. Few bidding documents include appropriate language dealing with fraud and corruption.	**1**
The legal framework does not directly address fraud, corruption or unethical behaviour and its consequences. Bid documents generally do not cover the matter.	**0**

Sub-indicator 12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.

This indicator assesses the existence of legal provisions that define fraudulent and corrupt practices and set out the responsibilities and sanctions for individuals or firms indulging in such practices. These provisions should address issues concerning conflict-of-interest and incompatibility situations. The law should prohibit the intervention of active public officials and former public officials for a reasonable period of time after leaving office in procurement matters in ways that benefit them, their relatives, and business or political associates financially or otherwise. There may be cases where there is a separate anti-corruption law (e.g. anti-corruption legislation) that contains the provisions. This arrangement is appropriate as far as the effects of the anti-corruption law are the same as if they were in the procurement law.

Scoring Criteria	Score
The legal/regulatory framework explicitly deals with the matter. It defines fraud and corruption in procurement and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption in procurement, without prejudice of other provisions in the criminal law.	**3**
The legal/regulatory framework includes reference to other laws that specifically deal with the matter (e.g. anti-corruption legislation in general). The same treatment is given to the consequences.	**2**
The legal/regulatory framework has general anti-corruption and fraud provisions but does not detail the individual responsibilities and consequences which are left to the general relevant legislation of the country.	**1**
The legal/regulatory framework does not deal with the matter.	**0**

Sub-indicator 12(c) – Evidence of enforcement of rulings and penalties exists.

This indicator is about the enforcement of the law and the ability to demonstrate this by actions taken. Evidence of enforcement is necessary to demonstrate to the citizens and other stakeholders that the country is serious about fighting corruption. This is not an easy indicator to score, but the assessor should be able to obtain at least some evidence of prosecution and punishment for corrupt practices. The assessor should get figures on the number of cases of corruption reported through the system, and the number

of cases prosecuted. If the ratio of cases prosecuted to cases reported is low, the narrative should explain the possible reasons.

Scoring criteria	Score
There is ample evidence that the laws on corrupt practices are being enforced in the country by application of stated penalties.	3
There is evidence available on a few cases where laws on corrupt practices have been enforced.	2
Laws exist, but evidence of enforcement is weak.	1
There is no evidence of enforcement.	0

Sub-indicator 12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement.

This sub-indicator looks to verify the existence of an anti-corruption programme and its extent and nature or other special measures which can help prevent and/or detect fraud and corruption specifically associated with public procurement.

A comprehensive anti-corruption programme normally includes all the stakeholders in the procurement system, assigns clear responsibilities to all of them, and assigns a high- level body or organisation with sufficient standing and authority to be responsible for co-ordinating and monitoring the programme. The procurement authorities are responsible for running and monitoring a transparent and efficient system and for providing public information to promote accountability and transparency. The control organisations (supreme audit authority) and the legislative oversight bodies (e.g. the Parliament or Congress), are responsible for detecting and denouncing irregularities or corruption. The civil society organisations are responsible for social audits and for monitoring of procurement to protect the public interest. These may include NGOs, the academia, the unions, the chambers of commerce and professional associations and the press. The judiciary also participates, often in the form of special anti-corruption courts and dedicated investigative bodies that are responsible for investigating and prosecuting cases of corruption. There are normally government public education and awareness campaigns as part of efforts to change social behaviour in respect to corrupt practices and tolerance. Anti-corruption strategies usually include as well the use of modern technology to promote e-procurement and e-government services to minimise the risk of facilitation payments.

The assessor should assess the extent to which all or some of these actions are organised as a co-ordinated effort with sufficient resources and commitment by the government and the public or the extent to which they

are mostly isolated and left to the initiative of individual agencies or organisations.

Scoring Criteria	Score
The government has in place a comprehensive anti-corruption programme to prevent, detect and penalise corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out. Special measures are in place for detection and prevention of corruption associated with procurement,	**3**
The government has in place an anti-corruption programme but it requires better co-ordination or authority at a higher level to be effective. No special measures exist for public procurement.	**2**
The government has isolated anti-corruption activities not properly co-ordinated to be an effective integrated programme.	**1**
The government does not have an anti-corruption programme.	**0**

Sub-indicator 12(e) – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviour.

This indicator assesses the strength of the public in maintaining a sound procurement environment. This may manifest itself in the existence of respected and credible civil society groups that provide oversight and can exercise social control. The welcoming and respectful attitude of the government and the quality of the debate and the contributions of all interested stakeholders are an important part of creating an environment where integrity and ethical behaviour is expected and deviations are not tolerated.

Scoring Criteria	Score
(a) There are strong and credible civil society organisations that exercise social audit and control. (b) Organisations have government guarantees to function and co-operation for their operation and are generally promoted and respected by the public. (c) There is evidence that civil society contributes to shape and improve integrity of public procurement.	**3**
There are several civil society organisations working on the matter and the dialogue with the government is frequent but it has limited impact on improving the system.	**2**
There are only a few organisations involved in the matter, the dialogue with the government is difficult and the contributions from the public to promote improvements are taken in an insignificant way.	**1**
There is no evidence of public involvement in the system OR the government does not want to engage the public organisations in the matter.	**0**

Sub-criteria 12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behaviour.

The country provides a system for reporting fraudulent, corrupt or unethical behaviour that provides for confidentiality. The system must be seen to react to reports as verified by subsequent actions taken to address the issues reported.

Scoring Criteria	Score
There is a secure, accessible and confidential system for the public reporting of cases of fraud, unethical behaviour and corruption.	**3**
There is a mechanism in place but accessibility and reliability of the system undermine and limit its use by the public.	**2**
There is a mechanism in place but security or confidentiality cannot be guaranteed	**1**
There is no secure mechanism for reporting fraud, unethical behaviour and corruption cases	**0**

Sub-criteria 12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision-making positions.

The country should have in place a Code of Conduct/Ethics that applies to all public officials. In addition, special provisions should be in place for those involved in public procurement. In particular, financial disclosure requirements have proven to be very useful in helping to prevent unethical or corrupt practices.

Scoring Criteria	**Score**
(a) There is a Code of Conduct or Ethics for government officials with particular provisions for those involved in public financial management, including procurement. (b) The Code defines accountabilities for decision making and subjects decision makers to specific financial disclosure requirements. (c) The Code is of obligatory compliance and consequences are administrative or criminal	**3**
The system meets requirements (a) and (b) but is only a recommended good practice code with no consequences for violations unless covered by criminal codes.	**2**
There is a Code of Conduct but determination of accountabilities is unclear.	**1**
There is no Code of Conduct.	**0**

ANNEX F

GLOSSARY

AUDIT TRAIL

A chronological record of procurement activities which enables the reconstruction, review and examination of the sequence of activities at each stage of the public procurement process.

DEBARMENT

Exclusion or ineligibility of a contractor from taking part in the process of competing for government or multilateral agency contracts for a definite or indefinite period of time, if, after enquiry or examination, the contractor is adjudged to have been involved in the use of corruption to secure past or current projects with a government agency.

DIRECT SOCIAL CONTROL

The involvement of stakeholders – not only private sector representatives but also end-users, civil society, the media or the public at large – in scrutinising the integrity of the public procurement process.

FOUR-EYES PRINCIPLE

A requirement that a process will be effectively conducted by at least two individuals.

INTEGRITY

Integrity in the context of public procurement implies that:

- Procurement procedures are transparent and promote fair and equal treatment for bidders.
- Public resources linked to public procurement are used in accordance with intended purposes.

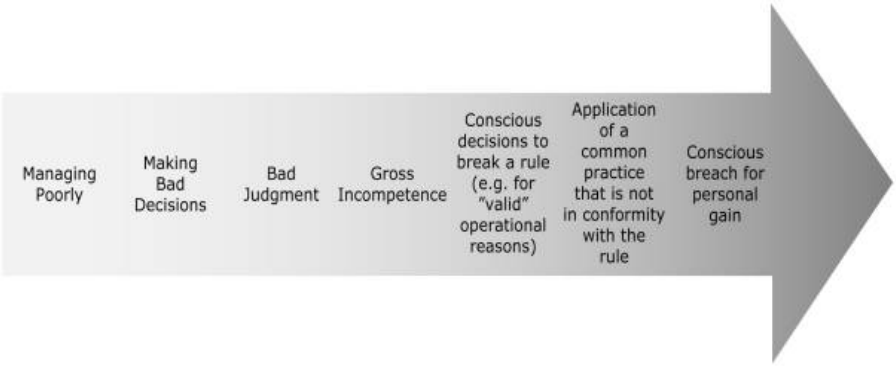
- Procurement officials' behaviour is in line with the public purposes of their organisation.
- Systems are in place to challenge procurement decisions, ensure accountability and promote public scrutiny.

INTEGRITY PACT

An agreement between a government or government department with all bidders for a public sector contract that neither side will pay, offer, demand, or accept bribes, or collude with competitors to obtain the contract or while carrying it out.

MISMANAGEMENT

Mismanagement could conceivably cover a range of actions from a simple mistake in performing an administrative task to a deliberate transgression of relevant laws and related policies[26].



PUBLIC PROCUREMENT

Public procurement is the purchase of goods and services by governments and state-owned enterprises. It encompasses a sequence of related activities starting with the assessment of needs through award to the contract management and final payment.

26. This definition has been extracted from the Canadian Financial Administration Act.

REVERSE AUCTION

In an auction there is a single seller and many potential buyers bidding for the item being sold. A reverse auction, used for e-purchasing and generally using the internet (an e-auction), involves on the contrary one buyer and many sellers. The general idea is that the buyer specifies what they want to purchase and offers it to many suppliers.

RISK-BASED APPROACH

The definition taken in this publication of a risk-based approach is rather restrictive. It is defined as an approach identifying potential weaknesses that individually or in aggregate could have an impact on the integrity of procurement-related activities, and then aligning to these risks controls that effectively mitigate the risk to integrity.

TRANSPARENCY

Transparency in the context of procurement refers to the ability of stakeholders to know and understand the actual means and processes by which contracts are defined, awarded and managed.

WHISTLEBLOWING

Whistleblowing can be defined as a means to promote accountability by encouraging the disclosure of information about misconduct and possibly corruption while protecting the whistleblower against retaliation.

ANNEX G

FOR FURTHER INFORMATION

This Annex provides web links for further information on public procurement and integrity. These cover OECD countries as well as non members in which elements of good practice have been identified.

The web links are listed accordingly:

- Information system(s) on public procurement (e.g. procurement portal, information on procurement opportunities);
- Organisation(s) in charge of public procurement (e.g. management of public procurement, design of procurement regulations) and/or related to the control and accountability of public procurement (e.g. complaint and review, audit);
- Guidance documents from governments for enhancing integrity in public procurement;
- Other relevant web links to enhance professionalism in public procurement (e.g. professional associations, research institutes, etc.).

AUSTRALIA	*The Australian Government Tender System:* All business opportunities with Australian Government agencies https://www.tenders.gov.au/federal/index.cfm *Government of Australia, Department of Finance and Administration* http://www.finance.gov.au/ *South Australia Tenders and Contracts:* Public procurement opportunities within South Australia http://www.tenders.sa.gov.au/index.do *Commonwealth Procurement Guidelines* http://www.finance.gov.au/ctc/commonwealth_procurement_guide.html *Mandatory Procurement Procedures: Financial Management Guidance* http://www.finance.gov.au/procurement/mandatory_procurement_procedures.html

	Guidance on Ethics and Probity in Government Procurement http://www.finance.gov.au/procurement/ethics_probity_govt.html *Guidance on Procurement Publishing Obligations* http://www.finance.gov.au/procurement/procurement_publishing_obligations html
AUSTRIA	Database of procurement opportunities http://www.auftrag.at/ *Federal Public Procurement Office* http://www.bva.gv.at/BVA/default.htm *Austrian Court of Audit* - provides recommendations for improving processes, including public procurement (see Box IV.4) http://www.rechnungshof.gv.at
BELGIUM	*Joint Electronic Public Procurement Portal: Federal Service e-Procurement portal* http://www.jepp.be/ *Bulletin des adjudications:* Procurement opportunities database http://www.ejustice.just.fgov.be/cgi_bul/bul.pl *European and Belgian Public Procurement* http://www.ebp.be
BRAZIL	*COMPRASNET:* Procurement Portal of the Federal Government http://www.comprasnet.gov.br *Office of the Comptroller General:* developed a methodology for mapping out risks of corruption (see Box IV.6) http://www.cgu.gov.br
CANADA	*The Government of Canada Electronic Tendering Service* http://www.merx.com/ *Public Disclosure of contracts above CAD 10,000* http://www.tbs-sct.gc.ca/pd-dp/dc/index_e.asp *Details on project spending on public works and government services* http://www.pwgsc.gc.ca/reports/text/rpp_2005-2006_sct3-e.html *Statement of Values, Procurement Community of the Government of Canada* http://www.tbs-sct.gc.ca/cmp/values/statementvalues_e.asp *Defence Ethics Program* http://www.dnd.ca/ethics/

CHILE	*ChileCompra:* E-marketplace www.chilecompra.cl
CZECH REPUBLIC	*Public Procurement and Concessions Portal* http://www.portal-vz.cz/index.php?lchan=1&lred=1 *Official Site of Public Contracts, Publishing Subsystem* http://www.isvzus.cz/usisvz/index.jsp?language=change *E-market places solutions for central administration* https://gem.b2bcentrum.cz/ http://www.allytrade.cz *Ministry for Regional Development* http://www.mmr.cz/ *Office for the Protection of Competition* http://www.compet.cz
DENMARK	*Gatetrade:* Electronic marketplace for business-to-government e-commerce https://www.oex.gatetrade.net/home.jsp *Danish Competition Authority:* Responsible for the implementation of the EU Directives on public procurement, handling of complaints and providing guidance in principal cases. http://www.ks.dk/ *The Complaints Board for Public Procurement* http://www.klfu.dk/ *Statistics Denmark:* Statistical data including on public procurement http://www.dst.dk/HomeUK.aspx *Anti-Corruption Portal for Small and Medium-Sized Enterprises:* Detailed information for investing in emerging markets, including on procurement http://www.business-anti-corruption.com
FINLAND	*Hansel:* the central procurement unit of the State of Finland (see Box III.4) http://www.hansel.fi/ *Ministry of Finance:* Public spending http://www.vm.fi/vm/en/09_national_finances/index.jsp *The Market Court:* Hearings of market law, competition and public procurement cases http://www.oikeus.fi/markkinaoikeus/

FRANCE	*Official Gazette for Public Procurement Bids (BOAMP)* http://www.journal-officiel.gouv.fr/jahia/Jahia/pid/1 http://djo.journal-officiel.gouv.fr/centre-editper12.htm *Legannonces:* Procurement bids in the regional press http://www.legannonces.com/ *Les Marchés publics.com:* Consultation on procurement opportunities http://www.les-marches-publics.com/ *Marchés Publics France:* Joint initiative for public procurement information with Luxembourg and the Netherlands http://www.marchepublicfrance.com *Ministry of Economy, Finance and Industry:* Public procurement regulations http://www.minefi.gouv.fr/themes/marches_publics/ *Observatory of Public Procurement* http://www.minefi.gouv.fr/colloc/ *Association for Public Purchasing* http://www.apasp.com/modules/movie/scenes/home/
GERMANY	*E-Vergabe:* E-procurement system at the Federal level http://www.evergabe-online.de/ *Federal Ministry of Economy and Technology:* in charge of procurement regulations http://www.bmwi.de/ *Procurement Agency of The Federal Ministry of The Interior:* manages purchasing for 26 federal authorities, foundations and research institutions under the responsibility of the Ministry of the Interior http://www.bescha.bund.de/enid/55.html
GREECE	*Ministry of Development* http://www.efpolis.gr/
HUNGARY	*Public Procurement Council:* Information system on public procurement http://www.kozbeszerzes.hu/
ICELAND	*Competition Authority* http://www.samkeppni.is/samkeppni/en/ *RIKISKAUP - The Icelandic State Trading Centre* http://www.rikiskaup.is

INDIA	*Central Vigilance Commission:* has used technologies for increasing transparency in vulnerable areas such as procurement (see Box II.8) http://www.cvc.nic.in/ *Guidelines for improvement in the procurement system* http://cvc.nic.in/vscvc/purguide.pdf
IRELAND	*Irish Government Public Sector Procurement Opportunities Portal* http://www.etenders.gov.ie *Government Supplies Agency:* Central procurement of goods, supplies and services on behalf of the Government http://www.opw.ie/services/gov_sup/fr_gov.htm *National Public Procurement Policy Unit* http://www.finance.gov.ie/ViewDoc.asp?fn=/documents/publications/publicprocurementindex.htm&CatID=49&m=c *Government Contracts Committee's Public Procurement Guidelines* (see Box III.9) http://www.etenders.gov.ie/xt_Docdownload.aspx?id=1324 *Ethics in Public Procurement:* Guidance document http://www.etenders.gov.ie/xt_Docdownload.aspx?id=1182
ITALY	*Consip:* Company in charge of implementation of e-procurement (see Box III.14) http://www.consip.it/scd/index.jsp *Public Procurement Portal* http://www.acquistinretepa.it/portal/page?_pageid=173,1&_dad=portal&_schema=PORTAL *The Monitor of Public Works* http://www.autoritalavoripubblici.it/
JAPAN	*Online database of Japanese government procurement notices* http://www.jetro.go.jp/en/matching/procurement/ *Office for Government Procurement Challenge System (CHANS)* http://www5.cao.go.jp/access/english/chans_main_e.html
KOREA	*Korea On-line Electronic Procurement System* http://www.pps.go.kr/english/ *Public Procurement Service of Korea* http://www.pps.go.kr/english/

LUXEMBOURG	*Public procurement portal of Luxembourg* http://www.marches.public.lu/ *CRTI-B:* Public procurement in the construction industry http://www.crtib.lu/index.jsp?section=FR *Ministry of Public Works* http://www.mtp.etat.lu/ *Information center for SMEs* http://www.eicluxembourg.lu/index.php
MEXICO	*COMPRANET:* Electronic system for government contracting http://www.compranet.gob.mx *Ministry of Public Administration:* Legal provisions on public procurement http://www.funcionpublica.gob.mx/unaopspf/unaop1.htm
NETHERLANDS	*TenderNed:* Public procurement portal http://www.tenderned.nl/boa.application/page.m?pageid=1 *Information on public procurement contracts above the EU threshold* http://www.aanbestedingskalender.nl *Act on Promotion of Integrity Assessment by the Public Administration (BIBOP)* http://www.justitie.nl/onderwerpen/criminaliteit/bibob/wat-is-bibob/ *Pianoo:* Knowledge center for public procurement http://www.ovia.nl/index.jsp
NEW ZEALAND	*Government Electronic Tenders Service:* Procurement opportunities http://www.gets.govt.nz/Default.aspx?show=HomePage *TenderLink:* Bid advertisements throughout Australia and New Zealand https://www.tenderlink.com/ *New Zealand Tenders Gazette Online* http://www.tenders-gazette.co.nz/ *Ministry of Economic Development:* Information on government procurement http://www.med.govt.nz/templates/StandardSummary____181.aspx *Controller and Auditor-General's reports on purchasing and contracting cases* http://www.oag.govt.nz/reports/by-subject/purchasing-contracting/

NORWAY	*Doffin.no: Announcements for procurement* http://www.doffin.no/ *Ministry of Government Administration and Reform, Department of Competition:* in charge of procurement policy http://www.regjeringen.no/en/ministries/fad.html?id=339 *National Public Procurement Complaint Board (KOFA)* http://www.kofa.no/index.php?id=4
PAKISTAN	*Public Procurement Regulatory Authority* http://www.ppra.org.pk/
POLAND	*National public procurement portal* http://www.portal.uzp.gov.pl/pl/site/ *The Polish Public Procurement Office* http://www.uzp.gov.pl/
PORTUGAL	*Compras:* Public procurement portal http://www.compras.gov.pt/Compras/
ROMANIA	*Public procurement portal* http://www.e-licitatie.ro/Public/Common/Content.aspx?f=PublicHomePage
SLOVAK REPUBLIC	*Public Procurement Office:* Information system on public procurement http://www.uvo.gov.sk/
SLOVENIA	*Official Gazette of the Republic of Slovenia* http://www.uradni-list.si/index.jsp *Ministry for Finance, Public Procurement, Public Utilities and Concessions Department* http://www.gov.si/mf/slov/javnar/javnar.htm *National Review Commission for public procurement* http://www.gov.si/dkom/?lng=eng
SOUTH AFRICA	*National Treasury* (see Box III.1) http://www.treasury.gov.za/ *The Institute of Procurement and Supply* http://www.ipsa.co.za/
SPAIN	*Public Administration Electronic Contracting Platform:* Public procurement portal http://www.pecap.org

	Journal of the Official Gazette http://www.boe.es/ *Ministry of Economy and Finance* http://www.meh.es/Portal?cultura=en-GB
SWEDEN	*AnbudsJournalen:* Procurement opportunities above thresholds http://www.ajour.se/ *National Board for Public Procurement (NOU)* http://www.nou.se/ *National Board of Trade:* Information on market mechanisms behind public procurement http://www.offentlig.kommers.se *The Swedish Association of Public Purchasers:* promotes the development of a professional procurement for the public sector http://www.soiorg.org/
SWITZERLAND	*Simap:* Public procurement portal https://www.simap.ch/ *GIMAP.CH:* Bidding opportunities at federal level http://www.gimap.admin.chf/index.htm
TURKEY	*Public Procurement Platform* https://www.ihale.gov.tr/ssl/ksp/ *The Public Procurement Authority* http://www.kik.gov.tr/index2.htm
UNITED KINGDOM	*Government Opportunities Public Procurement Portal* http://www.govopps.co.uk/ *OGC Buying Solutions* http://www.ogcbuyingsolutions.gov.uk/default.asp *E-Procurement Scotland:* the Scottish Executive's e-procurement service for the Scottish public sector http://www.eprocurementscotland.com/ *Buy 4 Wales:* Sourcing portal for the Welsh public sector https://www.buy4wales.co.uk/buy4wales.aspx *Office of Government Commerce:* Centre for sharing expertise (see Box III.7) http://www.ogc.gov.uk/index.asp?id=35 *Chartered Institute of Purchasing and Supply:* promotes good practices to the purchasing profession http://www.cips.org *Public Procurement Research Group* http://www.nottingham.ac.uk/law/pprg/index.htm

UNITED STATES	*Federal Acquisition Regulations System:* Single-point-of-entry for government procurement, with information on regulations, systems, resources, opportunities, and training http://www.acquisition.gov *FedBizOpps:* Federal government procurement opportunities over USD 25,000 http://www.fbo.gov/ *Federal Procurement Data System* https://www.fpds.gov *Central Contractor Registration* http://www.ccr.gov/ *Excluded Parties List System from Federal contracts and subcontracts* http://www.epls.gov *Federal Technical Data Solutions* https://www.fedteds.gov/ *Office of Management and Budget, Office of Federal Procurement Policy* http://www.whitehouse.gov/omb/procurement/mission.html *Bid Protest Regulations: Government Accountability Office* http://www.gao.gov/decisions/bidpro/bid/bibreg.html *Defence Contract Management Agency* http://www.dcma.mil
INTERNATIONAL ORGANISATIONS	INTER-GOVERNMENTAL ORGANISATIONS *OECD Public Governance and Territorial Development Directorate: Ethics and Corruption in the Public Sector* http://www.oecd.org/department/0,2688,en_2649_34135_1_1_1_1_1,00.html *SIGMA: Support for Improvement in Governance and Management* http://www.sigmaweb.org/pages/0,2966,en_33638100_33638151_1_1_1_1_1,00.html *OECD Development Cooperation Directorate, Aid Effectiveness: Procurement* http://www.oecd.org/department/0,2688,en_2649_19101395_1_1_1_1_1,00.html *OECD Directorate for Financial and Enterprise Affairs: Corruption* http://www.oecd.org/topic/0,2686,en_2649_37447_1_1_1_1_37447,00.html *ADB-OECD Anti-Corruption Initiative for Asia and the Pacific* http://www.oecd.org/document/39/0,2340,en_34982156_34982431_35028199_1_1_1_1,00.html

Asia-Pacific Economic Cooperation (APEC): Government Procurement Expert Group
http://www.apec.org/apec/apec_groups/committees/committee_on_trade/government_procurement.html

Group of States against Corruption in the Council of Europe (GRECO)
http://www.coe.int/t/dg1/greco/evaluations/index_en.asp

European Commission: Public Procurement
http://ec.europa.eu/internal_market/publicprocurement/index_en.htm

Public Procurement Network in Europe
http://www.publicprocurementnetwork.org/

United Nations Procurement Service
http://www.un.org/Depts/ptd/

United Nations Office of Project Services: Procurement Services
http://www.unops.org/UNOPS/Procurement/Overview/

United Nations Commission on International Trade Law
http://www.uncitral.org/uncitral/en/index.html

World Trade Organisation: Transparency in Government Procurement
http://www.wto.org/english/tratop_e/gproc_e/gptran_e.htm

MULTILATERAL DEVELOPMENT BANKS

World Bank: Procurement
http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,menuPK:51355691

African Development Bank
http://www.afdb.org/portal/page?_pageid=473,1&_dad=portal&_schema=PORTAL

Asian Development Bank: Procurement Guidelines
http://www.adb.org/Documents/Guidelines/Procurement/default.asp?p=prcrmnt

European Bank for Reconstruction and Development (EBRD): Procurement
http://www.ebrd.com/oppor/procure/index.htm

Inter-American Development Bank: Procurement Policies
http://www.iadb.org/exr/english/BUSINESS_OPP/bus_opp_procurem_procedurs.htm

Multilateral Development Banks e-Government Procurement Website
http://www.mdb-egp.org/ui/english/pages/home.aspx

	INTERNATIONAL PRIVATE SECTOR ORGANISATIONS *Business and Industry Advisory Committee to the OECD* http://www.biac.org/ *International Chamber of Commerce* http://www.iccwbo.org/ *International Federation of Consulting Engineers (FIDIC)* http://www1.fidic.org/about/ethics.asp INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS *Transparency International: Contracting* http://www.transparency.org/tools/contracting

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Integrity in Public Procurement

GOOD PRACTICE FROM A TO Z

Of all government activities, public procurement is most vulnerable to corruption. Just one example: in OECD countries, bribery by international firms is more pervasive in public procurement than in utilities, taxation, or judiciary. As public procurement is a key economic activity of governments – estimated at around 15% of GDP, this has a major impact on how taxpayers' money is spent.

Although it is widely agreed that all public procurement reforms should follow good governance principles, international efforts have focused exclusively on the bidding process. But this is only the tip of the iceberg. Recent corruption scandals have spotlighted grey areas throughout the whole public procurement cycle, including in needs assessment and contract management. Reform efforts have also often neglected exceptions to competitive procedures such as emergency contracting and defence procurement.

This publication goes beyond the general statement that good governance and corruption prevention matter in public procurement. It offers practical insights into how the profession of procurement is evolving to cope with the growing demand for integrity, drawing on the experience of procurement practitioners as well as audit, competition and anti-corruption specialists.

The book provides, for the first time, a comparative overview of practices meant to enhance integrity throughout the whole procurement cycle, from needs assessment to contract management. It also includes numerous "elements of good practice" identified not only in OECD countries but also in Brazil, Chile, Dubai, India, Pakistan, Romania, Slovenia and South Africa.

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