OECD Principles for Integrity in Public Procurement

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Foreword

At the OECD Symposium and Global Forum on Integrity in Public Procurement in November 2006, participants called for the creation of an international instrument in order to help policy makers reform public procurement systems and reinforce integrity and public trust in how public funds are managed.

Two years later, OECD countries demonstrated their commitment to take action in this major risk area by approving the Principles for Enhancing Integrity in Public Procurement *in the form of an OECD Recommendation. This Recommendation is a policy instrument to help governments prevent waste, fraud and corruption in public procurement. It represents a consensus from member countries that efforts to enhance good governance are essential in the entire public procurement cycle, from needs assessment to contract management and payment. In 2011, OECD countries will report on progress made in implementing the Recommendation.*

The OECD played a pioneer role in recognising the importance of good governance in public procurement. The Principles *are anchored in four pillars: transparency, good management, prevention of misconduct, accountability and control in order to enhance integrity in public procurement. The overall aim is to enhance integrity efforts so that they are fully part of an efficient and effective management of public resources.*

The Principles *reflect a global view of policies and practices that have proved effective for enhancing integrity in procurement. They are intended to be used in conjunction with identified good practices from governments in various regions of the world. Furthermore, a Checklist was developed to provide a practical tool for procurement officials on how to implement this framework at each stage of the procurement cycle. The report also gives a comprehensive map of risks that can help auditors prevent, as well as detect, fraud and corruption. Finally, it features a case study on Morocco, where a pilot application of the* Principles *was carried out.*

The Principles *provide policy guidance for governments in the implementation of international legal instruments developed in the framework of the OECD as well as other organisations such as the United Nations, the World Trade Organisation and the European Union. An extensive consultation was carried out in 2008 on the* Principles *and Checklist with various stakeholders. The consultation with representatives from international organisations confirmed that the* Principles *usefully complement international legal instruments.*

The Principles *also reflect the multi-disciplinary work of the OECD in analysing public procurement from the public governance, aid effectiveness, anti-bribery and competition perspectives. In particular, they build on OECD methodologies such as the Development Assistance Committee's Methodology for assessment of national procurement systems and the Working Group on Bribery's Typology of bribery in public procurement.*

The report was prepared by Elodie Beth, Innovation and Integrity Division of the Public Governance and Territorial Development Directorate. It draws heavily upon the insights gained during the regular meetings of the network of Experts on Integrity in Public Procurement.

Acknowledgements. *The Secretariat is grateful for the views provided by various stakeholders in the development of the* Principles *and Checklist. In particular, the network of Experts on Integrity in Public Procurement provided invaluable contributions throughout the process. In addition, we appreciated the feedback in the consultation process from representatives of governments in non-member economies, the private sector, civil society, bilateral donor agencies and international organisations. Finally, special thanks go to members of the Public Governance Committee, under the chairmanship of Roberta Santi, for their guidance and commitment in bringing the issue to the political level.*

The Secretariat also wishes to acknowledge the contributions from authors of specific chapters in this publication. In particular, Jean-Pierre Bueb prepared the chapter on risk mapping and Anikó Hrubi co-authored the chapter on the pilot application of the Principles *in Morocco.*

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Table of Contents

Executive Summary 9

Part I

PRINCIPLES FOR ENHANCING INTEGRITY IN PUBLIC PROCUREMENT

Introduction 18

Chapter 1. **Transparency** 21

Principle 1. Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers 22

Principle 2. Maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering 24

Chapter 2. **Good Management** 27

Principle 3. Ensure that public funds are used in public procurement according to the purposes intended. 28

Principle 4. Ensure that procurement officials meet high professional standards of knowledge, skills and integrity 30

Chapter 3. **Prevention of Misconduct, Compliance and Monitoring** 33

Principle 5. Put mechanisms in place to prevent risks to integrity in public procurement 34

Principle 6. Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management 36

Principle 7. Provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly 38

Chapter 4. **Accountability and Control** 41

Principle 8. Establish a clear chain of responsibility together with effective control mechanisms. 42

Principle 9. Handle complaints from potential suppliers in a fair and timely manner. 44

Principle 10. Empower civil society organisations, media and the wider public to scrutinise public procurement 46

Part II

IMPLEMENTING THE PRINCIPLES

Chapter 1. **Enhancing Integrity at Each Stage of the Procurement Cycle: A Checklist** 51

1. **Pre-tendering phase** 53
   Risks to integrity in pre-tendering 53
   Precautionary measures in pre-tendering 54
   Stage 1. Needs assessment 54
   Stage 2. Planning and budgeting 55
   Stage 3. Definition of requirements 58
   Stage 4. Choice of procedures 61
2. **Tendering phase** 63
   Risks to integrity in tendering 63
   Precautionary measures in tendering 64
   Stage 5. Invitation to tender 64
   Stage 6. Evaluation 65
   Stage 7. Award. 67
3. **Post-tendering phase** 69
   Risks to integrity after the award 69
   Precautionary measures in post-tendering 70
   Stage 8. Contract management. 70
   Stage 9. Order and payment 72

Chapter 2. **Risk Mapping: Understanding Risks of Fraud and Corruption in the Public Procurement Cycle** 75

1. **Risks in the needs assessment**. 77
   Minor studies 77
   Studies above the national threshold 79
2. **Risks in the planning** 81
   Estimating project costs 81

OECD PRINCIPLES FOR INTEGRITY IN PUBLIC PROCUREMENT – ISBN 978-92-64-05561-2 – © OECD 2009

Immediate misappropriation during document preparation 83
Arranging for misappropriation in the future 84

3. **Risks in relation to the selection method** 90
Abuses involving buying groups 90
Abuses of open calls for tender 91
Restricted calls for tender 93
The negotiated procedure 96
Procedures to avoid issuing a call for tender 97

4. **Risks during the management of the contract** 98
Delivery of supplies 98
Supply of services 100
Carrying out the work 101

Chapter 3. **A Pilot Application of the Principles in Morocco** 107

Introduction 108

1. **Overview of the 2007 Decree on public procurement** 111
The 2007 Decree on public procurement 111
Actors in the reform and supporting texts 113

2. **Strengths and weaknesses of the public procurement system** 115
The 2007 public procurement regulations: A detailed framework for public procurement 115
More transparency in the procurement cycle 115
Electronic procedures: Creation of a national public procurement portal 116
Introduction of anti-corruption measures in the 2007 Decree 116
First step towards the introduction of an appeals mechanism 116

3. **Policy recommendations: How to improve the system** 119
Professionalise public procurement 119
Strengthen the independence of the Public Procurement Review Board . 120
Pursue the initiative to reinforce accountability and control 121
Ensure harmonised interpretation and implementation of the 2007 Decree 121
Introduce specific measures to fight corruption in procurement 122

Annex A. OECD Recommendation on Enhancing Integrity in Public Procurement 125
Annex B. The Multi-disciplinary Approach of the OECD on Procurement 131
Annex C. The Consultation on the Principles and Checklist with Stakeholders 134

Glossary 137

Boxes

I.1. Aim of the Principles 18
I.2. Key pillars of the Principles for enhancing integrity in public procurement 18
II.2.1. Repeating the same study 78
II.2.2. Overvaluing the estimate 82
II.2.3. Undervaluing the estimate 82
II.2.4. Using affiliated entities 84
II.2.5. Using exclusive rights 85
II.2.6. Using non-standard specifications 85
II.2.7. Collusion between the official in charge of specifications and a supplier 87
II.2.8. Reducing publicity 91
II.2.9. Abusing the use of urgency 92
II.2.10. Leaking information 93
II.2.11. Misrepresenting an operation to split up contracts 97
II.2.12. Providing discounts to an association 99
II.2.13. Modifying services 101
II.2.14. Overvaluing invoices 103
II.2.15. Adding work unrelated to the contract 104
II.3.1. Efforts to prevent risks of corruption in public procurement: The National Electricity Board in Morocco 117

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Executive Summary

Public procurement: A major risk area

Governments and state-owned enterprises purchase a wide variety of goods, services and public works from the private sector, from basic computer equipment to the construction of roads. Public procurement is a key economic activity of governments that represents a significant percentage of the Gross Domestic Product (GDP) generating huge financial flows, estimated on average at 10-15% of GDP across the world.[1] An effective procurement system plays a strategic role in governments for avoiding mismanagement and waste of public funds.

Of all government activities, public procurement is also one of the most vulnerable to fraud and corruption. Bribery by international firms in OECD countries is more frequent in public procurement than in utilities, taxation, and judicial system, according to a survey of the World Economic Forum.[2] Bribery in government procurement is estimated to be adding 10-20% to total contract costs. Due to the fact that governments around the world spend about USD 4 trillion each year on the procurement of goods and services, a minimum of USD 400 billion per year is lost due to bribery (Peter Eigen, Transparency International, 2002).

Weak governance in public procurement hinders market competition and raises the price paid by the administration for goods and services, direct impacting public expenditures and therefore taxpayers' resources. The financial interests at stake, and the close interaction between the public and private sectors, make public procurement a major risk area.

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

Although it is widely agreed that public procurement reforms should adhere to good governance principles, reform efforts at the international level have focused largely on the formation of contracts in the last decade, when tenders from suppliers are solicited and evaluated. These reforms were made in order to promote competitive tendering for the selection of suppliers, even

though rules also allow, in certain circumstances, less formal selection procedures.

So far, the formation of contracts – starting with the definition of requirements to the contract award – is the most regulated and transparent phase of the procurement cycle, the "tip of the iceberg". However, discussions at the 2004 OECD Global Forum on Governance highlighted the need for governments to take additional measures to prevent risks of corruption in the entire procurement cycle, in particular:

- At the stage of **needs assessment**, which is particularly vulnerable to political interference, and in **contract management and payment**. These stages are less subject to transparency as they are usually not covered by procurement regulations.
- When using exceptions to competitive procedures, for instance in **national security and emergency procurement**.

A commitment from OECD countries

Could countries do more to prevent mismanagement, fraud and corruption in public procurement? OECD countries demonstrated their commitment to take action in this area in October 2008. Following the proposal of the Public Governance Committee, they approved the OECD *Principles for Enhancing Integrity in Public Procurement* in the form of an OECD Recommendation. The Principles are primarily directed at policy makers in governments at the national level, but may also offer general guidance for sub-national government and state-owned enterprises.

The Principles provide a policy instrument for enhancing integrity in the entire public procurement cycle. They take a holistic view by addressing various risks to integrity, from needs assessment, through the award stage, contract management and up to final payment.

Procedures that enhance transparency, good management, prevention of misconduct, accountability and control contribute to preventing the waste of public resources as well as corrupt practices. Efforts to enhance good governance and integrity in public procurement are fully part of an efficient and effective management of public resources.

How to keep the public procurement process transparent?

Corruption thrives on secrecy. A key challenge across countries is to ensure transparency in the entire public procurement cycle, no matter what the stage of the process is or the procurement method used.

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The first Principle for Enhancing Integrity in Public Procurement calls on governments to ***provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers***. There are several things governments can do to ensure this. For example, if key decisions on procurement are well-documented and easily accessible, inspectors are able to check whether specifications are unbiased or award decisions are based on fair grounds. The degree of transparency also needs to be adapted according to the recipient of information and the stage of the cycle. In particular, governments should protect confidential information, such as trade secrets of tenderers, to ensure a level playing field.

The second Principle stresses that governments should ***maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering***, such as extreme urgency or national security. To ensure sound competitive processes, governments should provide clear rules, and possibly guidance, on the choice of the procurement method. No matter what the procedure used, maximising transparency is key, for example through the publication of notices on-line for low-value purchases. Governments could also set up procedures to mitigate possible risks to integrity. In the case of a hurricane or a flood, a risk mitigation board could be set up to bring together key stakeholders to allow for clear policy directions and increased communication during the emergency.

How to achieve value for money?

Common shortfalls in the planning and management of procurement include needs that are not well estimated, unrealistic budgets or officials who are under skilled. Governments realise that procurement should be integrated into a more strategic view of government actions to improve value for money.

The third Principle states that governments need to ***ensure that public funds are used in procurement according to the purposes intended.*** Procurement plans generally include the related budget planning, formulated on an annual or multi-annual basis, with a detailed and realistic description of the financial and human resource management requirements. The management of public funds should be monitored by internal control and internal audit bodies, supreme audit institutions and/or parliamentary committees. When a bridge is to be built, for example, a court of audit may verify not only the legality of the spending decision but also whether the planned bridge responds to a real need.

The fourth Principle calls on governments to ***ensure that procurement officials meet high professional standards of knowledge, skills and integrity.*** Recognising working in public procurement as a profession is critical to reducing mismanagement, waste and corruption. Just like the medical or legal professions, public procurement officials could benefit from well-defined curricula, specialised knowledge, professional certifications and integrity guidelines. For example, if a public official sitting on a tendering commission finds that one of the tenderers is someone with whom he or she has a personal relationship, the official should be able to identify the potential conflict of interest and take action.

How to improve resistance to fraud and corruption?

There is increasing recognition that specific measures are needed in the public and private sectors to identify and address risks of fraud and corruption in public procurement.

The fifth Principle requests governments to ***put mechanisms in place to prevent risks to integrity in public procurement.*** Risks to integrity can pertain to potentially vulnerable positions, activities, or projects. For instance, an anti-corruption agency could draw a "risk map" that identifies the positions of officials who are vulnerable, activities in the procurement where risks arose in the past, and the particular projects at risk due to their value or complexity. These risks can be addressed through mechanisms that foster a culture of integrity in the public service such as integrity training, financial disclosure, or the management of conflict of interest.

The sixth Principle ***encourages close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management***. Governments should set clear integrity standards for the private sector and ensure they are followed. For example, officials who systematically record feedback on experience with individual suppliers are in a better position to evaluate future tenders. Potential suppliers should also be encouraged to take voluntary steps to reinforce integrity in their relationship with the government. These include codes of conduct, integrity training programmes for employees, corporate procedures to report fraud and corruption, internal controls, certification and audits by a third independent party.

The seventh Principle calls on governments to ***provide specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct.*** For example, a public procurement agency could have "blinking" indicators that track decisions and identify potential irregularities by drawing attention to transactions departing from established norms for a project. Procedures for reporting misconduct could also be established, such as an internal complaint desk, a hotline, an external

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ombudsman or an electronic reporting system that protects the anonymity of the individual. Governments should not only define sanctions by law but also provide the means for them to be applied in an effective, proportional and timely manner.

How to ensure that rules are followed?

A key condition for a public procurement system to operate with integrity is the availability and effectiveness of accountability and control mechanisms.

The eighth Principle highlights the importance for governments to ***establish a clear chain of responsibility together with effective control mechanisms.*** A clear chain of responsibility is key for defining the authority for approval and based on an appropriate segregation of duties, as well as the obligations for internal reporting. In addition, the regularity and thoroughness of controls should be proportionate to the risks involved. For example, probity advisors could be called upon for purchases that are high value/volume, complex or sensitive in order to advise the procuring authority at key stages of the process and provide a level of independent assistance about the fairness of the procurement.

The ninth Principle stresses that governments should ***handle complaints from potential suppliers in a fair and timely manner***. To ensure an impartial review, an independent body with the power to enforce its decisions should rule on procurement decisions and provide adequate remedies. In particular, potential suppliers should be able to refer to an appeal body. In addition, establishing alternative dispute settlement mechanisms can also be a way to avoid formal litigation and reduce the time for solving complaints. For example, the government could set up an advisory complaint board or a contact point for advice to companies facing problems in cross-border cases.

Last, but not least, the tenth Principle calls on governments to ***empower civil society organisations, media and the wider public to scrutinise public procurement***. Civil society organisations, media and the wider public should have access to public information on the key terms of major contracts. The reports of supreme audit institutions should also be made widely available to enhance public scrutiny. Reviews of procurement activities could also be undertaken. For example, an *ad hoc* parliamentary committee may investigate large infrastructure projects. Direct control by citizens can complement these traditional accountability mechanisms, for example through the monitoring of high-value or complex procurements by a representative from a civil society organisation.

Implementing the Principles

The OECD Principles provide a policy framework for enhancing integrity in the entire public procurement cycle. However, following such principles in real-life situations is the true test.

From simple mistake to deliberate act: Adapting the response

Government contracts can give rise to mistakes, anomalies, fraud, and misappropriation of public funds or instances of corruption. Some of these problems can be avoided through adequate guidance for public procurement officials. Accordingly, the OECD developed a Checklist to help procurement officials implement the *Principles for Enhancing Integrity in Public Procurement*.

The Principles and Checklist are based on acknowledged good practices from governments in various legal and administrative systems. They are intended to be used in conjunction with identified good practices, which provide concrete options for reform for policy makers together with their underlying context (see *Integrity in Public Procurement: Good Practice from A to Z*, OECD (2007), available at *www.oecd.org/gov/ethics*).

For cases when fraud, misappropriation and corruption are the result of an official's deliberate act to circumvent the rules for illicit gain, the government's response needs to be adapted accordingly. A comprehensive map of risks to integrity can help auditors detect misappropriation of public funds, in particular fraud or corruption.

A practical Checklist for procurement officials

The *Checklist for Enhancing Integrity in Public Procurement* provides a practical tool for the implementation of the Principles. The Checklist provides guidance to practitioners at every stage of the public procurement cycle, from needs assessment to contract management and payment. The procurement cycle is defined as three main phases:

- pre-tendering, including needs assessment, planning and budgeting, definition of requirements and choice of procedures;
- tendering, including the invitation to tender, evaluation and award; and
- post-tendering, including contract management, order and payment.

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Risk mapping

Gaining a better understanding of risks can help auditors detect fraud and corruption. The report provides insights into risks to integrity at key points of the public procurement process, that is:

- During the needs assessment, this could take the form of studies that are repeated, never delivered, or useless.
- During the planning, the estimate for the project is for instance over or undervalued, unnecessary documents are billed or project specifications are prepared in a way to allow for future gains.
- In relation to the selection method, this may take the form of reduced publicity, abuse of emergency procedures, or a misrepresented operation to split up contracts. For instance, during the contract management, discounts are provided to an "association" registered under the same address of a company, services are modified, invoices are overvalued or work unrelated to the contract is added.

A benchmark for OECD and non-member countries

The Principles are a point of reference with which policy makers can review, assess and further develop existing policies both in OECD and non-member countries.

Promoting policy dialogue

The Principles are used for conducting Joint Learning Studies and formulating capacity development plans in various regions of the world such as the Middle East and North Africa, South East Europe and Asia Pacific. A pilot application of the Principles was carried out in Morocco in 2007 that helped the government strengthen its public procurement procedures in the wider context of the fight against corruption. Highlights of the study on Morocco are presented in the report, in particular key findings and policy recommendations to improve the procurement system.

Acceding to OECD membership

The Principles are also used for countries in the accession process to OECD membership, in particular Chile, Estonia, Israel, Russia and Slovenia, in order to benchmark with OECD standards.

Reporting on progress in 2011

With regard to OECD countries, they will report on progress made in implementing the Recommendation in 2011.

Notes

1. Quantifying the size of public procurement is a difficult task because of the absence of detailed and consistent measurements of government procurement markets for a large number of countries. It is estimated to be the equivalent of 10 to 15% of GDP in OECD countries, depending on whether the compensation for employees is included.
2. Kaufmann, World Bank (2006), based on Executive Opinion Survey 2005 of the World Economic Forum covering 117 countries.

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PART I

Principles for Enhancing Integrity in Public Procurement

Introduction

The Principles guide governments in developing and implementing an adequate policy framework for enhancing integrity in public procurement, while at the same time, taking into account the various national laws and organisational structures of member countries. They are primarily directed at policy-makers in governments at the national level but they also offer general guidance for sub-national government and state-owned enterprises.

Box I.1. **Aim of the Principles**

The overall aim of the Principles is to guide policy makers at the central government level in instilling a **culture of integrity throughout the entire public procurement cycle**, from needs assessment to contract management and payment.

Key pillars of the Principles

The Principles provide a policy framework with ten key Principles to reinforce integrity and public trust in how public funds are managed (see key pillars of the Principles in Box I.2).

Box I.2. **Key pillars of the Principles for enhancing integrity in public procurement**

The Principles stress the importance of procedures to enhance transparency, good management, prevention of misconduct as well as accountability and control in public procurement.

A. Transparency

1. Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers.

2. Maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.

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Box I.2. **Key pillars of the Principles for enhancing integrity in public procurement** *(cont.)*

B. Good management

3. Ensure that public funds are used in procurement according to the purposes intended.

4. Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.

C. Prevention of misconduct, compliance and monitoring

5. Put mechanisms in place to prevent risks to integrity in public procurement.

6. Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.

7. Provide specific mechanisms to monitor public procurement as well as detect misconduct and apply sanctions accordingly.

D. Accountability and control

8. Establish a clear chain of responsibility together with effective control mechanisms.

9. Handle complaints from potential suppliers in a fair and timely manner.

10. Empower civil society organisations, media and the wider public to scrutinise public procurement.

Public procurement is at the interface of the public and private sectors, which requires close co-operation between the two parties to achieve value for money. It also requires the sound stewardship of public funds to reduce the risk of corrupt practices. Public procurement is also increasingly considered a core element of accountability to the public on the way public funds are managed. In this regard, the Checklist emphasises how governments could co-operate with the private sector as well as with stakeholders, civil society and the wider public to enhance integrity and public trust in procurement.

Defining integrity

Integrity can be defined as the use of funds, resources, assets, and authority, according to the intended official purposes, to be used in line with public interest. A "negative" approach to define integrity is also useful to determine an effective strategy for preventing integrity violations' in the field of public procurement. Integrity violations[1] include:

- corruption including bribery, "kickbacks", nepotism, cronyism and clientelism;

- fraud and theft of resources, for example through product substitution in the delivery which results in lower quality materials;
- conflict of interest in the public service and in post-public employment;
- collusion;
- abuse and manipulation of information;
- discriminatory treatment in the public procurement process; and
- the waste and abuse of organisational resources.

Legal, institutional and political conditions for the implementation of the Principles

In order to implement the Principles, governments should ensure that the effort to enhance integrity in public procurement at the policy level is also supported by the country's leadership and by an adequate public procurement system. The following items are commonly regarded as the essential structural elements of a public procurement system:[2]

- an adequate legislative framework, supported by regulations to address procedural issues not normally the subject of primary legislation;
- an adequate institutional and administrative infrastructure;
- an effective review and accountability regime;
- an effective sanctions regime; and
- adequate human, financial and technological resources to support all elements of the system.

In the following sections the Principles are complemented by annotations that provide options for reform in the implementation of the Principles.

Notes

1. Based on L. Huberts and J.H.J Van den Heuvel, *Integrity at the Public-Private Interface*, Maastricht 1999: Shaker.
2. Based on *United Nations Convention against Corruption: Implementing Procurement-Related Aspects*, paper submitted by the United Nations Commission on International Trade Law at the Conference of States Parties to the United Nations Convention against Corruption in Indonesia in January 2008.

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PART I

Chapter 1

Transparency

Principle 1. Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers.

Governments should provide potential suppliers and contractors with clear and consistent information so that the public procurement process is well understood and applied as equitably as possible. Governments should promote transparency for potential suppliers and other relevant stakeholders, such as oversight institutions, not only regarding the formation of contracts but in the entire public procurement cycle. Governments should adapt the degree of transparency according to the recipient of information and the stage of the cycle. In particular, governments should protect confidential information to ensure a level playing field for potential suppliers and avoid collusion. They should also ensure that public procurement rules require a degree of transparency that enhances corruption control while not creating red tape to ensure the effectiveness of the system.

Governments should ensure access to laws and regulations, judicial and/or administrative decisions, standard contract clauses on public procurement, as well as to the actual means and processes by which specific procurements are defined, awarded and managed. Information on procurement opportunities should be disclosed as widely as possible in a consistent, timely and user-friendly manner, using the same channels and timeframe for all interested parties. Conditions for participation, such as selection and award criteria as well as the deadline for submission should be established in advance. In addition, they should be published so as to provide sufficient time for potential suppliers for the preparation of tenders and recorded in writing to ensure a level playing field. When using national preferences in public procurement, transparency on the existence of preferences or other discriminatory requirements also enables potential foreign suppliers to determine whether they have an interest in entering a specific procurement process. In projects that hold specific risks because of their value, complexity or sensitivity, a pre-posting of proposed tendering documents could provide an opportunity for potential suppliers to ask questions and provide feedback early in the process. This allows the identification and management of potential issues and concerns before the tendering.

Transparency requirements usually focus on the tendering phase. However, transparency measures such as recording information or using new technologies are equally important in the pre-tendering and post-tendering phases to prevent corruption and enhance accountability. Without recording

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at decision making points in the procurement cycle, there is no trail to audit, challenge the procedure, or enable public scrutiny. Records should be relevant and complete throughout the procurement cycle, from needs assessment to contract management and payment and include electronic data in relation to the traceability of procurement. These records should be kept for a reasonable number of years after the contract award to enable the review of government decisions. New technologies can also play an important role in providing easy and real-time access to information for potential suppliers, track information and facilitate the monitoring on procurement processes (see also Recommendation 10). Electronic systems, for instance in the form of "one-stop-shop" portal, can be used in addition to traditional off-line media to enhance transparency and accountability throughout the procurement cycle.

Restrictions should apply in the disclosure of sensitive information, that is, information the release of which would compromise fair competition between potential suppliers, favour collusion or harm interests of the State. For instance, disclosing information such as the terms and conditions of each tender helps competitors detect deviations from a collusive agreement, punish those firms and better co-ordinate future tenders. The need for access to information should be balanced by clear requirements and procedures for ensuring confidentiality. This is particularly important in the phases of submission and evaluation of tenders. For instance, procedures to ensure the security and confidentiality of documents submitted could help guide officials in handling sensitive information and in clarifying what information should be disclosed. Furthermore, closer working relationships between competition and procurement authorities should be developed to raise awareness about risks of tender-rigging, as well as prevent and detect collusion.

Ensuring an adequate degree of transparency that enhances corruption control, while not impeding the efficiency and the effectiveness of the procurement process, is a common challenge for governments. Procurement regulations and systems should not be unnecessarily complex, costly or time-consuming, as this could cause excessive delays to the procurement and discourage participation, in particular for small and medium enterprises. Excessive red tape may also create possible opportunities for corruption, for instance in the case of regulatory instability, or when leading to requests for exceptions to rules. Furthermore, special attention should be paid to ensuring the overall coherence of the application of procurement regulations across public organisations.

Principle 2. Maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.

To ensure sound competitive processes, governments should provide clear rules, and possibly guidance, on the choice of the procurement method and on exceptions to competitive tendering. Although the procurement method could be adapted to the type of procurement concerned, governments should, in all cases, maximise transparency in competitive tendering. Governments should consider setting up procedures to mitigate possible risks to integrity through enhanced transparency, guidance and control, in particular for exceptions to competitive tendering such as extreme urgency or national security.

Open tendering contributes to enhancing transparency in the process. However, a key challenge for governments is to ensure administrative efficiency, and therefore the procurement method could be adapted to the type of procurement concerned. Procurements, irrespective of whether they are competitive or not, should be managed in a clear and transparent framework and grounded in a specific need.

To ensure sound competitive processes, governments should provide clear and realistic rules on the choice of the optimum method. This choice could be governed primarily by the value and the nature of the contract, that is the type of procurement concerned (*e.g.* different procurement methods should apply for goods and for professional services such as the development of computer applications). They could also pro-actively establish additional guidelines for officials to facilitate the implementation of these rules, specifying criteria for using different types of procedures and describing how to use them. Competition authorities may be consulted to determine the optimum procurement method to be used to achieve an efficient and competitive outcome in cases where the number of potential suppliers is limited and where there is a high risk of collusion.

Ensuring a level playing field also requires that exceptions to competitive tendering are strictly defined in procurement regulations in relation to:

- the value and strategic importance of the procurement;
- the specific nature of the contract which results in a lack of genuine competition such as proprietary rights;
- the confidentiality of the contract to protect state interests; and
- exceptional circumstances, such as extreme urgency.

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Similarly, when negotiations are allowed, the basis for negotiations should be clearly defined by regulations, so that they can only be held under exceptional circumstances and within a predefined timeframe.

Although the procurement method could be adapted to the type of procurement concerned, governments should, in all cases, maximise transparency in competitive tendering. For instance, in the case of framework agreements, guidance could be provided to ensure adequate transparency throughout the process, including in the second stage that is particularly vulnerable to corruption. Furthermore, governments should consider setting up complementary procedures for mitigating risks of corruption, in particular for exceptions to competitive tendering, such as extreme urgency or national security:

- *Transparency*. Restricted or limited tendering does not necessarily justify less transparency. On the contrary, it may require even more transparency to mitigate risks of corruption. For instance, in the case of limited tendering, the requirements of a contract may be publicised for a short period of time when there is a possibility that only one supplier can perform the work. This could provide suppliers with a chance to prove that they are able to satisfy requirements, which may lead to the opening of a competitive procedure. Similarly, amendments to the contract could be publicised through the use of new technologies. The derogation from competitive tendering should be justified and recorded in writing to provide an audit trail.
- *Specific guidance*. Guidelines and training materials, as well as advice and counselling, provide examples of concrete steps for handling limited or non-competitive procedures for both procurement and finance officials. Restrictions are also important for setting clearly defined boundaries. For instance, follow-on contracting may be allowed only under strict conditions defined in the contract, taking into account the amount of the procurement.
- *Additional or tightened controls*. The independent responsibility of at least two persons at key points of the decision making or in the control process contributes to the impartiality of public decisions. In addition, other measures could be used, such as independent review at each stage of the procurement cycle, specific reporting and public disclosure requirements, or random audits to check compliance on a systematic basis.
- *Enhanced capacity*. The best available skills and experience could be deployed depending on the assessment of the potential risk of the project. For large procurements, independent validation may be necessary through a probity auditor or the involvement of stakeholders. For emergency procurement, a risk mitigation board may be set up bringing together key actors – procurement, control officials and technical experts – to allow for clear policy direction and increased communication.

The procurement capacity available in the country and, in the case of post-conflict countries, the urgency of fulfilling needs, should be taken into account before introducing these procedures for mitigating risks of corruption.

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PART I

Chapter 2

Good Management

Principle 3. Ensure that public funds are used in public procurement according to the purposes intended.

Procurement planning and related expenditures are key to reflecting a long-term and strategic view of government needs. Governments should link public procurement with public financial management systems to foster transparency and accountability as well as improve value for money. Oversight institutions such as internal control and internal audit bodies, supreme audit institutions or parliamentary committees should monitor the management of public funds to verify that needs are adequately estimated and public funds are used according to the purposes intended.

Public procurement systems are at the centre of the strategic management of public funds to promote overall value for money, as well as help prevent corruption. To reflect government needs and provide a strategic outlook in relation to the attainment of government or department objectives, procurement planning is a key management instrument. Procurement plans – generally prepared on an annual basis – may include the related budget planning, formulated on an annual or multi-annual basis (often as part of a department investment plan), with a detailed and realistic description of financial and human resource requirements. Planning requires that officials are adequately trained in planning, scheduling and estimating projects costs so that projects are well co-ordinated and fully funded when works need to begin. Procurement plans could also be published to inform suppliers of forthcoming opportunities providing that the information released is carefully selected to avoid possible collusion. Project-specific plans may be prepared for purchases of goods and services that are considered high value, strategic or complex to establish project milestones and an effective structuring of payment. Performance reporting can also contribute to aligning procurement activities with expected outputs or outcomes, particularly when it is linked to associated expenditures.

Public procurement should be considered an integral part of public financial management and to the fostering of transparency and accountability from expenditure planning to final payment. Transparency and accountability begin with the budget process, with the full disclosure of all relevant fiscal information in a timely and systematic manner.[1] Electronic systems can help connect with the overall financial management system to ensure that procurement activities are conducted according to plans and budgets, and that all necessary information on public procurement is made available and

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tracked. To enhance the responsibility of high-ranking officials, fiscal reports may contain a statement of responsibility by the Minister and the senior official responsible for producing the report. The budget should be implemented in an orderly and predictable manner with arrangements for the exercise of control and stewardship of the use of public funds, taking into account the whole life of the contract.

Sound reporting is fundamental throughout key management processes to support investment decisions, asset management, acquisition management, contract management and payment. A dynamic system of internal financial controls, including internal audit, helps ensure the validity of information provided. Budget, procurement, project and payment verification activities should be segregated. These activities should be conducted by individuals or entities from separate functions and distinct reporting relationships. Electronic systems can provide a way to integrate procurement with financial management functions while providing a "firewall" between individuals, as direct contact is not required.

The management of public funds in procurement should be monitored not only by internal auditors but also by independent oversight institutions, such as Supreme Audit Institutions and Parliamentary Committees depending on the country context. Oversight institutions should have the opportunity and the resources to effectively examine fiscal reports. In particular, they may verify not only the legality of a spending decision but also whether it has been carried out in line with government needs. Reports may be audited on a random basis by the Supreme Audit Institution, in accordance with generally accepted auditing practices. Parliament can also play a role in scrutinising the management of public funds in procurement, particularly by reviewing the reports of the supreme audit institution and calling upon the government for action, where necessary. Fiscal reports should be made publicly available to enable stakeholders, civil society and the wider public to monitor the way public funds are spent (see also Recommendation 10).

Principle 4. Ensure that procurement officials meet high professional standards of knowledge, skills and integrity.

Recognising officials who work in the area of public procurement as a profession is critical to enhancing resistance to mismanagement, waste and corruption. Governments should invest in public procurement accordingly and provide adequate incentives to attract highly qualified officials. They should also update officials' knowledge and skills on a regular basis to reflect regulatory, management and technological evolutions. Public officials should be aware of integrity standards and able to identify potential conflict between their private interests and public duties that could influence public decision making.

Public procurement is increasingly recognised as a strategic profession (rather than a simple administrative function) that plays a central role in preventing mismanagement, waste and potential corruption. Adequate public employment conditions and incentives – in terms of remuneration, bonuses, career prospects and personnel development – help attract and retain highly skilled professionals. Capacities should also be sufficient to ensure that procurement officials are able to fulfil their various tasks. Mobility in the administration should also be encouraged to the extent possible and supported by adequate training. Human resource management policies may encourage exchanges between the public and private sectors to cross-fertilise talent and commercial know-how, provided that public service regulations define an adequate framework for preventing conflict-of-interest situations, especially for post-public employment.

In light of new regulatory developments, technological changes and increased interaction with the private sector, it is essential that a systematic approach to learning and development for procurement officials be used to build and update their knowledge and skills. Governments should support officials with adequate information and advice, through guidelines, training, counselling, as well as information sharing systems, databases, benchmarks and networks that help them to make informed decisions and contribute to a better understanding of markets. To prevent risks to integrity, guidance is all the more important in countries that put emphasis on managerial approaches and that provide more discretion and flexibility to officials in their daily practice.

Training plays an important role in helping officials recognise possible mistakes in performing administrative tasks and improving their practices accordingly. Formal and on-the-job training programmes should be available for entry-level as well as more experienced procurement officials, to ensure

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that officials involved in public procurement have the necessary skills and knowledge to carry out their responsibilities and keep abreast of evolutions. In addition, certification programmes, established in co-operation with relevant stakeholders such as institutes or universities, help ensure that both programme managers and contractors have acquired an appropriate level of training and experience. Officials, as well as suppliers' organisations, may also be consulted in the revision of procurement standards to ensure that the policy's rationale is understood and accepted and that the standards can be realistically implemented.

Integrity standards are a core element of professionalism, as they influence the daily behaviour of procurement officials and contribute to creating a culture of integrity. To prevent the influence of individual private interests on public decision making, officials should be aware of the circumstances and relationships that lead to conflict-of-interest situations. These situations may be the reception of gifts, benefits and hospitality, the existence of other financial and economic interests, personal and family relationships, affiliations with organisations, or the promise of future employment. The communication of integrity standards is essential to raise awareness and build officials' capacity to handle ethical dilemmas and promote integrity. This is equally important for managers, high-level officials, as well as external employees and contractors involved in procurement. Furthermore, detailed guidelines could be provided for officials involved in public procurement, for instance in the form of a code of conduct. These guidelines help ensure impartiality in their interactions with suppliers, manage conflict of interest and avoid the leak of sensitive information.

Note

1. See also OECD *Best Practices for Budget Transparency*, May 2001 (*www.oecd.org/dataoecd/33/13/1905258.pdf*).

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PART I

Chapter 3

Prevention of Misconduct, Compliance and Monitoring

Principle 5. Put mechanisms in place to prevent risks to integrity in public procurement.

Governments should provide institutional or procedural frameworks that help protect officials in public procurement against undue influence from politicians or higher level officials. Governments should ensure that the selection and appointment of officials involved in public procurement are based on values and principles, in particular integrity and merit. In addition, they should identify risks to integrity for job positions, activities, or projects that are potentially vulnerable. Governments should prevent these risks through preventative mechanisms that foster a culture of integrity in the public service such as integrity training, asset declarations, as well as the disclosure and management of conflict of interest.

To protect procurement officials from undue influence, in particular political interference and internal pressure from high-level officials, public organisations should have adequate institutional or procedural frameworks, sufficient resources to effectively carry out responsibilities and supportive human resource policies. For instance, providing guarantees to ensure that a public procurement official can appeal against a decision of dismissal contributes to the impartiality of the official in making decisions by protecting him or her from undue influence. In addition, merit-based selection procedures and integrity screening processes for senior officials involved in procurement enhance resistance to corruption. This is particularly important as senior officials serve as a role model in terms of integrity in their professional relationship with political leaders, other public officials and citizens. More generally, there should be a clear commitment from senior officials in the administration to set the example and provide visible support to the fight against corruption.

A "risk map" of the organisation(s) could be developed to identify the positions of officials which are vulnerable, those activities in the procurement where risks arise, and the particular projects at risk due to the value and complexity of the procurement. This risk map could be developed in close co-operation with procurement officials. On that basis, training sessions could be developed to inform officials about risks to integrity and possible preventative measures. Suppliers could also follow integrity training to raise awareness of the importance of integrity considerations in the procurement process. In addition, specific procedures may be introduced for officials in positions that are especially vulnerable to corruption, such as regular performance appraisals, mandatory disclosure of interests, assets, hospitality

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and gifts. If the information disclosed is not properly assessed, risks to integrity, including potential conflicts of interests, will not be properly identified, resolved and managed. This information should be recorded and kept up-to-date. Integrity procedures should be clearly defined and communicated to procurement officials and to other stakeholders when relevant.

Avoiding the concentration of key areas in the hands of a single individual is fundamental in the prevention of corruption. The independent responsibility of at least two persons in the decision making and control process may take the form of double signatures, cross-checking, dual control of assets and separation of duties and authorisation (see also Recommendation 3 in relation to the budget). To the extent possible, separating the responsibilities for authorising transactions, processing and recording them, reviewing the transactions, and handling related assets also helps prevent corruption. A key challenge with the separation of duties and authorisation is to ensure the flow of information between management, budget and procurement officials and to avoid the fragmentation of responsibilities and a lack of overall co-ordination. The separation of duties and authorisation should be organised in a realistic manner in order to avoid creating overly burdensome procedures that may create opportunities for corruption.

Depending on the level of risk, a system of multiple-level review and approval for certain matters, rather than having a single individual with sole authority over decision making, may introduce an independent element to the decision making process. These reviews may focus for example on the choice of competitive and non-competitive strategies prior to the tendering or on significant contract amendments. They may be carried out by senior officials independent of the procurement and project officials or by a specific contract review committee process. However, multiple-level reviews often involve officials with less detailed knowledge of individual procurements and hold the risk of fragmenting accountability.

Prolonged contact over an extended period of time between government officials and suppliers should also be avoided. The rotation of officials – involving when possible new responsibilities – could be a safeguard for positions that are sensitive or involve long-term commercial connections. However, sufficient capacity and institutional knowledge should be ensured at the government level over time. Electronic systems also provide a promising instrument for avoiding direct contact between officials and potential suppliers and for standardising processes. The use of new technologies may require security control measures for the handling of information, such as: the use of unique user identity codes to verify the authenticity of each authorised user; well-defined levels of computer access rights and procurement authority; and the encryption of confidential data. A cost-benefit analysis of technical solutions should be carried out early in the process, especially for low-value procurement.

Principle 6. Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.

Governments should set clear integrity standards and ensure compliance in the entire procurement cycle, particularly in contract management. Governments should record feedback on experience with individual suppliers to help public officials in making decisions in the future. Potential suppliers should also be encouraged to take voluntary steps to reinforce integrity in their relationship with the government. Governments should maintain a dialogue with suppliers' organisations to keep up-to-date with market evolutions, reduce information asymmetry and improve value for money, in particular for high-value procurements.

Governments should set clear standards for integrity throughout the entire procurement cycle starting with the selection process. The selection of tenderers should be based on criteria, which are defined in a clear and objective manner, are not discriminatory and cannot be altered afterwards. Requirements could be placed on potential suppliers and contractors to show evidence of anti-corruption policies and procedures and to contractually commit them to comply with anti-corruption standards. This could be accompanied by a contractual right to terminate the contract in the event of non-compliance. Several options could be considered for taking into account integrity considerations in the selection process. For instance, potential suppliers may make declarations of integrity in which they testify that they have not been involved in corrupt activities in the past. Alternatively, governments may also lead by example by using "Integrity Pacts" that require a mutual commitment by the government and all tenderers to refrain from and prevent all corrupt acts and submit to sanctions in case of violations.

The information provided by potential suppliers needs to be verified and compared with other internal and external sources of information, such as government databases. Databases may include information such as past performance, prices, and possibly a list of suppliers that have been excluded from procurement with the government. Furthermore, suppliers should be closely monitored in contract management to maintain high standards of integrity and ensure that they are kept accountable for their actions. For instance, there could be a rigorous verification of identity of contractors and sub-contractors early in the process, based on reputable sources of information, to avoid that subcontracting is used as a means to conceal fraud or corruption. More generally, feedback on the experience with individual suppliers should be kept to help public officials in making decisions in the future.

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It is also the responsibility of the private sector to reinforce integrity and trust in its relationship with government through robust contractor integrity and compliance programmes. These programmes include codes of conduct, integrity training programmes for employees, corporate procedures to report fraud and corruption, internal controls, certification and audits by a third independent party. They should apply equally to contractors and sub-contractors. Voluntary self-regulation can be undertaken by individual suppliers or members of an industry or a sector, which pro-actively engage in the adoption of integrity measures, in particular by committing to anti-corruption agreements. It is essential that the information is accurate and maintained up-to-date to ensure the effectiveness of voluntary self-regulation by the private sector.

Fostering an open dialogue with suppliers' organisations contributes to improving value for money by setting clear expectations and reducing information asymmetry. For instance, engaging representatives of the private sector in the review or the development of procurement regulations and policies helps ensure that the proposed standards reflect the expectations of both parties and are clearly understood. To foster a more strategic approach to public procurement, governments could provide the opportunity for the industry to discuss innovative solutions so that governments know how marketplaces operate and align with those markets and the opportunities they create. Similarly, governments should regularly conduct market surveys and dialogue with the private sector to keep abreast of suppliers, products and prevailing prices for goods and services.

This dialogue is critical throughout the procurement cycle, from needs assessment to contract management in order to foster a trustful relationship between government and the private sector. Potential suppliers may have the possibility to seek clarification before the tendering, especially for high-value procurements, for instance in the form of public hearings to clarify what is needed. This disclosure of information should be carefully considered, taking into account possible risks of collusion between private sector actors. In order to clarify expectations and anticipate possible misunderstanding with potential suppliers, elements of good practice include prompt responses to questions for clarification and the availability of dispute boards to prevent or resolve disputes on major projects. In the case of responses to questions for clarification, the information should then be transmitted to potential suppliers in a consistent manner to provide a level playing field. The grounds for selecting the winner could be made public, including the weighting given to qualitative tender elements. At a minimum, debriefing should be provided to unsuccessful tenderers on request so that they understand why their proposal fell short in relative terms of other tenders, without disclosing commercially-sensitive information about other tenders. In the contract management, dialogue between both parties is also needed to enable problems to be quickly identified and resolved.

Principle 7. Provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly.

Governments should set up mechanisms to track decisions and enable the identification of irregularities and potential corruption in public procurement. Officials in charge of control should be aware of the techniques and actors involved in corruption to facilitate the detection of misconduct in public procurement. In order to facilitate this, governments should also consider establishing procedures for reporting misconduct and for protecting officials from reprisal. Governments should not only define sanctions by law but also provide the means for them to be applied in case of breach in an effective, proportional and timely manner.

The public procurement process should be closely monitored to detect irregularities and corruption. Governments should set up mechanisms that help track decisions and enable the identification of potential risks. Management controls, approval and reporting are key to monitoring public procurement. In addition, the use of electronic systems increases transparency and accountability while allowing officials to use their discretion and judgement for achieving value for money. For instance, a set of "blinking" indicators could be developed in relation to existing computer data-mining to draw attention to transactions that appear to depart from established norms for a project. These indicators, developed on the basis of risks identified, would preferably not be communicated to procurement practitioners to avoid influencing their behaviour. When a number of indicators start "blinking", follow-up should be initiated by auditors to facilitate the detection of irregularities or corrupt practices (see also Recommendation 8). Where justified, this information could be brought to the attention of law enforcement authorities to enable possible investigations.

Officials in charge of control should be aware of the techniques and actors involved in corruption in public procurement to facilitate the detection of misconduct. These officials could follow specialised training on a regular basis to inform them about corrupt techniques used in procurement. Knowledge of the actors involved in corruption and the understanding of their underlying motivations, as well as the techniques used to carry out corrupt agreements also assists in detecting potential corruption. Given the capacity of criminals to devise new techniques, these training sessions could be updated and carried out at regular intervals.[1] Experts' assistance could also be

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required to examine a particular technical, financial or legal aspect of the procurement process and gather evidence that could be presented in court.

Public authorities may also develop clear procedures to report misconduct, such as an internal complaint desk, or a hotline, an external ombudsman or an electronic reporting system that protects the anonymity of the individual who reports misconduct yet allows clarification questions. A key challenge is to ensure the protection of public officials who report misconduct against retaliation, in particular through legal protection, protection of privacy information, anonymity or the setting up of a protection board. At the same time, particular attention should be paid to ensuring that the management of complaints is well documented and impartial to avoid harming unnecessarily the reputation of individuals affected by allegations.

Effective, proportional and timely redress, as well as sanctions should not only be defined by law but also promptly applied in case of irregularities, fraud, as well as active and passive corruption in public procurement. Governments should enforce administrative, civil and criminal sanctions.[2] Traditional redress and sanctions include the denial or loss of the contract, liability for damages and the forfeiture of tender or performance bonds. In addition, these could include confiscation of ill-gotten gains and debarment from future contracts to deter private sector actors from engaging in corrupt practices.[3] With regard to officials, redress, consequences and sanctions could encompass administrative, civil and criminal sanctions, including confiscation of ill-gotten gains. Administrative consequences may also exist at the organisational level to punish the contracting authority, for instance in the form of a pecuniary fine in proportion to the value of the contract.

Notes

1. See *Bribery in Public Procurement: Methods, Actors and Counter-Measures*, OECD, 2007.
2. For further information about country practices in relation to sanctions in Asia and the Pacific, see *Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries*, ADB/OECD, 2007.
3. For further information on the challenges of introducing debarment, see *Fighting Corruption and Promoting Integrity in Public Procurement*, OECD, 2005.

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PART I

Chapter 4

Accountability and Control

Principle 8. Establish a clear chain of responsibility together with effective control mechanisms.

Governments should establish a clear chain of responsibility by defining the authority for approval, based on an appropriate segregation of duties, as well as the obligations for internal reporting. In addition, the regularity and thoroughness of controls should be proportionate to the risks involved. Internal and external controls should complement each other and be carefully co-ordinated to avoid gaps or loopholes and ensure that the information produced by controls is as complete and useful as possible.

Defining the level of authority for approval of spending, sign off and approval of key stages, based on an appropriate segregation of duties, is essential to establish a clear chain of responsibility. Internal guidelines should clarify the level of responsibility, the required knowledge and experience, the corresponding financial limits and the obligation of recording in writing of key stages in the public procurement cycle. In the case of delegated authority, it is important to explicitly define the delegation of power of signature, the acknowledgement of responsibility and the obligations for internal reporting. These processes should be embedded in daily management and supported by adequate communication and training. Managers play an important role in leading by example and enhancing integrity in the culture of the organisation. They are in charge of setting expectations for officials in performing to appropriate standards and are ultimately responsible for irregularities and corruption.

Regular internal controls by officials independent of those undertaking the procurement may be tailored to the type of risk; these controls include financial control, internal audit or management control. External audits of procurement activities are important to ensure that practices align with processes; they are carried out to verify that controls are being performed as expected. Financial audits help detect and investigate fraud and corruption while performance audits provide information on the actual benefits of procurements and suggest systemic improvements. Performance audits review not only compliance with expenditure rules but also the attainment of the physical and economic objectives of the investment. It is important to ensure that external audit recommendations are implemented within a reasonable delay.

The frequency of audits could be determined by factors such as the nature and the extent of the risks, that is the volume and associated value, the various types of procurement, the complexity, sensitivity and specificity of the

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procurement (for instance for exceptions to competitive tendering). There should be no minimum threshold for conducting random audits. For instance, for procurements that are particularly at risk, the use of a probity advisor or a probity auditor may be considered. On the one hand, probity advisors give advice during the procurement to provide a level of independent assurance about the openness and fairness of the process. On the other hand, probity auditors are an external party that is engaged to verify afterwards that a procurement activity was conducted in line with good practice.

Given that public procurement is subject to various controls, attention should be paid to ensuring that controls complement each other and are carefully co-ordinated to avoid gaps and overlaps in controls. A systematic exchange of information between internal and external controls could be encouraged to maximise the use of information produced by different controls. Auditors should promptly report to criminal investigators for follow-up investigation when there are suspicions of fraud or corruption. Information from external audits on procurement should be publicised to reinforce public scrutiny. Furthermore, public disclosure of internal controls may also be considered.

Principle 9. Handle complaints from potential suppliers in a fair and timely manner.

Governments should ensure that potential suppliers have effective and timely access to review systems of procurement decisions and that these complaints are promptly resolved. To ensure an impartial review, a body with enforcement capacity that is independent of the respective procuring entities should rule on procurement decisions and provide adequate remedies. Governments should also consider establishing alternative dispute settlement mechanisms to reduce the time for solving complaints. Governments should analyse the use of review systems to identify patterns where individual firms could be using reviews to unduly interrupt or influence tenders. This analysis of review systems should also help identify opportunities for management improvement in key areas of public procurement.

Providing timely access to review mechanisms contributes to ensuring the overall fairness of the procurement process. A key challenge for governments is to resolve complaints in a fair manner while ensuring administrative efficiency, that is the delivery of goods and services to citizens in a timely manner. Decisions that could be challenged should include not only the award decision but also key decisions in the pre- and post-award phases, such as the choice of the procurement method or the interpretation of contract clauses in the management of the contract. To enable the timely resolution of complaints, a range of measures may be used, for example:

- Using e-procurement, when possible, to ensure that the information on the award is communicated in a prompt manner to all tenderers and that they have a reasonable delay to challenge the decision.
- Providing remedies to challenge the decision early in the process, such as the setting aside of the award decision, the use of a standstill period for challenging the decision between the award and the beginning of the contract, or the decision to suspend temporarily the award decision when relevant. In all cases, a sufficient period of time to prepare and submit a challenge should be provided to unsuccessful tenderers.
- Reviews could also be allowed during contract management and after the end of the contract for a reasonable time in order to claim damages.

To ensure the impartiality of review mechanisms, review decisions should be ruled upon by a body with enforcement capacity that is independent of procuring entities. As a first stage, potential suppliers should have an opportunity to submit their complaints to the procuring authority in

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order to prevent confrontation and the costs of a quasi-judicial or judicial review. Officials participating in the review should be secure from external influence. Their decisions may also be published, possibly on-line. In all cases, potential suppliers should be able to refer to an appeal body – administrative and/or judicial – to review the final decision of the procuring authority.

Efficient and timely resolution for complaints is essential for the fairness of public procurement. Different approaches may be used to ensure the enforcement of procurement regulations within a reasonable delay. For example, using a review body with specific professional knowledge in dealing with complaints may reinforce the legitimacy of decisions and reduce the time for solving complaints. Similarly, alternative resolution mechanisms may be established to encourage informal problem solving and prevent a formal review.

Finally, the use of review systems could be analysed to identify opportunities for management improvement in key areas of public procurement as well as patterns where individual firms may be using them to unduly interrupt or influence tenders. In addition, cases of undue pressure on officials from individual firms, such as intimidation and threats of physical harm, should be closely reviewed and handled.

Adequate remedies should be available for tenderers, such as setting aside of procurement decisions, interim measures, annulment of concluded contracts, damages and pecuniary penalties.[1] The review body could have the authority to define and enforce interim measures, such as the decision to discontinue the procedure, taking into account the public interest. The review body should have the authority to enforce final remedies to correct inappropriate procuring agency actions and apply sanctions accordingly, in particular the annulment of a concluded contract. Potential suppliers may be compensated for the loss or damages caused, not only through the reimbursement of tendering costs but also through damages for lost profits. Pecuniary penalties could be applied to force contracting authorities to adhere strictly to their legal obligations.

Principle 10. Empower civil society organisations, media and the wider public to scrutinise public procurement.

Governments should disclose public information on the key terms of major contracts to civil society organisations, media and the wider public. The reports of oversight institutions should also be made widely available to enhance public scrutiny. To complement these traditional accountability mechanisms, governments should consider involving representatives from civil society organisations and the wider public in monitoring high-value or complex procurements that entail significant risks of mismanagement and corruption.

Scrutiny practices enhance assessment and review of government actions focusing on the power of information to enhance accountability. Governments should enable civil society organisations, media and the general public to scrutinise public procurement through the disclosure of public information. Freedom of information laws represent a key instrument for enhancing transparency and accountability in the public procurement process. For instance, records could be made available for civil society organisations, media and the wider public, to uncover cases of mismanagement, fraud, collusive behaviour and corruption. In addition, electronic systems are a useful tool for governments to disseminate information on major contracts and therefore enable public scrutiny.

The effective implementation of freedom of association laws and the existence of strong civil society organisations, including trade unions in the public and private sectors, contribute to a broader institutional environment that is conducive to enhanced transparency and accountability in public procurement. This also facilitates civil society initiatives that track the management of public funds in procurement by disseminating information relative to budgetary and financial execution. A promising mechanism is the "open agenda", which obliges procurement officials to disclose every meeting they have with the private sector, in order to ensure a level field for competition. Education of civil society organisations, media and the wider public, for instance through awareness-raising programmes and communication campaigns, is crucial in supporting the integrity of the procurement process.

Oversight institutions such as Parliament, Ombudsman/Mediator and Supreme Audit Institution play an important role in enhancing public scrutiny through their reports on public procurement (see also Recommendation 3). Oversight bodies may undertake reviews of procurement activities, through an *ad hoc* parliamentary committee or a review by the Supreme Audit

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Institution, for investigating a specific issue. In addition, an Ombudsman/ Mediator should examine the legality of public administration actions, in particular with respect to laws on access to information, and undertake investigations.

Scrutiny practices may also require the involvement of other stakeholders in the public procurement process. For development assistance programmes, bilateral and multilateral donors could play a role in strengthening and assessing the quality and functioning of public procurement systems.[2] For procurements that involve important risks of mismanagement and possibly corruption, governments should consider the possibility of involving representatives from civil society, academics or end-users in scrutinising the integrity of the process. "Direct social control" mechanisms encourage their involvement as external observers of the entire procurement process or of key decision making points.[3]

This practice of "direct social control" could complement more traditional accountability mechanisms under specific circumstances. Strict criteria should be defined to determine when direct social control mechanisms may be used, in relation to the high value, complexity and sensitivity of the procurement, and for selecting the external observer. In particular, there should be a systematic verification that the external observer is exempt from conflict of interest to participate in the process and is also aware of restrictions and prohibitions with regard to potential conflict-of-interest situations, such as the handling of confidential information. Governments should support these initiatives by ensuring timely access to information, for instance through the use of new technologies, and providing clear channels to allow the external observer to inform control authorities in the case of potential irregularities or corruption.

Notes

1. See *Public Procurement Review and Remedies Systems in the European Union*, SIGMA Paper No. 41, 2007.
2. For instance, the OECD-DAC Joint Venture for Procurement has developed with donor members and partner countries a common country-led approach to strengthening the quality and performance of public procurement systems.
3. This practice is used in particular by Transparency International as part of Integrity Pacts to involve an independent monitor in the process. The independent expert, who may be provided by civil society or commercially contracted, has access to all documents, meetings and parties and could raise concerns first with the principal, and of no correction is made, with the prosecution authorities.

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PART II

Implementing the Principles

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PART II

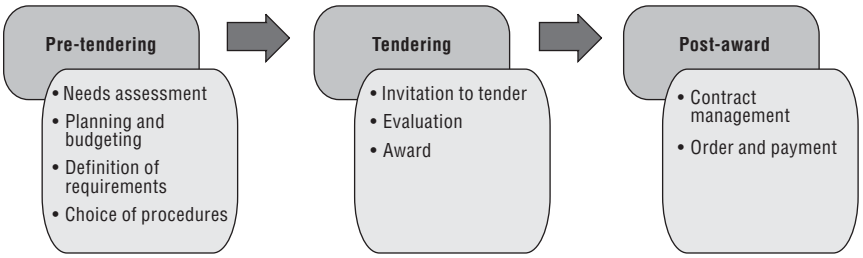
Chapter 1

Enhancing Integrity at Each Stage of the Procurement Cycle: A Checklist

This Checklist provides a practical tool for implementing the policy framework for enhancing integrity at each stage of the public procurement cycle, from needs assessment to contract management and payment. The procurement cycle comprises three main phases:

- pre-tendering, including needs assessment, planning and budgeting, definition of requirements and choice of procedures;
- tendering, including the invitation to tender, evaluation and award; and
- post-tendering, including contract management, order and payment (see Figure II.1.1).

Figure II.1.1.



For each stage of the procurement cycle, practical guidance is provided concerning common risks to integrity and precautionary measures to reduce these risks.

The Checklist focuses on concrete processes and measures that can set up or developed by practitioners to enhance integrity in the public procurement cycle. Governments should ensure that these measures are adequately supported by wider legal, institutional and political conditions in the country.

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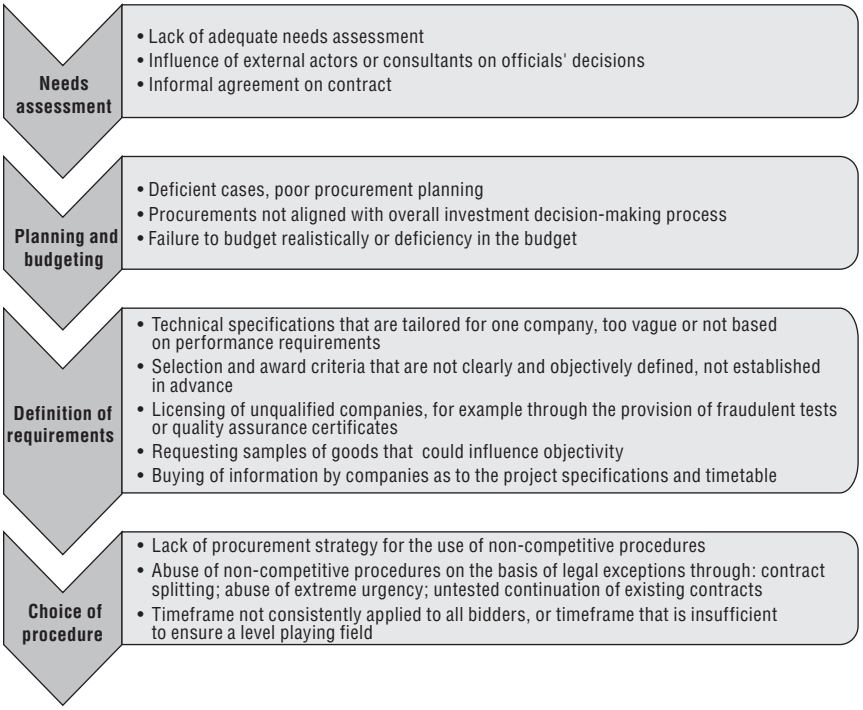
1. Pre-tendering phase

Risks to integrity in pre-tendering

In the pre-tendering phase, common risks to integrity include:

- the lack of adequate needs assessment, planning and budgeting of public procurement;
- influence of external actors, including political interference;
- requirements that are not adequately or objectively defined;
- an inadequate or irregular choice of the procedure; and
- a timeframe for the preparation of the tender that is insufficient or not consistently applied.

Figure II.1.2. **Pre-tendering: Risks to integrity at each stage of the procurement**



Source: Based on Integrity in Public Procurement: *Good Practice from A to Z*, OECD, 2007.

Precautionary measures in pre-tendering

Stage 1.
Needs assessment

- **Reduce information asymmetry with the private sector to take a strategic approach to the management of procurement markets based on government needs, for instance:**
  - *a)* gather as much information as possible on the industry or the goods and services (*e.g.* through a market study, existing databases); and
  - *b)* organise consultations with the private sector where appropriate, in cases where a large number of potential suppliers could be involved in relation to a specific procurement project. Attention should be paid to ensuring that the information exchange is organised in an open, structured and ethical manner to avoid collusion between potential suppliers and that the outcomes of discussions are recorded.

- **Provide an assessment of the need for the procurement, in particular whether:**
  - *a)* the need is for the replacement or enhancement of existing resources or to meet an entirely new requirement;
  - *b)* there are no alternatives, including the use of in-house resources or the enhancement of existing capacity through enhanced efficiency;
  - *c)* procurement would be essential for the conduct of business or to improve performance; and
  - *d)* the planned capacity or size is actually needed.

- **Use a validation system that is independent from the decision maker, in particular:**
  - *a)* ensure that decisions to launch a specific procurement are taken by more than one official to the extent possible, especially for projects of high value, to minimise the risk of lobbying or collusion with a specific firm;
  - *b)* for projects at risk because of their value, complexity or sensitivity, consider the use of independent validation of the process (*e.g.* approval by a review committee, use of a probity advisor), and
  - *c)* consult representatives from end-user organisations and the wider public in the needs assessment (*e.g.* in the form of a survey of public utility).

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Stage 2. Planning and budgeting

- **Ensure that the procurement is aligned with:**
  - *a)* the strategic priorities of the organisation; and
  - *b)* the overall investment decision making process and the general budget process which should be completed prior to the commencement of the tendering process.

- **As part of the planning, ensure clear and reasonable time frames for each stage of the procurement process by:**
  - *a)* ensuring that these timeframes can be consistently applied; and
  - *b)* taking into account the value, complexity and sensitivity of the contract when fixing the timescale for responses.

- **Provide a realistic estimation of the budget and ensure its timely approval, in particular by:**
  - *a)* preparing a realistic estimate of all phases of the procurement, based on sound forecasting methods;
  - *b)* verifying that funds are available to meet the procurement to the extent possible;
  - *c)* requesting the budget holder to approve expenditure; and
  - *d)* taking into account possible variations over time, which could have an impact on the contract.

- **Prepare a business case for major projects that are particularly at risk because of their value, complexity or sensitivity by:**
  - *a)* taking specialised advice from project and technical experts to assess costs and benefits in a realistic manner. Also possibly request independent peer review of economic, environmental, and social forecasts (*e.g.* involve independent oversight body, specialised public agencies, panel of experts or representatives from civil society, or academic institutes or think tanks, etc.);
  - *b)* ensuring a sound project management regime. In particular: make sure that project management costs are properly funded, that dedicated project officials are in place, and that key stages of the project are appropriately documented;

c) preparing project-specific procurement plans to determine the level of risk of the project and plan precautionary measures accordingly (*e.g.* use of gateway reviews to provide an independent review at each stage of the procurement cycle, probity auditor, etc.); and

d) ensuring that criteria for making procurement decisions are defined in a clear and objective manner, included in the tendering documents, and that decisions demonstrate that criteria have been respected.

- **Clearly define responsibilities taking into account possible risks by:**

  a) attributing the responsibility of project development and implementation to one project organisation, with directors being held accountable;

  b) defining the delegated levels of authority for approval of spending, sign off and approval of key stages;

  c) performing an assessment of the positions of officials which are vulnerable and those activities in the procurement where risks may arise; and

  d) planning senior-level review within the organisation at key stages of the procurement process and considering additional control depending on the value, complexity and sensitivity of the procurement.

- **Make sure that officials are aware of the requirements for the transparency of the procurement system and well prepared to apply them by:**

  a) designating the official(s) in charge of ensuring publicity over government decisions;

  b) publishing any law, regulation, judicial decision, administrative ruling, standard contract clauses mandated by law or regulation, and procedure regarding procurement, and any modifications thereof;

  c) using an electronic and/or paper medium that is widely disseminated and remains readily accessible to the public;

  d) ensuring adequate record storage and management for recording key decisions throughout the procurement cycle; and

  e) reaping the benefits from the use of new technologies that can automatically process and record transactions while avoiding human intervention.

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- **Ensure separation of duties and authorisation, which can take several forms such as:**

  a) ensuring segregation of technical, financial, contractual and project authorities for the approval process when possible. The following functions could be handled by different personnel: issue of purchase orders; recommendation of award; certification of the receipt of goods and services; and payment verification; and

  b) identifying separate personnel with clear responsibility for key stages of the procurement process, including definition of requirements, evaluation, control of performance and payment. When these duties cannot be separated, compensating controls should be put in place (*e.g.* random audit).

Stage 3. Definition of requirements

- **Take precautionary measures to prevent conflict of interest, collusion and corruption and promote integrity, in particular by:**

  a) obtaining declarations of private interests from officials involved in the procurement process and, in case of consultation, of other parties involved where appropriate;

  b) ensuring that officials are informed and have received guidance about how to handle conflict-of-interest situations. For officials and other actors involved in the process (*e.g.* civil society monitors), make them aware of restrictions and prohibitions (*e.g.* receipt of gifts, handling of confidential information);

  c) ensuring that officials are familiar with identified risks to integrity in the procurement process (for instance through a risk map or training) and encourage them to liaise with competition and/or enforcement officials in case of doubt of collusion or corruption; and

  d) promoting integrity, not only by delineating minimal standards but also by defining a set of values that officials should aspire to.

- **Take into account integrity considerations in the selection process, in particular by:**

  a) establishing satisfactory evidence of identity of potential suppliers and sub-contractors, including documentary evidence of the identity of key actors who have the legal power to operate in the business;

  b) where applicable, collecting declarations of integrity from potential suppliers in which they testify that they have not been involved in corrupt activities in the past. Consider possible sources of information to verify the accuracy of the information submitted. In addition, consider the possibility of placing requirements on potential suppliers/contractors to show evidence of anti-corruption policies and to contractually commit to complying with anti-corruption standards;

  c) when selecting tenderers on the basis of criteria that include integrity considerations, ensure that this information can be collected and that it can be obtained from a reputable source (*e.g.* official certificate of absence of convictions in Court);

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d) considering the use of Integrity Pacts to ensure the mutual commitment of officials and potential suppliers to integrity standards; and

e) where applicable, excluding tenderers who have been involved in corruption or debarred on corruption charges.

- **Make requirements available to all parties by:**

  a) publishing requirements for participation and recording them in writing; and

  b) where possible, providing potential suppliers with the right to seek clarifications, especially for high-value procurements, while ensuring that the answers are widely shared and recording them in writing.

- **When considering the use of a list of suppliers, ensure that:**

  a) inherent risks to competition and transparency are taken into account before deciding to use a list of suppliers;

  b) the list of suitable suppliers is published on the basis of a set of criteria that are clearly defined and stated;

  c) the list is updated on a regular basis (at least on a yearly basis) and that a clear channel and sufficient timeline is advertised for application; and

  d) proposed prices are compatible with goods and services, in reference to established market prices or based on the knowledge of prior procurements of a similar nature (*e.g.* through a database or data mining).

- **Ensure that specifications are:**

  a) based on the needs identified. Suppliers and end-users may be consulted in the drafting of specifications, provided that the number of participants is sufficiently large and representative, and that the results are reviewed in light of market analysis done by the procuring authority to provide objective analysis;

  b) designed in a way to avoid bias, in particular that they are clear and comprehensive but not discriminatory (*e.g.* no proprietary brands or trade descriptions). It is necessary to avoid any form of specification that favours a particular product or service; and

  c) designed in relation to functional performance, with a focus on what is to be achieved rather than how it is to be done in order to encourage innovative solutions and value for money.

- **Ensure that award criteria are clearly and objectively defined by:**

  a) using evaluation criteria on the basis of the economically most advantageous, unless this is a commodity purchase for which the basis of the lowest price may be used;

  b) specifying the relative weightings of each criteria and justifying them in advance;

  c) specifying to what extent these considerations are taken into account in award criteria when using economic, social or environmental criteria; and

  d) including any action that the procuring agency is entitled to make in the criteria (such as negotiations, under what conditions, etc.) and recording them.

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Stage 4. Choice of procedures

- **Guide officials in determining the optimum procurement strategy that balances concerns of administrative efficiency with fair access for suppliers, in particular by:**

  a) making sure that the choice of the method ensures sufficient competition for the procurement and adapting the degree of openness depending on the procurement concerned;

  b) providing clear rules to guide the choice of the procurement method, ensuring a competitive process and developing additional guidelines for officials to help the implementation of these rules;

  c) reviewing and approving procurement strategies for all procurements, to ensure that they are proportional to the value and risk associated to the procurement; and

  d) considering consulting with officials in competition authorities to ensure that the procurement strategy adopted is the one that is most likely to achieve an efficient and competitive outcome.

- **Take precautionary measures for enhancing integrity where competitive tendering is not required by regulations. These measures may be proportionate to the value of the contract and include for instance:**

  a) clear and documented requirements;

  b) the justification of the choice of procedure (when using non-competitive procedures) and the appropriate records;

  c) a specification of the level of the authorising personnel;

  d) planning of random reviews of results of non-competitive procedures;

  e) a consideration of the possibility of involving stakeholders and civil society to scrutinise the integrity of the process, especially for exceptional circumstances such as extreme urgency or for high-value contracts;

  f) the publication of the criteria to be applied for the selection of the supplier, and the expected terms of the contract; and

  g) after the award of contract, a publication of the contract agreement.

- **For restricted/selective tendering methods, specific measures could be taken to enhance integrity, such as:**
  - *a)* considering the minimum number of suppliers to be invited for tendering according to regulations, estimating the maximum number of suppliers that could be realistically considered for the specific procurement, and recording justifications if the minimum number of tenders cannot be met; and
  - *b)* conducting spot checks to confirm suppliers' offers and contacting suppliers who do not respond to repeated invitations to tender with a view to detecting potential manipulation.

- **For negotiated/limited tendering methods, specific measures could be taken to enhance integrity, such as:**
  - *a)* providing more detailed record, including for instance the particular supplier who was selected; and
  - *b)* including the terms agreed upon in the contract, with a specification reflecting the supplier's solution.

- **Ensure transparency for qualification processes that cover multiple procurements and are not open at all times for application (*e.g.* framework agreements) by:**
  - *a)* publishing the current list of qualified suppliers;
  - *b)* publishing the invitation to apply for qualification on a regular basis, including the qualification criteria;
  - *c)* ensuring that specifications are set up in advance and published; and
  - *d)* publishing all awards under framework agreements, either per order or on a regular basis.

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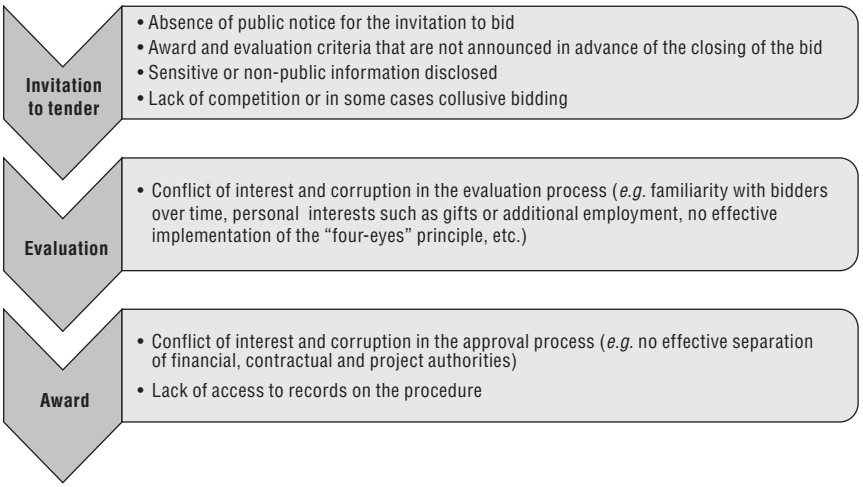
2. Tendering phase

Risks to integrity in tendering

In the tendering phase, common risks to integrity include:

- inconsistent access to information for tendering in the invitation to tender;
- lack of competition or, in some cases, collusive tendering resulting in inadequate prices;
- conflict-of-interest situations that lead to bias and corruption in the evaluation and in the approval process; and
- lack of access to records on the procedure in the award that discourages unsuccessful tenderers to challenge a procurement decision.

Figure II.1.3. **Tendering: Risks to integrity at each stage of the procurement**



Source: Based on Integrity in Public Procurement: *Good Practice from A to Z*, OECD, 2007.

Precautionary measures in tendering

Stage 5.
Invitation to tender

- **Ensure a sufficient level of transparency in the procurement opportunity:**
  - *a)* for open tendering: make the information on the procurement publicly available, including related evaluation criteria; and
  - *b)* for restricted/selective and negotiated/limited methods: publish information on how to qualify in a readily available medium within a timeframe and in a manner that would reasonably allow eligible suppliers to apply.

- **Publish a tender notice that includes:**
  - *a)* information on the nature of the product or service to be procured, specifications, quantity, timeframe for delivery, realistic closing dates and times, where to obtain documentation, and where to submit tenders;
  - *b)* a clear and complete description of selection and award criteria that is non discriminatory and cannot be altered afterwards;
  - *c)* details on the management of the contract and the plan and method for payment and possibly the guarantees when required; and
  - *d)* details of the contact point for enquiries.

- **Communicate to potential suppliers in the same timeframe and in the same manner, in particular by:**
  - *a)* encouraging information exchange on a formal basis (*e.g.* contact points for enquiries, information sessions, on-line module to observe clarification meetings, on-line posting of questions and answers);
  - *b)* ensuring that questions for clarification are promptly responded to and that this information is transmitted to all interested parties;
  - *c)* communicating changes immediately, preferably in the same channel originally used; and
  - *d)* publishing information, preferably on-line, to allow for external monitoring and public scrutiny.

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Stage 6. Evaluation

- **Ensure security and confidentiality of information submitted, in particular by:**
  - *a)* ensuring that measures are in place for the security and storage of tendering documents (*e.g.* keeping a document register, numbering all documents or having a central storage area for all documents), as well as for limiting access to documents; and
  - *b)* considering electronic security issues and having documented processes for electronic storage and communication (*e.g.* tenders submitted electronically are safeguarded from access before the closing time; the system has the capacity to reject late tenders automatically).

- **Define a clear procedure for the opening of the tender, in particular by:**
  - *a)* having a team open, authenticate and duplicate sealed tenders as soon as possible after the designated time, immediately followed by public opening, if possible;
  - *b)* performing the opening of tenders, preferably before a public audience where basic information on the tenders is disclosed and recorded in official minutes;
  - *c)* specifying clear policy defining circumstances under which tenders would be invalidated (*e.g.* tenders received after the closing time are invalidated unless it is due to a procuring agency error);
  - *d)* ensuring that any clarification of submitted tenders does not result in substantive alterations after the deadline for submission; and
  - *e)* ensuring that a clear and formal report of all the tenders received is produced (including their date and time of arrival, as well as the comments received from tenderers) before passing them to the officers responsible for their evaluation.

- **Ensure that the evaluation process is not biased and confidential by:**
  - *a)* undertaking evaluations with more than one evaluating official or preferably a committee. Depending on the value of the procurement and the level of risk, the committee could include not only officials from different departments but also possibly external experts;
  - *b)* using notified evaluation criteria systematically and exclusively and assessing them independently (*e.g.* technical, project and risk criteria

could be assessed prior to and separately from financial criteria). Tenders should be evaluated against notified criteria, preferably on a "whole-of-life basis";

c) verifying that officials in charge of the evaluation are not in a conflict-of-interest situation (*e.g.* through mandatory disclosure) and are bound by confidentiality requirements. In the case of an evaluation committee, integrity and professional considerations must be taken into account in the selection of members and involve a member that is external to the procurement team when possible; and

d) including all relevant aspects of the evaluation in a written report signed by the evaluation officers/committee.

- **When allowing negotiations after the award to prevent waste and potential corruption (*e.g.* only one tender is received):**

  a) ensure that negotiations are conducted in a structured and ethical manner and are held within a predefined period of time so that they do not discriminate between different suppliers;

  b) handle information on tenders in a confidential manner; and

  c) keep detailed records of the negotiation.

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Stage 7. Award

- **Inform tenderers as well as the wider public on the outcome of the tendering process by:**
  - *a)* promptly notifying unsuccessful tenderers of the outcome of their tenders, as well as when and where the contract award information is published;
  - *b)* publishing the outcome of the tendering process in a readily available medium. A description of goods or services, the name and address of the procuring entity; the name and address of the successful supplier, the value of the successful tender or the highest and lowest offers taken into account in the award of the contract, the date of award; and the type of procurement method used should be included. In cases where limited tendering was used, a description of the circumstances justifying the use of limited tendering should also be included;
  - *c)* considering the possibility of publishing the grounds for the award, including the consideration given to qualitative tender elements. Do not disclose commercially-sensitive information about the winning tender or about other tenders, which could favour collusion in future procurements; and
  - *d)* allowing the mandatory standstill period, where one exists, before the beginning of the contract.

- **Offer the possibility of debriefing to suppliers on request by:**
  - *a)* withholding confidential information (*e.g.* trade secrets, pricing);
  - *b)* highlighting the strengths and weaknesses of the unsuccessful tender;
  - *c)* for debriefings in writing, ensuring that the written report is approved beforehand by a senior procurement official; and
  - *d)* organising oral debriefings, provided that discussions are carried out in a structured manner so that they do not disclose confidential information, and that they are properly recorded.

- **Resolve possible disputes through constructive dialogue when possible, and provide an identified channel for formal review by:**
  - *a)* in the case of problems with potential suppliers, making an effort to resolve disputes through negotiation as a first step;

b) providing information on how to lodge a complaint related to the procurement process;

c) providing the possibility to use dispute resolution mechanisms not only before but also after the award; and

d) considering the possibility of using interim measures to enable the prompt processing and resolution of complaints. The possible overriding adverse consequences for the interests concerned, including the public interest, should be taken into account when deciding whether such measures should be applied.

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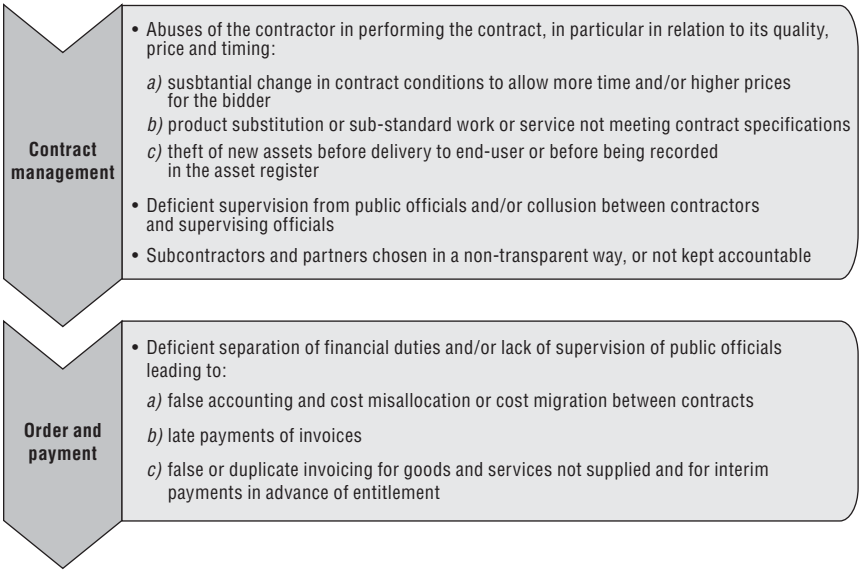
3. Post-tendering phase

Risks to integrity after the award

In the phase following the contract award, common risks to integrity include:

- abuse of the contractor in performing the contract, in particular in relation to its quality, price and timing;
- deficient supervision from public officials and/or collusion between contractors and supervising officials;
- the non-transparent choice or lack of accountability of subcontractors and partners;
- lack of supervision of public officials; and
- the deficient separation of financial duties, especially for payment.

Figure II.1.4. **Post-tendering: Risks to integrity at each stage of the procurement**



Source: Based on Integrity in Public Procurement: *Good Practice from A to Z*, OECD, 2007.

Precautionary measures in post-tendering

Stage 8.
Contract management

- **Clarify expectations, roles and responsibilities for the management of the contract by:**
  - *a)* ensuring that the contracting agency and the supplier are aware of policies in order to prevent conflict of interest and corruption (*e.g.* publication of the policies, reference in the contract) and that the supplier communicates this information to potential sub-contractors;
  - *b)* ensuring that contract and purchase orders provide sufficient information to enable the supplier to deliver the goods/services of the correct description and quantity within the specified time;
  - *c)* including models in the contract for appropriate risk sharing between the contracting authority and the contractor, especially for complex procurements (*e.g.* performance bond, penalty for late delivery and/or payment);
  - *d)* including the payment in the contract, and where this is not possible, informing suppliers of the payment period following approval of invoice; and
  - *e)* stating in the contract possible compensation in case of undue withholding of payment by contracting officials.

- **Supervise closely the contractor's performance and integrity, in particular by:**
  - *a)* monitoring the contractor's performance against specific targets and levels laid down in the contract at regular intervals;
  - *b)* ensuring that costs are monitored and kept in line with contract rates and approved budgets;
  - *c)* organising inspection of "work-in-progress" (especially regarding structural elements that could be hidden by ongoing construction) and completing work and random sample checks;
  - *d)* using electronic systems to monitor progress of contract and timely payment and sending warnings regarding possible irregularities or corruption;
  - *e)* involving third parties to scrutinise the process (*e.g.* selected member from an end-user organisation); and

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f) where possible, testing the product, system or other results in a real-world environment prior to delivery of the work.

- **Control change in the contract by:**

  a) ensuring that contract changes that alter the price and/or description of the work are supported by a robust and objective amendment approval process;

  b) ensuring that contract changes beyond a cumulative threshold are monitored at a high level, preferably by the decision making body that awarded the contract;

  c) allowing contract changes only up to a reasonable threshold, and changes that do not alter the quality of the good or service. Beyond this threshold, a review system could be set up to understand the reasons for these changes and consider the possibility to re-tender;

  d) clearly tying in the variation with the main contract to provide an audit trail; and

  e) recording changes to the contract and possibly communicating them to unsuccessful tenderers as well as other stakeholders and civil society.

- **Enable stakeholders, civil society and the wider public to scrutinise public procurement by:**

  a) recording, co-ordinating and communicating information in relation to contract management;

  b) organising regular review meetings between the customer and contractor, and recording end-user satisfaction with the service; and

  c) ensuring access to records for stakeholders and possibly civil society and the wider public for a reasonable number of years after the contract award.

Stage 9. Order and payment

- **Verify that the receipt of goods/services is in line with expected standards by:**
  - *a)* inspecting the goods against the purchase order and the delivery invoice before payment. It is also necessary to assess and certify the standard of service to ensure quality;
  - *b)* when possible, involving at least two officials in the verification that the receipt of goods/services is in line with expected standards; and
  - *c)* involving, in addition to procurement officials, end-users when possible to enhance checks and balances.

- **Ensure that the final accounting or audit of a project is not carried out by personnel involved in former phases to ensure the separation of duties and authorisation, for instance:**
  - *a)* officials who examine the invoice against the goods and orders/delivery note should differ from those officials who give the payment order to the accounting department; and
  - *b)* payments should be cross-checked by the accounting entity afterwards.

- **Ensure that the budgeting system provides for a timely release of funds to make payment against contractual conditions, in particular by:**
  - *a)* committing budget funds promptly prior to or during the award of the contract;
  - *b)* using innovative methods such as purchase cards for small value procurements, provided that their use is limited to purchases of specified items and that expenditure is limited;
  - *c)* organising random supervisory checks on payments and, where financial systems permit, monitor outstanding payments; and
  - *d)* preparing systematic completion reports for certification of budget execution and for reconciliation of delivery with budget programming.

- **Consider the possibility of a post project assessment, in particular by:**
  - *a)* selecting projects for post project assessment on the basis of identified criteria, including the value of the procurement as well as its

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complexity, sensitivity and specificity (*e.g.* exceptions to competitive procedures);

b) reviewing the procurement process, drawing lessons that can be learned for any future contracts and placing this information on record;

c) considering the possibility of a "feedback loop" through the consultation of end-users in the post project assessment, particularly for high-value procurements, and involving civil society representatives who monitored the project, if applicable;

d) including information on discrepancies and abnormal trends in procurement (*e.g.* possible collusion, split orders) in the report for information management as well as liaising with competition and/or law enforcement agencies, when relevant; and

e) transmitting information on high-value procurements to the supreme audit institution or other oversight bodies.

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PART II

Chapter 2

Risk Mapping: Understanding Risks of Fraud and Corruption in the Public Procurement Cycle

Public procurement is an activity particularly vulnerable to fraud and corruption. With the governments of countries – developed and developing alike – facing the same problem, it is important to explore crackdown and prevention techniques for reducing such misconduct. To be able to tackle a problem, however, any good practitioner must first study and understand it. This chapter will therefore explore the techniques used to misappropriate funds, and will also look at the various types of fraud that have been uncovered. The aim is to make stakeholders (public procurement practitioners, elected officials, businesses, investigators, magistrates and so forth) aware of the risks of fraud and corruption.

This chapter strives to offer the most comprehensively possible (albeit non-exhaustive) inventory of the means detected to date by which the main types of procurement contracts have been tainted by corruption or fraud. The examples have been chosen from European Union member states, and they span many years. This is no accident: they show that fraud is possible even in countries with longstanding and abundant legislation, and in which numerous checks are performed by officials whose honesty is beyond reproach. They reveal that fraud can strike even at the heart of European Union services.

Despite the controls in place, a number of government contracts give rise to errors, anomalies, fraud, misuse of public funds or corruption. Most errors and anomalies can be explained by a lack of awareness on the part of the people involved – purchasing agents, accountants, auditors, etc. – and this can be put right through training. However, misappropriation – for instance in the form of fraud and corruption – is more difficult to correct because it results from a deliberate desire to circumvent the rules for illicit gain, and to cover up the perpetrator's actions.

This research has focused primarily on:

- methods used, at each stage of the procurement cycle, to make a fraudulent transaction look legitimate to observers or auditors; and
- techniques for misappropriating funds initially earmarked for a transaction, how the funds are used (whether there is personal gain or not), and the networks that make it possible to arrange such dealings.

In describing these mechanisms, it is useful to distinguish between risks of fraud and corruption *i)* in the needs assessment; *ii)* in the planning; *iii)* in relation to the selection method; and *iv)* during the contract management.

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1. Risks in the needs assessment

Even before a contract is signed, there are many different ways to misappropriate public funds in relation to scoping studies, timeliness, cost and so on. The amounts involved in this type of misappropriation are often smaller than can be extracted once a contract has been awarded, but they are easier to conceal. The number of payments can also be increased, since this type of misappropriation can take place at each stage of the contract-planning process.

Whatever the purpose of the scoping study, the mechanism for illegally diverting public funds remains the same. Procedures may differ, however, depending on the usefulness of the proposed study. If the purpose is to check out a hypothesis, choose an option or ensure that a decision is adopted, the study must be conducted with utmost seriousness, by a competent consultancy. If, however, the study serves no real purpose (for example, when such aspects are perfectly clear), it can be contracted out to any firm, which will provide a document that delivers the desired justification without having to expend much time or thought. In some cases it will provide nothing at all, simply collecting the agreed amount of money. Thus, the documents received can either be of high quality or else be "empty". Clearly it is easier to detect misappropriation if the studies are useless or of poor quality, or if they are not delivered at all. But the quality of the study and the amount of money diverted are not always correlated: very good studies may conceal major misappropriation, while poor-quality studies may have been conducted honestly. Above all, it is necessary to ascertain how much is at stake, and thus to tailor controls to the amount of money involved.

Minor studies

This category includes all studies for which the cost falls below the national regulatory threshold. In this case the official is generally free to deal with whomever they choose, practically without justification, since in most cases a simple voucher or order letter is all that is needed to commit to the expenditure. An invoice will trigger payment, provided that the amount and the description match the order. Conventional controls would be unlikely to detect any fraud.

There are a few ways the decision-maker can "divert" money for him or herself, for associates or relatives, or for a group with which he or she has connections, but he or she needs the help of a consultancy. Firstly, the money must leave the local authority or public body through the following "legitimate" channels before it can be "re-allocated" to the chosen recipient using one of the techniques described earlier:

- "Friendly" consultancies. The decision-maker can contact a "friendly" consultancy or organisation to ask it to perform the work. This is a

procedure that has been used extensively by certain political parties to collect funds. With this "friend", there is no problem of competition. The chosen firm can thus obtain a fee far in excess of the work performed (over-billing), corresponding to the normal cost of providing the study (whatever its quality) plus whatever amount the decision-maker would like to have.

- An entity belonging to the decision-maker. The decision-maker may ask an entity belonging to him or her, or to family members, to perform the study.

Duplicating studies

The decision-maker can also have the same study conducted by more than one party, either simultaneously or not. If they are to submit their studies simultaneously, firms may be prompted to get together and form a "cartel" (see Box II.2.1 for an example). Their prices will be "harmonised" to achieve a wide profit margin. They divide up contracts amongst themselves and in some instances call upon colleagues or competitors to subcontract out a part of the study. This benefits each party, including the decision-maker, who will receive the amount of money requested from a consultancy that did not take part in the selection process. If the decision-maker allows them to submit their work on different dates, the last parties to deliver their proposals may take advantage of the work done by the first consultancies; in the best-case scenario, the first, highly competent firm will prepare a study from which the others will copy extensively and thus be able to earn wide profit margins. In any event, this abnormally large margin will find its way back to the decision-maker, or to his designated beneficiaries, via the slush fund and using false-invoicing.

Box II.2.1. **Repeating the same study**

To prepare for a major public event, the organising body needed to calculate electricity requirements. A contract for an initial study was awarded to a highly specialised consultancy through a standard tender process. When the report was delivered, the decision-maker, claiming a need to verify the findings, hired two other consulting firms to conduct the same study for a price equivalent to the amount paid to the first firm. At the same time, he provided them with the findings of that first study. The other two companies copied the report already prepared, confirmed the findings, and sent their invoices to the decision-maker. The invoices were highly overpriced for the work involved, and the decision-maker recovered most of the money *via* a transfer to his bank account in a tax haven.

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Studies never delivered

The decision-maker may order studies that will be paid for in instalments (which can theoretically amount to as much as 80% of the total contract prior to delivery, although most commonly the initial payment is half the total cost). It will then not be possible to obtain the commissioned study, either because the consultancy fails and vanishes, or because the decision-maker never asks for it (because it has "become unnecessary"), even if the firm has not shut down after collecting its down payments. In either case, none of the down payments are lost for the people involved in the fraud (the slush fund being used for a kickback to the decision-maker), as the (false) invoices enable the firm receiving the payments to show that the payments correspond to services that have in fact been performed and from which it derived no benefit.

Studies above the national threshold

If the cost of a study exceeds the national threshold, the decision-maker must launch a call for tenders or resort to the negotiated procedure (see Section 3).

Circumventing the procedure

In the event of a tendering process, in order to be sure of working with the firm that suits him or her, the decision-maker generally chooses the "economically most advantageous" tender, taking care to list a number of subjective elements[1] as additional selection criteria, such as the individual competence of study managers, the firm's reputation, past accomplishments in the region and so forth. Having taken these precautions, the decision-maker can decide to award the study to the firm he or she deems most "competent" and likeliest to respond to his solicitations.

If, because of intense competition, the stipulated price for the study is not high enough to generate the planned margin, the decision-maker will in many cases be "convinced" by the chosen consultancy to expand the study beyond its initial mission, so as to shed greater light, for example, on the implications of the proposed project. This triggers a spiral of contract amendments by the decision-maker or his designated representatives, the prices of which are set arbitrarily (*e.g.* unit prices are the same as in the initial contract, but the number of hours' work is set arbitrarily). Such amendments make it possible to create the additional margin, which will be redistributed to the decision-maker or his friends.

Altering the outcome of the selection process

Sometimes the decision-maker may also launch a conventional call for tenders and choose the lowest tenderer for his intended project. The

successful tenderer will then have a number of different ways to pay the decision-maker a commission:

- *If the successful tenderer has not been forewarned about the commission*, he or she is the victim of genuine extortion by the decision-maker, who has officially accepted the tender but will only allow the successful tenderer to begin work after paying an illegal commission. The tenderer then pays up to avoid losing the right to tender on future contracts. To be able to pay this unforeseen contribution to the decision-maker, the tenderer either: *i)* obtains an amendment whereby he or she can generate the amount needed *via* false invoices; *ii)* trims his or her margin but creates additional fictitious expenses (false invoices) to avoid being taxed on a profit that was never made; or *iii)* is forced to employ undeclared workers or, more frequently, *via* a subcontractor.
- *If the successful tenderer has been forewarned,* he or she will have already factored for the amount of the "commission" into his or her tender. There is no distortion of competition because all tenderers have been treated equally. The commission can be paid to the decision-maker via the classic procedure of false invoices which are generally channelled through another "friendly" consultancy specialising in such practices. The decision-maker imposes this consultancy on the contract-holder as a subcontractor before signing the contract. This subcontractor gets paid generously by over-billing for fairly useless work that requires no particular technical expertise (in many cases just re-arranging study findings) but that will generate the money ultimately destined for the decision-maker.

Above the European threshold, notification of the contract must be published in the *Official Journal of the European Union*. In many cases, the decision-maker then uses the above procedures to award the contract to the most accommodating consultancy. In other cases, the decision-maker makes sure (through underestimation) that the call for tender is unsuccessful, in which case he or she can then use the negotiated procedure with a variety of consultancies so as, ultimately, to select the "best" candidate, *i.e.* the one known to be most amenable to corruption practices. It should be noted that this procedure is also used extensively in connection with nationwide calls for tender.

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2. Risks in the planning

Before the contract-awarding process is launched, and to complement the preliminary studies described above, decision-makers must call upon their own staff or specialised bodies to perform a number of other services. Here, the aim is to establish the precise cost of the project that has theoretically been given the go-ahead. This allows for a sound analysis of the tenders, as well as the preparation of the administrative and technical documentation needed for launching a call for tender that meets all needs and regulations. As laudable as these objectives are, however, they can be diverted from their true purpose by a dishonest decision-maker or business.

Estimating project costs

To decide in principle whether a proposed project is feasible, the decision-maker needs only the rough estimates that are provided by the preliminary studies. To move forward in the decision-making process, the decision-maker has to fine-tune the estimate. But the estimate presented to the decision-maker's superiors to justify the proposed option may be deliberately skewed in the following ways because of an intent to reap some personal financial or moral benefit from the deal.

Overvalued estimates

The estimate may be overvalued if the project concerned is of clear benefit to various stakeholders. The decision-maker may take advantage of the situation, for example, by turning the construction of essential infrastructure into more prestigious facilities that will enhance his or her fame (see Box II.2.2). More practically, the decision-maker may exhibit skills as a "good manager" – the cost having been grossly overestimated to begin with – by successfully completing the project within budget. Moreover, there can be no suspicion that he or she has subsequently enjoyed any "favours" from the firms awarded the contract (although the overestimation makes such favours perfectly feasible), since the actual price ends up being very close to the estimate.

Undervalued estimates

In most cases, estimates are undervalued because the decision-maker must win the approval of the group for which he or she acts, and to which he or she reports (*e.g.* the city council). The decision-maker does so by maximising the expected benefits while minimising the cost of the investment. This raises the risk of having to ask for additional finances during project execution, thus exposing the decision-maker's management to criticism. He or she nevertheless believes that once the project is underway such budget increases will not be called into question, as long as there was

Box II.2.2. **Overvaluing the estimate**

A city council decided to rebuild the city hall, which was outdated, too small and no longer met public access requirements. The estimated cost of refurbishing the existing building would be higher than the cost of building a new one, according to the city's technical departments. Therefore land was chosen for a new downtown location. However, it involved removing several thousand square metres of land from a public garden. Thus, the mayor was able to boast of a remarkable achievement: building a new city hall perfectly integrated with its surroundings, while keeping within the initial budget. He gained a reputation as a good mayor and a good manager.

The unvarnished truth was discovered a few years later by some of his opponents. Apart from the refurbishment, the initial cost had also included the purchase of land adjacent to the old city hall for building the planned extensions. Since this land was not vacant, it was necessary to factor in the cost of demolishing the existing structure. In the end, although these expenditures were never made, their costs were included in the budget for the new building. Moreover, a simple calculation using available prices showed that the construction costs amounted to more than double the usual amounts. And finally, a short time after the project was completed, the mayor acquired a splendid country house, and his re-election campaign the following year featured the use of especially glossy publications.

initial agreement on the principle of carrying it out. These increases, which will take the form of amendments to the initial contract, will also enable him or her to receive "commissions" from the firms to which contracts have been awarded (Box II.2.3).

Box II.2.3. **Undervaluing the estimate**

In the initial estimate for the construction of an underground car park, the cost of lighting was "forgotten". This was rectified later by adding nearly 20% to the value of the contract. But the omission, by keeping the initial costs low, helped to get the go-ahead for a project that was being challenged by the municipal opposition. It also helped in selecting the most accommodating contractor.

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Immediate misappropriation during document preparation

Defining project specificities

After submitting a precise estimate of the project's cost, the main input from any service providers involves setting out the "specificities" of the proposed project and preparing documents for the selection process: specifications, technical clauses, administrative clauses, etc.

Since these documents are vital, one simple technique for misappropriating sums of money is for the decision-maker to have them prepared in-house, by his own staff, while at the same time commissioning identical work from an outside service-provider. The outside firm needs only to copy the documents prepared by the decision-maker's technical staff, affix its own logo and collect the fee stipulated in its contract. Without expending much effort, the outside firm submits a report that corresponds precisely to what the decision-maker wants. Substantially overpaid, it is in a position (via false invoicing, *inter alia*) to pay into a slush fund which will be used, among other things, to pass some of the money back to the decision-maker. A variation on this technique, and one which avoids any involvement of the decision-maker's technical staff, is to subcontract the preparation of projects for which there exist standard documents (contemporary works, licensed models, standard models, etc.), which enables the contractor to do his work easily and provide all the necessary regulatory guarantees.

Making project particulars and tenders understandable

Technical studies, even if done well, can sometimes be difficult to understand and even more difficult to explain to laymen (such as city councillors, for example). It is thus perfectly reasonable to hire an organisation to make the findings understandable. However, it is not necessary to commission a private company for this purpose, since usually the decision-maker's technical staff and the office handling the project study are fully capable of explaining complex documents and making their work understandable to anyone. Hiring a private company can therefore be used to camouflage commission payments to the decision-maker or his friends, as discussed in the previous section on minor studies.

"Ordinary" commissions

Lastly, irrespective of the chosen service-provider, and whatever the quality of the services rendered, the decision-maker can always arrange to be paid "commissions" by using the technique of over-billing, as long as the potential providers have been informed of his intention and the amount of his needs before taking part in a regular call for tenders. Thus all tenderers will

have factored the cost of the commission into their proposals and there is no discrimination since all of them have been informed.

Arranging for misappropriation in the future

Not all misappropriation is necessarily immediate. There are far more subtle techniques, which are used, for example, when preparing project specifications to arrange for future diversions of funds. These can be organised in a virtually scientific manner to avoid any risk of detection over the life of the contract (see also Section 4 on the management of the contract).

Affiliated entities

The first opportunity for this type of misappropriation arises when a decision-maker commissions a service-provider to prepare some or all of the tender documents. If this service provider is affiliated to a group that includes another subsidiary likely to submit a tender on the future project, it might be tempted to favour companies in its own group by providing them with exclusive information that would enable them to get the contract, or by inserting specifications that companies in its group alone would be able to meet. This situation is not unusual. Cross-shareholdings, takeovers and mergers have mushroomed in recent years to the point that decision-makers and their staff often do not know which group of companies might stand to benefit from the information and specifications. This is because each company within a group generally retains its own identity and a certain degree of independence (Box II.2.4).

Box II.2.4. **Using affiliated entities**

A local government needed to install a new computer system. The work was commissioned to a specialised company which recommended the use of specific products, materials and software. All of these proposals involved supplies for which one firm held exclusive rights. On investigation, it turned out that this firm was another subsidiary of the group to which the specialised company belonged.

Two scenarios are possible when there is dependency or collusion among the company establishing the tender specifications and certain firms planning to compete for the contract. If the decision-maker has not been informed of these ties, and if he or she fails to take the precaution of checking whether any exist, he or she may be "manipulated" (even if the decision-maker was contemplating being paid "commissions" when the contract was awarded). If the decision-maker has in fact been informed of the connection between the

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service-provider and one or more tenderers, and if, having that information, the decision-maker attempts to capitalise on it by soliciting a "commission" payment, the collusion, which in this case becomes especially important, is very difficult to prove. It can only be proved if it is revealed by an unsuccessful tenderer, or if an external auditing body looks into any ties between the firm compiling the specifications and the company whose offer, being especially well-matched to the decision-maker's requirements, was successful and thus won the contract.

Another technique is to persuade the decision-maker or his staff to specify services that only particular companies can provide because of their exclusive rights to a material, product or manufacturing process. The use of the phrase "Product N or the equivalent" attempts to reduce the number of cases in which a particular supplier or manufacturer is given the upper hand. Nonetheless, it is still not uncommon for specifications to name a certain service, giving one particular firm an edge over all others (see Box II.2.5).

Box II.2.5. **Using exclusive rights**

Specifications for computer equipment should not state "Windows operating system", since this would automatically eliminate a number of competitors, including those that use the Linux system or the system developed by Apple.

Non-standard specifications

Apart from particular specifications that certain firms alone can meet, specifications sometimes stipulate values far in excess of prevailing standards. Obviously, there could be many reasons for this. However, one should ask whether these specifications will in fact be used in the implementation of the project (Box II.2.6).

Box II.2.6. **Using non-standard specifications**

Specifications for reinforcing concrete in a particular project called for steel bars with a diameter of 12 mm, justified on the grounds that the height of the proposed building might be increased. When the work was carried out, inspectors were informed that the building could not be made any higher. They therefore checked the building's safety against conventional standards, which required only 10 mm-diameter bars. Nevertheless, the company billed for 12 mm bars. On this item alone, the savings amounted to 44% of the price of the steel bars.

This scheme would be impossible without the complicity of the decision-maker's representative who certifies the work that is carried out. The scheme allows the holder of the contract to generate sums of money, part of which can be used to "compensate" dishonest inspectors. The balance can be recovered in full by the company without the decision-maker being informed,or shared with the decision-maker if the latter has approved the scheme.

Another approach is for a company, acting together with the decision-maker, to submit a tender that does not adhere to standard specifications and, as a result, is lower than those of the other competitors. This proposal generally enables the firm to get the contract and to pay a "commission" to the decision-maker without trimming its margin.

Lastly, it is worth mentioning that there may be a technician on the decision-maker's staff who "operates" for his or her own benefit. Knowing that they have the employer's trust, technicians are in a good position to impose "exorbitant" specifications, to ensure that they are or are not factored in by certain companies when they submit their tenders, and then to check and certify whether or not they have been adhered to. The fact that the same technician is present throughout the entire process enables to engineer significant misappropriation for its own benefit, needing only the complicity of the firm's local manager, with the decision-maker not knowing about this.

"Errors"

Another misappropriation technique involves making "errors" in quantities or quality specifications. Any estimate will contain a provision of about 5 to 10% of the total amount of the contract to allow for unforeseen on-site incidents. For example, a road-building project may encounter an error in the volume of rock fill to be destroyed, or its hardness may not have been realised. Also, despite extensive geological studies, the full extent of certain pockets of clay that have to be removed before the road can be built may be underestimated.

But in some cases these "unforeseen" events may not be unknown at all; instead they have been deliberately concealed, or omitted from the documentation distributed to potential tenderers. This is one of the most effective means of misappropriating substantial amounts of money. While information that is known to be incomplete or erroneous is planted into specifications, the correct information is provided to a "privileged" enterprise. When the corrupt decision-maker or technician informs one of the firms about the actual quantities or quality specifications, the following scenarios are possible:

- The informed firm neglects to incorporate an especially costly requirement into its estimate and wins the contract thanks to an offer that is lower than

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its competitors, yet which still leaves it with a wide profit margin. This type of favouritism is sometimes used to bolster the chances of local firms that are well acquainted with the territory, at the expense of outside firms that based their offers on the specifications alone.

- The firm submits a proposal with an attractive total price in order to win the contract and, in its price list, indicates high unit prices for work that it knows has been underestimated in terms of quantity (Box II.2.7). When the quantities stipulated in the specifications have been reached but the problem has not yet been solved, it will request a continuation of the work until the desired result is achieved. There will be no further tenders. The additional work is performed by the contract-holder and paid at the unit price stipulated in the initial price list submitted by the company. The profit margin will be restored, and then some, which will leave room for substantial rebates.

This system implies collusion between the official preparing the specifications and the firm that is favoured to get the future contract.

Box II.2.7. **Collusion between the official in charge of specifications and a supplier**

Along the planned route of a new roadway through a mountainous limestone area, there are caves, filled to varying extents with clay, that need to be "purged" (that is emptying the caves of their compressible clay content and subsequently filling them with an incompressible substance). Because this is a very expensive operation, exploratory boring is carried out prior to construction to determine the volume of purging necessary. However, the specifications are amended to indicate a smaller volume of boring.

If the volume indicated in the specifications is smaller than the estimated volume, the informed contractor will submit an overall offer that is lower than the others to get the contract but will state a high unit price for purges. Once the quantities mentioned in the specifications have been reached, further purges will then be necessary. Confronted with this totally "unforeseeable" situation, a contract amendment will be signed with the on-site contractor, using the unit prices stipulated in its offer. As a result, the contractor will more than cover its costs and be able to "reward" its informant.

If the volume indicated in the specifications is overstated, the contractor, thanks to its knowledge of the ground, will commit to a lower volume of purges, offering to cover the cost of any overruns from its estimate. It will underbid the others and get the contract while still having the resources to "reward" its informant.

"Omissions"

In many contracts, when disputes arise it can emerge that the decision-maker has no means of enforcing the terms of the contract because the "penalties" section has been deleted from the original document. As a result, if a contractor intentionally fails to meet its commitments, no penalties can be imposed on it.

There is nothing new about this procedure, which is used fairly often when there is collusion between decision-maker and contractor. It gives a firm a special advantage by waiving the obligations that bind its competitors, such as deadlines for project completion. It can also lead to payments of subsidies or advances with nothing in return.

"Imposed" maintenance

The final method commonly used to generate long-term substantial and steady inflows of cash is to acquire equipment or materials that can only be maintained either by the installer or an exclusive contractor. While the procurement contract can be negotiated on particularly attractive terms, the same cannot be said for the maintenance of the equipment or materials, since here the supplier imposes their own terms.

This scenario is especially prevalent in computer technology and office automation systems. Here, the acquisition of hardware, in some cases at highly competitive prices, is conditional upon acceptance of a multi-year maintenance contract for servicing the equipment, as well as the compulsory purchase of a range of specific maintenance products (without which the manufacturer's guarantee is null and void). These highly profitable sales enable the supplier to make steady and substantial profits, at least part of which they can return in any form to the decision-maker to retain his or her custom.

A similar approach is to sell equipment that is incompatible with the purchaser's existing stock. In time, the purchaser will have to make costly changes to its existing stock to make it compatible with the new devices or, more radically, will have to replace its stock entirely. It goes without saying that in either case, "aids to decision-making" (in the form of commissions or other benefits) are planned to help the decision-maker make the best choice, and that these "aids" are maintained over the entire life of the contract, thus ensuring years of income for both partners.

The cases so far are of services provided by entities independent of the decision-maker. However, similar situations can arise if work is performed in-house by the decision-maker's own staff if they have no choice but to implement their boss's instructions. They too, then, may be prompted to "skew" the results of their studies, *e.g.* by neglecting to enumerate all of the

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consequences of a technological choice (materials currently used made obsolete; the need for periodic upkeep by the contractor; rewriting of computer software used until that point; "erroneous" estimates of certain items of expenditure, etc.).

In most cases, such voluntary omissions are used to justify subsequent contracts (using the negotiated procedure), which enables the decision-maker to look forward to "commission" payments for his personal benefit for many years to come.

3. Risks in relation to the selection method

The type of procedure chosen to launch the procurement process can indicate a desire to circumvent legislation. The procedures themselves are not at fault, since they are all designed to ensure fair access and equal opportunities to candidates for public procurement contracts. But in the wrong hands, each of these procedures can camouflage the misappropriation of public funds, corrupt practices, influence-peddling, and acquisition of illegal interests. They can also undermine the equality of tenderers. The risks are not always the same, however, depending upon whether the call for tenders is open or restricted, whether a negotiated procedure is followed or whether a group is used as an intermediary. Some procedures lend themselves more readily than others to misuse. In addition, the decision-maker can sometimes manage to avoid having to initiate a call for tender, which reduces the transparency of the procurement and creates opportunities for abuse.

Abuses involving buying groups

A buying group helps procurement managers with relatively low procurement requirements by circumventing the need to issue a call for tender. The mandatory call for tender is issued by the group, and the public procurement manager simply chooses which goods to buy from a catalogue. In addition, if only a small volume of goods is needed, the prices offered by the group are usually lower than those that the public procurement manager would be able to obtain directly from suppliers. In return for dispensing with the procedure and in order to cover expenses, the group charges a commission on the goods it sells.

This simple and useful mechanism can nonetheless be abused. There are two practices in particular that can lead to the genuine misuse of the procedure.

A buying group customer may want one of their own suppliers to be benchmarked by the group to avoid having to issue a call for tender every time when ordering a product. He or she may therefore ask the group to issue a "tailor-made" call for tender – a call for tender for a highly specific product. Regardless of the number of offers received, only one product is capable of meeting all the requirements given that the specifications were tailored for that particular product. The product is therefore benchmarked and can be used by the customer. If, despite all these precautions, another supplier still submits an equivalent offer, it would always be possible to charge a slightly higher than normal commission in order to "erode" the profit margin and thereby make it of little interest to the supplier to be benchmarked. Such procedures have been reported in countries where the buying group has a virtual monopoly on procurement.

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The group may also decide to favour suppliers who are already benchmarked at the expense of new arrivals. This process can be used when an innovative tender is submitted. The group draws up, usually with the firm proposing the new product, a specification corresponding precisely to the distinctive characteristics of the new product. This unofficial document is then discreetly circulated to the group's friends and the group only initiates the tendering procedure once its usual suppliers are ready to respond to the call for tender. Several products therefore correspond to the tender specification and, for a variety of reasons, the contract is always awarded to one of the group's usual suppliers with which it has agreed various "arrangements", such as kickbacks on commissions.

Abuses of open calls for tender

Although an open call for tender implies that all candidates are entitled to submit offers, various techniques can bias the equality of access to public procurement contracts. The following techniques are the most noteworthy.

Reduced publicity

Where publication of a notice in the *Official Bulletin of Publication of Public Procurement Notices Contracts* (BOAMP) is not mandatory, the call for tender may be published in journals or reviews with very limited circulation (Box II.2.8). In some cases, regardless of the value of the contract in question, an "oversight" can mean that the call for tender is not published at all, whether at local, national or international level. Thus only a few privileged firms who are "in the know" will be able to respond to the notice or submit a tender.

Box II.2.8. **Reducing publicity**

In the 1990s, a large number of the calls for tender for constructing a metro in a European city were only published in the national press, not in the *Official Bulletin of Publication of Public Procurement Notices*.

Subjective criteria

Although selection criteria for tenders must be justified, certain additional criteria may be more subjective, which may skew the assessment of tenders. This is the case, for example with the "architectural aspect" or "environmental appropriateness" of a project, which are a matter of subjective, personal choice.

Unrealistic deadlines

Despite all the precautions set out in the regulations, the deadlines for disseminating information may be too short to allow firms not notified in advance to submit a credible tender or even to study the project. Indeed, in some cases even the regulatory notice periods are too short to allow potential tenderers to carry out a serious cost appraisal.

Decision-makers often justify shortened deadlines on the grounds of urgency, if not compelling urgency, but experience has shown (Box II.2.9) that in fact such excuses are only given because short deadlines can exclude undesirable candidates. National regulations should give an exact definition of the conditions under which the concept of urgency may be applied.

Box II.2.9. **Abusing the use of urgency**

In the extension of a university, the increase in the number of students at the start of the academic year in September was put forward as an urgency to use non-competitive procedures. However, as it was already known two years previously therefore it could not be held to be an unforeseeable event.

Difficult conditions for obtaining documents

Even when the minimum regulatory deadlines are respected, the conditions for obtaining the specification may mean that only local firms or very large groups can obtain it. For example, it might have to be obtained on the spot (with no provision made for posting it to tenderers) or the cost of making specifications available may be very high. In addition, in some calls for tender, important documents included in the specification (drawings, geological studies, etc.) may not be ready at the start of the selection process. They are sent later, but even when the deadline for submitted tenders is extended (which is not always the case), there is often not enough time to study these documents properly to submit a technically well drafted tender. The only firms that can study their tender properly and submit prices within the deadlines are therefore firms which had prior knowledge of the contents of these documents.

Information leaks

The person drawing up the specification or the decision-maker may release, in advance to certain suppliers, important information on the content of the call for tender (Box II.2.10). This contravenes the principle that all candidates should be dealt with equally.

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Box II.2.10. **Leaking information**

During a call for tenders for constructing a building near a watercourse, the competitors were not informed of the construction of a dam upstream of the future construction site. By lowering the level of the water table, the dam avoided the need for special foundations, which all of the competitors, apart from the local firm involved in the construction of the dam, had included in their tenders.

Restricted calls for tender

Calls for tender are known as "restricted" when only a short-list of candidates is permitted to submit a tender. In principle, this procedure is used when the work can only be performed by a limited number of firms or for low value contracts. However, it is also misused to exclude firms that may be less favourably disposed towards the decision-maker (*e.g.* those that will not accept being discriminated against) or that are less familiar with local "practices" (*e.g.* foreign firms).

Drawing up a list of candidates

The most important step in a restricted call for tender is to make a list of candidates, based solely on technical criteria, who could be consulted. Failure to issue a notice of the call for candidates or failure to call for candidates are the most commonly observed infringements of the regulations and are done to avoid too many candidates coming forward for inclusion in the list of firms invited to tender.

The decision-maker (the person in charge of the contract or the tender review board) chooses firms from this list, without having to state the criteria on which the selection is based. These firms will be asked to submit a tender. If these firms should fail to give the decision-maker satisfaction, he or she can deselect them or invite new candidates (increased competition) to submit proposals in subsequent consultations.

As a general rule, everything proceeds "smoothly" and the contracts are split among a restricted number of selected suppliers. In reality, the decision-maker prefers to select firms that he or she knows because he or she has already used them (for example) and because they provide the guarantees of quality, compliance or procurement that he or she expects. For their part, the firms on the list have no interest in seeing new competitors added to their group. They thus seek to retain the trust of the decision-maker by supplying suitable services and by sometimes offering, in addition, some personal "advantages".

Conspiracy

When the decision-maker always consults the same firms, he or she obtains satisfactory service within reasonable deadlines and consequently feels that he or she is making the best use of the community's resources by taking few risks. Indeed, in many cases he or she justifies the policy in terms of safeguarding local jobs. However, this approach can encourage some corrupt practices amongst the firms in the favoured group, which usually involve the following steps.

Group agreement. Firms that are regularly selected sometimes agree among themselves on a "*modus vivendi*" which will allow them to satisfy the decision-maker without having to compete fiercely to secure contracts. This practice allows them to divide contracts among themselves according to their own criteria (work planning, difficulty of the work, deadlines, etc.), provided that the decision-maker makes no changes to either the selection method or the list of candidates. Any firm that does not play along is excluded from the public procurement contract, whereas those which do play the game increase their prices to reflect the constraints imposed upon them and are therefore able to "compensate" both their colleagues who have not been selected (through sub-contracting or various forms of compensation) and the decision-maker (via commissions). Ultimately, it is the taxpayer who foots the bill for all these additional expenses.

Decision-making approach. This conspiracy between firms (which in most cases arises without any prompting by the decision-maker) can take various forms: an official association; a secret association to nominate the firm that will submit the "best" tender and agree on an acceptable contract price; or a secret association to choose which members will alone be in a position to obtain the contract, while the others receive kickbacks from this or subsequent transactions. A number of the members in charge of such transactions set out the rules to be followed in forthcoming projects or projects already in progress, note the operations in a book and discuss the tenders that will be submitted. Such meetings can be held at several levels: national, regional and local. Members are organised according to both table and trade in order to respond to the technical complexity of operations. Such groups are therefore highly corporatist organisations.

To ensure that the system works properly, prior knowledge of forthcoming contracts (the type of operation and provisional cost) is required. Thus if firms are informed beforehand or if information is leaked on other offers, the association has at its disposal, before the call for tender is issued, details that will aid internal discussions. Such discussions allow contracts to be shared out in advance.

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Implementation of decisions. When the call for tender is issued, the review of candidates' proposals must be purely formal. The "competitors" (the other members of the group) have submitted unusable quotations or have proposed prices that are too high.[2] The firm selected by the group is the only one to submit a satisfactory tender and therefore wins the contract. Sometimes, the decision-maker is confronted with a conspiracy between firms in which all submit tenders far higher than the price estimate drawn up by his or her departments. The decision-maker therefore has to declare the call for tender inconclusive and commit to a negotiated procedure (see next Section). However, irrespective of the firm with which the decision-maker will subsequently negotiate, he or she will be dealing with one of the members of the conspiracy. The outcome of this will therefore be an increase in the cost of the operation, which will ultimately be borne by the taxpayer.

It should be noted that while these behaviours may not be qualified as corrupt, they nonetheless seriously compromise the equality of candidates' access to public procurement contracts and the overall integrity of the process.

Kickbacks. The competitors who have deliberately ruled themselves out of the contract will receive kickbacks. For example, they may be actively involved in the operation as sub-contractors, they may benefit indirectly from the operation or they may be awarded (by the group) another national or local contract. In the event that they cannot receive compensation in the form of a contract within a short period of time, they may receive, almost officially, compensation through an invoice (obviously false) for services supplied or work carried out.

Stock market manipulation and insider dealing. A conspiracy, in the case of major work contracts, can also give rise to stock market manipulation. If a major group listed on the stock exchange is awarded a large contract obtained through a conspiracy, those in the know can use this information to their own advantage. They may decide, for example, to purchase cheap shares in the successful company before the outcome of the call for tender has been announced. The value of these shares will automatically increase when the good news over the contract is released. All they have to do then is to immediately sell the shares to cash in their profits.

Likewise, the sale of shares in a company before official notification of its failure to win a major contract is a way of avoiding the loss in share value that will automatically follow the announcement. If circumstances permit, using these two levers can be doubly rewarding. In addition, provided only a small number of shares are involved, these activities are very difficult to detect. However, such practices cannot be overlooked as they offer scope for substantial earnings and, if the conditions are right, constitute insider dealing.

The negotiated procedure

All negotiated contracts – when only chosen suppliers are invited to negotiate a contract – are suspect in the eyes of inspectors because direct negotiation between a decision-maker and a supplier can give rise to all sorts of manipulation leading to fraud, misappropriation of public funds and corruption. This is why use of this procedure has only been permitted in a number of specific cases (those listed in EU Directives and various national regulations). Of these permitted cases, special attention should be paid to the following because they are susceptible to abuse.

Tests, research and experiments

Although this technique requires the decision-maker to prove that the work, supplies or services being ordered are to be used for experimental or R&D purposes, any major civil work or specialised building can easily fall into this category. However, while such justification is acceptable for this type of civil work, it is not acceptable in the case of common or customary construction work (typical civil works, construction of residential buildings based on a specific model or conventional industrial workshops, etc.).

After an unsuccessful call for tender

This is the most common case. It can easily occur; all that is required to have a call for tender declared inconclusive is to specify stringent technical requirements and a low contract price. In the course of the "negotiation", it is then a straightforward matter to reduce the services to the level of the standards that usually apply and/or to increase the initial financial package so that, in return for "compensation", the contract can be awarded to the most amenable firm.This is one of the easiest forms of misappropriation and inspectors should give priority to investigating such cases.

In the event of urgency or compelling urgency

This process is used frequently, even though national and EU case history has helped to considerably reduce the cases that can be covered by this provision (totally unforeseeable events and serious risks if the work or the procurement is not carried out immediately).

National security or military secrecy

European Court of Justice case history has, in a number of cases, helped to curtail use of this concept, significantly reducing the frequency with which it is invoked at both the national and EU level. We should therefore no longer see purchases of blankets for the army covered by the provisions of military secrecy or painting work in a consulate for which the interests of the nation are invoked.

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There is no consultation procedure that can effectively avoid all risks of fraud or corruption. Dishonest individuals will always try to use the loopholes in different types of procedure for fraudulent ends that are likely to be punished by criminal law.

Procedures to avoid issuing a call for tender

A call for tender must be issued for any contract whose value exceeds a level set by a member country. However, decision-makers may use certain techniques to avoid having to follow this procedure, which they feel leaves too much to chance given that their aim is to choose a firm that is friendly to them. They may therefore try to arrange things so that the code no longer applies, in the ways described below.

Splitting-up contracts

A common technique is to ensure that public procurement procedures no longer apply by awarding contracts whose value does not exceed the specified thresholds. For example, an attempt may be made to misrepresent a building or operation (Box II.2.11), or to split projects into smaller components.

Box II.2.11. **Misrepresenting an operation to split up contracts**

In the building industry, instead of issuing a call for tender for the entire operation, consultations are carried out by activity: plumbers, glass-fitters, painters, carpenters, etc. While such practices are banned, the waters can be muddied to avoid detection by using different addresses for the same building, first specifying the address on one street and then on another. In addition, contracts can be staggered over time and, if necessary, guarantees can be provided that the building is usable in its current state, that the various work contracts are not linked and that they do not have an impact on its use.

Splitting-up invoices

It is also possible to use the fact that, following a merger or a take-over, the same firm may have a number of different trading names. Consequently, when the number of orders placed during the same financial year is about to exceed the threshold, which would at the very least require the signing of a contract to ensure compliance with the regulations, the supplier is asked to submit his invoices under another of his trading names. Each "different firm" is then awarded a volume of contracts that falls short of the threshold and can therefore continue to work under the shorter consultation procedures.

4. Risks during the management of the contract

The preceding chapter primarily described "subtle" forms of misappropriation, such as fraudulent intellectual services, false projects, illegal commissions and fraudulent arrangements to facilitate misappropriation during the management of the contract. In most cases these take the form of tangible services that have not been supplied or that have been poorly carried out, use of illegal (or undeclared) workers, overseers and inspectors who are accomplices in misappropriation, as well as a series of practices and tricks of the trade. All these "tricks" allow the contract holder to generate the financial flows required to fund a bribery pact.

Once the contract has been awarded, there are several other possible ways that misappropriation can occur during the execution of work, the supply of a service or the purchase of supplies.

Delivery of supplies

Misappropriation during the delivery of supplies is relatively easy to detect or uncover. It may take several forms.

Discounts

When the government buyer obtains promotional discounts, in quantitative terms or otherwise, they are usually incorporated into the invoice in the form of reductions or increases in the quantities delivered. This is not always the case, however, as these discounts are sometimes offered directly to the buyer:

- The supplier opens an account in the name of the buyer. This account is credited with amounts corresponding to the discounts omitted from the invoices. Using this account, the buyer purchases additional goods sold by the firm. Sometimes it is used to purchase equipment for which the buyer does not have credit or which is subject to administrative licences that are not readily obtainable. In some cases the buyer may make purchases for him or herself, family members or friends. The goods concerned will not be listed in any inventory because they do not legally exist.
- The discount is paid by transferring the sum into an account that does not belong to the buyer's administration but to an association with a very similar name with which the buyer is linked (Box II.2.12). This process can be used to endow parallel structures (associations linked to the buyer, for example) with financial or material assets. Its main advantage is to give such structures the means to buy everything they may need and not only the products listed in the supplier's catalogue.

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- Part of a deal offered to the buyer (*e.g.* buy three products and receive a fourth one free) is shared with a friendly organisation. So three products may be bought, delivered and paid for by the purchaser at the normal rate; the fourth, which is free, is delivered later and to another address. This process thus also provides a friendly organisation, or individuals, with equipment or operating resources.

Box II.2.12. **Providing discounts to an association**

As part of a major sporting event, contracts were awarded to a well-known company by a public body called XYZT. In agreement with the managers, quantitative discounts were invoiced separately, under the name XYZt, an association registered at the same address and whose chairman was an elected official.

Amendments to the order

Amending the order is another technique used to misappropriate funds. A product is ordered and an invoice raised. Just before the product is due to be delivered, the supplier is asked to modify the order and supply a cheaper product, but the original invoice is sent to the local authority. Since the price paid is higher than the value of the goods delivered, the supplier provides the customer with a credit voucher or a cheque to make up the difference. However, the credit voucher or cheque is made out to a similar beneficiary that resembles, but is not the same as the purchaser. This process requires the purchaser to collude with the person in charge of verifying the service supplied (since the invoice does not match the goods supplied). It also means there will be irregularities in the books, in that the reimbursement is not made out in the name of the customer, even though such similar names are sometimes used so that a "mistake" can easily be made.

Another, much simpler, process involves giving the product purchased a generic name which does not exactly match the product desired (for example, a printer will be described as a "typewriter"), but which has exactly the same reference as the product supplied, the price having been agreed beforehand by the purchaser and the supplier. This system is used to acquire equipment that could not otherwise be bought due to a lack or shortage of specific funds. However, it can also be used to misappropriate public funds for personal profit.

Part-exchange of equipment

When buying new equipment, the purchaser must often dispose of the old equipment because it is worn out, broken, unsuitable or has simply

become obsolete (although often still in good working order). As a general rule, the purchaser gets rid of these old products by selling them at a very low price, either directly, if his or her status allows, or through a middleman in the form of a specialist agency. In the latter case, the purchaser does not profit from the sale because the income goes straight into the public purse. However, in some cases the purchaser can come to an arrangement whereby the supplier buys the now useless goods from the purchaser. A part-exchange price, generally very low, is agreed from which, in certain cases, the costs of disconnecting, dismantling and removing the equipment must be deducted. The final sum, usually fairly small, is then deducted from the price of the new equipment or offered as a credit to the purchaser of the new equipment.

When the equipment in question consists of computer or office equipment that is still in good working order, slightly more complicated arrangements may be found which will put a higher value on the transfer of ownership. The old equipment is dismantled and transported to a depot for destruction but is not actually destroyed. The price of dismantling and transporting the equipment corresponds to a set part-exchange price. The firm that has signed the contract (to supply the new equipment) therefore finds itself in the possession of goods that have a zero book value (purchase price equal to the costs of dismantling and transporting the goods) but which are nonetheless in perfect working order. The firm can therefore dispose of this equipment without entering the transfer into its books. It thus sells these goods on to a buyer specialised in buying unwanted stock (a broker) who, depending on his or her status, can either sell it on as second-hand equipment or dismantle the equipment to sell on as spares. The declared price of this transaction between the firm and the broker will be zero. In contrast, the firm will be given a sum of money in cash which it can either keep for use as a slush fund or, more probably, partly hand over to the original owner (the purchaser of the new goods) as a "thank you" present.

Supply of services

The supply of services may also give rise to misappropriation, although the mechanisms are usually more sophisticated than for the procurement of goods. This discussion is limited to phenomena internal to the service provider, since such practices take the form of tax evasion (concealing profits) which is not necessarily linked to corruption, even though in some cases the need to increase income and profits is imposed by the need to pay "compensation" after securing the contract.

Modification of services

In a number of cases, once the contract has been awarded the decision-maker and the service supplier agree to downgrade the services specified in

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the contract. The aim here is to reduce the quality of the services the supplier is required to provide so that a commission can be paid to the decision-maker (Box II.2.13).

Box II.2.13. **Modifying services**

A contract was awarded for office cleaning services. This contract called for full, daily cleaning of the furniture in each office. Afterwards, following negotiation, it was agreed that only wastebaskets and ash-trays would be emptied every day, while the offices would be cleaned once a week rather than once a day. A share of the resulting savings made would be remitted to the decision-maker either in the form of cleaning services (for his personal residence), or as cash which would ensure regular income for him for several years given that the contract, which was multi-year from the very onset, would be regularly renewed.

In the case of intellectual services, a verbal agreement between the decision-maker and the service supplier may be sufficient for the latter to reduce the supply of services. In this way, the planned work-load can be significantly reduced, the requirements restricted and the supplier of services freed of contractual obligations to his or her advantage, while still respecting the obligation to provide progress reports which are usually used to authorise the payment of advances. The supplier then pays the agreed "contribution" requested by the decision-maker.

Double (or multiple) payments

Another technique consists of ordering a study that already exists. The intention here, once the contract has been awarded, is to rewrite a study that the decision-maker or supplier already possesses. This practice, known as "recycling", allows a share-out of substantial gains because the decision-maker purchases, under another name, a service which has already been received and paid for. This process can even be repeated several times in a row. This procedure is easy to use but difficult to detect unless one has already been informed of the existence of the first study, prepared under a different name.

Carrying out the work

This is the most complex technique to detect because public works and buildings are constructed in stages, each of which may be awarded to different contractors who may or may not be linked to each through group or sub-contracting contracts. Misappropriation arises from the existence of many types of so-called preparatory works which are often dealt with independently

of the contract itself; additional work, regardless of the reasons for such work; and work which will not be carried out or which will not comply with the selection process specifications. It should also be noted that the same people are involved in all operations: site manager, foremen, representative of the design office heading the operation. All of these people are, to a lesser or greater extent, subordinated to the contract holder and undoubtedly find it easier not to oppose any misappropriation they may see or in which they may be involved, but rather to exact, in their turn, their own benefits. Alternatively, they themselves may be the organisers of the misappropriation.

Preparatory work

The construction of a building or a civil work often requires some initial land preparation (for example, ground preparation and demolition) and other construction-related activities (rubble clearance, traffic deviation and restoration of traffic flows, landscaping, etc.). The contract holder could sub-contract these operations, which are usually covered by private law contracts. The contract holder selects the first tier of sub-contractors and submits his or her selection to the official for approval. Subsequently, each of these sub-contractors can choose other contractors to carry out part of the work contract. These cascaded sub-contracts can be used to produce sums that will then be remitted to the decision-maker using the system of false invoices or undeclared work.

However, the decision-maker may also decide to carry out this preparatory work since it is often independent of the main contract. In order to obtain commissions on these contracts, the decision-maker may use a number of specific practices. In the case of demolitions or ground preparation (grubbing up tree stumps), contracts are awarded as lump-sums that are often determined purely arbitrarily. If there are several firms competing for the contract, which would mean lower lump-sums, the number of units can be increased (*e.g.* trees to be felled) or reference made to unexpected difficulties (*e.g.* need to use more powerful plant) in order to obtain the payment of additional sums that will allow the firm awarded the contract to maintain its profit margin while still paying a commission to the decision-maker (Box II.2.14).

The removal of rubble, particularly for major building projects in urban areas, can be a fundamental issue for the local authority. For example, as part of the preparatory work for building a major library, 900 000 tons of gravel were excavated and removed by waterway to avoid nuisance and the destruction of highways surrounding the site. Such contracts, paid on a unit basis (per cubic metre or tonne transported) may give rise to corrupt misappropriation, regardless of the mode of transport used.

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Box II.2.14. **Overvaluing invoices**

As part of the preparatory work for which contracts were awarded on a lump-sum basis, the specification called for the felling and grubbing up of trees and removal of the ground cover along the route of a future road. The estimates called for the removal of ground cover to an average depth of 20 cm and the felling of 2 000 trees more than 30 cm in diameter. Oddly, the invoices submitted six months later referred to the removal of ground cover and soil to a depth of 40 cm and the felling of 4 000 trees.

Additional work

Contractors are often asked by the decision-maker to perform additional work during the term of the contract. This work is covered either by riders to the original contract or by service orders. In any event, such work should be justified on technical grounds.

Additional work commissioned by a "service order". Where an incorrect estimate means that the work originally planned is not sufficient (greater volume of drainage effluent than initially foreseen, poor quality of local sub-soil requiring larger foundations, deeper or greater number of footings, etc.), the prime contractor orders the work to be carried out by means of a service order, provided that the additional quantities do not exceed 20% of the initial estimate. Since it is very difficult, under the circumstances, to determine whether the wrong initial estimate was established deliberately or accidentally, it is clear to see how, for work covered by such a service order, all types of misappropriation would be possible.

Additional work covered by a rider. When the volume of additional work exceeds the initial estimate, perhaps because the estimate was not drawn up properly or unforeseen events occur or come to light during the project, a rider to the contract must be drawn up. For example, land was found to be polluted by oil products to a greater depth than initially foreseen during construction of a stadium, which led to the drawing up of a rider to increase the level of decontamination work required.

However, the grounds for issuing such riders are not as clear-cut as might seem at first; this process is sometimes used to enable the firm to pay large commissions to the decision-maker. For example, the establishment of a rider may be the result of a deliberately undervalued estimate for certain work items or a deliberate failure to take account of the inclusion of a civil work or building in the site (no car parks, access road, etc.). In this type of work, we are faced with either a genuinely unforeseeable technical difficulty or a study in

which certain items have been deliberately miscalculated or omitted so that it is technically possible for the contract-holder to establish or re-establish sufficient margins that will be used in part to pay commissions to the decision-maker.

In both cases, the work continues without a new call for tender being issued at the unit price set by the contract-holder in his or her tender. Since the contractor has been told that the quantities have been deliberately underestimated, he or she specifies high unit prices for the work in question and is able to tender a low bid in order to win the contract. Although the overall proposal is cheaper than that of competitors, the contractor is sure to be able to recover and generate profits without too many risks. The same would be true if the documents had deliberately overpriced certain jobs that were hard to complete. Being aware of these "deviations", the contractor would have been able to hone his or her tender price and obtain the contract while still being able to make a profit. Since it is always hard to distinguish between a deliberate mistake and an unforeseeable event, the contractor can easily release the financial resources which will allow him or her to express gratitude to the decision-maker.

"Extensions" to the initial contract are another form of additional work that are encountered frequently. In such cases, the decision-maker, who agrees with the quality of the service supplied by the firm, decides to extend the scope of the contract: instead of resurfacing the road over two kilometres, it will now be resurfaced over three, for example. This practice, commonly employed by certain decision-makers, distorts the rules of competition and is increasingly condemned by the competent authorities – when they notice it.

Far more serious is the case of additional work unrelated to the contract but which is demanded by decision-makers (Box II.2.15). It may be performed

Box II.2.15. **Adding work unrelated to the contract**

After the construction of a motorway, a general finance inspectorate strongly criticised the financial misappropriation, disavowal of responsibilities and lack of realism that often surrounds major development projects. In detail, it criticised the construction of a luxurious operating centre in which each employee (in principle working on the motorway) had over 17 m^2 of office space, the existence of five full motorway interchanges in a valley inhabited by only 41 000 people, the financing of a sports club by the firm, etc. In contrast, the technical manuals describe this motorway as an "exemplary construction project completed on time and to very high standards in terms of its architectural design and integration into the environment".

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for the good of the community (surfacing a public square, for example) but may also be for the personal benefit of the decision-maker, such as the construction of a private swimming pool, restoration of a building, etc. In both cases, if corruption is involved, there will be false documents in the firm's accounts.

Modified or incomplete work

Through the "skewed" drafting of the technical specifications used solely for work performance, there are two other types of misappropriation possible that were mentioned earlier in the section on the planning of the contract. Work that has been planned to specific, and sometimes exacting, standards is either not performed at all or performed to only conventional standards. This allows the contracted firm to realise large profit margins that it can appropriate or remit to the decision-maker. The connivance of the departments responsible for inspecting the work and certifying the service rendered is essential, since the work actually carried out is different to that specified in the contract. In practice, the firm which does not perform a given number of services sees its profits rise without having to resort to a system of false invoices. It is the decision-maker who instigates all the actions since he or she has taken it upon themselves to certify, through a "friendly" inspection agency, that the work has been performed in compliance with the document submitted to the firm.

Notes

1. The use of such criteria is theoretically prohibited, but it is sometimes difficult to distinguish between specified criteria that are objective and those that are subjective.
2. These quotations may have been "fabricated" for them by the candidate chosen to win the contract, notably through the use of specialised software.

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PART II

Chapter 3

A Pilot Application of the Principles in Morocco

Introduction

The economic interests at stake of public procurement in Morocco are considerable. In terms of transactions, 11 614 government contracts were awarded in 2007 and 10 143 in 2005, 88.8%[1] and 88.9% respectively, through open tendering.

Public procurement plays an important strategic role in sustaining growth through investment projects initiated and financed by the government and carried out by market actors. Both Moroccan and foreign firms are potential tenderers for public procurement contracts. Recent statistics indicate that public procurement accounts for 70% of the business of construction firms in Morocco and 80% of the business of engineering firms.

Given the financial interests at stake, public procurement is one of the areas of government activity exposed to the risk of corruption, both in OECD member countries and in Morocco. A perception study carried out by *Transparency Maroc* in 2002 revealed that 60% of firms taking part in the survey considered that public procurement in Morocco was not systematically transparent and that illegal payments were frequent.

Recent reforms

The government has gradually come to realise the scale of the problem and the issues involved. Although public procurement has not been a policy priority in the past – no reforms were made between 1976 and 1998, the measures taken in 1998 and 2007 underline the State's growing determination to reform this area of its action.

The current reform of public procurement in Morocco is based on a set of government modernisation measures, including:

- Decree 2-06-388 of 5 February 2007 setting conditions and terms for the award of government contracts and certain rules relating to their management and control (referred to in the report as the "2007 Decree").
- Dahir[2] 1-02-25 of 3 April 2002 promulgating Act 61-99 on the responsibility of public authorising officials, controllers and accountants.
- Decree 2-01-2332 of 4 June 2002 approving the general administrative terms and conditions applicable to service contracts for studies and general contracting awarded on behalf of the State.

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- Dahir 1-03-195 of 11 November 2003 promulgating Act 69-00 on state financial control of state-owned enterprises and other bodies.
- Decree 2-99-1087 of 4 May 2000 approving the general terms and conditions of contract applicable to work performed on behalf of the State. And
- Decree 2-98-884 of 22 March 1999 regarding the system for approving design and main contractor services.

Objectives of the study

The objective of the study was to examine Morocco's progress in modernising public procurement, placing particular emphasis on fighting corruption and enhancing integrity. The government aims at reducing the risks of corruption, while ensuring that the procedures in place contribute to overall value for money in public procurement, in order to enhance integrity and optimise the use of public resources in the production of goods and services.

The study covers the entire public procurement process from needs assessment to award and contract management. It seeks to identify the strengths and weaknesses of the system and to frame policy recommendations for improvement.

Fighting corruption and enhancing integrity in public procurement involves not only formulating and implementing a solid legal framework for procurement but also enforcing it and imposing sanctions in the event of non-compliance. This study seeks to identify and examine the legislative, institutional and practical aspects of the management and control of public procurement in Morocco within the broader framework of improving the probity of public life.[3]

Analytical framework

The OECD Principles for Enhancing Integrity in Public Procurement provide the analytical framework for the study. They guide governments in the preparation and implementation of a policy framework that enables them to enhance integrity in public procurement.

The Principles define integrity as the use of funds, resources, assets, and authority for the official purposes for which they are intended to be used, in line with public interest. The offering and acceptance of bribes, conflicts of interest, nepotism, the abuse and manipulation of information, discriminatory treatment and the waste and abuse of organisational resources are actions and situations that can compromise integrity in public procurement.

Methodology

The Joint Learning Study, which is a pilot project for the region, was prepared in several phases.

- The first phase consisted of preliminary research work conducted by the OECD Secretariat and the preparation of a questionnaire framework for interviews.
- Next, experts went on a fact-finding mission in October 2007 to conduct an initial assessment of the system and the progress made. One noteworthy feature of the mission was the involvement of government experts from OECD countries (Canada and France) and the region (Dubai, United Arab Emirates) in order to provide a variety of viewpoints for the analysis. Interviews were conducted with officials from the various Moroccan government agencies concerned, and meetings were held with representatives of the private sector, civil society and international organisations.
- Preparation of the draft study in close co-operation with the government experts who took part in the fact-finding mission.
- Validation of the draft study with representatives from the government, private sector and civil society that had been met during the field mission.[4]
- Further to this pilot project in Morocco, a workshop was organised in Morocco in April 2008 on the theme of integrity in public procurement to discuss the results of the study done with stakeholders, as well as to allow exchanges between experts from the region. On this occasion, participants showed they were in favour of the Joint Learning Study's methodology, with certain countries in the Middle East and North Africa region expressing an interest in a study of their system.

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1. Overview of the 2007 Decree on public procurement

The 2007 Decree on public procurement

Reasons for the reform

The Decree setting conditions and terms for the tendering phase and certain rules relating to their management and control, which came into effect on 1 October 2007, seeks to address:

- the shortcomings and loopholes of the 1998 Decree (*e.g.* absence of procedures for the settlement of disputes, limited public notification, lack of clarity in relation to selection criteria, etc.);
- the need to update and modernise public spending management tools;
- developments in international standards and the government's international commitments (*e.g.* European Union, World Bank and Free Trade Association); and
- firms' and citizens' demands for and expectation of better quality service.

The principles

The principles of the 2007 Decree are consistent with those that guide reforms at the international level such as the WTO Agreement on Public Procurement and EU Public Procurement Directives, *i.e.* increased transparency and competition as well as the equal treatment of tenderers. The simplification of procedures and improved probity in public life are also stated objectives of the 2007 Decree.

Main advances

The main advances of the 2007 Decree are:

- increased transparency with regard to potential suppliers and within the administration (*e.g.* wider publication of tender notices, automatic notification of unsuccessful tenderers of the reasons for non-selection and a more systematic requirement to keep documents relating to awarded contracts for a minimum period of five years);
- introduction of specific anti-corruption measures for both tenderers and the contracting authority;
- better regulation of certain at-risk practices, such as the use of sub-contractors and negotiated contracts; and
- better co-operation with the private sector by simplifying administrative procedures and introducing forms of recourse.

Scope of the 2007 Decree

The 2007 Decree provides a detailed framework for regulating the public procurement procedure in Morocco at central government level and regional and local level. It applies to local authorities by virtue of Article 48 of Decree 2-78-576 of 30 September 1976 regulating the accounts of local authorities and their consolidation. In the case of public establishments operating under the oversight of the Ministry of the Economy and Finance, each establishment is required to draw up its own regulations on public procurement in compliance with the basic rules of transparency, competition and fair treatment. Because they did not have regulations of their own, some public enterprises have decided to apply the 2007 Decree. Some enterprises which already had their own regulations, such as the National Electricity Board and the National Water Board, are thinking about harmonising their regulations, in light of recent developments.

It was said during the interviews that local authorities may well find it hard to implement the provisions of the 2007 Decree. To overcome any such difficulties, fresh thought is being given to introducing supplementary regulations for local procurement, within the broader framework of modernising and upgrading the organisation, financing and staffing of local government. Although public procurement is decentralised from a technical and managerial standpoint, financial decisions on the commitment of funds are taken centrally. The situation of Rabat, the capital city, is more complex and unique, since the presence of a mayor and a prefect *(Wali)* with different responsibilities means that the procurement process is split in two.

The 2007 Decree contains more exceptions than the 1998 Decree. For example, the 2007 Decree does not apply to:

- agreements and contracts concluded by central government under the rules of ordinary law;
- delegated management contracts for public services and infrastructure;
- asset disposals and services provided between government agencies under the prevailing regulations; and
- concessions and delegated management contracts are regulated by the February 2006 Act on the delegated management of public services.

REMARK. Steps to harmonise the provisions of the 2007 Decree with the regulations applicable to public establishments and state-owned enterprises is necessary to make the regulation of public procurement more coherent. The role of the Government General Secretariat could be enhanced in this context to ensure intergovernmental co-ordination to facilitate the harmonisation or even standardisation of regulatory provisions whenever possible. In some OECD member countries, a single regulatory text applies to the State, local authorities and public

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establishments. Moreover, it will be essential to put in place the means to implement the 2007 Decree; to do this, adequate human and financial resources will have to be provided at both central and local level.

Actors in the reform and supporting texts

Actors

Several public sector actors are involved in the planning, tendering, performance and control of public procurement contracts. Only senior officials – ministers at national level, and regional council presidents and governors at local level – have the power to authorise budget commitments. Authorising officials entrust the procurement procedure to contracting authorities. The contracting authorities in turn draw up, manage and monitor procurement contracts, from the preparation of specifications and award of the contract to the monitoring and control of contract implementation. Control staff is responsible for ensuring the compliance of the process in terms of budgetary and regulatory procedures. The payment office's staff is responsible for settling the corresponding expenditure and discharging the public entity's debts. Budgetary commitment, planning and expenditure payment functions are therefore kept separate.

Supporting texts

In order to supplement and the specific provisions of the 1998 Decree and other regulations relating to public procurement, a number of supporting texts are being created, notably through:

- the adaption of the general conditions of contracts applicable to works and design contracts (2000 and 2004); and
- the standardisation of other terms and conditions, like the common conditions of contract and the special conditions of contract.

It was also pointed out in interviews that several projects were planned in this respect, such as a standard format for special specifications, the amendment of general terms and conditions of contract in order to ensure compliance with the provisions of the 2007 Decree, a guide to public procurement drawn up by the General Treasury and a common classification for documentary evidence of commitments and payments.

REMARK. These measures to support implementation of the 2007 Decree in the form of explanatory notes, manuals and standardised documents for contracts relating to the provision of work, supplies and services must be continued. These texts will play an essential part in clarifying the provisions of the regulations, ensuring consistent interpretation at central government level and defining the implementing conditions for the 2007 Decree.

Raising awareness

In order to advertise the content of the new public procurement reform, the General Treasury of the Kingdom of Morocco organises training days for the departments affected by the reform. The experts trained will assist with awareness-raising days organised at local level by territorial authorities in several regions of Morocco. Led by experts and practitioners, these workshops, which explain the new regulations, are designed to provide training in the new regulations to central and local government officials responsible for public procurement. An information day for the private sector has been organised by the General Treasury. This training is essential in order to facilitate harmonised interpretation and implementation of the 2007 Decree.

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2. Strengths and weaknesses of the public procurement system

The following points sum up the identified strengths and weaknesses of the public procurement system in Morocco.

The 2007 public procurement regulations: A detailed framework for public procurement

The 2007 Decree setting conditions and terms for public procurement, which came into effect on 1 October 2007 in Morocco, seeks to remedy the shortcomings of the 1998 Decree. It provides a detailed framework for public procurement and is conform to principles of good governance, which guide efforts at an international level.

The 2007 Decree applies to central government and local authorities. Public enterprises and establishments can adopt their own specific regulations provided that they comply with regulations regarding competition and transparency. Authorities that do not have their own regulations in place must apply the 2007 Decree. It will important in the future to harmonise existing regulations for all public enterprises and establishments with the provisions of the 2007 Decree.

In addition, although the 2007 Decree partly covers the needs assessment (Article 4) and contract performance (Articles 91 and 92) phases, more emphasis could be placed on the pre- and post-tendering phases in order to ensure the integrity of the entire procurement process. In particular, it would be advisable that regulations and additional guidelines such as the General Terms and Conditions of Contract, provide further details on the preventative mechanisms that apply to these grey zones.

Lastly, attention should be paid to ensuring that the 2007 Decree is effectively implemented at central, regional and local levels. In particular, adequate human and financial resources must be provided at the regional and local levels to allow implementation of the 2007 Decree.

More transparency in the procurement cycle

The 1998 Decree already reflected the principle of increased transparency in public procurement. The 2007 Decree introduces new features such as increased scope for informing firms of tender notices, increased transparency for negotiated contracts and automatic notification of unsuccessful tenderers and more systematic conservation of documents relating to awarded contracts in order to facilitate any subsequent research.

While the aim is to make the best purchase possible (work, supply of goods or services), one of the challenges of implementation lies in striking the right balance between increased transparency and procedural efficiency. Care

must be taken to ensure that the implementation of provisions regarding transparency do not lead to delays in the award of contracts and additional costs for the administration.

Electronic procedures: Creation of a national public procurement portal

The creation of the new electronic portal has particularly ambitious objectives, including publication on the portal of planned procurement programmes, tender notices, the results of tendering, excerpts from the minutes of tender review sessions and progress reports on the performance of contracts.

Further consideration should be given to ways of facilitating the transition from a paper-based system to a system that combines paper and electronic media, especially in terms of improving the management capacities of procurement departments and enterprises with regard to the electronic portal.

Introduction of anti-corruption measures in the 2007 Decree

The 2007 Decree introduces anti-corruption measures for the first time, both for the tenderer (sworn oath, undertaking not to use dishonest practices or corruption) and for the contracting authority (abstention from any relationship or action that could compromise its independence).

It is considered important that these measures should be applied within a solid legal framework that regulates conflicts of interest for the actors involved in public procurement in order to strengthen the integrity of the entire system. Some public enterprises such as the National Electricity Board in Morocco have taken the initiative to develop ethical rules and procedures (see Box II.3.1).

Besides this legislative framework, attention should also be paid to the effective implementation of sanctions against corrupt officials, regardless of their rank or seniority, in order to bolster confidence in this new system.

First step towards the introduction of an appeals mechanism

Any tenderer who challenges the outcome of a tendering procedure and is dissatisfied with the decision taken is entitled to take the matter up with the contracting authority. If the tenderer is not satisfied with the contracting authority's response, it may, as a second step, take up the matter with the minister concerned and, as a third step, with the presiding Government Secretary General over the Public Procurement Review Board to consider the request. The Public Procurement Review Board issues an opinion in an advisory capacity.

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Box II.3.1. **Efforts to prevent risks of corruption in public procurement: The National Electricity Board in Morocco**

With 10 000 employees and 3.5 million customers, the National Electricity Board is a public establishment of an industrial and commercial nature, created in 1963, with activities focused on the production, transportation and distribution of electricity. After the government itself, it is the largest investor in the country with planned investment of MAD 11.6 billion in 2008 (compared with MAD 36.07 billion from the government's general budget and a total of MAD 66.6 billion* by all state-owned enterprises and public establishments). It is subject to supervision by the Court of Accounts, the IGF, the Directorate of State-Owned Enterprises and Public Establishments and Parliament (through specific parliamentary committees).

Given the sums at stake, the power sector is particularly vulnerable to corruption. In order to minimise risks of corruption that could tarnish its reputation, the National Electricity Board has taken a proactive stance to strengthen the integrity of its procedures. It established an ethics committee in 2007 that includes the CGEM and staff representatives. The remit of this Committee is to propose binding ethical rules and procedures for both staff and other stakeholders, including suppliers.

Its first task was to develop a code of ethics which would encourage staff to comply with the Act on the status of personnel. The consultation process for preparing the code was based on a representative sample that included not only managers but also operational staff (around 40% of representatives were from management, *versus* 60% from workers on the ground). Adherence to the code was made voluntary, as a means of encouraging all staff to sign on willingly. The next task will be to evaluate conflict-of-interest risks within the firm.

The National Electricity Board is also playing a driving role in the use of new technologies to strengthen transparency and accountability in procurement. Thus, it was publicising invitations to tender at its Internet site even before the 2007 Decree made this mandatory. It also maintains a database not only for storing information on calls for tender but, more generally, to keep records of decisions taken in the procurement process, and thereby make staff accountable. Information on suppliers is centralised and classified to facilitate evaluations on the basis of objective parameters such as price and timeliness of delivery.

The next phase should be to examine National Electricity Board's current operating regulations to harmonise them with the provisions of the 2007 Decree and have them validated by its Board of Directors.

* Statistics published by the Directorate of State-Owned Enterprises and Privatisation.

To ensure that complaints are treated fairly, plaintiffs should be given easier access to the Review Board by eliminating a number of existing filters and the Board itself should be given more powers and more resources in both financial and human terms.

A shift from control of compliance to performance-based controls of public spending

The aim of the reform is to relax *ex ante* control based on procedural compliance in favour of *ex post* control which would improve efficiency by emphasising control of the outcome and tangibility of the service supplied. Despite the numerous and cumbersome control efforts of such prestigious institutions as the General Treasury (*Trésorerie Générale*), the Inspectorate General of Finance (*l'Inspection Générale des Finances*) and the Court of Accounts Office (*la Cour des comptes*), these controls have proved unable to produce sufficient material evidence for judges to investigate cases of corruption in public procurement.

Tightening up *ex post* controls requires a change of mindset and therefore calls for a structural reorganisation and the professionalisation and support of the staff concerned. Training has a key role to play in this enhancement of professional skills in order to keep actors abreast of reforms, familiarise them with the new procedures to follow and also help them to prevent any risks of corruption.

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3. Policy recommendations: How to improve the system

The analysis of procurement in Morocco identified a number of possible adjustments for enhancing the integrity of the system. To assist the Moroccan government in its efforts to reform public procurement, five priority lines have been identified through an analysis of the system:

- strengthen professional skills in public procurements in order to give authorising officials sufficient management capacity as part of the process of relaxing *ex ante* controls;
- increase the powers of the Public Procurement Review Board;
- continue with the assignment of responsibilities and auditing process;
- ensure the harmonised interpretation and implementation of the 2007 Decree; and
- introduce specific measures to prevent corruption in public procurement.

Professionalise public procurement

The reform now underway to simplify *ex ante* controls contributes to speeding up procurement procedures and avoiding excessive red tape in verifying their compliance with regulations. The plan is to transfer *ex ante* control gradually to the most capable authorising officials. While this should be feasible in the case of ministries that have a long tradition of procurement such as the Ministry of Equipment, the transfer may be more difficult for other line ministries that do not have the same skills profile. The issue is still more complicated for local governments, where there is even less available capacity.

In this context, the professionalism could be enforced by developing a common body of knowledge and skills. One possibility would be to create a professional category of public procurement specialists, whose function would be devoted entirely to planning, contracting and executing purchases, and who would assist the authorising officials in a context where the authorising officials themselves are responsible for internal controls. This function should have its own status and recognition within the hierarchy of civil service posts. In addition, specific procurement training could be organised so that procurement specialists can keep their skills up to date in line with the latest regulatory and technological developments, especially those relating to the electronic procurement portal. Over the longer term, a system for certifying purchases could be developed, with the support of international partners.

These measures would allow procurement to be recognised as a profession in its own right and ensure that contracting authorities at both the central and local level have the contract management capacity needed, which cannot but facilitate the move towards *ex post* control.

Strengthen the independence of the Public Procurement Review Board

The possibility of invoking the Public Procurement Review Board for the friendly settlement of disputes represents a step towards instituting an effective right of appeal for tenderers (Article 95 of the 2007 Decree). In fact, there is a widespread climate of mistrust among firms *vis-à-vis* the government, and firms are reluctant to file complaints. Yet the Public Procurement Review Board's mandate is very narrow, for appeals to it are submitted indirectly through the General Secretary of Government, and its opinion has merely advisory force. This means that the government is both judge and party, for it is the line minister who has the final say in the dispute. Although its creation dates back to 1936, the committee's human and financial resources are grossly inadequate for the proper handling of complaints. Finally, the right of challenge only relates to the award of the contract. This right therefore does not apply to the choice of procurement procedure or to the criteria for the selection of candidates, to a decision by the Review Board to reject all tenders, or to a decision by the competent authority to cancel the call for tenders.

A speedy mechanism for dealing with complaints is needed to ensure that tenderers are treated fairly, and there are a number of ways in which this can be achieved:

- The 2007 Decree should be amended to remove a number of filters on access to the Review Board, notably by allowing it to be consulted directly.
- Consideration might be given to speeding up the appeals procedure by making more systematic use of the right to refer cases to the Administrative Judge, which would allow appeals to be judged within a reasonable period of time.

If the aim is to put in place a proper appeals mechanism, consideration might be given to guaranteeing the independence of the Review Board by:

- Enhancing its statutes. Its opinions could be made binding so that they cannot be contested by the administrative and judicial tribunals. Furthermore, the exceptions mentioned in the 2007 Decree under which the procedure cannot be disputed could be removed to allow the procedure to fully fulfil its role as an appeals mechanism.
- Increasing its budgetary and human resources which are too limited and which do not allow it to successfully meet its remit.

Furthermore, other considerations must be taken into account to ensure the independence of the appeals mechanism. To avoid any undue influences, notably at a political level, certain guarantees for integrity could be introduced, for example the appointment of its members could be based on

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precise professional and ethical criteria (*e.g.* no conflicts of interest, a reputation of integrity and neutrality).

Pursue the initiative to reinforce accountability and control

There has been significant progress in recent years in terms of provisions making the authorising officials accountable before the budget discipline court (Act 61-99 promulgated by Dahir 1-02-25 of 3 April 2002) and overseeing them (mandatory audit for contracts exceeding MAD 5 million since 1998). Another move in the right direction is the ambitious reform to ease *ex ante* control, which can lead to excessive formalities. In addition, the control is under reform to become more performance based. Yet despite these efforts, it was indicated during our interviews that ministers and senior officials are not systematically held responsible for their decisions and are rarely taken to task for violating the rules.

This can be attributed to the fact that when the authorising official is a minister, they cannot be held legally liable even if they has issued a requisition order (Article 52 of Act 62-99, on the Code of Financial Jurisdictions, 13 June 2002). More generally, there is no real control over the appropriateness of expenditure, and this leaves the authorising official broad powers of discretion when it comes to defining needs. With respect to *ex post* control, it was indicated in the interviews that the audit requirement for major contracts is not systematically enforced.

The move to accountability and *ex post* control of the authorising officials should be pursued. Several steps could be considered. The Code of Financial Jurisdictions could be amended to make authorising officials more accountable. The role of the IGF in the pre-tendering phase could also be expanded so that it can ensure the proposed procurement is consistent with the nature and scope of needs, which would help to verify the appropriateness of the expenditure. Finally, steps should be taken to ensure not only that large contracts are audited, but that audits are conducted more systematically for contracts worth less than MAD 5 million. One possibility would be to set audit priorities for the IGF in light of the risks inherent in the contract (for example the amount, the type of procedure used, etc.), without any minimum threshold for such audits.

Ensure harmonised interpretation and implementation of the 2007 Decree

The 2007 Decree constitutes a detailed and modern framework for regulating public procurement at the level of both central and local government. Its principles are consistent with those apply internationally, such as the WTO Agreement on Public Procurement, especially when it comes

to transparency, promoting competition, and preventing corruption. The private sector's involvement in preparing the 2007 Decree has enhanced its relevance, for it broadly reflects the expectations of stakeholders. It establishes clear rules governing procurement. It covers the entire procurement cycle, from the definition of needs to management of the contract, although it is focused primarily on the tendering phase. However, the Decree solely applies to state-owned enterprises and public establishments which do not have their own specific regulations.

The main challenge is to ensure that the decree is taken into consideration and actually implemented:

- Measures to publicise the decree have been initiated and should be stepped up. Training is underway within government departments and agencies, at both the central and local levels. This effort should be extended to firms, to familiarise them in particular with the new electronic portal and encourage them to use it.
- Similarly, more explanatory notes, manuals and standardised documents focusing on works, goods and services should be developed to ensure a common interpretation and implementation of the 2007 Decree. These explanatory notes would be particularly important for pre- and post-tendering phases.
- To ensure implementation of the Decree, consideration might be given to organising, within a year's time, a review of the application of its provisions by the administrations concerned and to make public the results of this review.

Moreover, it is essential to harmonise the provisions of the 2007 Decree with the regulations applicable to public establishments and state-owned enterprises, in order to make procurement regulation more consistent. The role of the General Secretary of Government could be useful here, in fostering intergovernmental co-ordination to facilitate harmonisation of texts. Moreover, adequate capacity must be provided at the local level to permit implementation of the Decree.

Introduce specific measures to fight corruption in procurement

The 2007 Decree introduces for the first time provisions targeted specifically at combating corruption in public procurement, by tenderers and officials alike. However, there are no detailed, government-wide ethical standards defining private interests and situations that might compromise officials' impartiality. More generally, government officials do not have a thorough understanding of the phenomenon of corruption and its causes, particularly when it comes to procurement.

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It would be useful for the Central Corruption Prevention Office to take into consideration the specific measures for preventing corruption in public procurement. A first step would be to compile a "risk map" for the different departments and agencies to identify the positions of officials which are vulnerable, those procurement activities where risks arise, and the particular projects at risk due to the value and complexity of the procurement. To achieve this, the various administrations will have to co-operate with the Office and provide the required information. On this basis, the strategy and the means for combating corruption in procurement could be properly adapted. For example, training sessions could be organised to inform procurement officials and the controllers about the risks of corruption and measures for preventing and detecting it.

If ethical standards are to be thoroughly instilled in procurement activities, it is essential to develop regulations on conflicts of interest that will clearly define private interests or situations that could compromise an official's independence. In addition, officials involved in procurement could be made aware of ethical issues, with the adoption of a professional code that would help them manage potential conflict-of-interest situations (for example the receipt of gifts and other advantages) in their relations with suppliers.

Notes

1. The figure of 88.8% by open tendering in 2007 does not include purchase orders. The remaining contracts were awarded by restricted open tendering tendering (6%) or negotiated (5.2%). *Source: Statistiques de la trésorerie générale du royaume du Maroc.*
2. A Dahir is a decree issued by the King of Morocco.
3. Improving the probity of public life in Morocco is a government priority. An Action Plan against Corruption was framed in August 2005.
4. A detailed description of the methodology is given in the document "Terms of Reference for the Pilot Project on the Integrity of Public Procurement in Morocco – Joint Learning Study".

ANNEX A

OECD Recommendation on Enhancing Integrity in Public Procurement

THE COUNCIL,

Having regard to articles 1, 2a), 3 and 5b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having regard to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on 21 November 1997, the Revised Recommendation of the Council on Combating Bribery in International Business Transactions adopted on 23 May 1997 and the related Recommendation on Anti-corruption Proposals for Bilateral Aid Procurement endorsed by the Development Assistance Committee on 7 May 1996;

Noting that legislation in a number of member countries also reflects other international legal instruments on public procurement and anti-corruption developed within the framework of the United Nations, the World Trade Organisation or the European Union;

Recognising that public procurement is a key economic activity of governments that is particularly vulnerable to mismanagement, fraud and corruption;

Recognising that efforts to enhance good governance and integrity in public procurement contribute to an efficient and effective management of public resources and therefore of tax payer's money;

Noting that international efforts to support public procurement reforms have in the past mainly focused on the promotion of competitive tendering with a view to ensuring a level playing field in the selection of suppliers;

Recognising that member countries share a common interest in preventing risks to integrity throughout the entire public procurement cycle, starting from needs assessment until contract management and payment;

On the proposal of the Public Governance Committee:

I. RECOMMENDS:

(1) That member countries take appropriate steps to develop and implement an adequate policy framework for enhancing integrity throughout the entire public procurement cycle, from needs assessment to contract management and payment;

(2) That, in developing policies for enhancing integrity in public procurement, member countries take into account the Principles which are contained in the Annex to this Recommendation of which it forms an integral part;

(3) That member countries also disseminate the Principles to the private sector, which plays a key role in the delivery of goods and services for the public service.

II. INVITES the Secretary General to disseminate the Principles to non-member economies and to encourage them to take the Principles into account in the promotion of public governance, aid effectiveness, the fight against international bribery and competition.

III. INSTRUCTS the Public Governance Committee to report to the Council on progress made in implementing this Recommendation within three years of its adoption and regularly thereafter, in consultation with other relevant Committees.

Appendix
Principles for Enhancing Integrity in Public Procurement

I. Objective and scope

The Recommendation provides policy makers with Principles for enhancing integrity throughout the entire public procurement cycle, taking into account international laws, as well as national laws and organisational structures of member countries.

The Recommendation is primarily directed at policy makers in governments at the national level but also offers general guidance for sub-national government and state-owned enterprises.

II. Definitions

Public procurement cycle

In the context of the present Recommendation, the public procurement cycle is defined as a sequence of related activities, from needs assessment, to the award stage, up until the contract management and final payment.

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Integrity

The Recommendation aims to address a variety of risks to integrity in the public procurement cycle. Integrity can be defined as the use of funds, resources, assets, and authority, according to the intended official purposes and in line with public interest. A negative' approach to define integrity is also useful to determine an effective strategy for preventing integrity violations' in the field of public procurement. Integrity violations include:

- corruption including bribery, "kickbacks", nepotism, cronyism and clientelism;
- fraud and theft of resources, for example through product substitution in the delivery which results in lower quality materials;
- conflict of interest in the public service and in post-public employment;
- collusion;
- abuse and manipulation of information;
- discriminatory treatment in the public procurement process; and
- the waste and abuse of organisational resources.

III. Principles

The following ten Principles are based on applying good governance elements to enhance integrity in public procurement. These include elements of transparency, good management, prevention of misconduct, as well as accountability and control. An important aspect of integrity in public procurement is an overarching obligation to treat potential suppliers and contractors on an equitable basis.

A. Transparency

1. Member countries should provide an adequate degree of transparency in the entire public procurement cycle in order to promote fair and equitable treatment for potential suppliers

Governments should provide potential suppliers and contractors with clear and consistent information so that the public procurement process is well understood and applied as equitably as possible. Governments should promote transparency for potential suppliers and other relevant stakeholders, such as oversight institutions, not only regarding the formation of contracts but in the entire public procurement cycle. Governments should adapt the degree of transparency according to the recipient of information and the stage of the cycle. In particular, governments should protect confidential information to ensure a level playing field for potential suppliers and avoid collusion. They should also ensure that public procurement rules require a

degree of transparency that enhances corruption control while not creating red tape' to ensure the effectiveness of the system.

2. Member countries should maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering

To ensure sound competitive processes, governments should provide clear rules, and possibly guidance, on the choice of the procurement method and on exceptions to competitive tendering. Although the procurement method could be adapted to the type of procurement concerned, governments should, in all cases, maximise transparency in competitive tendering. Governments should consider setting up procedures to mitigate possible risks to integrity through enhanced transparency, guidance and control, in particular for exceptions to competitive tendering such as extreme urgency or national security.

B. Good management

3. Member countries should ensure that public funds are used in public procurement according to the purposes intended

Procurement planning and related expenditures are key to reflecting a long-term and strategic view of government needs. Governments should link public procurement with public financial management systems to foster transparency and accountability as well as to improve value for money. Oversight institutions such as internal control and internal audit bodies, supreme audit institutions or parliamentary committees should monitor the management of public funds to verify that needs are adequately estimated and public funds are used according to the purposes intended.

4. Member countries should ensure that procurement officials meet high professional standards of knowledge, skills and integrity

Recognising officials who work in the area of public procurement as a profession is critical to enhancing resistance to mismanagement, waste and corruption. Governments should invest in public procurement accordingly and provide adequate incentives to attract highly qualified officials. They should also update officials' knowledge and skills on a regular basis to reflect regulatory, management and technological evolutions. Public officials should be aware of integrity standards and be able to identify potential conflict between their private interests and public duties that could influence public decision making.

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C. Prevention of misconduct, compliance and monitoring

5. Member countries should put mechanisms in place to prevent risks to integrity in public procurement

Governments should provide institutional or procedural frameworks that help protect officials in public procurement against undue influence from politicians or higher level officials. Governments should ensure that the selection and appointment of officials involved in public procurement are based on values and principles, in particular integrity and merit. In addition, they should identify risks to integrity for job positions, activities, or projects that are potentially vulnerable. Governments should prevent these risks through preventative mechanisms that foster a culture of integrity in the public service such as integrity training, asset declarations, as well as the disclosure and management of conflict of interest.

6. Member countries should encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management

Governments should set clear integrity standards and ensure compliance in the entire procurement cycle, particularly in contract management. Governments should record feedback on experience with individual suppliers to help public officials in making decisions in the future. Potential suppliers should also be encouraged to take voluntary steps to reinforce integrity in their relationship with the government. Governments should maintain a dialogue with suppliers' organisations to keep up-to-date with market evolutions, reduce information asymmetry and improve value for money, in particular for high-value procurements.

7. Member countries should provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly

Governments should set up mechanisms to track decisions and enable the identification of irregularities and potential corruption in public procurement. Officials in charge of control should be aware of the techniques and actors involved in corruption to facilitate the detection of misconduct in public procurement. In order to facilitate this, governments should also consider establishing procedures for reporting misconduct and for protecting officials from reprisal. Governments should not only define sanctions by law but also provide the means for them to be applied in case of breach in an effective, proportional and timely manner.

D. Accountability and control

8. Member countries should establish a clear chain of responsibility together with effective control mechanisms

Governments should establish a clear chain of responsibility by defining the authority for approval, based on an appropriate segregation of duties, as well as the obligations for internal reporting. In addition, the regularity and thoroughness of controls should be proportionate to the risks involved. Internal and external controls should complement each other and be carefully co-ordinated to avoid gaps or loopholes and ensure that the information produced by controls is as complete and useful as possible.

9. Member countries should handle complaints from potential suppliers in a fair and timely manner

Governments should ensure that potential suppliers have effective and timely access to review systems of procurement decisions and that these complaints are promptly resolved. To ensure an impartial review, a body with enforcement capacity that is independent of the respective procuring entities should rule on procurement decisions and provide adequate remedies. Governments should also consider establishing alternative dispute settlement mechanisms to reduce the time for solving complaints. Governments should analyse the use of review systems to identify patterns where individual firms could be using reviews to unduly interrupt or influence tenders. This analysis of review systems should also help identify opportunities for management improvement in key areas of public procurement.

10. Member countries should empower civil society organisations, media and the wider public to scrutinise public procurement

Governments should disclose public information on the key terms of major contracts to civil society organisations, media and the wider public. The reports of oversight institutions should also be made widely available to enhance public scrutiny. To complement these traditional accountability mechanisms, governments should consider involving representatives from civil society organisations and the wider public in monitoring high-value or complex procurements that entail significant risks of mismanagement and corruption.

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ANNEX B

The Multi-disciplinary Approach of the OECD on Procurement

Following the Global Forum on Governance in 2004, the Public Governance Committee (PGC) and the Working Group on Bribery in International Business Transactions, and the Development Assistance Committee (DAC), have jointly carried forward the multi-disciplinary work on preventing corruption in public procurement:

- The Public Governance Committee mapped out good practices to enhance integrity, in particular through transparency (*e.g.* e-procurement), professionalism, corruption prevention, as well as accountability and control measures. Drawing on the experience of procurement specialists, as well as audit, competition and anti-corruption specialists, the OECD report *Integrity in Public Procurement: Good Practice from A to Z* provides a comparative overview of practices to enhance integrity in the entire procurement cycle, from needs assessment to contract management and payment.
- The Working Group on Bribery in International Business Transactions, the body responsible for monitoring the implementation of the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions, developed a typology on bribery in public procurement. Based on contributions from law enforcement and procurement specialists, the report *Bribery in Public Procurement: Methods, Actors and Counter-Measures* describes how bribery is committed through the various stages of government purchasing; how it is related to other crimes, such as fraud and money laundering; and how to detect such crimes and apply sanctions accordingly.
- The Development Assistance Committee has been working with developing countries to strengthen procurement systems through the Working Party on Aid Effectiveness. It has also been working with its members to enhance their collective efforts to address corruption through the DAC Network on Governance.

- The Competition Committee has addressed competition issues arising in the context of public procurement. Recently it has developed a checklist to help public procurement officials detect bid-rigging during procurement tenders and limit the risks of collusion by careful design of the procurement process.

The Principles take into account the following legal instruments, policy instruments and tools in relation to public procurement and anti-corruption:

- The 1997 *OECD Convention on Bribery of Foreign Public Officials in International Business Transactions* and the revised *Recommendation on Combating Bribery in International Business Transactions*. The revised Recommendation states that:

i) Member countries should support the efforts in the World Trade Organisation to pursue an agreement on transparency in government procurement.[1]

ii) Member countries' laws and regulations should permit authorities to suspend from competition for public contracts enterprises determined to have bribed foreign public officials in contravention of that member's national laws and, to the extent a member applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, such sanctions should be applied equally in case of bribery of foreign public officials.

iii) In accordance with the Recommendation of the Development Assistance Committee, member countries should require anti-corruption provisions in bilateral aid-funded procurement, promote the proper implementation of anti-corruption provisions in international development institutions, and work closely with development partners to combat corruption in all development co-operation efforts.

In commentary 24 to Article 3, an explicit reference is made to the "temporary or permanent disqualification from participation in public procurement".[2]

Over the last decade, the 37 Parties to the OECD Anti-Bribery Convention have made commendable progress in detecting, investigating and prosecuting foreign bribery – levelling the playing field for international business. Thanks especially to the rigorous peer review monitoring mechanism, governments have passed anti-bribery laws and created special investigation and prosecution units. Businesses have started to change the way they trade and invest worldwide, in the face of increased public scrutiny. The Shared Commitment to Fight Against Foreign Bribery, adopted at the 2007 Rome Ministerial Conference, provides a clear mandate for future work. Among others commitments, Parties pledge to maintain the robust monitoring mechanism – and to remain at the forefront of the global fight against foreign bribery by ensuring relevant and effective anti-bribery standards. The Working Group on Bribery is conducting a review of the OECD anti-bribery instruments, which might impact these instruments' procurement provisions and their subsequent enforcement.

- The 1996 Development Assistance Committee (DAC) *Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement*. The DAC recommends

that Members introduce or require anti-corruption provisions governing bilateral aid-funded procurement. The anti-corruption provision of the Recommendation was integrated in the 1997 revised Recommendation on combating bribery in international business transactions. However, the Recommendation did not apply to procurement carried out by developing countries themselves. Therefore developing countries, bilateral and multilateral donors have in the past years worked together through a Round Table process. As a result, the Working Party on Aid Effectiveness has developed a benchmarking methodology that developing countries and donors can use to assess the quality and effectiveness of national procurement systems through the DAC Joint Venture on Procurement.[3] In addition, the DAC Network on Governance has identified an agenda for collective donor action and *Principles for Donor Action in Anti-Corruption*[4] to ensure coherent support to country-led anti-corruption efforts.

Instruments and tools in relation to corporate governance and competition have also been considered, in particular the 1998 *Recommendation of the Council on Effective Action Against Hard Core Cartels*, the 2000 *Guidelines for Multinational Enterprises and the Risk Awareness Tool for Multinational Enterprises in Weak Governance*.

Notes

1. On 1 August 2004, the WTO General Council adopted a decision, which addressed, *inter alia*, the handling of the issue of transparency in government procurement, as well as the issues of the relationship between trade and investment and the interaction between trade and competition. The Council agreed that "those issues will not form part of the Doha Work Programme and therefore no work towards negotiations [...] will take place within the WTO during the Doha Round". Since this decision, the Working Group on Transparency in Government Procurement has been inactive.

2. Article 3 of the Convention states that criminal sanctions shall be imposed on natural persons. While countries were convinced that sanctioning legal persons for foreign bribery was particularly important when negotiating the terms of the Convention, they did not stipulate that sanctions be of criminal nature. Consequently, Article 2 asks countries to introduce the "responsibility of legal persons" while Article 3(2) states that non-criminal sanctions against a corporation are also acceptable, provided that they include sanctions that are "effective, proportionate and dissuasive". See also *Fighting Corruption and Promoting Integrity in Public Procurement*, OECD, 2005.

3. For further information about the benchmarking and assessment methodology, please refer to: *www.oecd.org/document/40/0,3343,en_2649_19101395_37130152_1_1_1_1,00.html*.

4. See the Policy Paper and Principles on Anti-Corruption, Setting an Agenda for Collective Action, OECD, 2007, as well as the following web link: *www.oecd.org/dac/governance/corruption*.

ANNEX C

The Consultation on the Principles and Checklist with Stakeholders

An extensive consultation was carried out in 2008 on the Principles and Checklist. The consultation with representatives from OECD bodies working on related issues helped reflect the multi-disciplinary approach of the OECD. The Principles reflect the richness of the multi-disciplinary approach of the OECD that analyses public procurement from various perspectives: good governance, anti-bribery, development assistance, competition and international trade.

Furthermore, a consultation was carried out with representatives from government from non-member economies, private sector, civil society, bilateral donor agencies and international organisations – such as the United Nations, the World Trade Organisation or the European Union. The consultation with different stakeholders, in particular international and regional organisations working on public procurement issues, was an essential step to verify that the Principles provide guidance at the policy level that is in line with existing international legal instruments and usefully complements them. In addition to the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, these instruments include, notably:

- the *United Nations Convention against Corruption* (Chapter II on Preventative measures, in particular article 9 on Public procurement and management of public finances); (see Note)
- the *United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Services, Construction and Services*;
- the *World Trade Organisation Agreement on Government Procurement* (GPA);
- the legislative package of the *Directives of the European Parliament and of the Council on Procurement*; and

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- the *International Labour Organisation's Labour Clauses (Public Contracts) Convention*.

In addition, other international and regional organisations such as the multilateral development banks, as well as bilateral aid agencies, were consulted to build on their experience in procurement reform work at the country level. Their experience was also particularly useful as they have developed related guidelines, even if these guidelines are tailored to the special conditions applicable under their financing. These include guidelines for anti-corruption and fiduciary risk assessment, such as the Public Expenditure and Financial Accountability (PEFA) Program.

Note

Article 9 of the United Nations Convention Against Corruption states that:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making, that are effective, *inter alia*, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, *inter alia*:

a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed; and

e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, *inter alia*:

a) Procedures for the adoption of the national budget;

b) Timely reporting on revenue and expenditure;

c) A system of accounting and auditing standards and related oversight;

d) Effective and efficient systems of risk management and internal control; and

e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

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Glossary

Audit Trail	A chronological record of procurement activities enabling 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 corruption to secure past or current projects with a government agency.
Direct Social Control	The involvement of external actors – for example end-users, representatives from civil society or the wider public – in scrutinising the integrity of the public procurement process.
Integrity Pact	An agreement between a government or government department with all tenderers 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. In case of breach, the contract terms and conditions include the possibility of cancellation of contract, forfeiture of bond, liquidated damages and debarment.[1]
Limited/negotiated Tendering	Limited/negotiated tendering means a procurement method where the entity contacts supplier(s) individually.
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.[2]
Open Tendering	Open tendering means a procurement method where all interested suppliers may submit a tender.
Public Procurement Cycle	The procurement cycle encompasses a sequence of related activities, from needs assessment, to the award stage, up until the contract management and final payment.

Restricted/selective Tendering

Restricted/selective tendering means a procurement method where a limited number of suppliers are invited by the procuring entity to submit a tender.

Reverse Auction

A traditional auction is where there is a single seller and many potential buyers tendering 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 it wants to purchase (and often its price ceiling), and then invites suppliers to prepare a tender. Reverse auction lends itself well to the procurement or purchase of items that are in large supply and for which price savings can be gained through increased competition.

Risk-based Approach

This approach identifies potential weaknesses that individually or in aggregate could have an impact on the integrity of procurement-related activities, and controls are then aligned to these risks.

Transparency

Transparency in the context of procurement refers to access to information on:

- laws and regulations, judicial decisions and/or administrative rulings, standard contract clauses for public procurement; and
- the actual means and processes by which specific procurements are defined, awarded and managed.

Notes

1. See also the website of Transparency International: *www.transparency.org/global_priorities/public_contracting/integrity_pacts*.
2. This definition has been extracted from the 1985 Canadian Financial Administration Act (*laws.justice.gc.ca/en/F-11/index.html*).

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OECD Principles for Integrity in Public Procurement

Many governments have heavily invested in reforming public procurement systems, both to ensure a level playing field for potential suppliers and to increase overall value for money. Yet although government contracts are increasingly open to competition, about 400 billion dollars in taxpayers' money are still lost annually to fraud and corruption in procurement. What can countries do better?

The *OECD Principles for Integrity in Public Procurement* are a ground-breaking instrument that promotes good governance in the entire procurement cycle, from needs assessment to contract management. Based on acknowledged good practices in OECD and non-member countries, they represent a significant step forward. They provide guidance for the implementation of international legal instruments developed within the framework of the OECD, as well as other organisations such as the United Nations, the World Trade Organisation and the European Union.

In addition to the Principles, this exhaustive publication includes a Checklist for implementing the framework throughout the entire public procurement cycle. It also gives a comprehensive map of risks that can help auditors prevent as well as detect fraud and corruption. Finally, it features a useful case study on Morocco, where a pilot application of the Principles was carried out.

"*The Checklist will help governments and agencies to develop more transparent, efficient procurement systems*", Nicolas Raigorodsky, Under-secretary of Transparency Policies, Anticorruption Office, Argentina

"*Public procurement is one of the most important public governance issues. Action is needed to ensure integrity by reducing bribery and corruption*", Business and Industry Advisory Committee to the OECD

"*The general thrust and content of the document is commendable. Much of it tracks very closely to the United Nations Convention Against Corruption and the United Nations Commission on International Trade Law Model Law*", Stuart Gilman, Head of the UN Global Programme Against Corruption and the Anticorruption Unit, United Nations Office on Drugs and Crime

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