



Accountability

Purpose of the Checklist

- To guide and support public procurement practitioners in reviewing, developing and updating their procurement framework, according to the 12 principles of the Recommendation of the Council on Public Procurement.
- To encourage self-assessment and providing a starting-point for implementing the Recommendation.
- To provide more detailed information and guidance for each of the 12 principles as well as actions that can be taken to improve the strategic use of public procurement.

Public Procurement
Principle: **Accountability**

Procurement Stage:
All phases

Audience: **Policy Maker,
Procuring Entity, Private
Sector, Civil Society**

Description

Accountability can be strengthened by following proposed steps below, while also improving other closely-linked principles (please refer to the box below). Suggestions and comments on the content and format of the Checklist can be sent to: public.procurement@oecd.org.

Main linkages between accountability and other principles of the Recommendation

- **Transparency:** Transparency promotes accountability by giving account for public procurement processes.
- **Integrity:** Oversight and control mechanisms help to reinforce accountability throughout the procurement process. An effective complaint system contributes to identifying and sanctioning cases of corruption related to public procurement operations. If appropriately used, complaint systems may also reinforce risk management strategies and contribute to build a culture of integrity among procurement officials.
- **Access:** Rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition.
- **Participation:** Opportunities for direct involvement of relevant external stakeholders in the procurement system can ensure that rules are actually observed and are not just lip service.
- **E-procurement:** E-procurement systems can be used for the monitoring of the performance of the public procurement.
- **Capacity:** Appropriate support (e.g. resources, staffing, qualification and training) is required to conduct procurement audits.
- **Evaluation:** Coordinated, sufficiently resourced and integrated internal controls and external controls can contribute to the monitoring of the performance of the public procurement system.

(A) Clear lines for oversight of the public procurement cycle

Establish clear lines for oversight of the public procurement cycle to ensure that the chains of responsibility are clear, that oversight mechanisms are in place and that the delegated levels of authority for approval of spending and approval of key procurement milestones is well defined. Rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition.

A.1 Adherents should develop a legal/regulatory framework, organisation and procedures to provide a functioning control system. This can include:

- Laws and regulations that establish a comprehensive control framework including internal controls, independent internal audit function, external audits and oversight by competent bodies,
- Internal control/audit mechanisms and functions that ensure appropriate oversight of procurement transactions (reception, opening of bids, evaluation, award, contract management and contract management), including reporting to management on compliance, effectiveness and efficiency of procurement operations,
- Internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation,
- Independent external audits that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls.

A.2 Adherents should define a clear chain of responsibilities based on appropriate segregation of duties. It can define:

- The level of authority for approval of spending, sign off and approval of key procurement milestones,
- The level of responsibility, required knowledge and experience, corresponding financial limits and the obligation of recording in writing of key stages in the public procurement cycle,
- The delegation of power of signature, acknowledgement of responsibility and obligation for internal reporting in the case of delegated authority,
- Decision making authority is delegated to the lowest competent levels, consistent with the risks associated and the monetary sums involved.

A.3 Adherents should establish comprehensive and clear rules for justifying and approving exceptions to procurement procedures.

- See bullet C2 of the principle "Access" for more details.

(B) System of effective and enforceable sanctions

Develop a system of effective and enforceable sanctions for government and private-sector procurement participants, in proportion to the degree of wrong-doing to provide adequate deterrence without creating undue fear of consequences or risk-aversion in the procurement workforce or supplier community.

B.1 Adherents should develop a system of effective and enforceable sanctions for government and private-sector procurement participants. It can include:

- Clear and publicly available procedures for submission and resolution of complaints,
- A system and procedures that define sanctions and remedies, including the timely suspension or debarment of firms and individuals from participating in procurement processes,
- Designating a body with enforcement capacity that is:
 - Independent of public procurement entities,
 - Adequately resourced and staffed to fulfil its function,
 - Exercising its legal authority to suspend procurement proceedings and impose remedies,
- Monitoring of the compliance level of public procurement entities with legal decisions on sanctions and remedies.

B.2 Adherents should define and apply disciplinary, civil and criminal sanctions to parties involved with irregularities, fraud, active and passive corruption in public procurement in an effective, proportional (to the level offense) and timely manner which could lead for instance to:

- For private-sector procurement participants:
 - Denial or loss of the contract
 - Interim measures (e.g. decision to discontinue the procedure)
 - Compensation for loss or damages (e.g. reimbursement of the tendering cost and damages for lost profits)
 - Forfeiture of tender or performance bonds
 - Confiscation of ill-gotten gains
 - Debarment from future contracts to deter private sector actors from engaging in corruption practices
- For government:
 - Administrative consequences to punish the contracting authority
 - Pecuniary penalties for forcing contracting authorities to adhere strictly to their legal obligations

(C) Handling of complaints in a fair, timely and transparent way

Handle complaints in a fair, timely and transparent way through the establishment of effective courses of action for challenging procurement decisions to correct defects, prevent wrong-doing and build confidence of bidders, including foreign competitors, in the integrity and fairness of the public procurement system. Additional key aspects of an effective complaints system are dedicated and independent review and adequate redress.

C.1 Adherents should ensure that there is a complaint system in place dedicated to public procurement in order to allow decisions to be challenged with regard to:

- Infringements of public procurement rules,
- Public procurement procedures,
- Contract award decisions,
- The interpretation of contract clauses in the management of the contract.

C.2 Adherents should establish effective courses of action for challenging procurement decisions to correct defects, prevent wrong-doing and build confidence of bidders, including foreign competitors. The courses of action can include:

- A review that is carried out by the procuring entity,
- A recourse to a body with enforcement capacity that is independent of the respective procuring entities,,
- Alternative dispute settlement mechanisms (e.g. conciliation), encouraging informal problem solving and preventing formal reviews.

C.3 Adherents should handle complaints in a fair way. In order to achieve this end, adherents could consider:

- Charging fees that inhibit access by concerned parties,
- Imposing remedies in the decision that are consistent with the finding of the case and with the available remedies provided for in the legal and regulatory framework,
- Result in remedies that are relevant to correcting the implementation of the process or procedures,
- Issue decisions that are binding on all parties.

C.4 Adherents should handle complaints in a timely way. In order to achieve this end, adherents could consider:

- Specifying timeframes for the submission and review of challenges and for appeals and respecting those timeframes for the review of challenges and appeals,
- Ensuring 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 decisions,
- Providing remedies to challenge the decision early in the process, such as 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,
- Providing unsuccessful tenderers a sufficient period to prepare and submit a challenge,
- Allowing reviews during contract management and after the end of the contract for a reasonable time in order to claim damages,
- Issuing decisions within the timeframe specified in the law/regulations, issuing of decisions that do not unduly delay the procurement process.

C.5 Adherents should handle complaints in a transparent way. In order to achieve this end, adherents could consider:

- Specifying the remedies in the tender documentation,
- Rendering decisions on the basis of available evidence submitted by the parties,
- Following procedures for submission and resolution of complaints that are clearly defined and publicly available,
- Publishing decisions on the centralized government online portal within specified timelines and as stipulated in the legal and regulatory framework,
- Publishing statistics on the number of challenges filed and the type and the number of sanctions being imposed each year.

C.6 Adherents should ensure that the reviews undertaken by the complaint system are independent. This means that:

- The officials participating in the review are secure from external influence,
- The appeal body is not involved in any capacity in procurement transactions or in the process leading to contract award decisions,
- The appeal body takes balanced and unbiased decision in consideration of the relevant information.

(D) Coordinated, sufficiently resourced and integrated internal controls, external controls and audits

Ensure that internal controls (including financial controls, internal audit and management controls), and external controls and audits are coordinated, sufficiently resourced and integrated to ensure: (1) the monitoring of the performance of the public procurement system; (2) the reliable reporting and compliance with laws and regulations as well as clear channels for reporting credible suspicions of breaches of

those laws and regulations to the competent authorities, without fear of reprisals; (3) the consistent application of procurement laws, regulations and policies; (4) a reduction of duplication and adequate oversight in accordance with national choices; and (5) independent ex-post assessment and, where appropriate, reporting to relevant oversight bodies.

D.1 Adherents should undertake internal controls, external controls and audits in order to ensure:

- The monitoring of the performance of the public procurement system,
 - The reliable reporting and compliance with laws and regulations as well as clear channels for reporting credible suspicions of breaches of those laws and regulations to the competent authorities, without fear of reprisals,
 - The consistent application of procurement laws, regulations and policies,
 - A reduction of duplication and adequate oversight in accordance with national choices,
 - Independent ex-post assessment and, where appropriate, reporting to relevant oversight bodies.
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D.2 Adherents should coordinate and integrate their internal controls, external controls and audits. In order to achieve this end, adherents could consider:

- Coordinating internal and external audit plans, at least annually, to ensure adequate oversight and a reduction of duplication,
 - Developing written procedures and standards for conducting procurement audits (both on compliance and performance) to ensure that internal and external audits are harmonized and mutually reinforcing,
 - Establishing clear and reliable rules on reporting to relevant oversight bodies,
 - Carrying out independent external audits to ensure that internal control functions are undertaken in the area of public procurement,
 - There are systems in place to follow up on the implementation/enforcement of the audit recommendations.
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D.3 Adherents should provide appropriate support (e.g. resources, staffing, qualification and training) to conduct procurement audits. In order to achieve this end, adherents could consider requiring that:

- Auditors are totally independent (e.g. not involved in any procurement transactions or contract award decision making functions) and selected in a fair and transparent way,
- Auditors have a sufficient knowledge for carrying out procurement audits (routine support by specialist or consultants are available in case of a knowledge gap among auditors),
- Sufficient training programs are available to ensure that both internal and external auditors are qualified to conduct high quality procurement audits, including performance audits.