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COMPENDIUM OF GOOD PRACTICES FOR INTEGRITY IN PUBLIC PROCUREMENT

This compendium is part of the on-going OECD public procurement reform agenda, which includes a new Recommendation of the Council on Public Procurement, the identification of good practices in transparency and anti-corruption, in green public procurement (GPP), peer reviews and the development of procurement performance indicators to support evidence-based decision-making.

Acknowledging that corruption is a threat to markets, trust in government, and the rule of law, and that fighting corruption requires governments and business to work together, the G20 Anti-Corruption Working Group (ACWG) in 2013 requested the OECD to develop the Compendium of good practices for integrity in public procurement and which was endorsed in October 2014. The compendium was enriched with examples from other OECD countries in particular Austria, Ireland, Spain and Sweden after being presented at the Meeting of Leading Practitioners on Public Procurement in June 2014.

The Compendium helps countries to address issues of emerging interest such as promoting integrity in the organisation of major public events. Sharing lessons learned from good practices supports efforts to foster trust in government and public spending.

Delegates are invited to review and provide comments before 10 February 2015, and provide more examples from OECD countries.

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COMPENDIUM OF GOOD PRACTICES FOR INTEGRITY IN PUBLIC PROCUREMENT

Introduction

1. Acknowledging that corruption is a threat to markets, trust in government, and the rule of law, and that fighting corruption requires governments and business to work together, the G20 Anti-Corruption Working Group (ACWG) requested the OECD to develop the Compendium of good practices for integrity in public procurement.

2. This paper presents the consolidated text of the Compendium taking into account the feedback and specific proposals received by G20 countries and other OECD countries in particular Austria, Ireland, Spain and Sweden. It provides country examples for detecting and preventing integrity risks and promoting the application of objective criteria, as well as factors for successful implementation of good practices in specific country contexts. The Compendium focusses on two areas: 1) transparency in procurement and fighting red tape; and 2) mechanisms for integrity and accountability.

3. This Compendium supports countries in mapping good practices and sharing lessons learned in order to shape the global debate and set examples for fighting corruption and promoting integrity in public procurement while implementing national standards. Based on lessons learned, the Compendium provides examples on:

- Promoting an adequate level of transparency of the public procurement system and facilitating access to procurement opportunities through, for example, the use of e-procurement systems and state-of-the-art techniques;
- Safeguarding the integrity of the public procurement system through, for example, encouraging co-operation between government, the private sector and the civil society and through the professionalization of the procurement function, including integrity training programmes;
- Mitigating risks of corruption, for example, through coordinated and integrated internal control and risk-assessment tools;
- Fostering accountability, for example, through a fair, timely and transparent complaints mechanism and stakeholder participation and scrutiny.

4. The Compendium also helps countries to address issues of emerging interest such as promoting integrity in the organisation of major public events. Sharing lessons learned from good practices supports efforts to foster trust in government and public spending.

5. Delegates are invited to review and provide comments before 10 February 2015, and provide more examples from OECD countries.

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I. Transparency in procurement and fighting red tape

6. Transparency is critical for minimizing the risks that are inherent in public procurement. The financial interests at stake, the volume of transactions and the close interaction between public and private sectors in the award of public contracts all pose risks to integrity. Transparency also serves an important role in levelling the playing field for businesses and allowing small and medium enterprises to participate on more equal footing. International instruments such as the United Nations Convention Against Corruption, the UNCITRAL Model Law on Procurement of Goods, the OECD Principles on Enhancing Integrity in Public Procurement and the APEC Transparency Standards on Government Procurement, provide standards to promote transparency.

1. Transparency of procurement information including opportunities and contract award decisions

7. An adequate degree of transparency and accessibility of general procurement information are key for promoting integrity, minimizing waste and preventing corruption. Governments should adapt the degree of transparency according to the recipient of the information and the stage of the cycle while protecting confidential information to ensure a level playing field for potential suppliers and avoid collusion practices. Such information includes specific regulations, annual procurement plans, business opportunities, and contracts awarded, as well as procurement statistics. For example in Saudi Arabia, all government tenders shall be announced in the Official Gazette, in two local newspapers and by electronic means.

8. Most G20 countries now publish online information on procurement regulations and general information for bidders regarding the procurement process. The experience of Australia in publishing procurement information and producing spending statistics is described below.

Box 1. Australian Government's procurement information system

The Australian Government's procurement information system, AusTender, provides centralised publication of Australian Government business opportunities, annual procurement plans, multi-use lists and contracts awarded. Agencies are required by the Commonwealth Procurement Rules to publish on AusTender standing offer arrangements and contracts with a value of AUD 10,000 or more. Since 2005, Commonwealth Authorities and Companies Act bodies are also required to publish details of certain contracts and standing offers.

On the AusTender website, it is possible to access reports on contract notices, standard offer notices and procurement plans (<https://www.tenders.gov.au/?event=public.reports.list>). As an example, the records that are available online on contract notices include information on the procuring entity, the procurement method, the contract value and period, a description of the contract, and supplier details. The records are searchable by agency, date range, value range, category, confidentiality, supplier name, supplier Australian Business Number (ABN) and report type. It is also possible to download summary records that include information on the total count and value.

Aggregated information that has been extracted from AusTender is available on the website of the Department of Finance.

It includes statistics on:

- total procurement contracts reported, including a breakdown of total value and number of contracts per financial year;
- procurement contracts by value threshold, including a breakdown of value, percent of total value, number of contacts and percent of total number of contracts;
- SME participation in procurement;
- overseas procurement contracts (contracts identified by agencies as primarily or entirely based outside Australia);

Box 1. Australian Government's procurement information system (*Cont'd*)

- individual business participation in procurement;
- the ratio of goods to services contracts procured;
- the top 20 categories for goods and services procurement contracts, including a breakdown of value, percent of total value, and percent of Small and Medium Enterprises (SME) participation;
- the top 10 procuring Financial Management and Accountability Act 1997 Agencies (FMA), including a breakdown of value, percent of total value, and rank in previous years compared to the most recent ranking.

In addition, the Department of Finance, together with Protiviti, has conducted an analysis of AusTender data for 2010-11 and 2011-12 on (i) the split (by value) between the procurement of goods and services by the Australian Government; (ii) the total value of Australian Government procurement for each United Nations Standard Products and Services Code (UNSPSC) in relation to total expenditure in Australia; (iii) the total value of goods procured that are likely to be “Australian made” and services procured that are delivered from within Australia; and (iv) the total value of goods or services procured by the Australian Government that are likely to be imported, in order to determine the impact the Australian Government procurement market has on the Australian economy. The report is available at the Departments’ website (<http://www.finance.gov.au/procurement/analysis-of-australian-overseas-purchasing-contracts.html>.)

Source: Department of Finance, Australia.

9. Online publication of relevant information on procurement opportunities, timelines for submitting bids and selection and evaluation criteria can increase confidence in procurement procedures and increase competition. Argentina and Mexico’s experience illustrates transparency can be promoted in procurement by facilitating access to information. *Argentina Compra* publishes the regulatory framework, institutional information about the ONC, relevant statistics and allows the search by type of requirements procured, by procurement unit, by goods and services needed and publishes supplier information.

Box 2. *Argentina Compra*- Public procurement website of the Argentinian National Public Administration

The Public Procurement System of the National Public Administration of Argentina is based on the free public dissemination of all contracts made by central agencies through the Website of the National Procurement Office (ONC) “*Argentina Compra*” (www.argentinacompra.gov.ar). The website has two consultation platforms: one providing free access to the general public and a second one, exclusive for procurement authorities and registered suppliers.

“*Argentina Compra*” publishes the regulatory framework, the institutional information about the ONC, relevant statistics, news and improvements of the procurement system as well as a guide to common questions about how the public procurement system works. In addition, the website allows the following:

A. - Search by requirements: Stakeholders interested in offering their goods and services can obtain information related to past and current requirements. For each of these requirements, the website provides information on the number of procedures carried out, the procurement procedure used, the goods and services procured as well as the date and places to consult the solicitation documents and the presentation and opening of the bids.

B. - Search by procurement unit: It allows knowing what the government needs to procure by each procurement unit. It is possible to find information about the identification of the procurement unit, such address, phone and means of contact, as well as information about the public official carrying out the public procurement process in each unit.

Box 2. Argentina Compra- Public procurement website of the Argentinian National Public Administration (Cont'd)

C. - Search by goods and services procured: the System of catalogue of goods and services was created to allow identifying the goods and services needed through an uniform and homogeneous criteria and specific codes. This allows suppliers and the public to know what goods and services the government needs to procure, its future requirements and ongoing processes as well as information on the procurement authority, the goods or services required, the type of contract and the deadlines for submission of bids and openings.

D. - Suppliers: The website also provides information on potential and awarded suppliers of the National Public Administration. This allows all stakeholders to know who supplies the government. It is possible to access basic information on suppliers, if the supplier is debarred or suspended, its previous performances and the size of the company. It is also possible to find the reference prices offered by the suppliers.

Source: Anti-Corruption Office, Ministry of Justice and Human Rights, Argentina.

10. Mexico, on the other hand, uses a central procurement portal which makes information available, from pre-solicitation documents, award decisions and supporting information to the testimony from civil society actors scrutinising the procurement process.

Box 3. Disclosure of information through the central procurement system Compranet in Mexico

The Mexican federal government puts particular emphasis on enhancing transparency in public procurement to promote a level playing field for suppliers and achieve value for money in government operations. A large range of procurement information at the central level of government is publicly available. For example, the Law of Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP) makes mandatory for federal institutions to publish procurement information on Compranet.

Compranet (www.compranet.gob.mx) is the procurement information system for federal government procurement procedures for goods, services, leasing and public works funded with federal resources. Since the reform of Mexican procurement law in 2009, it is compulsory for the Mexican federal public administration to use Compranet. This website publishes information such as annual procurement programmes, tender procedures (solicitation documents, minutes of the clarification meetings and of the opening of tenders), contract awards history and formal complaints. Mexico also allows the electronic submission of bids through a national e-procurement system at central government level.

Mexico's commitment in the framework of the Open Government Partnership in the area of procurement is to consolidate the new version of Compranet to achieve better and more efficient administration of public resources. The federal government will seek to improve Compranet. The qualifications and competencies of officials in charge of Compranet will be revised to better fit the needs. The federal government will also develop clearer responsibility chains along with control mechanisms that empower civil society organisations, the media and society to scrutinise government procurements.

Table 1. Disclosure of information through the procurement system Compranet

	Compranet
Website	https://compranet.funcionpublica.gob.mx
Procurement legal framework	✓
Manuals and guidelines for suppliers	
Annual procurement plans	✓
Long-term procurement plan	

**Box 3. Disclosure of information through the central procurement system
Compranet in Mexico (Cont'd)**

Pre-solicitation documents	✓
Solicitation documents	✓
Minutes resulting from the clarification meetings	✓
Electronic submission of bids	✓
Award decisions and supporting information	✓
Contract modifications	✓
Statistics and database related to past procurement	✓
Payment information	
Registry of suppliers not allowed to be awarded contracts	✓
Social witness testimony	✓
Possibility to file a formal complaint against procurement procedures	✓
Documentation associated with formal complaints	✓

Sources: OECD (2013), Public Procurement Review of the State's Employees' Social Security and Social Services Institute in Mexico, OECD Publishing as well as OECD (2011), Towards More Effective and Dynamic Public Management in Mexico, OECD Public Governance Reviews, OECD Publishing.

11. Furthermore, some G20 countries increase transparency by debriefing bidders on contract award decisions and explaining how they were reached. This practice improves suppliers' confidence that processes are conducted in a fair manner and encourage them to participate in future processes. Almost all G20 countries publish award decisions. Countries such as Canada, the United Kingdom and the United States debrief bidders on how the award decision was taken.

Box 4. Verbal debriefing in the United Kingdom

Regulations in the United Kingdom require departments to debrief candidates for contracts exceeding European Union procurement thresholds. They also strongly recommend debriefing for contracts below the thresholds.

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

The topics for discussion during the debriefing depend mainly on the nature of the procurement. However, the session follows a predefined structure. First, after introductions, the procurement selection and evaluation process is explained openly. The second stage concentrates on the strengths and weaknesses of the supplier's bid to improve their understanding. After the discussion, the suppliers are asked to describe their views on the process and raise any further concerns or questions. More importantly, at all stages, it remains forbidden to reveal information about other submissions. Following the debriefing, a note of the meeting is made for the record. Effective debriefing may reduce the likelihood of legal challenge if suppliers are thereby convinced that the process has been carried out correctly and according to rules of procurement and probity.

Source: OECD (2007), Integrity in Public Procurement: Good Practice from A to Z, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264027510-en>

2. Processing and tracking information on public procurement spending

12. The role of transparency and citizen engagement in fighting corruption is recognised in international conventions. Transparency provides citizens with the information they need to scrutinize government decision making. Experiences in some G20 countries such as Brazil and the United States have revealed that specific mechanisms to monitor public procurement and online tools can be effective to encourage public scrutiny.

Box 5. The Transparency Portal of the Federal Public Administration in Brazil

www.portaldatransparencia.gov.br was created in November 2004 in Brazil to provide free real-time access to information on budget execution, as a basis to support direct monitoring of federal government programmes, including procurement spending by citizens. Access to the Transparency Portal is available without registration or password. Data are automatically extracted and published on the portal from existing information systems of the federal public administration, removing the need for any specific actions by federal public organisations to publish information.

Since May 2010, revenue and expenditure data available through the Transparency Portal are updated daily. Citizen use of the portal has grown since its launch from approximately 700 000 hits per month to approximately 2.3 million hits per month, with the number of users growing from approximately 10 000 per month to 230 000 per month.

The Transparency Portal has received recognition internationally. For example, in 2008 the Transparency Portal was recognised as one of the good practices for transparency and the fight against corruption at the 2nd Conference of State Parties to the United Nations Convention Against Corruption.

Source: OECD (2012), OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264119321-en>

Box 6. Federal Procurement Data Systems in the United States

Since 1979, the Federal Procurement Data System (FPDS) has been the primary government-wide contracting database. Its name changed to become Federal Procurement Data System "Next Generation" (FPDS-NG) in 2003, following the first major redesign of the system since its launch. The system includes procurement contract actions reported through connections with the contract writing systems of approximately 65 departments, bureaus, agencies, and commissions. With limited exceptions, it stores information on all federal contract actions exceeding the micro-purchase threshold awarded each year for goods and services; with annual totals above USD 450 billion to over 160 000 suppliers. Over time, the number of data elements has increased from 27 in 1979 to around 200 in 2014 and, over the same period, the contract award threshold for capturing data in the system has decreased from USD 10 000 to USD 3 000. Since 2008, the FPDS-NG also serves as the backbone for providing procurement data to www.USASpending.gov – a searchable database of information on federal contracts and other government expenditures such as grants, loans, and co-operative agreements. Congress and the public also rely on the FPDS-NG for a wide range of information including department/agency contracting actions, government-wide procurement trends, and how procurement actions support socio-economic goals and affect specific geographical areas and markets.

In December 2007, www.USASpending.gov was launched to enable greater transparency in reporting on federal spending in accordance with the 2006 Federal Funding Accountability and Transparency Act. The goal was to establish a single searchable website, accessible to the public at no cost, which includes for each Federal award:

- the name of the entity receiving the award;
- the amount of the award;
- information on the award including transaction type, funding agency, etc;
- the location of the entity receiving the award; and
- an unique identifier of the entity receiving the award.

The portal supports citizens in conducting additional analysis of government data by enabling them to track expenditures in a user-friendly manner. USASpending.gov has been recently updated in October 2010 to display of first-tier sub-award data (subcontracts and subgrants).

Source: US OFPP, OECD Public Procurement Review of the United States Federal Government (Forthcoming)

3. E-Procurement

13. E-procurement – the use of information and communication technologies in public procurement – can facilitate access to public tenders, increase competition and allow the detection of bid rigging cases. For example, competition authorities make extensive use of the large databases of bidding information that e-procurement generates to screen data and detect suspicious bid strategies (identical bids, rotation schemes, etc.) which can be the symptoms of a collusive arrangement. In addition, it can help lower costs by reducing administrative burdens and shortening procurement procedures deadlines. Many G20 countries such as Brazil, China, Indonesia, Italy, Korea, Mexico, Russia Federation (Box 7) and Saudi Arabia are increasing their use of e-procurement. In Brazil, the Ministry of Planning, Budget and Management estimates that savings of 19% (approximately € 2.4 billion) of the total contract value done through e-procurement were achieved by the Federal Government in 2012 as a result of the use of e-procurement. In the European Union, e-procurement platforms have been established in many countries and are increasingly used for common or off-the-shelf goods.

Box 7. Towards e-procurement in the Russia Federation

The Russian Federation recently reformed its public procurement legislation, the Federal Law on the procurement system of goods, works and services for the state and municipal needs (Law № 44-FZ) in order to make public procurement more open, competitive and transparent.

In addition, 16 regulatory acts will be adopted in 2014 to provide guidance on the implementation of key innovations such as life cycle contracts, price formula contracts, tender with limited participation, and contract services of entities. This will be done by setting requirements for goods purchased by public authorities, creating a database of standard contracts (standard terms and conditions of contracts), as well as banking support of contracts. One of the most important features of the reformed law draws on the need to carry out public discussions on large procurements (over 1 billion rubles, approximately US 28 million) through a special online forum as well as in-person hearings.

The main objective to achieve in 2014 is to transfer paper-based competitive tendering into electronic form and to improve information software as well as to create a unified information system. Until now, most of the public procurement in the Russian Federation is carried out by five electronic trading platforms. Currently, 230 000 entities and 250 000 suppliers are registered on these platforms.

All information on public procurement (over 8 trillion ruble per year, approximately US 223 billion) including the *state-owned enterprises* (more than 9 trillion rubles per year, approximately US 251 billion) is gathered in the official website www.zakupki.gov.ru with an average attendance of 100 000 visitors per day.

In accordance with Law № 44-FZ an unified information system of government procurement (UES) should be in place by 2016. The UES will be the heart of the contract system covering all stages of procurement, from the publication of the procurement notice to audit, monitoring and control of public procurement.

Under Law № 44-FZ, the UES should contain:

- short-term and long-term procurement plans (annual and 3-year) and information of their implementation;
- information on procurement regulation and on procurement and contracts compliance;
- registry of contracts;
- registry of complaints, scheduled and unscheduled inspections, their results and instructions;
- database of standard contracts (standard terms and conditions of contracts);
- monitoring results, audit and control of procurements and
- catalogs of goods, works and services.

It is expected that by 2020 the use UES would automatize the work of more than 2 million users and reduce costs for entities and suppliers.

Source: Ministry of Economic Development, Russian Federation

14. In addition to efficiency benefits, e-procurement systems can be used to provide integrity benefits as well. These systems can limit direct interactions between officials and potential suppliers. KONEPS, the e-procurement system managed by the public Procurement Service (PPS) of Korea is described below.

Box 8. Integrated e-procurement system KONEPS in Korea

In Korea, a notable improvement has been made in the transparency of public procurement administration since the early 2000s through the implementation of a national e-procurement system.

In 2002, Public Procurement Service (PPS), the central procurement agency of Korea, introduced a fully integrated, end-to-end e-procurement system called KONEPS. This system covers the entire procurement cycle electronically (including a one-time registration, tendering, contracts, inspection and payment) and related documents are exchanged online. KONEPS links with about 140 external systems to share and retrieve any necessary information, and provide a one-stop service, including automatic collection of bidder's qualification data, delivery report, e-invoicing and e-payment. Furthermore, it provides related information on a real-time basis.

All public organisations are mandated to publish tenders through KONEPS. In 2012, over 62.7% of Korea's total public procurement (USD 106 billion) was conducted through KONEPS. In KONEPS 45 000 public entities interact with 244 000 registered suppliers. According to PPS, the system has boosted efficiency in procurement, and significantly reduced transaction costs. In addition, the system has increased participation in public tenders and has considerably improved transparency, eliminating instances of corruption by preventing illegal practices and collusive acts. For example, the Korea Fair Trade Commission runs on KONEPS, the Korean BRIAS system which is the automated detection system for detecting suspicious bid strategies. According to the integrity assessment conducted by Korea Anti-Corruption and Civil Rights Commission, Integrity perception index of PPS has improved from 6.8 to 8.52 out of 10 as the highest score, since the launch of KONEPS.

A key concern for illegal practices was borrowed e-certificates. In order to mitigate this risk, the Public Procurement Service introduced "Fingerprint Recognition e-Bidding" in 2010. In the Fingerprint Recognition e-Bidding system, each user can tender for only one company by using a biometric security token. Fingerprint information is stored only in the concerned supplier's file, thus avoiding any controversy over the government's storage of personal biometric information. By July 2010, it was applied in all tenders carried out via the KONEPS by local governments and other public organisations procuring goods, services and construction projects. In 2011, PPS launched a new bidding service allowing the bidding process to take place via smartphones through newly developed security tokens and applications.

Source: Public Procurement Service (PPS), Korea

15. E-procurement systems can also help to ensure that officials have access to relevant and useful data regarding prior vendor performance, bribery condemnations and other integrity breaches. For example, the United States requires its contracting officers to determine that a vendor is a "responsible source" before proceeding with a contract award. To be deemed responsible, a prospective contractor must have a satisfactory performance record and a satisfactory record of integrity and business ethics, among other criteria, and contracting officers are allowed considerable discretion in making this type of decision. Two of the systems used to support them in their decision-making are described below.

Box 9. Vendor Performance Information in the United States

In working to build the right supplier relationships, the United States focuses on doing business with contractors who place a premium on integrity, performance and quality. To this end, agencies have been directed to improve the quantity, quality, and utilization of vendor performance information. Vendor past performance information including an identification and description of the relevant contract, ratings across six dimensions (quality, schedule, cost, utilization of small business, etc.), and a narrative for each rating - is contained within the Past Performance Information Retrieval System (PPIRS). Additional information regarding certain business integrity issues - including contracts terminated for default or cause; information about criminal, civil, or administrative procedures related to a federal contract; and prior findings that a contractor is not responsible - is captured in the Federal Awardee Performance and Integrity Information System (FAPIIS). Agencies are taking steps to improve the value of both systems by providing information that is both more complete and more useful.

Agencies are required to report past performance information, which will then be available to other contracting officers within PPIRS, on all contracts and orders above USD 150,000 (with various exceptions). However, an initial analysis showed that compliance varied widely among agencies. As a result, in March of 2013, the United States established a tiered-model of annual performance targets to bring all agencies to 100% compliance by 2015. To improve reporting compliance in FAPIIS, the United States utilizes information contained in the Federal Procurement Data System – Next Generation (FPDS-NG) to identify contracts that should have entries within FAPIIS (e.g., those where the contract was terminated for default or terminated for cause on the part of the vendor). By cross-checking with existing data sources, agencies are provided with a cost-effective mechanism to improve compliance.

Finally, recognizing that both systems are only as useful as the quality of the data that is entered, agencies were directed to ensure that their acquisition professionals are knowledgeable regarding the past performance regulations and procedures, and trained to use the reporting tools appropriately. These are all important steps as the United States continues to explore ways to ensure that the most relevant and recent past performance information is accessible, useful, readily available, and transparent to acquisition officials before award decisions are made.

Source: United States Office of Federal Procurement Policy (OFPP), Improving the Collection and Use of Information about Contractor Performance and Integrity (March 6, 2013). Available at: <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/improving-the-collection-and-use-of-information-about-contractor-performance-and-integrity.pdf>

16. In line with the EU legislation, there are mandatory debarment/exclusion rules in place in EU Member States according to which bidders against whom final court convictions for corruption have been handed down are excluded from future tenders¹. In many EU Member States laws contain debarment provisions and contracting authorities have also cross-access to their internal debarment databases.

17. With the leadership of the WB, MDBs have developed an Agreement for Mutual Enforcement of Debarment Decisions and make public the list of companies and individuals ineligible to participate in their tendering process². The 2009 OECD Anti-Bribery Recommendation calls on Parties to the OECD Convention of Bribery of Foreign Public Officials in International Business Transactions to: “suspend, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials and, to the extent a Party applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, ensure that such sanctions should be applied equally in case of bribery of foreign public officials”.

¹ http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

² World Bank Listing of Ineligible Firms & Individuals is available at <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

4. Promoting the participation of SMEs

18. In addition to providing a more efficient system, the reduction of bureaucratic burdens can increase fairness, foster integrity, and decrease corruption, especially in the case of small and medium size enterprises (SMEs). SMEs constitute more than 90% of all established businesses worldwide and are a key driver for economic growth and development. When faced with excessive administrative burdens, SME's are more likely to make illegal payments in order to circumvent the burden.³ The report *Corruption Prevention to Foster Small and Medium Sized Enterprises Development* from UNIDO & UNODC, 2007, states that SMEs are more susceptible to bureaucratic corruption than larger companies. This is due to: their structure (e.g. there is often a greater degree of informality and fewer accountability mechanisms); short-term vision and perspective (as opposed to larger companies, small and medium size enterprises may be less concerned about reputation and other long-term negative impacts of corruption); limited financial resources; and their inability to wield influence over officials and institutions, as they lack bargaining power to oppose requests for illegal payments from public officials. In addition, SMEs are also more susceptible to administrative corruption due to the fact that they often lack the time and resources necessary to get informed about complex regulations and requirements, making illegal payments to cover up mistakes or avoid overly bureaucratic procedures more likely.

19. Therefore, countries across the world have made use of a variety of measures to encourage SMEs' participation in public procurement in countries such as China (Box 10) and Spain (Box 10), to enable SMEs through capacity development and limiting corruption risks affecting SMEs and to reduce bureaucracy.

Box 10. Encouraging SMEs' participation in public procurement in China

Chinese government has been conscious of the impact of public procurement on SMEs since the beginning of its government procurement reform. The first comprehensive government procurement code, Government Procurement Law 2002 (GPL), provides in Article 9 “[G]overnment procurement shall be conducted in such a manner as to facilitate achievement of the economic and social development policy goals of the State, including but not limited to environmental protection, assistance of underdeveloped or ethnic minority regions, and development of small and medium-sized enterprises”. In addition, Law on Promotion of Small and Medium-sized Enterprises 2002 which was adopted by the National People's Congress on the same day provides in Article 34 “[I]n government procurement, preference shall be arranged to goods or services originated from small and medium-sized enterprises”.

In addition, the 2011 Interim Measure on Facilitating the Development of SMEs in Government Procurement adopted jointly by Ministry of Finance (MOF) and Ministry of Industry and Information Technology (MIIT) provides that 30% of government procurement budget shall be set aside to purchase goods and services from SMEs and 60% of such reserved contracts shall be awarded to small or micro enterprises. Furthermore, small and micro enterprises participating in procurement not reserved for SMEs shall be granted a price preference in the range of 6-10% with the exact margin to be determined by the relevant procuring entity or its agent. The Interim Measure also encourages big companies to use SMEs as subcontractors, to form consortia with SMEs, and encourages financial institutions to provide credits/guarantees for SMEs to pay deposits and perform the contract.

Finally, it is compulsory for the procuring entities to report their implementation of the measure and the data gathered shall be published on the official government procurement media (website: www.ccg.gov.cn; newspaper: Chinese Finance and Economy; and magazine: Chinese Government Procurement, China State Finance).

Source: Treasury two Government Procurement Management Division, Ministry of Finance, People's Republic of China.

³ U4. Reducing bureaucracy and corruption affecting small and medium enterprises. Available at <http://www.u4.no/publications/reducing-bureaucracy-and-corruption-affecting-small-and-medium-enterprises/>

Box 11. Simplification of Public Procurement Procedure In Spain: Self Declaration

Spain, through the Act 14/2013, of support and internationalization of entrepreneurs which modified the Royal Legislative Decree 3/2011, of Contracts of the Public Sectors has introduced measures intended to support and facilitate participation of SME's in public procurement.

In addition to several changes in the legal regime of classification in order to increase the thresholds requiring pre-classification, Act 14/2013 added a new paragraph to article 146 of Royal Legislative Decree 3/2011, of Contracts of the Public Sectors in which allows contracting entities to receive from potential suppliers a self declaration instead of several documents certifying legal, social and fiscal situation of the SME willing to participate in public procurement procedures. This self declaration will always be enough in contracts of works under 1.000.000 euro and in provision and services contracts under 90.000 euro.

The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. Contracting authorities should also be entitled to request all or part of the supporting documents at any moment where they consider this to be necessary in view of the proper conduct of the procedure.

Although these measures embody targets from National authorities in Spain and they comply with the recent new Directives on Public Procurement from the European Union: "Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through use of a European Single Procurement Document (ESPD) consisting of an updated self-declaration, could result in considerable simplification for the benefit of both contracting authorities and economic operators."

Source: Ministry of Finance and Public Administrations

20. The European Commission is also taking action to minimise administrative burdens for SMEs and make it easier for SMEs to participate in tenders.

Box 12. Reducing red tape in the EU

There are more than 20 million SMEs in the EU, representing 99% of businesses. SMEs are a key driver for economic growth, innovation, employment and social integration. The economic outlook for the EU SMEs shows positive signs with a combined increase in aggregated employment and value-added of EU's SMEs. The Commission is taking action to ensure that its policies and programmes sustain this positive trend by reducing administrative burden for small business. Reducing administrative burden for small business is a joint challenge for the Commission and the Member States.

In 2012, the Commission ran a public consultation to identify the Top 10 most burdensome legislative acts. The public consultation on the TOP10 most burdensome legislative acts for SMEs ("TOP10 public consultation") is part of the ambitious policy actions launched by the Commission in 2011 with the objective to minimise the regulatory burden for SMEs and adapt EU regulation to the needs of micro-enterprises.

The following EU laws were identified by SMEs as being the most burdensome: REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals), VAT - Value added tax legislation, General Product Safety, Recognition of professional qualifications, Shipments of waste - Waste framework legislation - List of waste and hazardous waste, Labour market-related legislation, Data protection, working time, recording equipment in road transport (for driving and rest periods), procedures for the award of public contracts (public works, supply and service contracts), modernised customs code.

Box 12. Reducing red tape in the EU (*cont'd*)

Progress on reducing burdensome legislation

In Summer 2013 the Commission reported that it had already proposed simplification of the EU laws on:

- data protection,
- posting of workers,
- general product safety,
- public procurement
- recognition of professional qualifications and road transport

New EU directives on public procurement and concession contracts were adopted on 15 January 2014 to ensure better quality and value for money when public authorities buy or lease works, goods or services. They will also make it easier for SMEs to participate in tender procedures.

The Directives aim at:

- Creating a modern public procurement legislative framework and ensuring greater efficiency of public procurement;
- Simplification and flexibility of rules;
- Reducing the administrative burden on public authorities and potential contractors;
- Facilitating Small and Medium Enterprises' participation;
- Stimulating of greater competition across the Single Market;
- Switching to electronic procurement;
- Promoting innovation and contributing to a better use of resources.

Rules under the new directives which are favourable for SMEs include the simplification of the bidding procedure with a standard "European Single Procurement Document" based on self-declarations. Only the winning bidder will have to provide original documentation. The European Commission estimates that this should reduce the administrative burden on companies by over 80%. The new rules also encourage the division of contracts into lots to make it easier for smaller firms to bid.

Source: http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=7156 and <http://www.eu2013.it/en/news/pressreleases/public-procurement-reform-will-lead-to-more-efficient-simple-and-flexible-procedures->

21. Measures include one-stop shops; data-sharing and standardisation; common commencement dates for new rules; and tailored guidance and trainings for SMEs, such as the one from Italy (Box 12) and engage with SME to ensure that SMEs are fully engaged in the public procurement reform process as done in Ireland (Box 13).

Box 13. Supplier Training Desks (STDs) in Italy

Italy has strengthened its co-operation with suppliers by setting up Supplier Training Desks (STDs) (“Sportelli in Rete” in Italian) within the offices of suppliers’ associations. STDs provide training and assistance to local enterprises and in particular micro, small and medium enterprises (MSMEs) on the use of electronic procurement tools. The project consists of a network of dedicated training desks over the country where the central purchasing agency, Consip experts train workforce from the associations that will subsequently train local MSMEs on the use of electronic procurement tools. In Italy, MSMEs (Micro Enterprises) tend to participate to lower value public procurement tenders. Their participation to tenders from 100.000 to 300.000 euros corresponds to 65%, whereas to tenders from 1 to 5 million euros their participation decreases up to 51% and to 30% for tenders with a value higher than 5 million euros.

The project addresses point 5 of the European Small Business Act (SBA): “Adapt public policy tools to SME needs: facilitate SMEs’ participation in public procurement and better use State Aid possibilities for SMEs”, it has also been quoted as a good practice, at a European level, in the “European Code of Best practices facilitating access by SME’s to public procurement contracts” and has been winner of the European eGovernment Awards in the category “empowering business”.

This project has been well received and attended by MSMEs. Since the beginning of the project, more than 2250 MSMEs were supported by the Supplier Training Desks, and obtained the qualification to the public emarketplace implemented by Consip for low value purchases through ecatalogues (MePA). Around 1000 of these enterprises were qualified in 2013, which corresponds to 44% of the total. 11 National Enterprises Associations are involved in the project.

Their role is fundamental since they are recognized, by the enterprises, as the local reference institution. As a result, in 2013, more than 21000 SMEs represented 98% of on line enterprises (online at least once between 1st of January and 31st of December) and 14000 SMEs represented 98% of active enterprises (active means having been awarded at least once between 1st of January and 31st of December).

Furthermore, in 2013 97% of the number of transactions (337.682) was handled by SMEs and 93% of the value (907 million€) was gained by SMEs.

Table 1 On line and active enterprises in 2013

Size of enterprise	On line	Active
Medium	5%	6%
Micro	68%	66%
Big	2%	2%
Small	25%	26%
Total	100%	100%

Table 2: Volume and value of transactions in 2013

Size of enterprise	Volume of transactions	Value of transactions
Medium	12%	16%
Micro	54%	42%
Big	3%	7%
Small	31%	35%
Total	100%	100%

Today, more than 200 training desks are active and scattered around the country, providing continuous free training and assistance. The MePA has allowed thousands of SMEs to make business during the last five years making it a very suitable procurement tool for SMEs who are the highest percentage of enterprises using it.

Consip’s active role in setting up an efficient e-procurement platform and commitment in establishing a very collaborative partnership with the Enterprises Associations has changed the perception of Consip: it is no longer seen as a threat, but as a business opportunity in a transparent and competitive environment.

Source: CONSIP, Italy.

Box 14. Engagement with SMEs to reduce Red Tape in Ireland

The Office of Government Procurement (OGP) has analysed a representative subset of data and the results show that in 2013, 75% of contracts awarded to Irish companies were to Irish SMEs. Despite this positive data, the Government is keen to ensure that SMEs are fully engaged in the public procurement reform process through the:

- direct engagement with SME representative bodies to ensure their views are considered in the future development of public procurement policy; and
- review of public procurement guidelines and procedures to reduce red tape and address any obstacles to SMEs participating as fully as possible in the public procurement process.

Direct engagement with SME representative bodies

The OGP has set up a high level group on SME access to public procurement with the Department of Jobs, Enterprise and Innovation, which is chaired by the Chief Procurement Officer. The specific focus of this high level group is on developing and monitoring strategies for SME access to public procurement and monitoring the public procurement actions under the Action Plan on Jobs. In addition, the OGP has established an SME working group comprising of the main stakeholder community including ISME, SFA, IBEC, Chambers Ireland, Inter-trade Ireland, Enterprise Ireland and the Department of Jobs, Enterprise and Innovation. This group commenced its operation on 31st January 2014 and focuses its attention to addressing issues affecting SME access to public procurement from both a buyer and supplier perspective.

Communication with Suppliers

In recognition of the need to work more closely with suppliers the OGP in collaboration with Inter-trade Ireland has hosted four “Meet the Buyer” events. At these events public sector buyers have met over 4,500 SMEs. Here they can learn how to improve their chances in tendering, find out the latest procurement news and trends, and how to form consortia. It also enables businesses network with other companies to form joint ventures and identify sub-contracting opportunities. The OGP will continue to hold such events in the future.

Review and update of public procurement guidelines and procedures

Following extensive engagement with SME stakeholders all public bodies have been issued with guidelines (Circular 10/14) designed to promote participation of small and medium-sized enterprises in the award of public contracts. These guidelines set out positive measures that contracting authorities are to take to promote SME involvement in a manner that is consistent with the principles and rules of the existing public procurement regulatory regime. The guidance also highlights practices that are to be avoided because they can unjustifiably hinder small businesses in competing for public contracts. The key provisions of the guidance include:

- supplies and general services contracts with an estimated value of €25,000 or more to be advertised on the www.etenders.gov.ie website; This portal facilitates the involvement of SMEs in public sector procurement by the advertising of Contract Opportunities; publication of Contract Award Notices; and the issuing of Registration and e-mail Alerts In relation to goods and services, suppliers can upload their business details on the eTenders portal, which will ease the administrative burden of competing in multiple tenders.
- Acceptance of self-declarations limited to award stage and the promotion of e-procurement with mandatory electronic availability of procurement documents;
- less use of “restrictive” tendering procedures and greater use of “open” tendering;
- ensuring that the levels set by contracting authorities for suitability criteria are justified and proportionate to the needs of the contract (for example, except in justified cases, turnover requirements are to be explicitly limited to two times the estimated contract value);
- sub-dividing larger requirements into lots where this is practical and can be done without compromising efficiency and value for money;
- the needs and possibilities for small businesses to compete and supply to be taken into account when setting up panels / framework arrangements;
- encouragement of small companies to combine with others to make a joint bid for a contract that they might not be in a position to perform on their own.

The Guidance goes on to advise that contracting authorities buyers should, where possible and appropriate, encourage new and innovative solutions by indicating in tender documents where they are prepared to accept reasonable variants to the specifications. Alternatively or in addition, requirements may, for example, be set out in terms of a deliverable which allows tenderers to provide creative and innovative solutions. An output-oriented approach is needed in order to enable buyers to concentrate on the functional requirements of a product they would like to have, but leaves tenderers the freedom to develop new, innovative goods or services which might better correspond to the actual need of the buyer.

Source: Office of Government Procurement, Ireland

II. Mechanisms for integrity and accountability

22. Integrity is a cornerstone of good governance and critical for maintaining trust in government. A sound management of procurement contracts is critical for transparent and accountable spending of taxpayer's money -- procurement accounts on average a third of government spending -- and also essential to building a stronger, cleaner and fairer global economy.

23. Based on the experience of G20 countries, specific standards for procurement officials, such as, codes of conduct, conflict-of-interest policies, could mitigate the risks related to the specificities of the public procurement process, in addition to wider standards and procedures applicable in the whole public service, such as clear whistle-blowing reporting procedures and effective protection for whistle-blowers. Integrity in procurement also depends on mechanisms and capacity that ensure effective internal and external control as well as guidance or trainings on integrity issues for public procurement officials. Finally, in response to citizens' demands for accountability in the management of public expenditures, some governments have also introduced direct social control mechanisms by involving stakeholders – the private sector, end-users, civil society, the media or the public at large – in key stages of the procurement processes.

1. National integrity standards and tools for procurement specialists

24. Procurement officials bear an important responsibility in maintaining integrity and therefore this impacts the trust that citizens hold in the government's ability to deliver effectively goods and services. Recognizing this, countries apply national integrity standards for all public officials -- for example in civil service regulations -- and standards for specific at-risk positions, such as for procurement officials, tax and customs officials or financial authorities. Specific standards for procurement officials are set in laws and regulations, for example in Saudi Arabia, Mexico, the United States and Turkey (see example below).

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

The Turkish public procurement system experienced a major reform in 2002 in order to address the following shortcomings:

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

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

- The Authority shall be independent in the fulfilment of its duties. No organ, office, entity or person can issue orders or instructions for the purpose of influencing the decisions of the Authority.
- The Authority is comprised of the Public Procurement Board, the Presidency and service units. Members of the Public Procurement Board are appointed by the Council of Ministers and must have no past or present relationship of membership with any political party. Members of the Board are nominated for a four-year terms and, once appointed, cannot be revoked before the expiry of their term.

Box 15. Setting clear ethical standards for procurement officials: The 2002 public procurement reform in Turkey (*Cont'd*)

- Members of the Board take an oath that they will fulfil their duties in an honest and impartial manner, that they will not violate and let others violate the provisions of the PPL Law and related legislation.
- Members of the Board, except for some legally-defined exceptions, cannot be involved in any official or Private job, trade or freelance activity, and cannot be a shareholder or manager in any kind of commercial partnership. Members of the Board are obliged to dispose of any share or securities they have acquired prior to taking office, via transferring them to persons other than their relatives by blood up to third degree or by marriage up to second degree, within thirty days following the start of their assignment periods, except for those securities issued by the Under secretariat of Treasury for domestic borrowing purposes. The members who do not act in compliance with this provision shall be deemed resigned from their memberships.
- Members of the Board are obliged to submit a declaration of property, within one month following the date of commencement and expiry of office, and every year during their service period.
- When executing their duties, Members of the Board and the staff of the Authority cannot disclose any confidential information or document to any entity except for those authorised by law for such disclosures, and cannot use them for the benefit of their own or third parties. This duty of confidentiality shall also continue after they leave their offices.
- Members of the Board cannot participate in meetings and voting sessions related to decisions concerning their relatives by blood up to third degree or by marriage up to second degree and fosters.

In addition to safeguards provided in the Public Procurement Law, “Regulation on Principles Which Public Procurement Board Members and Public Procurement Authority Staff Must Observe” was adopted and published in the Official Journal in 21.01.2003. The regulation provides, inter alia, that Members of the Board and Public Procurement Authority Staff:

- Cannot act for real or legal persons who deal with Public Procurement Authority, cannot borrow from them or their employees or cannot use them as personal surety.
- Cannot make a commitment or promise about the regulatory or supervisory activities concerning their duties.
- Neither them nor their spouses and family members which they support can accept a gift from persons who deal with Public Procurement Authority.
- Cannot use confidential information they obtained in carrying out their duties for their own interest, cannot make recommendations or comments based on such information.
- Neither them nor their spouses and family members which they support can acquire goods or real estate from persons who deal with Public Procurement Authority or from their subsidiaries other than goods or real estate they sell as part of their usual commercial activity; Public Procurement Board Members and Public Procurement Authority Staff cannot obtain or become an intermediary for others to obtain goods or services from them below the price announced to public in general.
- Cannot buy, sell or own any share or securities except for those securities issued by the Under secretariat of Treasury for borrowing purposes.
- Must carry out regulatory activities in a transparent manner open to public in order to prevent an impression that contacting with a company or a group of companies in drafting regulation puts them in a privileged position.
- Cannot ask others to intervene/ mediate for their assignment, appointment or promotion within the Public Procurement Authority.

Source: Public Procurement Authority, Turkey.

25. An emerging number of G20 and OECD countries, such as France, Canada (see example below) and Austria (Box 17), introduced specific codes of conduct for procurement officials in addition to general integrity standards in the form of a code of conduct or code of ethics for the whole public service. They

have also developed guides or guidelines to help procurement officials apply these standards in daily practice. The standards expected of procurement officials - in particular specific restrictions and prohibitions - aim to ensure that officials' private interests do not improperly influence the performance of their public duties and responsibilities. Most common conflict-of-interest situations are related to personal, family or business interests and activities; gifts and hospitality; disclosure of confidential information and future employment.

Box 16. Code of Conduct for Procurement in Canada

The Government of Canada spends billions of dollars a year on the procurement of goods and services. The government has a responsibility to maintain the confidence of the vendor community and the Canadian public in the procurement system, by conducting procurement in an accountable, ethical and transparent manner.

The *Code of Conduct for Procurement* provides all those involved in the procurement process – public servants and vendors alike – with a clear statement of mutual expectations to ensure a common basic understanding among all participants in procurement.

The *Code* reflects the policy of the Government of Canada and is framed by the principles set out in the *Financial Administration Act* and the *Federal Accountability Act*. It consolidates the federal government's measures on conflict of interest and anti-corruption as well as other legislative and policy requirements relating specifically to procurement. This *Code* is intended to summarize existing law by providing a single point of reference to key responsibilities and obligations for both Public servants and vendors. In addition, it describes Vendor Complaints and Procedural Safeguards.

The government expects that all those involved in the procurement process will abide by the provisions of this *Code*.

Source: www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html

Box 17. The Anti-Corruption Strategy of the Austrian Federal Procurement Agency

The Austrian Federal Procurement Agency (BBG) offers special attention to the development of a compliance mechanism which constitutes an important element of corruption risk management strategies in procurement processes, both in terms of prevention and detection of fraud and corruption.

Its Anti-corruption Strategy has been developed mainly as a tool for preventing corruption. In order to achieve this, BBG defined actions which have to be taken into consideration:

- Precise organizational procedures (clear definition of roles and structures)
- Anti-corruption measures need to be integrated in the workday life
- The strategy needs constant reassessment and improvement
- Raising awareness of staff is done constantly
- Sharpening the focus on the consequences of corruption

The Strategy is based on three main pillars: the obligation of conducting transparent procurement procedures, the active commitment against corruption and the anti-corruption directive.

The anti-corruption directive is a compliance management tool for the prevention of corruption.

It contains an explicit regulation of the main values and strategies regarding prevention of corruption, clear definition of grey areas (e.g. the difference between customer care and corruption; what is permitted, what not), clear rules on accepting gifts as well as rules on additional occupation. It also offers the employees a clear view on the emergency management.

Box 17. The Anti-Corruption Strategy of the Austrian Federal Procurement Agency (*cont'd*)

In terms of transparency of the procurement processes, BBG staff is bound to the principle of absolute accuracy. A transparent, objective and documented decision making process as well as a strict internal control system (four eyes principle, division of functions, rotation of staff) are elements which guarantee fair competition between bidders. In addition, BBG employees are asked to declare in writing that they will refrain from any action that could lead to a competitive advantage or preferential treatment of one of the bidders.

BBG also has a clear rule which states that it is generally prohibited to receive any gifts. In addition to this, there is a special policy on non- acceptance of Christmas gifts.

In the case of bias, the employees are asked to communicate this without delay to the anti-corruption assignee or to the respective manager. The person, who, although biased, is carrying out actions in his or her name or in the name of family members, renders himself liable for disciplinary prosecution.

In case of suspicion or perceived corruption action, the anti-corruption assignee has to be notified. All the notifications are treated with great care and fully confidential.

BBG also drafted a code of conduct which addresses prevention measures against corruption. It has to be signed by each employee together with the contract of employment.

BBG employees are not allowed to accept any money or gifts or equivalent values for private usage neither for themselves nor for any third party, from contractors with whom they are in contact through their activity in the BBG.

Raising awareness is the main action for preventing corruption in the BBG. The anti-corruption assignee is regularly (every two months) organising trainings and workshops and disseminates learning materials to keep the staff updated and aware of the risks they are exposed to.

Source: The Anti-Corruption Strategy of the Austrian Federal Procurement Agency (BBG)

26. Integrity standards in the public procurement process do not apply only to procurement officials, but also to the private sector. For example, Integrity Pacts, developed by Transparency International (TI)⁴ in the 1990s, oblige government officials and companies to adhere to an ethical conduct. The three main objectives are to enable:

- Companies to abstain from corruption by providing assurance to them that the competitors will similarly refrain from corruption, and that government agencies are also committed to prevent corruption;
- Governments to reduce the high costs and the distortion effect of corruption in public procurement; and
- Citizens to more easily monitor public decision-making and their government's activities.

27. Integrity pacts are adaptable to many contexts and have been applied in various regions of the world. They are flexible tools that can be applied to: construction contracts; goods and services contracts; state asset privatisation programmes; state licences or concessions and extraction rights (oil or gas exploration and production, mining, fishing, logging, for example); or government-regulated services such as public-private partnerships, telecommunications, water supply and waste collection services. They have been used by several G20 countries:

⁴ Source: Transparency International. http://archive.transparency.org/global_priorities/public_contracting/integrity_pacts

Argentina	Public hearings –Poder Ciudadano
Germany	Schönefeld International Airport, Berlin, a project worth €2.4 billion
India	The Central Vigilance Commission (CVC) issued the Directive 008/CRD/013, which refers to the implementation of integrity pacts as ‘standard operating procedure’ in procurement contracts of any major government department and they are essential part of the Draft National Anti-Corruption Strategy (see example below).
Indonesia	the pact has been adapted and applied to local government contracts in up to 20 districts
Italy	the pact has been introduced mainly at municipal level: Milan City Council
Korea	The Korean pact model emphasises the protection of whistleblowers and the creation of an ombudsman system to carry out independent external monitoring
Mexico	Transparencia Mexicana has implemented pacts in over 100 contracts, worth approximately USD \$30 billion in total
United Kingdom	Integrity pacts have also been adapted and implemented with particular focus on the defence sector

Box 18. Integrity Pacts in India

In the recent past CVC has taken commendable initiatives in terms of promoting electronic solutions and Integrity Pacts. Integrity Pacts in procurement help governments, businesses and civil society to fight corruption in the field of public contracting via an agreement on no corruption between the procurement agency and all bidders for a public sector contract. In India, Integrity Pacts hold additional relevance for the following reasons:

- Low rating in the Corruption Perception Index;
- History of scandals and delays in Public Procurement;
- Existing anti-corruption regulations have had limited success.

39 public sector companies are using Integrity Pacts in their procurement process. According to a Transparency International -India document, 96% of Integrity Pact Compliant Public Sector Undertakings feel that the Integrity Pact has helped in making procurement process more transparent and 100% feel that the procurement process will not be better off without IP.

Integrity Pacts in India has been used in several sector such as energy (gas, oil, thermal power), telecommunication or airport construction. In addition, India has developed specific Integrity Pacts in defence procurement. The Defence Procurement Procedures (DPP) 2006 for the first time introduced a provision called pre-contract Integrity Pact, in a move to eliminate ‘all forms of corruption’ in defence deals. The DPP 2006 provided for the appointment of Independent Monitors (IMs), who would be responsible to examine any violations of the Pact, brought to notice by the buyer. However, DPP 2006 did not mention the precise role and power of the IMs. An Amendment in 2009 includes clauses on precise role and powers to IMs.

Henceforth, IMs are authorised to scrutinize complaints with regards to violation of Integrity Pacts, through the access to ‘the relevant office records in connection with the complaints sent to them by the buyer.’ According to Defence Procurement Procedures 2011, Integrity Pacts are applicable in procurements worth Rs 100 crores (approximately USD 16 million) & above and in Defence Enterprises at Rs 20 crores (approximately USD 322 thousand) & above.

Source: Draft National Anti-Corruption Strategy <http://cvc.nic.in/NationalAntiCorruptionStrategydraft.pdf> and Assessment of Integrity Pact (IP) in IP Compliant Public Sector Undertakings. Transparency International. http://www.transparencyindia.org/resource/survey_study/Assessment%20of%20Integrity%20Pact%20in%20IP%20compliant%20PSUs.pdf

28. In addition to broad procurement-related standards, or agreements specific to an individual procurement action, some countries have developed standards to fight particular forms of fraud. Bid-rigging is one such type of fraud, as seen in the example from Japan below.

Box 19. Preventing bid-rigging in Japan

Fighting bid rigging is a high priority for the Japan Fair Trade Commission (JFTC). Accordingly JFTC has taken proactive measures against bid rigging by sanctioning conspirators if it finds bid rigging has occurred.

For the purpose of preventing bid rigging, the Act on Elimination and Prevention of Involvement in bid rigging came into force in January 2003. The Act provides that the head of procurement institutions shall take action to eliminate bid rigging if requested by the JFTC.

More generally, in order to promote competition and prevent cartels in public procurement, the JFTC made the following recommendations;

- For contracts open to competition, open bidding is appropriate.
- The names of designated bidders should be announced after the submission of bids.
- The estimated price should only be announced after the submission of bids.

The following table presents the number of JFTC's legal actions in recent years against antitrust violations as a whole and against bid rigging, the amount of penalties against antitrust violations as a whole and against bid rigging, and the number of the JFTC's requests to the head of procurement institutions under the Act on Elimination and Prevention of Involvement in Bid Rigging.

Fiscal year	2008	2009	2010	2011	2012
Number of legal actions against Anti-trust	17	26	12	22	20
Of which bid rigging of public procurement	2	10	3	7	4
Amount of penalty(billion yen) against Anti-trust	25.8	24.2	36.3	44.3	23.4
Of which bid rigging of public procurement	0.6	3.0	1.9	1.7	1.8
Number of the JFTC's request to the head of procurement institutions under the Act on Elimination and Prevention of Involvement in Bid Rigging	1	2	1	1	1

The JFTC organises training sessions for procurement officials in central government agencies and local governments, and provides them with training materials. In 2012, the JFTC sent trainers to central government, local public bodies and specified enterprises on 214 occasions and held 21 training sessions throughout Japan.

Fiscal year	2010	2011	2012
Number of trainers	142	158	214
Number of training sessions	23	20	21
Total number of participants at training sessions	12,495	12,682	18,620

Source: Japan Fair Trade Commission

2. Integrity training for procurement officials

29. Ethics or integrity training for public officials, and procurement officials in particular, can raise awareness, develop knowledge and commitment, critical elements of a culture of integrity in public organisations. The UN Convention against Corruption (UNCAC) requires that the State Parties adopt, maintain, and strengthen systems "that promote education and training programmes to enable them [civil servants] to meet the requirements for the correct, honourable and proper performance of public functions

and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions." Training on integrity, ethics and anti-corruption is provided in many countries around the world to prevent corruption and mismanagement of public funds. Countries such as Germany and France provide specific integrity training for procurement officials.

Box 20. Integrity training in Germany

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

The Procurement Agency has taken several measures to promote integrity among its personnel, including support and advice by a corruption prevention officer ("Contact Person for the Prevention of Corruption"), the organisation of workshops and training on corruption and the rotation of its employees.

Since 2001, it is mandatory for new staff members to participate in a corruption prevention workshop. They learn about the risks of getting involved in bribery and the briber's possible strategies. Another part of the training deals with how to behave when these situations occur; for example, by encouraging them to report it ("blow the whistle"). Workshops highlight the central role of employees whose ethical behaviour is an essential part of corruption prevention. About ten workshops took place with 190 persons who gave a positive feedback concerning the content and the usefulness of this training. The involvement of the Agency's "Contact Person for the Prevention of Corruption" and the Head of the Department for Central Services in the workshops demonstrated to participants that corruption prevention is one of the priorities for the agency. In 2005 the target group of the workshops was enlarged to include not only induction training but also on-going training for the entire personnel. Since then 6-7 workshops are being held per year at regular intervals, training approximately 70 new and existing employees per year.

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

Source: Federal Procurement Agency, Germany

Box 21. Specialised training for public procurement in France

The Central Service of Corruption Prevention, an inter-ministerial body attached to the Ministry of Justice in France has developed training material for public procurement to help officials identify irregularities and corruption in procurement. Below is a case study example out of this training material which illustrates the challenges faced by various actors at different steps of the procedure. It also highlights the difficulty of gathering evidence on irregularities and corruption.

Issue at stake

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

Stage one: Checking compliance with public procurement procedures

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

Stage two: Replying to the losing bidder

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

Stage three: Suspicions

The internal audit service confirms the unsuccessful bidder's claim and points out that nothing in the report helps to establish any grounds for the change made by the technical service. It also points out that it would be difficult for an official with any experience, however little, not to see that the expenses had been accounted for under another heading. The mayor now requests the audit service to find out whether the technical service is in the habit of making such changes, whether it has already processed bids from the winning bidder and if contracts were frequently awarded to the latter. He also requests that it check out the background of the officials concerned by the audit. Do they have experience? Have they been trained? Do they have links with the successful contractor?

Could they have had links with them in their previous posts? What do their wives and children do? Examination of the personnel files of the officials and the shares of the company which won the contract fail to find anything conclusive: the only links between the officials or their families and the successful bidder are indirect.

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

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

Conclusion

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

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

Source: OECD (2007), Integrity in Public Procurement: Good Practice from A to Z, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264027510-en>

3. Internal and external controls

30. Effective internal controls are essential to ensuring that goals and objectives are accomplished. Internal controls in procurement, including financial controls, internal audit and management controls, help in monitoring the performance of the procurement system, assisting in compliance with laws and regulations and ensuring reliable reporting. Internal control verifies whether chains of responsibility are clear and the delegated levels of authority for approval of spending and sign-off, and approval of key procurement milestones are well-functioning.

Box 22. Electronic workflow: Processing and tracking information on public procurement in Germany

The Federal Procurement Agency in the Ministry of the Interior has set up an electronic workflow that helps centralise all information related to the procurement activities of the Agency and provide a record of the different stages of the procurement procedures that are being conducted. All files are stored in a document management system. The Federal Procurement Agency keeps records to maintain transparency and provide an audit trail of procurement decisions. In case of suspicion the contact person for the prevention of corruption may also have access to documents for inspection. This access is not visible for the official concerned. The department for quality management examines documents in the system, randomly as well as systematically, while the internal audits review transactions of the previous year that have been identified with a higher corruption risk such as negotiated contracts. These inspections are not exclusively used to prevent corruption, but also to ensure lawful and economically advantageous public procurement.

Source: Federal Procurement Agency, Germany

31. Centralised internal control, for example in Brazil (see below), plays a crucial role in ensuring consistency in the application of procurement rules and standards across the whole public sector.

Box 23. Public Spending Observatory in Brazil

The Office of the Comptroller General of the Union launched the Public Spending Observatory (*Observatório da Despesa Pública*) in 2008 as the basis for continuous detection and sanctioning of misconduct and corruption. Through the Public Spending Observatory, procurement expenditure data are cross-checked with other government databases as a means of identifying atypical situations that, while not a priori evidence of irregularities, warrant further examination.

Based on the experience over the past several years, a number of daily actions are taken to cross procurement and other government data. This exercise generates “orange” or “red” flags that can be followed up and investigated by officials within the Office of the Comptroller General of the Union. In many cases, follow-up activities are conducted together with special Advisors on Internal Control and internal audit units within public organisations.

Examples of these tracks related to procurement and administrative contracts include possible conflicts of interest, inappropriate use of exemptions and waivers and substantial contract amendments. A number of tracks also relate to suspicious patterns of bid-rotation and market division among competitors by sector, geographic area or time, which might indicate that bidders are acting in a collusive scheme.

Finally, tracks also exist regarding the use of federal government payment cards and administrative agreements (convenios). In 2013, there were 60,000 instances of warnings originated from the computer-assisted audit tracks used by the Office of the Comptroller General of the Union to identify possible procurement irregularities, like:

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Business relations between suppliers participating in the same procurement procedure. 3. Fractioning of contracts in order to use exemptions to the competitive procurement modality. 5. Non-compliance by suppliers with tender submission deadlines. 7. Registration of bid submissions on non-working days 9. Supplier’s bid submissions or company records with the same registered address. 11. Contract amounts above the legally prescribed ceiling for the procurement modality used. 13. Contract amendments within a month of contract award, in violation of the specific tender modality. 15. Evidence of bidder rotation in procurement procedures 17. Use of reverse auctions for engineering services. 19. Micro- and small enterprises with shareholders in other micro- and small enterprises. | <ol style="list-style-type: none"> 2. Personal relations between suppliers and public officials in procurement procedures 4. Use of bid waiver when more than one “exclusive” supplier exists 6. Bid submission received prior to publication of a procurement notice. 8. Possibility of competition in exemptions. 10. Participation of newly established suppliers in procurement procedures. 12. Contract amendments above an established limit, in violation of the specific tender modality 14. Commitments issued prior to the original proposal date in the commitment registration system. 16. Bidding procedures involving suppliers registered in the Information Registry of Unpaid Federal Public Sector Credits (<i>Cadastro Informativo de Créditos Não Quitados do Setor Público Federal</i>).* 18. Micro- and small enterprises linked to other enterprises 20. Micro- and small enterprises with earnings greater than BRL 0.24 million or BRL 2.40 million, respectively. |
|---|---|

Source: OECD (2012), *OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service*, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264119321-en>

32. There is growing recognition to assess risk regularly in order to determine the nature and extent of the risks, for example to distinguish between a simple mistake in performing an administrative task and a deliberate transgression of relevant laws and related policies. In order to prevent and detect irregularities and failures in procurement processes, Argentina, Brazil, France, and Korea have been taking a looking forward approach by mapping out regularly risk factors and vulnerabilities of the integrity of the public procurement process.

33. On the other hand, some countries have undertaken a systemic and comprehensive approach by establishing a top procurement officer to evaluate and monitor public procurement performance in

government to achieve greater efficiency and transparency. For example, South Africa recently appointed a Chief Procurement Officer to review and modernize the legal framework, public procurement information systems and improve governance, compliance and accountability of public procurement.

Box 24. Public Procurement Reform in South Africa

In 2013 the National Treasury appointed a Chief Procurement Officer with the overarching regulatory responsibility to monitor and evaluate public procurement performance in government and to modernize public procurement systems for greater efficiency and transparency.

The Chief Procurement Officer's strategic objective is to:

- i. Develop an overarching regulatory framework for public procurement oversight;
- ii. Modernize public procurement information systems to optimize on public procurement planning and execution, spending and cost savings;
- iii. Improve public procurement achievements on sustainable economic, social and environmental development;
- iv. Improve public procurement governance, compliance and accountability;
- v. Improve the capacity and performance of procurement officials.

The National Treasury Office of the Chief Procurement Officer is currently:

- i. Reviewing legislation to modernize and simplify the legal framework for public procurement;
- ii. Reviewing preferential procurement legislation to enhance economic opportunities for industrial supplier development through public procurement;
- iii. Reviewing public procurement practices, the awarding of public procurement contracts, and the administration of contracts; to assess fairness, openness and compliance to policy; make appropriate recommendations of practice improvements and advise on developmental training intervention strategies;
- iv. Administering a Register for Tender Defaulters and Restricted Suppliers that is open to the public and for government to consult for contractors prohibited from doing business with government, found to be involved in corrupt activities and for supplier non-performance, before the awarding of public procurement contracts. The Register is available on National Treasury's website (<http://www.treasury.gov.za>).

Source: National Treasury, South Africa

4. Stakeholder participation

34. Direct accountability to the public and other stakeholders is a fundamental means of increasing transparency and integrity in decision making. In the past, several G20 countries such as Argentina, Indonesia, Mexico and the United States have involved stakeholders, including anti-corruption offices, private sector organisations, end-users, civil society, the media and the public at large, in the procurement process. More recently, some countries have introduced direct social control by involving citizens at critical stages of the procurement process. Mexico is one of the first G20 countries with experience of direct social control through the involvement of social witnesses in the procurement process.

Box 25. Social witnesses in Mexico

Since 2009, social witnesses are required to participate in all stages of public tendering procedures above certain thresholds as a way to promote public scrutiny. In 2014, these thresholds are MXN 336 million (approximately USD 25 million) for goods and services and MXN 672 million (approximately USD 50 million) for public works.

Social witnesses are non-government organizations and individuals selected by the Ministry of Public Administration (SFP) through public tendering. SFP keeps a registry of the approved social witnesses and evaluates their performance; unsatisfactory performance potentially results in their removal from the registry.

When a federal entity requires the involvement of a social witness, it informs SFP who designates one from the registry.

As of January 2014, SFP had registered 39 social witnesses for public procurement projects, five Civil Society Organisations and 34 individuals. This number has grown from 5 social witnesses in 2005 to 40 in 2014.

SFP notes that “the monitoring of the most relevant procurement processes of the federal government through social witnesses has had an impact in improving procurement procedures by virtue of their contributions and experience, to the point that they have become a strategic element for ensuring the transparency and credibility of the procurement system”. An OECD-World Bank Institute study (2006) indicates that the participation of social witnesses in procurement processes of the Federal Electricity Commission (Comisión Federal de Electricidad) created savings of approximately USD 26 million in 2006 and increased the number of bidders by over 50%.

Source: OECD (2013), Public Procurement Review of the Mexican Institute of Social Security: Enhancing Efficiency and Integrity for Better Health Care, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264197480-en>

35. In Argentina, for example the Anti-Corruption Office not only has contributed to map risks associated to the procurement process but carries out other activities such as training, oversight and advice.

Box 26. The role of the Anti-Corruption Office (OA) in public procurement in Argentina

The Anti-Corruption Office (OA) established within the Ministry of Justice and Human Rights, through its Planning Policy Transparency, seeks to improve and optimize public procurement spending and promote efficiency funds. These actions following complement those carry out made by National Procurement Office (ONC).

A. Oversight: the OA is called to intervene in numerous processes of the selection of bids, in order to identify problems and generate tools and mechanisms aimed at promoting transparency in public decision-making. This seeks to establish, maintain and strengthen public procurement systems.

B. Participation in the design of the solicitation documents: in order to promote greater competition, the OA can collaborate with various actors of the market in the preparation of the solicitation documents and help them respect the principles of equality and transparency. This allows for higher levels of efficiency and better service at lower costs, therefore creating savings. Those interested can find the draft solicitation document and may be involved from its preparation to completion. These processes are open and allow for the involvement of all stakeholders, avoiding any undue influence and promoting a level playing field. In practice, solicitation notices are published in various media and sent to interested parties inviting them to participate in the process, provide observations and improvements in order to avoid future challenges to the procurement process.

Box 26. The role of the Anti-Corruption Office (OA) in public procurement (Cont'd)

C. Risk mapping in public procurement: In 2007, the study “The State of Public Procurement: a map of transparency conditions and accessibility in public procurement”⁵ was carried out by the Planning Policy Transparency in the OA, with the financial support of UNDP and the British Embassy. The main objective of this study was to generate a scheme for strengthening transparency in the public procurement systems. A risk map was developed to identify problematic areas that favour the development of vulnerable areas for irregular or inefficient practices. The OA proposed a series of recommendations to develop transparency policy actions to narrow the problems encountered, improving the management practices in public procurement and strengthening those features that function adequately. Many of the recommendations made by the OA were considered for the 2012 update of the national regulatory procurement regime through the Presidential Decree No. 893/12 . This study had a second stage which concluded with the publication, in 2009, the play “The State of Public Procurement: In-depth study of public procurement”⁶. The second stage carried out a selection of the most demanded goods and analysed in depth more than 150 purchase orders from 19 selected procurement centres.

D. Training: Along with the ONC and the National Public Administration Institute (Instituto Nacional de la Administración Pública -INAP), the OA carries out training activities on ethics and transparency in public procurement for public officials.

E. Advice: the OA provides advice and guidance in the elaboration of public procurement regulations to entities such as the Ministry of Defence⁷ that are not covered by the national public procurement regime. Based on agreements with other organizations, the OA provides advice or carries out events where stakeholders can share their views, in order to improve the quality of regulatory instruments applied by the contracting entities.

Source: Anti-Corruption Office, Ministry of Justice and Human Rights, Argentina.

Box 27. ‘Welcome to the Open Dialogue’ in the United States

The federal acquisition system is governed by a myriad of rules, both administrative and statutory, that are designed to help agencies maximize results from their contracts, make sure that contractors are qualified to do business with the federal government, and ensure consistency with key economic and social policies. Efforts to streamline, modernize, and improve required procedures may allow contractors and agencies to execute in a more efficient and effective manner, while still supporting these policy objectives.

To identify potential improvements, the Chief Acquisition Officers Council (CAOC), in coordination with the Federal Acquisition Regulatory Council, the Chief Information Officers Council, and the Office of Management and Budget’s (OMB) Office of Federal Procurement Policy (OFPP), stood up an online platform in the second quarter of 2014 to allow members of the interested stakeholders acquisition community to engage with one another about burdens and barriers associated with the federal acquisition process and potential changes to address them. This dialogue was part of an effort to improve the economy and efficiency of the federal acquisition system by identifying impactful steps that could be taken to make it easier for agencies to do business with the best companies and enter into contracts that allow these companies to provide their best solutions for the taxpayer.

The dialogue sought to identify specific rules and requirements, tools, procedures, and practices that impact the efficiency and effectiveness of federal procurement and ways to improve them by encouraging responses in the following areas:

⁵ <http://www.anticorruptcion.gov.ar/documentos/2008EstContrataciones.pdf>

⁶ <http://www.sgp.gov.ar/contenidos/inap/capacitacion/capacitacion.html>

⁷ http://www.mpd.gov.ar/uploads/ResolucionDGN_53_2011.pdf

Box 27. ‘Welcome to the Open Dialogue’ in the United States (*Cont’d*)

- Reporting and compliance requirements – e.g., opportunities where collection processes and systems can be reengineered or automated, duplicative reporting can be eliminated, the frequency of reporting can be reduced, and outdated compliance thresholds can be changed.
- Procurement practices – e.g., opportunities where acquisition strategies can be modernized (to support more efficient and effective acquisition of IT, in particular), where best commercial practices can be utilized, as well as efforts to promote greater consideration of innovative solutions and contracting practices.
- Participation by small and minority businesses, new entrants, and non-traditional government contractors – e.g., opportunities for improving existing technical or strategic assistance programs, making buying platforms for finding business opportunities and bidding more user friendly, and lowering the cost of doing business.

Using the online platform, interested parties submitted ideas, responded to questions posed by moderators, and commented on other ideas – including those that they think are most promising and impactful.

Source: Chief Acquisition Officers Council, United States. <http://cxo.dialogue.cao.gov/>

Box 28. Web-based interactive guide for cooperation in procurements in Sweden

The Swedish Competition Authority (SCA) is responsible for the enforcement and surveillance of both competition and public procurement rules. In addition to this task, the SCA is also in charge of providing guidance and support to the public in procurement matters.

The combination of enforcement, policy and support tasks within the fields of competition and procurement produces valuable synergy effects and gives the SCA a unique position and advantage in the work for efficient competition and public procurement. An example of an appreciated outcome is the web-based interactive guide for cooperation in procurements.

The SCA has developed a web-based interactive guide for cooperation in procurements. The purpose is to offer guidance to companies on when and in what form they can cooperate and submit joint bids in procurements. The SCA has through its surveillance activities noticed that companies find it difficult to draw the line between competitive and anticompetitive/illegal cooperation. In this context, the SCA saw an opportunity to couple the enforcement work with more preventive outreaching measures and assist companies in this matter at an earlier stage.

The guide, which can be used by both procurers and companies, is built up around frequently asked questions. The questions ranges from more specific questions “Can we cooperate in this particular tender” to more general questions “What forms of cooperation are permitted” or “When am I allowed to use a competitor as subcontractor”. The user is also informed of what the consequences of illegal cooperation might be. Throughout the guide “pop-ups” appear where the user can get more detailed information about specific questions or examples based on real cases. Eventually, the user gets an indicative answer on whether the situation in question is likely to be permitted or not. The guide underlines, however, that in case of any uncertainty the user should seek legal advice.

Source: Swedish Competition Authority, http://www.konkurrensverket.se/t/SectionStartPage____8998.aspx.

5. Complaint mechanisms

36. Effective remedies for challenging procurement decisions are essential to build bidders' confidence in the integrity and fairness of the procurement system. Key aspects of an effective recourse system are timely access, independent review, efficient and timely resolution of complaints and adequate remedies.

37. Providing remedies before the contested contract is signed is essential to make sure that an aggrieved bidder maintains a chance of winning the contract. Several countries have introduced a mandatory standstill period between the contract award and the beginning of the contract to allow legal action by the harmed bidder in order to secure a reasonable opportunity to be reinstated in the procurement procedure. Reforms of public procurement laws in EU countries have been carried out in compliance with the 2007/66/EC Directive on remedies.

Box 29. Remedies Directives of the European Union

Remedies are legal actions available to economic operators who participate in contract award procedures, which allow them to request the enforcement of the public procurement rules and the protection of their rights under them in cases where contracting authorities, intentionally or unintentionally, fail to comply with the law.

The legal framework on remedies is found in the following Remedies Directives:

- Directive 89/665/EEC regulates remedies available to economic operators during public sector contract award procedures.
- Directive 92/13/EEC regulates remedies available to economic operators during utilities contract award procedures.

The aim of the Directives is to allow irregularities occurring in contract award procedures to be challenged and corrected as soon as they occur, therefore to increase the lawfulness and transparency of such procedures, build confidence among businesses and facilitate the opening of local public contracts markets to competition from all over Europe.

Remedies Directives **coordinate national review systems** by imposing some **common standards** intended to ensure that rapid and effective means of redress is available in all EU countries in cases where bidders consider that contracts have been awarded unfairly. Both Directives were amended by Directive 2007/66/EC which introduced two main features:

- a "**standstill period**" – contracting authorities need to wait for at least 10 days after deciding and communicating who has won the public contract before the contract can actually be signed. This period gives bidders time to examine the decision and decide whether to initiate a review procedure. If they do so within the standstill period, this results in the "automatic suspension" of the procurement process until the review body takes its decision. If these rules are not respected, under certain conditions national review bodies must render a signed contract ineffective.
- **more stringent rules against illegal direct awards** of public contracts – national courts are able to render these contracts ineffective if they have been illegally awarded without transparency and prior competitive tendering unless that is specifically permitted under the directives.

Source: http://ec.europa.eu/internal_market/publicprocurement/infringements/remedies/index_en.htm<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:335:0031:0046:EN:PDF>

38. Experiences of G20 countries have shown how essential the efficiency of the resolution of complaints is to reduce the time spent in litigation, for example in Canada, Germany, Saudi Arabia and Japan.

Box 30. The Office for Government Procurement Challenge System in Japan

The Japanese system of complaints concerning government procurement of goods and services (including construction services) aims to ensure greater transparency, fairness, and competitiveness in the government procurement system, under the principle of non-discrimination of foreign and domestic sources.

The Government Procurement Review Board (the Board) composed of 7 committee members and 16 special members receives and reviews complaints. The Office of Government Procurement Review (OGPR) headed by the Chief Cabinet Secretary and with administrative vice-ministers or directors from all ministries and agencies as its members is also notified of review procedures. Persons or bodies wishing to file a complaint may do so with the Board within ten (10) days after the basis of the complaint is known. The Board will examine complaints received within seven (7) working days of filing and determine whether they will be accepted for review.

If a complaint is accepted for review, the Board will immediately notify the complainant, OGPR, and the procuring entity of this in writing and publicly announce its decision through the Official Gazette, the Internet (<http://www5.cao.go.jp/access/english/kouji-e.html>), and other means, soliciting the attendance of participants interested in the complaint. The procuring entity is required to present a report to the Board; if the complainant or the participants disagree with this report, they may present statements to the Board or request a review by the Board, which the Board will subsequently undertake. Finally, a report on findings will be drawn up within ninety (90) days by the Board in cases of standard review. This period can be shortened if the complainant or the procuring entity so desire. This time limit may also vary according to the type of procurement of the complaint. If the Board finds that procurement has been carried out in a manner inconsistent with any provision of the Agreement on Government Procurement or other applicable measures, it will draw up recommendations with the report. The procuring entity is required, as a rule, to follow the recommendations of the Board.

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

Source: Minister of Foreign Affairs, Japan

39. In many G20 countries, complaints at the administrative level can prove useful, because they can lead to quick and inexpensive resolution of disputes, especially where breaches are caused by negligence of contracting authorities. If, alternatively, no breach has occurred, the authorities are given the opportunity to explain this to the complainant, presenting their arguments for their position. This is for example done by Saudi Arabia.

Box 31. Committee of advisors for the resolution of complaints in Saudi Arabia

The Kingdom of Saudi Arabia adopted in 2006 a new Procurement Law and its Implementation Regulations to improve the efficiency and transparency of the national procurement system in order to achieve value for money and increase accountability. One of the means to increase control and accountability are improved complaints mechanisms.

To achieve a quick resolution of complaints, the Minister of Finance forms a committee of advisors comprised of at least three members from the Ministry and personnel of other relevant government authorities. The committee is headed by a legal advisor and includes among its members a technical expert. The committee is re-formed every three years and its membership may only be renewed once.

This committee reviews compensation claims submitted by contractors and suppliers as well as reports of deceit, fraud and manipulation. It also reviews claims submitted by government authorities to the Minister of Finance requesting to exclude from public contracts the contractors who executed a project in a defective manner or in violation of the terms and specifications of the project, for a period not exceeding five years. The procedure before the committee can take place in person or in writing. The committee may seek the assistance of technical specialists and issues its decision, with all its members attending, unanimously or by majority. The dissenting opinion, if any, and the arguments of each party is stated in the minutes of the committee.

Source: Government Tenders and Procurement Law and the Saudi National Anti-Corruption Commission

40. Another good practice that resulted from the experience of some G20 countries is the use of alternative dispute resolution mechanisms. These eliminate the need to resort to litigation. Ombudsmen/mediators may conduct investigations of procurement activities and resolve matters by conciliation, for example, in Australia and Brazil. Canada introduced a Procurement Ombudsman to promote fairness, openness and transparency in federal government procurement by reviewing complaints and providing the possibility of an alternative dispute resolution, as described below.

Box 32. Procurement Ombudsman in Canada

A Procurement Ombudsman was set up in 2008 to increase the effectiveness and transparency of business practices in relation to procurement. This was part of a series of reforms to implement the Federal Accountability Action Plan in order to help strengthen accountability and increase transparency and oversight in federal government operations.

Objectives

The overall objective of the Office of the Procurement Ombudsman is to promote fairness, openness and transparency in federal government procurement. Its mandate and role are as follows:

1. Review departments' practices for acquiring materials and services to assess their fairness, openness and transparency and make any appropriate recommendations to the relevant department.
2. Review any complaint respecting the award of a contract for the acquisition of goods below the value of CAN 25 000 and services below the value of CAN 100 000, where the criteria of Canada's domestic Agreement on Internal Trade would apply but for the dollar thresholds.
3. Review any complaint respecting the administration of a contract for the acquisition of materials or services by a department or agency, regardless of dollar value.
4. Ensure an alternative dispute resolution process is provided, if all parties to the contract agree to participate.

Box 32. Procurement Ombudsman in Canada (Cont'd)

Implementation process

The Procurement Ombudsman was created through an amendment to the Department of Public Works and Government Services Act which established the Procurement Ombudsman's authority and activities. The associated Procurement Ombudsman Regulations, which provide specifics on how the Procurement Ombudsman's authority is to be exercised, were developed through a consultative process and pre-published in the Canada Gazette, Part I in December 2007. Comments from industry associations, government departments and the Procurement Ombudsman Designate were received and taken into consideration before being passed and the office became fully operational in May 2008. The Ombudsman reports directly to the Minister of Public Works and Government Services Canada (PWGSC), who is required to submit an annual report to Parliament. While the Office of the Procurement Ombudsman is a federally constituted independent organisation under the portfolio of the Minister of PWGSC, it has a government-wide mandate and operates horizontally in departments and agencies, including PWGSC.

Impact and monitoring

Between May 2008 and March 2011, the Office of the Procurement Ombudsman: handled more than 1 200 inquiries and complaints and conducted 6 investigations into contract award issues; dealt with 21 requests for an alternative dispute resolution process for contractual disputes; and conducted 12 procurement practice reviews which involved 26 different federal government departments and agencies.

A formative evaluation of the Office (<http://opo-boa.gc.ca/autresrapports-otherreports/evalform-formeval-eng.html>) was carried out which highlighted the following results:

- 1) The Office plays a crucial role in maintaining the credibility and fairness of the procurement process in the federal government.
- 2) The provision of alternative dispute resolution services by the Office has been able to facilitate settlement of a contractual dispute in almost all instances; the Office is seen by suppliers as an independent party to ensure fairness and avoid abuses in federal procurement as well as to help small businesses by acting as an impartial referee.
- 3) Not only does the Office help in providing independent investigation and restitution in matters arising from procurement and resolving issues so that the supplier does not have to engage a lawyer, it also enables suppliers to provide feedback on the procurement practices of federal departments for future improvements to the procurement process.

Source: OECD (2013), Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264201385-en>.

6. Additional safeguards for major public events

41. Major events usually require the procurement of a wide range of goods, public works and services on a very large scale and in a limited period of time increasing the risks for fraud, corruption and mismanagement of public funds and corruption. Therefore, a better understanding of the risks associated with major events, as well as corresponding policies and procedures to minimize these risks, are needed.

42. According to UNODC, "Major public events involve complex logistical arrangements, years of planning and can span more than one nation. Examples of these events include: the FIFA World Cup, the Olympic Games, golf's Ryder Cup, cycling's Tour de France, as well as international political events such as the G20 Summits [...] Given the huge amounts of money involved, both in the organization of, and the income derived from major public events, any failure can have enormous political, financial and economic consequences for agencies, sponsors and countries. But, the exceptional nature of these events increases the likelihood that regulations and procedures might be set aside or ignored. These problems are

exacerbated by the shortness of time for the delivery of large scale infrastructure projects often leading to a lack of oversight and transparency in the allocation of public funds.⁸

Box 33. UNODC'S Strategy for Safeguarding against Corruption in procurement of Major Public Events

Communication of information to potential contractors and suppliers

All communications with potential contractors and suppliers must be handled fairly so as to avoid giving or appearing to give an undue advantage to any of them. All communications should be fully documented and kept for future reference. In order to prevent any abuse of selection procedures and to promote confidence in the selection process, confidentiality must be observed by all parties, especially where negotiations are involved. Proactive measures are necessary to support and supervise employees performing discretionary decision-making on behalf of the organization.

Pre-qualification and pre-selection of contractors

Time pressures and predictable calls for efficiency and expediency should not in any way weaken existing procedures to properly document procurement decisions and allow for the subsequent verification of the application of the relevant rules and criteria. The Authority responsible for a major event should have well-defined, fair and transparent procedures to pre-qualify or pre-select potential suppliers and contractors. The procedures should be designed to ensure that potential suppliers and contractors meet certain ethical standards, are solvent, and have the capacity to deliver what they offer. The procedures should allow for the exclusion of potential suppliers and contractors when there is evidence of a conflict of interest, or of corrupt or unethical conduct on their part.

Pre-selection procedures should verify the qualifications of potential contractors or suppliers, including professional and technical qualifications, managerial capacity, financial resources, and the legal capacity to enter into a procurement contract. They must meet ethical standards and cannot be insolvent or bankrupt. They should not be the subject of legal proceedings for insolvency, breach of ethical standards, or acts of corruption.

There should be a fair and transparent system in place to ensure that certain potential suppliers or contractors can be excluded from the procurement process when there is evidence that they have bribed or attempted to bribe someone to influence the procurement process, when they are in a position of conflict of interest when they have an unfair competitive advantage.

Proposal evaluation and criteria

The criteria relating to the procurement exercise must be set in advance, be fair, and be publicly available. The evaluation procedure should be made public and the evaluation process must be transparent. The integrity of the evaluation process must be protected at every stage of that process. Develop policies and procedures that employ transparent market-driven approaches to tendering and bid evaluation

Any deviation from stated procedures must continue to maintain high standards of probity and integrity and must be properly justified, documented and recorded. If it is deemed necessary to revise and adapt existing policies and processes, or if deviations from these policies are to be allowed, any changes or exceptions to existing policies should be adopted in a transparent and publicly accountable manner.

Challenges to procurement proceedings

It is important for the Authority to have a proper process in place whereby potential contractors and suppliers who participated in the procurement proceedings may challenge the process, bring to its attention any alleged non-compliance with applicable laws, policies and procedures, or apply for reconsideration of a procurement decision made.

Source: The United Nations Convention against Corruption: A Strategy for Safeguarding against Corruption in Major Public Events. http://www.unodc.org/documents/corruption/Publications/2013/13-84527_Ebook.pdf

⁸ <http://www.unis.unvienna.org/unis/en/pressrels/2013/uniscp728.html>

Box 34. Initiatives for Safeguarding against Corruption in procurement in Olympic and Paralympic Games, London, UK and Beijing, China**2012 Olympic and Paralympic Games-London, UK**

For the 2012 Olympic and Paralympic Games, the United Kingdom Olympic Delivery Authority (ODA) was formed to take on the job of building the venues and infrastructure and procuring the services required for the Games. As a non-departmental public body within the United Kingdom Government's Department of Culture, Media and Sport, the ODA was required to comply with the country's public sector procurement regulations and the principles of fairness, transparency and non-discrimination. At the outset of the procurement activity, ODA engaged in a process of developing its own procurement policy after extensive consultation and having it endorsed at the highest level. The establishment of policy objectives in advance of the procurement process made it possible to assess bid compliance against these objectives. Key elements of the policy were then combined with procurement guidance to create a standard procurement code which provided detailed guidance to the procurement team. This code, as well as the process by which it was developed, may serve as a useful example for other countries in relation to procurement and legacy issues. The United Kingdom Olympic Delivery Authority ensured that it met its obligations under the law, particularly around risk, brand protection and stakeholders' rights by ensuring that its suite of contracts also included collateral warranties for key interested parties, restrictions of ownership of tier one contractors, enhanced conflict of interest provisions, fraud prevention and whistle-blowing requirements, and enhanced intellectual property rights.

2008 Olympic and Paralympic Games-Beijing

For the Beijing 2008 Olympics, the organizing committee established a department for the management and supervision of contracts, the Legal Affairs Department. The Committee formulated a directive on Methods Regarding Contract Management for BOCOG with supporting rules and regulations. Management measures were instituted with respect to contract approval, liability prevention, and execution of work under supervision. Prior to the signing of any major contract by the organizing committee, the Audit and Supervision Department was required to review and approve its terms and, when necessary, recommend revisions or changes. The execution of all contracts was subject to supervision and audit by the National Audit Office.

Source: The United Nations Convention against Corruption: A Strategy for Safeguarding against Corruption in Major Public Events. http://www.unodc.org/documents/corruption/Publications/2013/13-84527_Ebook.pdf

Box 35. Efforts to enhance integrity for the Brazil's 2014 World Cup and 2016 Olympic Games

Brazil is host of the 2014 FIFA World Cup and the 2016 Olympic Games. Both events involve significant amounts of public and private resources. It has been estimated that the federal government will spend BRL 10.4 billion (USD 6.2 billion; EUR 4.5 billion) on the World Cup, along with BRL 5.5 billion (USD 3.3 billion; EUR 2.4 billion) by state and municipal governments. This will be followed by BRL 12.5 billion (USD 7.5 billion; EUR 5.4 billion) in investments for the 2016 Olympic Games.

As a result transparency, control and accountability are being reinforced by:

The federal government of Brazil has set up governance structures for both mega-sporting events. In January 2010, a steering committee was established to define, approve and supervise the Strategic Plan of Actions for the 2014 FIFA World Cup (see Federal Decree no. 14/2010). It includes representatives from 21 federal public organisations and is headed by an Executive Group comprising of the Civil House of the Office of the President of the Republic and the Federal Ministries of Sport, Finance, Planning, Budget and Management and Tourism.

Similarly, in May 2010, the federal government, and the state and governments of Rio de Janeiro created the Olympic Public Authority (Autoridade Pública Olímpica) to co-ordinate all actions and works required for the 2016 Olympic Games. The head of the authority is appointed by the President of the Republic with confirmation by the Federal Senate.

In May 2010, the Federal Minister for Transparency and Control established obligations for federal public organisations to provide detailed information on their activities relating to the two mega-sporting events.

Through dedicated transparency portals for 2014 World Cup and 2016 Olympic Games (see www.portaldatransparencia.gov.br/copa2014 and www.portaldatransparencia.gov.br/rio2016, respectively) expenditures estimates real-time information on expenditure disbursements is published.

In May 2010, the Federal Court of Accounts presented its audit model to oversee expenditures related to the 2014 FIFA World Cup. It has also signed a protocol with state and municipal courts of audit in areas that will host cup matches defining their respective roles and provides for information sharing. To promote transparency and accountability, the Federal Court of Accounts has created a website to monitor the preparations for this international event as well as to publish the Federal Court of Accounts audits of the different projects involved (www.fiscalizacopa2014.gov.br). These activities are closely co-ordinated with the National Congress Permanent Subcommittee on Monitoring of Federal Public Funding for the 2014 FIFA World Cup.

Source: OECD (2012), OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service, OECD Public Governance Reviews, OECD Publishing, <http://dx.doi.org/10.1787/9789264119321-en>