



ORGANISATION FOR ECONOMIC  
CO-OPERATION AND DEVELOPMENT

## **ENHANCING INTEGRITY IN PUBLIC PROCUREMENT: A CHECKLIST**

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## FOREWORD

At the OECD Symposium and Global Forum on Integrity in Public Procurement in November 2006, participants called for an **instrument** for policy makers at the international level to reform public procurement systems and reinforce integrity and public trust in how public funds are managed. They also expressed interest in developing **practical tools** that could be applied, adapted and developed in different legal and administrative contexts.

To respond to these requests, the OECD developed a *Checklist for Enhancing Integrity in Public Procurement*. The Checklist is designed to guide policy makers at the central government level in instilling a culture of integrity in the entire procurement cycle<sup>1</sup>, from needs assessment to contract management and payment:

- The first part of the Checklist provides guidance for policy makers – in the form of ten key recommendations – on developing an adequate **policy framework** for enhancing integrity in public procurement;
- The second part provides **guidance on how to implement** this framework at each stage, from needs assessment to contract management. This part could be complemented in the next months by examples of practical tools used in various countries to support the implementation of the policy framework.

### A good governance perspective

The Checklist is based on applying a **good governance** approach, that is, transparency, good management, prevention of misconduct, accountability and control to enhance integrity in public procurement. The Checklist is an integral part of the Public Governance Committee efforts to promote integrity and corruption prevention in the public service.

### A Checklist based on good practice

The Checklist draws upon policies and practices that have proved effective for enhancing integrity in the entire procurement cycle, from **needs assessment to contract management**. These reflect various legal and administrative systems. Elements of good practice were identified not only in OECD countries, but also in Brazil, Chile, Dubai, India, Pakistan, Romania, Slovenia and South Africa.

These policies and practices were mapped out through an **international survey** and were reviewed at the OECD Symposium and Global Forum on Integrity in Public Procurement in November 2006. On this occasion, procurement practitioners, as well as audit, anti-corruption and competition specialists, reviewed these good practices, together with representatives from the private sector, academia, civil society, donor agencies and international organisations.

The Checklist is intended to be used in conjunction with **identified good practices** in the OECD publication *Integrity in Public Procurement: Good Practice from A to Z* (see [www.oecd.org/gov/ethics/procurement](http://www.oecd.org/gov/ethics/procurement)).

### **The multi-disciplinary approach of the OECD**

The Checklist builds on a multi-disciplinary effort in the OECD that was launched with the Global Forum on Governance in 2004, marking greater involvement of the OECD in the fight against corruption in public procurement (see Box No. 1 below). There was consensus among the representatives of public and private sectors, as well as non-governmental organisations, trade unions, academic institutions, donor agencies and international organisations, that public procurement is a major potential risk area for corruption.

#### **Box 1. The multi-disciplinary approach of the OECD to prevent corruption in public procurement**

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

The PGC mapped out good practices to enhance integrity, in particular through transparency (e.g. e-procurement), professionalism, corruption prevention, as well as accountability and control measures. Drawing on the experience of procurement specialists, as well as audit, competition and anti-corruption specialists, the OECD report *Integrity in Public Procurement: Good Practice from A to Z* provides a comparative overview of practices to enhance integrity in the entire procurement cycle, from needs assessment to contract management and payment.

The Working Group on Bribery in International Business Transactions, the body responsible for monitoring the implementation of the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions, developed a typology on bribery in public procurement. Based on contributions from law enforcement and procurement specialists, the report *Bribery in Public Procurement: Methods, Actors and Counter-Measures* describes how bribery is committed through the various stages of government purchasing; how it is related to other crimes, such as fraud and money laundering; and how to detect and sanction such crimes.

The Development Assistance Committee has been working with developing countries to strengthen procurement systems through the Working Party on Aid Effectiveness. It has also been working with its members to enhance their collective efforts to address corruption through the DAC Network on Governance.

### **Policy guidance that reflects the variety of international legal instruments on public procurement**

The Checklist is a policy instrument that provides functional guidance for governments. It can be placed in the appropriate international legislative context (e.g. United Nations Convention Against Corruption, UNCITRAL Model Law on Procurement of Goods, Construction and Services, the WTO Agreement on Government Procurement, the Directives of the European Commission, etc), and it can also be adapted to fit into different legal and administrative contexts.

The Checklist reflects the richness of the multi-disciplinary approach of the OECD that analyses public procurement from various perspectives: good governance, anti-bribery, development assistance, competition and international trade. The OECD has developed several instruments and tools in relation to public procurement and integrity (see Box No. 2 below).

## Box 2. OECD instruments and tools to address public procurement and anti-corruption issues

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

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

i) *Member countries should support the efforts in the World Trade Organisation to pursue an agreement on transparency in government procurement.*<sup>2</sup>

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

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

In commentary 24 to Article 3, an explicit reference is made to the “temporary or permanent disqualification from participation in public procurement”.<sup>3</sup>

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

The 1996 Development Assistance Committee (DAC) *Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement*. The DAC recommends that Members introduce or require anti-corruption provisions governing bilateral aid-funded procurement. The anti-corruption provision of the Recommendation was integrated in the 1997 revised Recommendation on combating bribery in international business transactions. However, the Recommendation did not apply to procurement carried out by developing countries themselves. Therefore developing countries, bilateral and multilateral donors have in the past years worked together through a Round Table process. As a result, the Working Party on Aid Effectiveness has developed a benchmarking methodology that developing countries and donors can use to assess the quality and effectiveness of national procurement systems through the DAC Joint Venture on Procurement.<sup>4</sup> In addition, the DAC Network on Governance has identified an agenda for collective donor action and *Principles for Donor Action in Anti-Corruption*<sup>5</sup> to ensure coherent support to country-led anti-corruption efforts.

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

The consultation with different stakeholders, in particular international and regional organisations working on public procurement issues, was an essential step to verify that the Checklist provides guidance at the policy level that is in line with existing international legal instruments and usefully complements them. These include, notably:

- The United Nations Convention against Corruption (Chapter II on Preventative measures, in particular article 9 on Public procurement and management of public finances)<sup>6</sup>;
- The United Nations Commission on International Trade Law (UNCITRAL) Model Law;
- The World Trade Organisation Agreement on Government Procurement (GPA);
- The legislative package of the Directives of the European Commission on public procurement; and
- The International Labour Organisation's Labour Clauses (Public Contracts) Convention.

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

The OECD played a leading role in recognising the importance of good governance in public procurement in 2004 and in developing technical guidance for policy makers to enhance integrity in public procurement. International legal instruments such as the WTO Agreement on Government Procurement (GPA) and the UNCITRAL Model Law, that primarily aim at ensuring the free movement of goods and services, are under revision to reflect underlying concerns in relation to integrity and the fight against corruption.

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## INTRODUCTION

### **Public procurement: A major risk area**

Public procurement is a key economic activity of governments; how it is carried out has a major impact on how tax payers' money is spent. Existing statistics suggest that public procurement accounts, on average, for 15% of the Gross Domestic Product worldwide, and is even higher in OECD countries.<sup>7</sup> An effective procurement system plays a strategic role for governments in avoiding mismanagement and waste of public funds.

Of all government activities, public procurement is one of the most vulnerable to corruption. Bribery by international firms in OECD countries is more frequent in public procurement than in utilities, taxation, and judicial system.<sup>8</sup> The financial interests at stake, and the close interaction between the public and private actors, make public procurement a major risk area.

Efforts to enhance good governance and integrity in public procurement are fully part of an efficient and effective management of public resources. Through corrupt practices, market competition is hindered; and the price paid by the administration for goods and services is artificially raised, which has a direct impact on public expenditures and therefore on taxpayers' resources. Effective procedures that enhance transparency, good management, prevention of misconduct, accountability and control contribute to preventing not only corruption but also the waste of public resources.

### **Beyond the “tip of the iceberg”: Addressing the whole procurement cycle**

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

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

Although it is widely agreed that public procurement reforms should follow good governance principles, international reform efforts have focused largely on the formation of contracts, when tenders from suppliers are solicited and evaluated. These reforms were driven by an effort at the international level to promote competitive tendering for the selection of suppliers, even though rules also allow, in certain circumstances, less formal selection procedures.

## Instilling a culture of integrity

The Checklist guides governments in developing and implementing an adequate policy framework for enhancing integrity in public procurement, while at the same time, taking into account the various national laws and organisational structures of member countries. It focuses on the purchases of goods and services by governments at the national level but also offers general guidance for sub-national government and state-owned enterprises.

### Box 3. Aim of the Checklist

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

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

## Defining integrity

Integrity can be defined as the use of funds, resources, assets, and authority, according to the intended official purposes, to be used in line with public interest. A ‘negative’ approach to define integrity is also useful to determine an effective strategy for preventing ‘integrity violations’ in the field of public procurement. Integrity violations<sup>9</sup> include:

- Corruption including bribery, ‘kickbacks’, nepotism, cronyism and clientelism;
- Fraud and theft of resources, for example through product substitution in the delivery which results in lower quality materials;
- Conflict of interest in the public service and in post-public employment;
- Collusion;
- Abuse and manipulation of information;
- Discriminatory treatment in the public procurement process; and
- The waste and abuse of organisational resources.

## Developing a policy framework

The Checklist provides a policy framework with ten key recommendations to reinforce integrity and public trust in how public funds are managed. This policy framework stresses the importance of procedures

to enhance transparency, good management, prevention of misconduct, as well as accountability and control in public procurement.

#### **Box 4. Ten key Recommendations to develop a policy framework**

##### ***I. Transparency***

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

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

##### ***II. Good management***

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

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

##### ***III. Prevention of misconduct, compliance and monitoring***

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

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

7. Provide specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct.

##### ***IV. Accountability and control***

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

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

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

### **Implementing the policy framework**

The Checklist also provides guidance for implementing the policy framework at each stage of the public procurement cycle, namely in:

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

## **Legal, institutional and political conditions for the implementation of the Checklist**

In order to implement the Checklist, governments should ensure that the effort to enhance integrity in public procurement at the policy level is also supported by the country's leadership and by an adequate public procurement system. The following items are commonly regarded as the essential structural elements of a public procurement system<sup>10</sup>:

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

## PART A. DEVELOPING THE POLICY FRAMEWORK

### I. TRANSPARENCY

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

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

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

Transparency requirements usually focus on the tendering phase. However, transparency measures such as recording information or using new technologies are equally important in the pre-tendering and post-tendering phases to prevent corruption and enhance accountability. Without recording at decision-making points in the procurement cycle, there is no trail to audit, challenge the procedure, or enable public scrutiny. Records should be relevant and complete throughout the procurement cycle, from needs assessment to contract management and payment and include electronic data in relation to the traceability of procurement. These records should be kept for a reasonable number of years after the contract award to enable the review of government decisions. New technologies can also play an important role in providing easy and real-time access to information for potential suppliers, track information and facilitate the

monitoring on procurement processes (see also Recommendation 10). Electronic systems, for instance in the form of “one-stop-shop” portal, can be used in addition to traditional off-line media to enhance transparency and accountability throughout the procurement cycle.

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

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

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

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

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

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

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

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

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

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

- *Transparency.* Restricted or limited tendering does not necessarily justify less transparency. On the contrary, it may require even more transparency to mitigate risks of corruption. For instance, in the case of limited tendering, the requirements of a contract may be publicised for a short period of time when there is a possibility that only one supplier can perform the work. This could provide

suppliers with a chance to prove that they are able to satisfy requirements, which may lead to the opening of a competitive procedure. Similarly, amendments to the contract could be publicised through the use of new technologies. The derogation from competitive tendering should be justified and recorded in writing to provide an audit trail.

- *Specific guidance.* Guidelines and training materials, as well as advice and counselling, provide examples of concrete steps for handling limited or non-competitive procedures for both procurement and finance officials. Restrictions are also important for setting clearly defined boundaries. For instance, follow-on contracting may be allowed only under strict conditions defined in the contract, taking into account the amount of the procurement.
- *Additional or tightened controls.* The independent responsibility of at least two persons at key points of the decision making or in the control process contributes to the impartiality of public decisions. In addition, other measures could be used, such as independent review at each stage of the procurement cycle, specific reporting and public disclosure requirements, or random audits to check compliance on a systematic basis.
- *Enhanced capacity.* The best available skills and experience could be deployed depending on the assessment of the potential risk of the project. For large procurements, independent validation may be necessary through a probity auditor or the involvement of stakeholders. For emergency procurement, a risk mitigation board may be set up bringing together key actors – procurement, control officials and technical experts – to allow for clear policy direction and increased communication.

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

## II. GOOD MANAGEMENT

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

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

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

Public procurement should be considered an integral part of public financial management and to the fostering of transparency and accountability from expenditure planning to final payment. Transparency and accountability begin with the budget process, with the full disclosure of all relevant fiscal information in a timely and systematic manner.<sup>11</sup> Electronic systems can help connect with the overall financial management system to ensure that procurement activities are conducted according to plans and budgets, and that all necessary information on public procurement is made available and tracked. To enhance the responsibility of high-ranking officials, fiscal reports may contain a statement of responsibility by the Minister and the senior official responsible for producing the report. The budget should be implemented in an orderly and predictable manner with arrangements for the exercise of control and stewardship of the use of public funds, taking into account the whole life of the contract.

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

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

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

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

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

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

Training plays an important role in helping officials recognise possible mistakes in performing administrative tasks and improving their practices accordingly. Formal and on-the-job training programmes should be available for entry-level as well as more experienced procurement officials, to ensure that officials involved in public procurement have the necessary skills and knowledge to carry out their responsibilities and keep abreast of evolutions. In addition, certification programmes, established in co-operation with relevant stakeholders such as institutes or universities, help ensure that both programme managers and contractors have acquired an appropriate level of training and experience. Officials, as well as suppliers' organisations, may also be consulted in the revision of procurement standards to ensure that the policy's rationale is understood and accepted and that the standards can be realistically implemented.

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

guidelines help ensure impartiality in their interactions with suppliers, manage conflict of interest and avoid the leak of sensitive information.

### III. PREVENTION OF MISCONDUCT, COMPLIANCE AND MONITORING

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

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

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

A “risk map” of the organisation(s) could be developed to identify the positions of officials which are vulnerable, those activities in the procurement where risks arise, and the particular projects at risk due to the value and complexity of the procurement. This risk map could be developed in close co-operation with procurement officials. On that basis, training sessions could be developed to inform officials about risks to integrity and possible preventative measures. Suppliers could also follow integrity training to raise awareness of the importance of integrity considerations in the procurement process. In addition, specific procedures may be introduced for officials in positions that are especially vulnerable to corruption, such as regular performance appraisals, mandatory disclosure of interests, assets, hospitality and gifts. If the information disclosed is not properly assessed, risks to integrity, including potential conflicts of interests, will not be properly identified, resolved and managed. This information should be recorded and kept up-to-date. Integrity procedures should be clearly defined and communicated to procurement officials and to other stakeholders when relevant.

Avoiding the concentration of key areas in the hands of a single individual is fundamental in the prevention of corruption. The independent responsibility of at least two persons in the decision making and control process may take the form of double signatures, cross-checking, dual control of assets and separation of duties and authorisation (see also Recommendation 3 in relation to the budget). To the extent possible, separating the responsibilities for authorising transactions, processing and recording them, reviewing the transactions, and handling related assets also helps prevent corruption. A key challenge with the separation of duties and authorisation is to ensure the flow of information between management,

budget and procurement officials and to avoid the fragmentation of responsibilities and a lack of overall co-ordination. The separation of duties and authorisation should be organised in a realistic manner in order to avoid creating overly burdensome procedures that may create opportunities for corruption.

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

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

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

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

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

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

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

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

and dialogue with the private sector to keep abreast of suppliers, products and prevailing prices for goods and services.

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

## **7. Provide specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct.**

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

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

Officials in charge of control should be aware of the techniques and actors involved in corruption in public procurement to facilitate the detection of misconduct. These officials could follow specialised training on a regular basis to inform them about corrupt techniques used in procurement. Knowledge of the actors involved in corruption and the understanding of their underlying motivations, as well as the techniques used to carry out corrupt agreements also assists in detecting potential corruption. Given the capacity of criminals to devise new techniques, these training sessions could be updated and carried out at regular intervals<sup>12</sup> Experts’ assistance could also be required to examine a particular technical, financial or legal aspect of the procurement process and gather evidence that could be presented in court.

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

Effective, proportional and timely redress, consequences and sanctions should not only be defined by law but also promptly applied in case of irregularities, fraud, as well as active and passive corruption in public procurement. Governments should enforce administrative, civil and criminal sanctions.<sup>13</sup> Traditional redress, consequences and sanctions include the denial or loss of the contract, liability for damages and the forfeiture of tender or performance bonds. In addition, these could include confiscation of ill-gotten gains and debarment from future contracts to deter private sector actors from engaging in corrupt practices.<sup>14</sup> With regard to officials, redress, consequences and sanctions could encompass administrative, civil and criminal sanctions, including confiscation of ill-gotten gains. Administrative consequences may also exist

at the organisational level to punish the contracting authority, for instance in the form of a pecuniary fine in proportion to the value of the contract.

## IV. ACCOUNTABILITY AND CONTROL

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

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

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

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

The frequency of audits could be determined by factors such as the nature and the extent of the risks, that is the volume and associated value, the various types of procurement, the complexity, sensitivity and specificity of the procurement (for instance for exceptions to competitive tendering). There should be no minimum threshold for conducting random audits. For instance, for procurements that are particularly at risk, the use of a probity advisor or a probity auditor may be considered. On the one hand, probity advisors give advice during the procurement to provide a level of independent assurance about the openness and fairness of the process. On the other hand, probity auditors are an external party that is engaged to verify afterwards that a procurement activity was conducted in line with good practice.

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

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

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

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

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

To ensure the impartiality of review mechanisms, review decisions should be ruled upon by a body with enforcement capacity that is independent of procuring entities. As a first stage, potential suppliers should have an opportunity to submit their complaints to the procuring authority in order to prevent confrontation and the costs of a quasi-judicial or judicial review. Officials participating in the review should be secure from external influence. Their decisions may also be published, possibly on-line. In all cases, potential suppliers should be able to refer to an appeal body – administrative and/or judicial – to review the final decision of the procuring authority.

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

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

Adequate remedies should be available for tenderers, such as setting aside of procurement decisions, interim measures, annulment of concluded contracts, damages and pecuniary penalties.<sup>15</sup> The review body could have the authority to define and enforce interim measures, such as the decision to discontinue the procedure, taking into account the public interest. The review body should have the authority to enforce final remedies to correct and sanction inappropriate procuring agency actions, in particular the annulment of a concluded contract. Potential suppliers may be compensated for the loss or damages caused, not only through the reimbursement of tendering costs but also through damages for lost profits. Pecuniary penalties could be applied to force contracting authorities to adhere strictly to their legal obligations.

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

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

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

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

Oversight institutions such as Parliament, Ombudsman/Mediator and Supreme Audit Institution play an important role in enhancing public scrutiny through their reports on public procurement (see also Recommendation 3). Oversight bodies may undertake reviews of procurement activities, through an *ad hoc* parliamentary committee or a review by the Supreme Audit Institution, for investigating a specific issue. In addition, an Ombudsman/Mediator should examine the legality of public administration actions, in particular with respect to laws on access to information, and undertake investigations.

Scrutiny practices may also require the involvement of other stakeholders in the public procurement process. For development assistance programmes, bilateral and multilateral donors could play a role in strengthening and assessing the quality and functioning of public procurement systems.<sup>16</sup> For procurements that involve important risks of mismanagement and possibly corruption, governments should consider the possibility of involving representatives from civil society, academics or end-users in scrutinising the integrity of the process. “Direct social control” mechanisms encourage their involvement as external observers of the whole procurement process or of key decision-making points.<sup>17</sup>

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

instance through the use of new technologies, and providing clear channels to allow the external observer to inform control authorities in the case of potential irregularities or corruption.

## **PART B. IMPLEMENTING THE POLICY FRAMEWORK**

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

- Pre-tendering, including needs assessment, planning and budgeting, definition of requirements and choice of procedures;
- Tendering, including the invitation to tender, evaluation and award; and
- Post-tendering, including contract management, order and payment (see diagram below).

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

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



## I. PRE-TENDERING PHASE

### Risks to integrity in pre-tendering

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

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

#### Pre-tendering: Risks to integrity at each stage of the procurement



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

## Precautionary measures in pre-tendering



- ✓ **Reduce information asymmetry with the private sector to take a strategic approach to the management of procurement markets based on government needs, for instance:**
  - a) Gather as much information as possible on the industry or the goods and services (*e.g.* through a market study, existing databases); and
  - b) Organise consultations with the private sector where appropriate, in cases where a large number of potential suppliers could be involved in relation to a specific procurement project. Attention should be paid to ensuring that the information exchange is organised in an open, structured and ethical manner to avoid collusion between potential suppliers and that the outcomes of discussions are recorded.
  
- ✓ **Provide an assessment of the need for the procurement, in particular whether:**
  - a) The need is for the replacement or enhancement of existing resources or to meet an entirely new requirement;
  - b) There are no alternatives, including the use of in-house resources or the enhancement of existing capacity through enhanced efficiency;
  - c) Procurement would be essential for the conduct of business or to improve performance; and
  - d) The planned capacity or size is actually needed.
  
- ✓ **Use a validation system that is independent from the decision maker, in particular:**
  - a) Ensure that decisions to launch a specific procurement are taken by more than one official to the extent possible, especially for projects of high value, to minimise the risk of lobbying or collusion with a specific firm;
  - b) For projects at risk because of their value, complexity or sensitivity, consider the use of independent validation of the process (*e.g.* approval by a review committee, use of a probity advisor); and
  - c) Consult representatives from end-user organisations and the wider public in the needs assessment (*e.g.* in the form of a survey of public utility).



**Stage 2.  
Planning and budgeting**

- ✓ **Ensure that the procurement is aligned with:**
  - a) The strategic priorities of the organisation; and
  - b) The overall investment decision-making process and the general budget process which should be completed prior to the commencement of the tendering process.
- ✓ **As part of the planning, ensure clear and reasonable time frames for each stage of the procurement process by:**
  - a) Ensuring that these timeframes can be consistently applied; and
  - b) Taking into account the value, complexity and sensitivity of the contract when fixing the timescale for responses.
- ✓ **Provide a realistic estimation of the budget and ensure its timely approval, in particular by:**
  - a) Preparing a realistic estimate of all phases of the procurement, based on sound forecasting methods;
  - b) Verifying that funds are available to meet the procurement to the extent possible;
  - c) Requesting the budget holder to approve expenditure; and
  - d) Taking into account possible variations over time, which could have an impact on the contract.
- ✓ **Prepare a business case for major projects that are particularly at risk because of their value, complexity or sensitivity by:**
  - a) Taking specialised advice from project and technical experts to assess costs and benefits in a realistic manner. Also possibly request independent peer review of economic, environmental, and social forecasts (*e.g.* involve independent oversight body, specialised public agencies, panel of experts or representatives from civil society, or academic institutes or think tanks, etc.);
  - b) Ensuring a sound project management regime. In particular: make sure that project management costs are properly funded, that dedicated project officials are in place, and that key stages of the project are appropriately documented;
  - c) Preparing project-specific procurement plans to determine the level of risk of the project and plan precautionary measures accordingly (*e.g.* use of gateway reviews to provide an independent review at each stage of the procurement cycle, probity auditor, etc.); and
  - d) Ensuring that criteria for making procurement decisions are defined in a clear and objective manner, included in the tendering documents, and that decisions demonstrate that criteria have been respected.
- ✓ **Clearly define responsibilities taking into account possible risks by:**
  - a) Attributing the responsibility of project development and implementation to one project organisation, with directors being held accountable;

- b) Defining the delegated levels of authority for approval of spending, sign off and approval of key stages;
  - c) Performing an assessment of the positions of officials which are vulnerable and those activities in the procurement where risks may arise; and
  - d) Planning senior-level review within the organisation at key stages of the procurement process and considering additional control depending on the value, complexity and sensitivity of the procurement.
- ✓ **Make sure that officials are aware of the requirements for the transparency of the procurement system and well prepared to apply them by:**
- a) Designating the official(s) in charge of ensuring publicity over government decisions;
  - b) Publishing any law, regulation, judicial decision, administrative ruling, standard contract clauses mandated by law or regulation, and procedure regarding procurement, and any modifications thereof;
  - c) Using an electronic and/or paper medium that is widely disseminated and remains readily accessible to the public;
  - d) Ensuring adequate record storage and management for recording key decisions throughout the procurement cycle; and
  - e) Reaping the benefits from the use of new technologies that can automatically process and record transactions while avoiding human intervention.
- ✓ **Ensure separation of duties and authorisation, which can take several forms such as:**
- a) Ensuring segregation of technical, financial, contractual and project authorities for the approval process when possible. The following functions could be handled by different personnel: issue of purchase orders; recommendation of award; certification of the receipt of goods and services; and payment verification; and
  - b) Identifying separate personnel with clear responsibility for key stages of the procurement process, including definition of requirements, evaluation, control of performance and payment. When these duties cannot be separated, compensating controls should be put in place (*e.g.* random audit).



**Stage 3.  
Definition of  
requirements**

- ✓ **Take precautionary measures to prevent conflict of interest, collusion and corruption and promote integrity, in particular by:**
  - a) Obtaining declarations of private interests from officials involved in the procurement process and, in case of consultation, of other parties involved where appropriate;
  - b) Ensuring that officials are informed and have received guidance about how to handle conflict-of-interest situations. For officials and other actors involved in the process (*e.g.* civil society monitors), make them aware of restrictions and prohibitions (*e.g.* receipt of gifts, handling of confidential information);
  - c) Ensuring that officials are familiar with identified risks to integrity in the procurement process (for instance through a risk map or training) and encourage them to liaise with competition and/or enforcement officials in case of doubt of collusion or corruption; and
  - d) Promoting integrity, not only by delineating minimal standards but also by defining a set of values that officials should aspire to.
  
- ✓ **Take into account integrity considerations in the selection process, in particular by:**
  - a) Establishing satisfactory evidence of identity of potential suppliers and sub-contractors, including documentary evidence of the identity of key actors who have the legal power to operate in the business;
  - b) Where applicable, collecting declarations of integrity from potential suppliers in which they testify that they have not been involved in corrupt activities in the past. Consider possible sources of information to verify the accuracy of the information submitted. In addition, consider the possibility of placing requirements on potential suppliers/contractors to show evidence of anti-corruption policies and to contractually commit to complying with anti-corruption standards;
  - c) When selecting tenderers on the basis of criteria that include integrity considerations, ensure that this information can be collected and that it can be obtained from a reputable source (*e.g.* official certificate of absence of convictions in Court);
  - d) Considering the use of Integrity Pacts to ensure the mutual commitment of officials and potential suppliers to integrity standards; and
  - e) Where applicable, excluding tenderers who have been involved in corruption or debarred on corruption charges.
  
- ✓ **Make requirements available to all parties by:**
  - a) Publishing requirements for participation and recording them in writing; and
  - b) Where possible, providing potential suppliers with the right to seek clarifications, especially for high-value procurements, while ensuring that the answers are widely shared and recording them in writing.

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

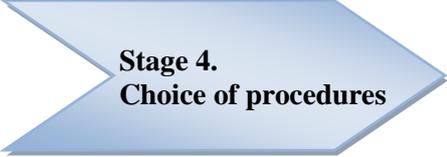
- a) Inherent risks to competition and transparency are taken into account before deciding to use a list of suppliers;
- b) The list of suitable suppliers is published on the basis of a set of criteria that are clearly defined and stated;
- c) The list is updated on a regular basis (at least on a yearly basis) and that a clear channel and sufficient timeline is advertised for application; and
- d) Proposed prices are compatible with goods and services, in reference to established market prices or based on the knowledge of prior procurements of a similar nature (*e.g.* through a database or data mining).

✓ **Ensure that specifications are:**

- a) Based on the needs identified. Suppliers and end-users may be consulted in the drafting of specifications, provided that the number of participants is sufficiently large and representative, and that the results are reviewed in light of market analysis done by the procuring authority to provide objective analysis;
- b) Designed in a way to avoid bias, in particular that they are clear and comprehensive but not discriminatory (*e.g.* no proprietary brands or trade descriptions). It is necessary to avoid any form of specification that favours a particular product or service; and
- c) Designed in relation to functional performance, with a focus on what is to be achieved rather than how it is to be done in order to encourage innovative solutions and value for money.

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

- a) Using evaluation criteria on the basis of the economically most advantageous, unless this is a commodity purchase for which the basis of the lowest price may be used;
- b) Specifying the relative weightings of each criteria and justifying them in advance;
- c) Specifying to what extent these considerations are taken into account in award criteria when using economic, social or environmental criteria; and
- d) Including any action that the procuring agency is entitled to make in the criteria (such as negotiations, under what conditions, etc.) and recording them.



**Stage 4.  
Choice of procedures**

- ✓ **Guide officials in determining the optimum procurement strategy that balances concerns of administrative efficiency with fair access for suppliers, in particular by:**
  - a) Making sure that the choice of the method ensures sufficient competition for the procurement and adapting the degree of openness depending on the procurement concerned;
  - b) Providing clear rules to guide the choice of the procurement method, ensuring a competitive process and developing additional guidelines for officials to help the implementation of these rules;
  - c) Reviewing and approving procurement strategies for all procurements, to ensure that they are proportional to the value and risk associated to the procurement; and
  - d) Considering consulting with officials in competition authorities to ensure that the procurement strategy adopted is the one that is most likely to achieve an efficient and competitive outcome.
  
- ✓ **Take precautionary measures for enhancing integrity where competitive tendering is not required by regulations. These measures may be proportionate to the value of the contract and include for instance:**
  - a) Clear and documented requirements;
  - b) The justification of the choice of procedure (when using non-competitive procedures) and the appropriate records;
  - c) A specification of the level of the authorising personnel;
  - d) Planning of random reviews of results of non-competitive procedures;
  - e) A consideration of the possibility of involving stakeholders and civil society to scrutinise the integrity of the process, especially for exceptional circumstances such as extreme urgency or for high-value contracts;
  - f) The publication of the criteria to be applied for the selection of the supplier, and the expected terms of the contract; and
  - g) After the award of contract, a publication of the contract agreement.
  
- ✓ **For restricted/selective tendering methods, specific measures could be taken to enhance integrity, such as:**
  - a) Considering the minimum number of suppliers to be invited for tendering according to regulations, estimating the maximum number of suppliers that could be realistically considered for the specific procurement, and recording justifications if the minimum number of tenders cannot be met; and
  - b) Conducting spot checks to confirm suppliers' offers and contacting suppliers who do not respond to repeated invitations to tender with a view to detecting potential manipulation.

✓ **For negotiated/limited tendering methods, specific measures could be taken to enhance integrity, such as:**

- a) Providing more detailed record, including for instance the particular supplier who was selected; and
- b) Including the terms agreed upon in the contract, with a specification reflecting the supplier's solution.

✓ **Ensure transparency for qualification processes that cover multiple procurements and are not open at all times for application (e.g. framework agreements) by:**

- a) Publishing the current list of qualified suppliers;
- b) Publishing the invitation to apply for qualification on a regular basis, including the qualification criteria;
- c) Ensuring that specifications are set up in advance and published; and
- d) Publishing all awards under framework agreements, either per order or on a regular basis.

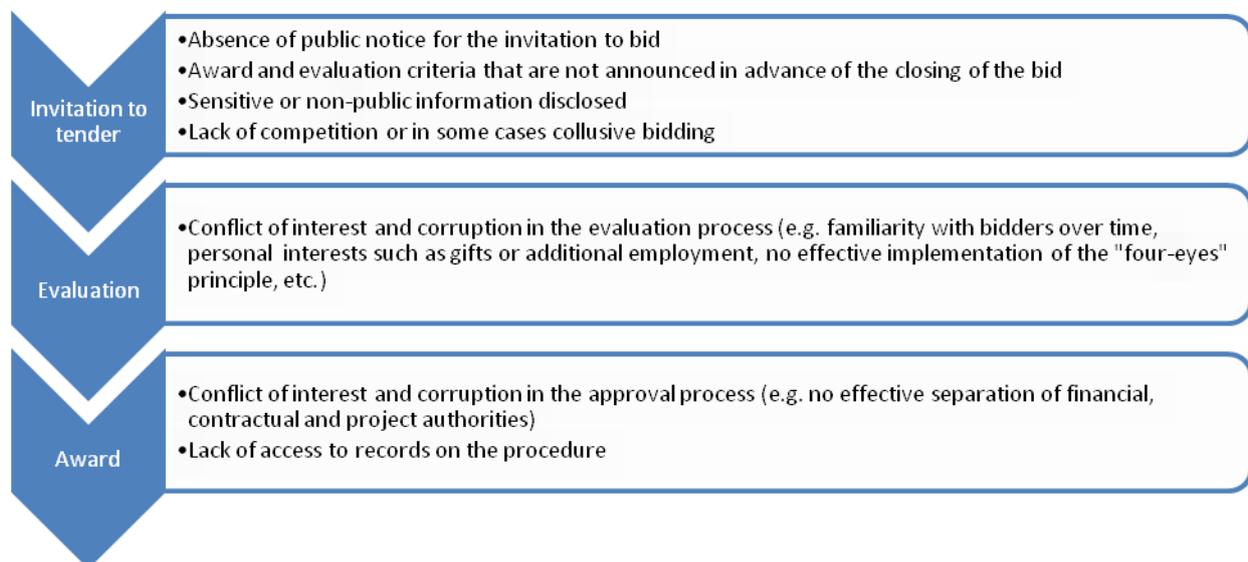
## II. TENDERING PHASE

### Risks to integrity in tendering

In the tendering phase, common risks to integrity include:

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

#### Tendering: Risks to integrity at each stage of the procurement



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

## Precautionary measures in tendering



### Stage 5. Invitation to tender

- ✓ **Ensure a sufficient level of transparency in the procurement opportunity:**
  - a) For open tendering: make the information on the procurement publicly available, including related evaluation criteria; and
  - b) For restricted/selective and negotiated/limited methods: publish information on how to qualify in a readily available medium within a timeframe and in a manner that would reasonably allow eligible suppliers to apply.
  
- ✓ **Publish a tender notice that includes:**
  - a) Information on the nature of the product or service to be procured, specifications, quantity, timeframe for delivery, realistic closing dates and times, where to obtain documentation, and where to submit tenders;
  - b) A clear and complete description of selection and award criteria that is non discriminatory and cannot be altered afterwards;
  - c) Details on the management of the contract and the plan and method for payment and possibly the guarantees when required; and
  - d) Details of the contact point for enquiries.
  
- ✓ **Communicate to potential suppliers in the same timeframe and in the same manner, in particular by:**
  - a) Encouraging information exchange on a formal basis (*e.g.* contact points for enquiries, information sessions, on-line module to observe clarification meetings, on-line posting of questions and answers);
  - b) Ensuring that questions for clarification are promptly responded to and that this information is transmitted to all interested parties;
  - c) Communicating changes immediately, preferably in the same channel originally used; and
  - d) Publishing information, preferably on-line, to allow for external monitoring and public scrutiny.



## Stage 6. Evaluation

✓ **Ensure security and confidentiality of information submitted, in particular by:**

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

✓ **Define a clear procedure for the opening of the tender, in particular by:**

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

✓ **Ensure that the evaluation process is not biased and confidential by:**

- a) Undertaking evaluations with more than one evaluating official or preferably a committee. Depending on the value of the procurement and the level of risk, the committee could include not only officials from different departments but also possibly external experts;
- b) Using notified evaluation criteria systematically and exclusively and assessing them independently (*e.g.* technical, project and risk criteria could be assessed prior to and separately from financial criteria). Tenders should be evaluated against notified criteria, preferably on a “whole-of-life basis”.
- c) Verifying that officials in charge of the evaluation are not in a conflict-of-interest situation (*e.g.* through mandatory disclosure) and are bound by confidentiality requirements. In the case of an evaluation committee, integrity and professional considerations must be taken into account in the selection of members and involve a member that is external to the procurement team when possible; and
- d) Including all relevant aspects of the evaluation in a written report signed by the evaluation officers/committee.

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

- a) Ensure that negotiations are conducted in a structured and ethical manner and are held within a predefined period of time so that they do not discriminate between different suppliers;
- b) Handle information on tenders in a confidential manner; and
- c) Keep detailed records of the negotiation.



**Stage 7.  
Award**

✓ **Inform tenderers as well as the wider public on the outcome of the tendering process by:**

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

✓ **Offer the possibility of debriefing to suppliers on request by:**

- a) Withholding confidential information (*e.g.* trade secrets, pricing);
- b) Highlighting the strengths and weaknesses of the unsuccessful tender;
- c) For debriefings in writing, ensuring that the written report is approved beforehand by a senior procurement official; and
- d) Organising oral debriefings, provided that discussions are carried out in a structured manner so that they do not disclose confidential information, and that they are properly recorded.

✓ **Resolve possible disputes through constructive dialogue when possible, and provide an identified channel for formal review by:**

- a) In the case of problems with potential suppliers, making an effort to resolve disputes through negotiation as a first step;
- b) Providing information on how to lodge a complaint related to the procurement process;
- c) Providing the possibility to use dispute resolution mechanisms not only before but also after the award; and
- d) Considering the possibility of using interim measures to enable the prompt processing and resolution of complaints. The possible overriding adverse consequences for the interests concerned, including the public interest, should be taken into account when deciding whether such measures should be applied.

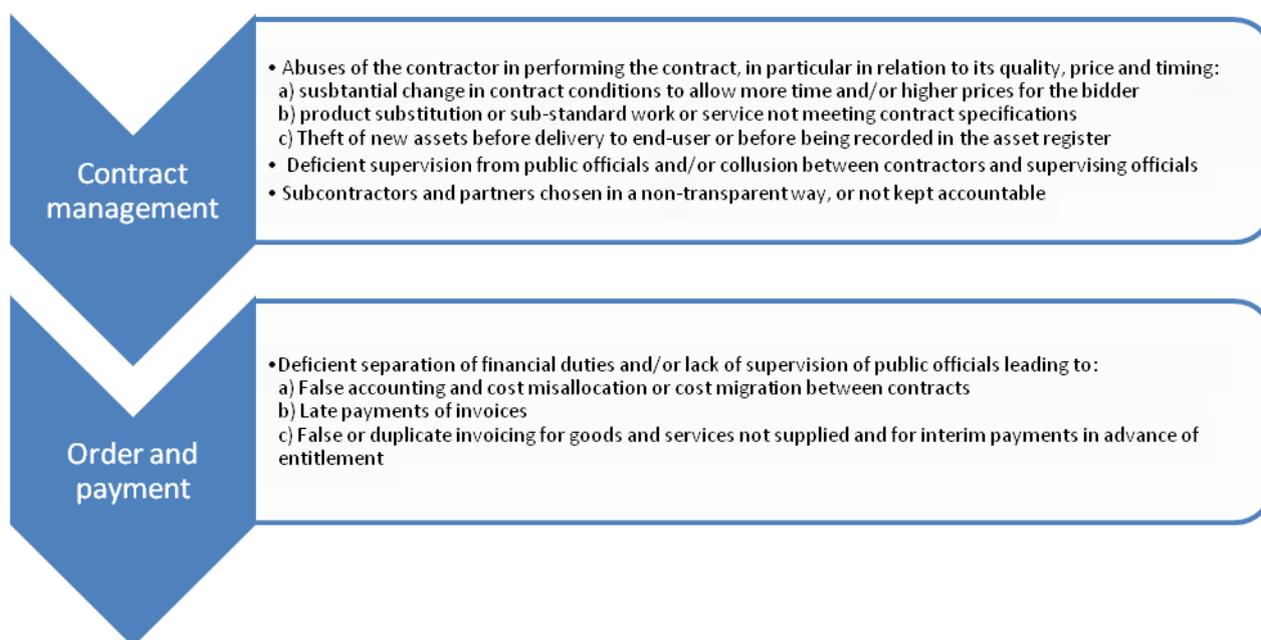
### III. POST-TENDERING PHASE

#### Risks to integrity after the award

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

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

#### Post-tendering: Risks to integrity at each stage of the procurement



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

## Precautionary measures in post-tendering



### ✓ Clarify expectations, roles and responsibilities for the management of the contract by:

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

### ✓ Supervise closely the contractor's performance and integrity, in particular by:

- a) Monitoring the contractor's performance against specific targets and levels laid down in the contract at regular intervals;
- b) Ensuring that costs are monitored and kept in line with contract rates and approved budgets;
- c) Organising inspection of "work-in-progress" (especially regarding structural elements that could be hidden by ongoing construction) and completing work and random sample checks;
- d) Using electronic systems to monitor progress of contract and timely payment and sending warnings regarding possible irregularities or corruption;
- e) Involving third parties to scrutinise the process (*e.g.* selected member from an end-user organisation); and
- f) Where possible, testing the product, system or other results in a real-world environment prior to delivery of the work.

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

- a) Ensuring that contract changes that alter the price and/or description of the work are supported by a robust and objective amendment approval process;
- b) Ensuring that contract changes beyond a cumulative threshold are monitored at a high level, preferably by the decision-making body that awarded the contract;
- c) Allowing contract changes only up to a reasonable threshold, and changes that do not alter the quality of the good or service. Beyond this threshold, a review system could be set up to understand the reasons for these changes and consider the possibility to re-tender;
- d) Clearly tying in the variation with the main contract to provide an audit trail; and
- e) Recording changes to the contract and possibly communicating them to unsuccessful tenderers as well as other stakeholders and civil society.

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

- a) Recording, co-ordinating and communicating information in relation to contract management;
- b) Organising regular review meetings between the customer and contractor, and recording end-user satisfaction with the service; and
- c) Ensuring access to records for stakeholders and possibly civil society and the wider public for a reasonable number of years after the contract award.



**Stage 9.**  
**Order and payment**

- ✓ **Verify that the receipt of goods/services is in line with expected standards by:**
  - a) Inspecting the goods against the purchase order and the delivery invoice before payment. It is also necessary to assess and certify the standard of service to ensure quality;
  - b) When possible, involving at least two officials in the verification that the receipt of goods/services is in line with expected standards; and
  - c) Involving, in addition to procurement officials, end-users when possible to enhance checks and balances.
  
- ✓ **Ensure that the final accounting or audit of a project is not carried out by personnel involved in former phases to ensure the separation of duties and authorisation, for instance:**
  - a) Officials who examine the invoice against the goods and orders/delivery note should differ from those officials who give the payment order to the accounting department; and
  - b) Payments should be cross-checked by the accounting entity afterwards.
  
- ✓ **Ensure that the budgeting system provides for a timely release of funds to make payment against contractual conditions, in particular by:**
  - a) Committing budget funds promptly prior to or during the award of the contract;
  - b) Using innovative methods such as purchase cards for small value procurements, provided that their use is limited to purchases of specified items and that expenditure is limited;
  - c) Organising random supervisory checks on payments and, where financial systems permit, monitor outstanding payments; and
  - d) Preparing systematic completion reports for certification of budget execution and for reconciliation of delivery with budget programming.
  
- ✓ **Consider the possibility of a post project assessment, in particular by:**
  - a) Selecting projects for post project assessment on the basis of identified criteria, including the value of the procurement as well as its complexity, sensitivity and specificity (*e.g.* exceptions to competitive procedures);
  - b) Reviewing the procurement process, drawing lessons that can be learned for any future contracts and placing this information on record;
  - c) Considering the possibility of a “feedback loop” through the consultation of end-users in the post project assessment, particularly for high-value procurements, and involving civil society representatives who monitored the project, if applicable;
  - d) Including information on discrepancies and abnormal trends in procurement (*e.g.* possible collusion, split orders) in the report for information management as well as liaising with competition and/or law enforcement agencies, when relevant; and

e) Transmitting information on high-value procurements to the Supreme Audit Institution or other oversight bodies.

## **GLOSSARY**

### **AUDIT TRAIL**

A chronological record of procurement activities enabling the reconstruction, review and examination of the sequence of activities at each stage of the public procurement process.

### **DEBARMENT**

Exclusion or ineligibility of a contractor from taking part in the process of competing for government or multilateral agency contracts for a definite or indefinite period of time, if, after enquiry or examination, the contractor is adjudged to have been involved in corruption to secure past or current projects with a government agency.

### **DIRECT SOCIAL CONTROL**

The involvement of external actors – for example end-users, representatives from civil society or the wider public – in scrutinising the integrity of the public procurement process.

### **INTEGRITY PACT**

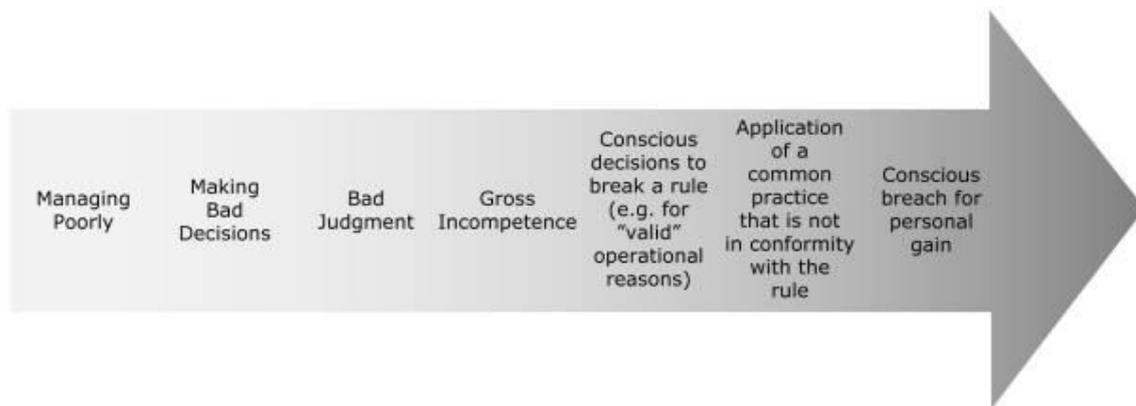
An agreement between a government or government department with all tenderers for a public sector contract that neither side will pay, offer, demand, or accept bribes, or collude with competitors to obtain the contract or while carrying it out. In case of breach, the contract terms and conditions include the possibility of cancellation of contract, forfeiture of bond, liquidated damages and debarment.<sup>18</sup>

### **LIMITED/NEGOTIATED TENDERING**

Limited/negotiated tendering means a procurement method where the entity contacts supplier(s) individually.

### **MISMANAGEMENT**

Mismanagement could conceivably cover a range of actions from a simple mistake in performing an administrative task to a deliberate transgression of relevant laws and related policies.<sup>19</sup>



Source: Government of Canada ([www.tbs-sct.gc.ca/report/rev-exa/faa-lgfp/faa-lgfp04\\_e.asp](http://www.tbs-sct.gc.ca/report/rev-exa/faa-lgfp/faa-lgfp04_e.asp)).

## **OPEN TENDERING**

Open tendering means a procurement method where all interested suppliers may submit a tender.

## **PUBLIC PROCUREMENT CYCLE**

The procurement cycle encompasses a sequence of related activities, from needs assessment, to the award stage, up until the contract management and final payment.

## **RESTRICTED/SELECTIVE TENDERING**

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

## **REVERSE AUCTION**

A traditional auction is where there is a single seller and many potential buyers tendering for the item being sold. A reverse auction, used for e-purchasing and generally using the internet (an e-auction), involves, on the contrary, one buyer and many sellers. The general idea is that the buyer specifies what it wants to purchase (and often its price ceiling), and then invites suppliers to prepare a tender. Reverse auction lends itself well to the procurement or purchase of items that are in large supply and for which price savings can be gained through increased competition.

## **RISK-BASED APPROACH**

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

## **TRANSPARENCY**

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

- Laws and regulations, judicial decisions and/or administrative rulings, standard contract clauses for public procurement; and

- The actual means and processes by which specific procurements are defined, awarded and managed.

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1. Procurement does not usually cover needs assessment as well as contract management and payment. However, the Checklist considers procurement as a complete procurement cycle in order to ascertain, from a good governance perspective, where vulnerabilities to corruption lie at the different stages that lead to the delivery of goods and services.

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

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

4. For further information about the benchmarking and assessment methodology, please refer to: [www.oecd.org/document/40/0,3343,en\\_2649\\_19101395\\_37130152\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/40/0,3343,en_2649_19101395_37130152_1_1_1_1,00.html).

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

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

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

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

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

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

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

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

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

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

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

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

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

- 
3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.
7. Public procurement is estimated at approximately 20% of Gross Domestic Product in OECD countries. For further information, see *The Size of Government Procurement Markets*, OECD, 2001.
8. Kaufmann, World Bank (2006), based on Executive Opinion Survey 2005 of the World Economic Forum covering 117 countries.
9. Based on L. Huberts and J.H.J Van den Heuvel, *Integrity at the Public-Private Interface*, Maastricht 1999: Shaker.
10. Based on *United Nations Convention against Corruption: implementing Procurement-Related Aspects*, paper submitted by the United Nations Commission on International Trade Law at the Conference of States Parties to the United Nations Convention against Corruption in Indonesia in January 2008.
11. See also OECD *Best Practices for Budget Transparency*, May 2001 ([www.oecd.org/dataoecd/33/13/1905258.pdf](http://www.oecd.org/dataoecd/33/13/1905258.pdf)).
12. See *Bribery in Public Procurement: Methods, Actors and Counter-Measures*, OECD, 2007.
13. For further information about country practices in relation to sanctions in Asia and the Pacific, see *Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries*, ADB/OECD, 2007.
14. For further information on the challenges of introducing debarment, see *Fighting Corruption and Promoting Integrity in Public Procurement*, OECD, 2005.
15. See *Public Procurement Review and Remedies Systems in the European Union*, SIGMA Paper No 41, 2007.
16. For instance, the OECD-DAC Joint Venture for Procurement has developed with donor members and partner countries a common country-led approach to strengthening the quality and performance of public procurement systems.
17. This practice is used in particular by Transparency International as part of Integrity Pacts to involve an independent monitor in the process. The independent expert, who may be provided by civil society or commercially contracted, has access to all documents, meetings and parties and could raise concerns first with the principal, and if no correction is made, with the prosecution authorities.
18. See also the website of Transparency International:  
[www.transparency.org/global\\_priorities/public\\_contracting/integrity\\_pacts](http://www.transparency.org/global_priorities/public_contracting/integrity_pacts).
19. This definition has been extracted from the 1985 Canadian Financial Administration Act ([laws.justice.gc.ca/en/F-11/index.html](http://laws.justice.gc.ca/en/F-11/index.html)).