

**Good Governance for Public Procurement:  
Linking Islands of Integrity**

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**GOOD GOVERNANCE FOR PUBLIC PROCUREMENT:  
LINKING ISLANDS OF INTEGRITY**

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*This document provides background information to support discussion in Session 2.*

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**GOOD GOVERNANCE FOR PUBLIC PROCUREMENT:  
LINKING ISLANDS OF INTEGRITY**

by

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**EXECUTIVE SUMMARY**

Government buyers are in the public eye because of the tremendous impact public procurement has on so many aspects of the social and business cultures and mores within a country. They must continually be aware of the influence of their actions and the responsibility they must shoulder to uphold the good of their country and its citizens. However, if the institutional underpinnings do not support honest and fair procurement actions, the virtuous civil servant can believe that he or she is a unique island of integrity in a sea of bureaucratic indifference to their personal and professional ethics.

This paper attempts to go to the arguments and the methods for procurement control at the institutional design and legislative levels. It is based on, and uses in part, source material from the organizations referred to in the paper obtained from referenced web sites on the Internet. National procurement systems are cited where they provide concrete examples to address the concepts discussed. Also, papers and discussions from the OECD Global Forum on Governance held 29/30 November 2004 in Paris are also cited in the paper. This Forum brought together participants from OECD and non-member countries to discuss methods, conditions and approaches to preventing, detecting and sanctioning corruption in public procurement.

Finally, in a supplement to this paper the United States system is used as an example to populate a matrix to help analyze a country's legal framework to help identify elements which can support anti-corruption efforts. If applied at the national level, this matrix can help highlight areas for additional attention. By perfecting and applying this matrix to OECD member countries, a useful comparison of techniques and potential gaps in the legal framework of a country can help to strengthen how effectively procurement professionals are being linked and supported in this important public management task.

**Balance between Efficiency and Controls**

Procurement operations and practices are at the core of a well functioning procurement system. Procuring entities must be held accountable for the responsibilities assigned to them. Officers of the Government who have been delegated procurement authority need to be made accountable for the public procurement decisions made by them. They represent the Government in an important interface with the

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<sup>1</sup>. The views expressed in this paper are personal to the author and do not necessarily reflect the official views of the OECD or of the governments of its member countries

public. They must be accountable for the effectiveness, efficiency, legal and ethical manner in which they conduct procurements.

Buyers should have the authority and encouragement to use personal initiative and sound business judgment on a daily basis. Additionally, the professional public buyer should employ knowledge of industry, trading principles and practices in an ethical manner to help set the tone of doing business within his or her national borders.

### **Identifying Good Practices**

A growing number of OECD countries have established flexible regulatory frameworks and simplified procedures in recent years. The challenge for OECD countries has been to find solutions on how to harmonize the legal, institutional and procedural frameworks in public procurement while providing managers with sufficient flexibility. In addition, considering that flexible procurement systems imply a degree of uncertainty in control procedures, accountability practices have been evolving in order to verify whether relevant regulations and standards are being met. Coordinating different forms of control (local controls, accounting controls, controls made by fiscal authorities, external controls and audits) to fill-in gaps and maximize the use of information produced by different controls is a concern for OECD countries.

To obtain best value, quality and service, it is good procurement policy to encourage the most competitive and able suppliers to tender for contracts. To do this, the procurement organization must have:

- Procedures which are fair, non-discriminatory, and transparent.
- Requirements which are clear -- using performance and international specifications where possible.
- Standard conditions of contract.
- Adherence to the Government's obligations under the contract, including the terms of payment.
- Good working relationships and trust with suppliers.

It is the responsibility of public buyers to uphold practices, policies, and procedures built around these concepts.

A cornerstone of a well-functioning public procurement system operating with integrity (fair, transparent, and credible) is the availability of mechanisms and capacity for independent control and audit of procurement operations to provide for accountability and compliance. Similarly, there must be a system for participants to lodge complaints and challenge decisions with administrative and judicial review bodies that also have the legal power to impose corrective measures and remedies against contracting entities in breach of the legal and regulatory framework. Fraud and corruption, including the issue of conflict of interest, should be addressed in legislation as well as through special measures in order to create a sound and fair environment for public procurement operations.

While the overall principles and objectives of good procurement are relatively well known, the extent to which the supporting legal framework knits these principles together to link individual procurement officers and their actions into a web of good governance is less understood. To help address this area and reduce avoid "islands of integrity", we have developed a framework (Table 2) which allows us to highlight key elements in controlling corruption in public procurement.

Government buyers help control approximately 15% of the global gross domestic product. The sheer size of this effort and the tremendous impact public procurement has on so many aspects of the social and business cultures and mores within a country keep public procurement in the public eye. Procurement

officials must be continually aware of the influence of their actions and the responsibility they shoulder to uphold the good of their country and its citizens. However, if the institutional underpinnings do not support honest and fair procurement actions, the virtuous civil servant can believe that he or she is a unique island of integrity in a sea of bureaucratic indifference to their personal and professional ethics.

An effective public procurement system will allow suppliers to provide satisfactory quality, service and price within a timely delivery schedule. The basic tenet of public procurement is straightforward: acquire the right item at the right time, and at the right price, to support government actions. Although the formula is simple -- it involves questions of accountability, integrity and value with effects far beyond the actual buyer/seller transactions at its center. A serious and sustained review of such decisions is needed to properly manage the public procurement function.

### ***Transparency***

Transparency, in the context of public procurement, refers to the ability of all interested participants to know and understand the actual means and processes by which contracts are awarded and managed. This requires the release, as a minimum, of information sufficient to allow the average participant to know how the system is intended to work, as well as how it is actually functioning. Transparency is a central characteristic of a sound and efficient public procurement system and is characterized by:

- Well-defined regulations and procedures open to public scrutiny.
- Clear, standardized tender documents.
- Bidding and tender documents containing complete information; and
- Equal opportunity in the bidding process.

Transparency requires that published rules are the basis for all procurement decisions and that these rules are applied objectively to all bidders. Transparency is an effective means to identify and correct improper, wasteful -- and even corrupt -- practices.

### ***Corruption***

Fighting corruption and improving financial accountability are essential for good governance. No country in the world appears to have escaped improper, wasteful and corrupt practices in public procurement.

Corruption deserves this special attention because it works in insidious ways. It tends to undermine the whole fabric of economic and political life. Thus, it is of extreme importance to establish and sustain correct behaviour in all procuring entities. Corruption, as defined by the World Bank<sup>2</sup> is the abuse of public office for private gain. This private gain could be in the form of money or favours for the benefit of family or friends -- or for the benefit of special interest groups such as a political party seeking to obtain or retain power. Such behaviour by persons concerned with the procurement process often leads to economic losses for the public. Thus, many lose for the benefit of a few.

### ***Public Interest***

The "public" expects that its interests are protected, or at least considered by the government when deciding how national resources are to be spent. The ability of the business community to participate in the

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<sup>2</sup> *Helping Countries Combat Corruption*, Poverty Reduction and Economic Management Network, The World Bank, Washington, DC September 1997, p 8

national procurement process helps assure its members that they can remain viable employers and productive economic units to build wealth and increase the tax base. Therefore, businesses feel a legitimate need to discuss or promote their interests as part of the overall "public" interest.

Transparency, or openness, of the decision-making process and actions of government are the most effective tool to directly or indirectly measure "the greatest good for the greatest number" in a Utilitarian sense. Transparency means that information is released in accordance with the rules, not indiscriminately to all people.

Information may not be available to the general public in matters classified for national security purposes or which are sensitive, such as in adjudicating the award of a competitive contract, for example. However, a transparent system will allow for some properly authorized representatives for public oversight (e.g. Public Accounts Committee of Parliament or Congress) to assure the public that government decisions followed proper procedures.

### ***Islands of Integrity***

In the context of a public procurement setting, where relatively large sums of money are dealt with daily, the pressure on an individual from within their society can be intense. Even where the procurement law or regulation clearly mandates proper behaviour, individuals in the procurement process may work within an organizational setting that at best is indifferent to how effectively these rules are practiced. Thus, where there is no sustaining system of support for correct actions, the dedicated procurement official becomes an island of integrity in an ocean of apathy. Firm leadership and clear communications can help link these islands with an effective institutional infrastructure.

### ***Building a Balanced Public Procurement System***

Balancing competing interests is one of the main functions of a political system. Governments have struggled with how to allow competing interests to contend in the political arena within acceptable rules. Some countries have addressed the issues involving corruption in public procurement in a more complete manner than others. To help assess the issues involved and the means to control corruption, we have developed a framework (below) to use as a tool for review. This Framework highlights key elements in controlling corruption in public procurement. By focusing on how to define corruption and establish the means to expose it, the corruption can then be corrected.

<b>A FRAMEWORK FOR CONTROLLING CORRUPTION IN PUBLIC PROCUREMENT</b>	
	<b>Key Elements</b>
DEFINE by	Criminal law, public procurement law, government regulations, professional code of ethics, custom and practice
EXPOSE by	Internal and external auditors, whistle blowers, public availability of government information, financial disclosure, protests of contract awards, other external oversight, professional diligence
CORRECT by	Implementation of law and regulation, protest resolution, management improvements
PREVENT by	<ol style="list-style-type: none"> <li>1. <b>PROFESSIONAL INDEPENDENCE:</b> to assure the professional independence of officials in charge of procurement to make properly balanced decisions on the basis of merit and shield them from improper pressure of higher ranking politically designated officials</li> <li>2. <b>PROFESSIONAL STANDING AND TRAINING:</b> to enhance the professional skills of the officials in charge of procurement and approaches used to train the officials in charge of procurement to prevent corruption and to enhance efficiency.</li> <li>3. <b>CHALLENGE and REVIEW SYSTEMS:</b> Approaches used to resolve challenges to the rules promulgated and actions taken within the public procurement system</li> <li>4. <b>QUALITY CONTROL AND REVIEW SYSTEMS:</b> Approaches to conduct pre and post award reviews and establish internal and external controls and process evaluation on the procurement process.</li> <li>5. <b>SYSTEM MANAGEMENT:</b> Approaches to maintain the procurement infrastructure and keep permanent contact with operational officials.</li> </ol>

Our ultimate goal is to prevent corruption within the public procurement system. To do so, we have set out for further review five topic areas. By considering these areas when looking at a procurement system's law and regulations, gaps in the system become more apparent for further attention.

*1. Professional independence:*

Strong institutional support at the top levels of government is needed for procurement personnel to promote integrity and the proper application of procurement law through independent administration and monitoring of the public procurement process. This leads to increased efficiency and professional performance in procurement operations. Strong rules to set out what is acceptable and what is not acceptable for procurement and other government officials can help safeguard this independence and control political influence and its distortions of economic efficiency and fairness. Knowing that strict rules are being enforced by the government can help dissuade any request for favouritism.

*2. Professional standing and training:*

Professionalism can be defined as the status, methods, or standards within a career area. Improving the professionalism of the procurement workforce is a means to link individual practitioners into a network to help control corruption. While being a professional does not eliminate the possibility of individual members being corrupt, it helps control improper behaviour by allowing actions to be judged against standards accepted by the profession.



Government officials performing contracting duties should be seen not as providing a clerical function but as part of the strategic process of controlling the use of government resources through a managed interaction with the private sector. Only by looking at officials in this way can a culture of professionalism and ethical behaviour be developed. Public procurement personnel need to clearly understand their role and develop the proper culture of responsibility and accountability to properly manage these resources.

3. *Challenge and review systems*

Complaints by disappointed bidders of government actions both before and after contract award allow the procurement process to improve. This is an important self-policing mechanism to assure good governance by allowing people most affected by the system to call attention to its shortcomings. Meritorious grievances of suppliers force a review of questionable or improper actions so that the procurement system is strengthened and integrity and accountability of government maintained.

4. *Quality control and review systems*

Internal and external checks of the procurement system, done in a reasonable manner, can pay dividends of more uniform policy approaches, improved cost controls and fewer instances of corruption or waste. Procurement personnel are involved in every aspect of the contracting process to some extent, but they rely on others within the organization to fulfil major functional responsibilities in many aspects of the process. In addition to those with direct involvement, indirect roles typically are given to others in the public organization for purposes of providing a system of checks and balances. These include approval authorities and auditors.

5. *System management*

Government procurement objectives will not be achieved simply by developing procurement rules. Like in the sport of football, the rules provide the guidelines under which the game is played but compliance with the rules alone does not make a competent or successful team. It requires constant attention to the state of play and devising up-to-the-minute strategies to reach your goal. To do this in public procurement, an organizer or supervisory body is needed to ensure that all the procurement entities are working

The Framework matrix can be an effective tool for review when it has been tested and perfected against more examples of national procurement systems. By perfecting and applying this matrix to OECD member countries, we expect to begin a dialog of just what are the critical elements in controlling corruption in public procurement and in what manner have these elements been addressed by various countries. It is expected that differences in approach will be featured through comparison of the completed Frameworks. These differences may be due to varying and unique national requirements or they may indicate areas for development of national policies which can lead to an overall strengthening of the compared systems. In the final analysis, further review of the public procurement legal framework can lead to a better understanding of policies and procedures that support procurement professionals so they are effectively linked and supported in this important public management task.

## 1. Procurement Scope

According to the results obtained by the OECD, the main estimates of the size of government procurement markets, expressed as a percentage of 1998 GDP data and in billions of USD, are approximately 15% of the global gross domestic product<sup>3</sup>. With ongoing structural changes in governments, decentralization and devolution, and the steady expansion of social services, the total amount of public procurement as a percentage of GDP is likely to increase or at least keep constant in the years to come.

The procurement process is a tributary of the budgetary stream. Organizations, whether they are private or public, determine through the budget process how resources are going to be used to meet established goals. The income from various sources is designated for specific projects and purposes. The organization can then make a decision as to how much of the budgeted amounts will be spent in-house using internal resources and how much will go "out of house" to meet the organizational goals. This is the basic "make or buy" decision that an organization uses to manage its work. The organization normally buys them if the needed goods and services are unavailable in-house, or cheaper than they would cost internally.

Governments provide goods and services to meet a variety of citizen-needs. Public procurement systems are the bridge between public requirements (e.g. roads, hospitals, defense needs, etc.) and private-sector providers when the government decides to go out of house. In this sense, governments traditionally use their budget process just as a private company makes similar decisions in their enterprise resource plan. However, unlike private sector procurement -- public procurement is a business process within a political system. And, just as a private company operating in a free market can be judged by its customers on the quality of its products or services, governments can be judged on the quality of governance provided.

The Process Chart below describes the general steps in public procurement.

**Public Procurement Environment** – law, regulations, organizational structures, professional capacities and other elements that surround the various stages of the process.

**Stage 1 – The Preparation Stage** – actions by the buying organizations to plan its solicitation strategy, meaning that the appropriate procedure is chosen, the specifications are decided upon, etc.

**Stage 2 – The Advertising Stage** – actions by the buying organization to publicize its requirements through a solicitation and issuing the solicitation documents to suppliers that are interested.

**Stage 3 – The Response Stage** – actions by the buying organization to receive the offers made by the suppliers and to evaluate them for recommendation for award.

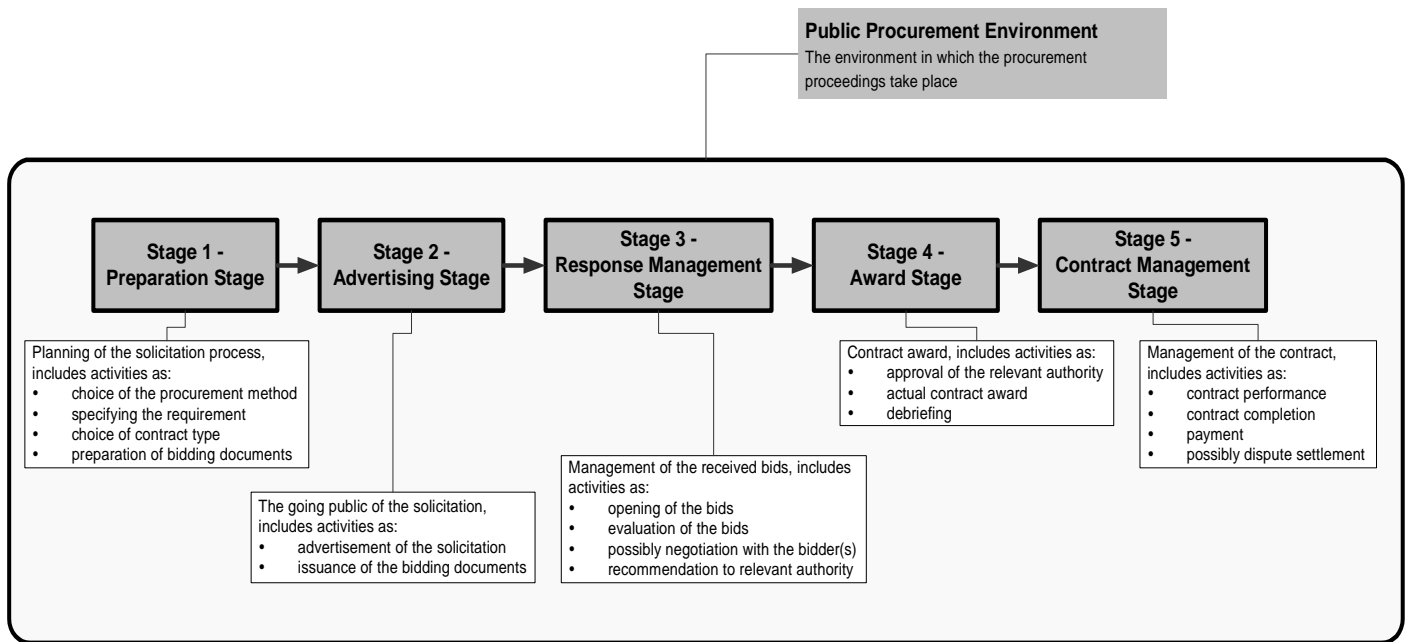
**Stage 4 – The Award Stage** – actions by the buying organization to select the supplier(s) with whom it will do business and in which the final contract is signed.

**Stage 5 – The Contract Management Stage** – actions by which the contract is performed and completed and in which the relationships between the two parties have to be managed.

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<sup>3</sup> The Size of Government Procurement Markets, OECD 2002, also available at <http://www.oecd.org/dataoecd/34/14/1845927.pdf>

# Process Chart



## 2. Islands of Integrity

The procurement process is applied within a system involving law, regulations, organizational structures and government personnel programs. Furthermore, individuals working within this system are tied to their communities by traditions and group relations (e.g. family, tribal, academic, social, etc.). Recent research<sup>4</sup> focused on integrity in a business setting indicates that integrity may be seen as supported or undermined as follows:

For the individual, values absorbed:

- From close associates - parents, siblings, other relatives and/or peers.
- Through acceptance of cultural values - the practiced norms of the society, established in social institutions such as the family, education in schools, universities and/or work settings.
- From acceptance or fear of social control systems; and
- From personal character development via self-reflection, career/life planning, etc.
- For organizations, values absorbed:
- From an organizational culture which emerges from the entity's history, its industry practices, management approaches, employment criteria, and responses to legal regimes, etc.
- Through corporate strategy setting - governance principles, policies, planning etc.

<sup>4</sup> Business Integrity Systems in Australia, RMIT Business School of Management with Griffith University and Transparency International Australia November 2001. p.2.  
<http://www.transparency.org.au/documents/Bisareport.pdf>

In the context of a public procurement setting, where relatively large sums of money are dealt with daily, the pressure on an individual from within their society can be intense. Even where the procurement law or regulation clearly mandates proper behaviour, individuals in the procurement process may work within an organizational setting that at best is indifferent to how effectively these rules are practiced. Thus, where there is no sustaining system of support for correct actions, the dedicated procurement official becomes an island of integrity in an ocean of apathy. Firm leadership and clear communications can help link these islands with an effective institutional infrastructure.

### 3. Corruption and Transparency

An effective public procurement system will allow suppliers to provide satisfactory quality, service and price within a timely delivery schedule. The basic tenet of public procurement is straightforward: acquire the right item at the right time, and at the right price, to support government actions. Although the formula is simple -- it involves questions of accountability, integrity and value with effects far beyond the actual buyer/seller transactions at its center. A serious and sustained review of such decisions is needed to properly manage the public procurement function.

The degree of transparency helps to determine the effectiveness of the public procurement system. Transparency, in the context of public procurement, refers to the ability of all interested participants to know and understand the actual means and processes by which contracts are awarded and managed. This requires the release, as a minimum, of information sufficient to allow the average participant to know how the system is intended to work, as well as how it is actually functioning. Transparency is a central characteristic of a sound and efficient public procurement system and is characterized by:

- Well-defined regulations and procedures open to public scrutiny.
- Clear, standardized tender documents.
- Bidding and tender documents containing complete information; and
- Equal opportunity in the bidding process.

Transparency requires that published rules are the basis for all procurement decisions and that these rules are applied objectively to all bidders. Transparency is an effective means to identify and correct improper, wasteful -- and even corrupt -- practices.

Fighting waste and corruption and improving financial accountability are essential for good governance. No country in the world appears to have escaped improper, wasteful and corrupt practices in public procurement.

Corruption deserves special attention because it works in insidious ways. It tends to undermine the whole fabric of economic and political life. Thus, it is of extreme importance to establish and sustain correct behaviour in all procuring entities. Corruption, as defined by the World Bank<sup>5</sup> is the abuse of public office for private gain. This private gain could be in the form of money or favours for the benefit of family or friends -- or for the benefit of special interest groups such as a political party seeking to obtain or retain power. Such behaviour by persons concerned with the procurement process often leads to economic losses for the public. Thus, many lose for the benefit of a few. Often there is some form of collusion between the purchasing and selling entities. Responsible government officials on the contracting side request -- or are induced -- to accept gratuities from bidders or contractors to make favourable award decisions. Such

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<sup>5</sup> Helping Countries Combat Corruption, Poverty Reduction and Economic Management Network, The World Bank, Washington, DC September 1997, p 8

influence in the decision-making and executive processes of a country has legal, administrative and economic costs. Table 1 contains examples of wasteful and corrupt practices which have affected public procurement in countries throughout the world. It affects not only public sector buyers, but extends to those who receive goods and services and those who use them.

Despite potential business opportunities, there is a perception among business groups that governments are slow payers, difficult to work with or have their own favoured suppliers for contract awards. In addition to such general complaints, there is often the belief that procurement rules and controls are not adequate to stop corrupt activities. One example of this is a recent survey of Norwegian business leaders – a country identified by Transparency International in their Corruption Perceptions Index as one of the least corrupt; - found that 55% do not believe tender rules prevent corruption.<sup>6</sup>

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<sup>6</sup> Ms. Tina Soreide, “Corruption in Public Procurement”, OECD Global Forum on Governance. P.4.

<b>Table 1: Examples of Corrupt Procurement Activities</b>	
<b>Corruption led by Government Personnel</b>	<b>Result</b>
Bribes and Kickbacks	Reward for expected or actual benefit for public official. Seller to buyer payments for participation in a procurement.
Conflict Of Interest	Government officials or their friends or relatives benefit from the contract or the contractor obtains an unfair advantage in future work.
Split Purchase	The procurement is divided into smaller pieces to avoid proper levels of oversight of buyer actions.
Tailored Specifications	Government employee develops specifications to restrict competition to favoured source.
Purchases for Personal Use	Official purchases for personal use or orders for excess quantities of an item to be diverted later for personal use.
Unnecessary Purchases	Bids are solicited for goods or services not needed or that duplicate other contracts.
Unreasonable Time Limits	Compressed schedule for competition to favour source with advance information.
Information Theft	Unauthorized release of information – such as bids or specification – normally by government employee to competing contractors.
Unnecessary Change Orders And Amendments	Slight change in contract for significant price increases.
Phantom Contractors	Government employees create non-existent companies to receive illegal payments.
<b>Corruption led by Contractor Personnel</b>	<b>Result</b>
Product Substitution	Contractors submit goods for testing which meet specification but deliver non-conforming items.
Double-Billing For Work	Same contractor charges government more than once for same effort.
Collusive Bidding, Price Fixing, Bid Rigging	Groups of prospective contractors form an agreement or arrangement to eliminate or limit competition.
False Invoices	Contractor bills for goods which have not been delivered.
False Representations	Contractor lies about a significant aspect of the contract, such as the use of recycled materials or the quality of goods.

Transparent procedures help attract more investment by lowering risk. A transparent procurement system allows competing private enterprises to judge the risk of doing business with the government. They can make more realistic economic investment decisions where government procurement policies are in line with good commercial practice and public accountability requirements.

Market-based systems work best when constructive pressure exists to change and improve pricing, quality, or performance of a product, or to otherwise satisfy customer needs. If a competitor arranges to minimize market pressures by relying on personal contacts, bribes or other means to "influence" the system, both parties are diminished in the long term, despite the apparent immediate benefits of such corruption:

- The public sector (buyer) will most likely receive a less satisfactory product to satisfy the public need at a higher price than if fairly set by the market place; and,
- The contractor (seller) loses initiative and energy to make its product or service more competitive or actually loses market share when the public eventually becomes aware of the corruption<sup>7</sup>.

#### **4. The World Bank and Other International Procurement Organizations**

The World Bank is the major lender to support development projects around the world. Projects are generally implemented by private sector firms under contracts with borrower countries following the World Bank Procurement Guidelines.<sup>8</sup> These Guidelines, policies and practices have significant influence among international financial institutions.

Prior to 1996, international organizations did not have active programs funded to fight corruption. This changed when the World Bank took a leading role in the fight against corruption, supporting more than 600 anticorruption programs and governance initiatives developed by its member countries. The Bank has acted as a catalyst for ethical reform by:

- Fostering the adoption of international accounting standards.
- Using the criteria of improving governance and controlling corruption as one basis for loan approval.
- Funding programs for anti-corruption initiatives to developing countries; and
- Barring private enterprise from Bank-financed contracts if the Bank determines that they use corrupt or fraudulent practices.

In 1980, only 0.6 percent of Bank lending went to projects supporting core public sector reform. In the fiscal year ended June 30, 2003, it had climbed to 12.3 percent. Bank lending for governance and public sector reform is expected to constitute roughly 25 percent of Bank projects in the current fiscal year. The proportion of new projects with public expenditure and financial reform components jumped to 18 percent in the 2003 fiscal year from nine percent in the year ended June 1997.

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<sup>7</sup> In addition to international attempts to minimize the benefits of corrupt business practices through such devices as anti-bribery conventions, many global companies have faced consumer boycotts or threatened shareholder actions when corrupt behaviour has been exposed.

<sup>8</sup> The Guidelines and procurement policies of the World Bank are at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,pagePK:84271~theSitePK:84266,00.html>

With research showing that open and transparent governments are more likely to generate economic growth -- and therefore to help reduce poverty -- ensuring good governance has been a major focus of the Bank's anti-corruption initiatives. In recent years, World Bank lending for governance, public sector reform and rule of law -- all key to poverty reduction - has averaged more than \$4 billion a year.

The Bank also runs a global 24-hour a day anti-corruption telephone hotline and established an independent Department of Institutional Integrity to investigate claims of fraud and corruption -- inside and outside the institution -- and a Sanctions Committee to adjudicate cases and assess penalties. So far more than 300 companies and individuals have been sanctioned for violation of the Procurement Guidelines and barred from doing business with the Bank through public procurement actions with borrowers, and their names and sanctions posted on the Bank's external web site. The Bank's investigative unit has more than 50 staff and spends \$10 million a year on investigations and sanctions, more than all other multilateral development banks combined.

As part of its continuing efforts in the area of anti corruption initiatives, the Bank initiated a new Annual Report on Investigations and Sanctions of Staff Misconduct and Fraud and Corruption in World Bank-Financed Projects<sup>9</sup> in February 2005. The report provides detailed data for the fiscal year 2004 as well as summary data for the period 1999-2004. The report finds that since 1999, the Bank's Institutional Integrity department has investigated and closed over 2,000 cases, both internal and external.

In addition to the World Bank, other international organizations are playing significant roles in controlling corruption in the procurement process. Among these are:

***Organisation for Economic Co-operation and Development (OECD)***

The Organisation for Economic Co-operation and Development (OECD) has the key organizational role in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In this role, it seeks the input of both the public and private sector through the Working Group on Bribery established by the Convention. This working group is comprised of representatives from all signatories of the Convention. It monitors each signatory's progress in enacting national bribery laws.

(Reference: <http://www.oecd.org/daf/nocorruption>)

***United Nations***

In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25) was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention, Office for Drug Control and Crime Prevention. The text of the United Nations Convention against Corruption was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of the Convention against Corruption, held between 21 January 2002 and 1 October 2003. The Convention was approved by the Ad Hoc Committee and adopted by the General Assembly by resolution 58/4 of 31 October 2003.

(Reference: [http://www.unodc.org/unodc/en/crime\\_convention\\_corruption.html](http://www.unodc.org/unodc/en/crime_convention_corruption.html))

<sup>9</sup>

Reference:

<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20368613~menuPK:34463~pagePK:64003015~piPK:64003012~theSitePK:4607,00.html>



### ***The International Monetary Fund (IMF)***

The IMF provides policy advice to its member countries through a process known as surveillance. Where relevant, this policy advice covers issues related to governance. Good governance is also pursued in IMF-supported programs. When seeking financial support from the IMF, country authorities describe their economic policies in a letter of intent. Governance or corruption is mentioned explicitly in over two thirds of the letters of intent published since 2002. The IMF's policy is to deny financial assistance to countries where bribery and corruption threaten to undermine economic recovery.

(Reference: <http://www.imf.org/external/np/exr/facts/gov.htm>)

### ***International Chamber of Commerce***

The International Chamber of Commerce (ICC) focuses on issues concerning business corruption that are of interest to private enterprise. The ICC issued the Rules of Conduct to Combat Extortion and Bribery in International Business Transactions. These rules are not binding on ICC members, but they are encouraged to endorse them voluntarily. To promote these voluntary rules, the ICC established a standing committee on extortion and bribery and several sub-committees dealing with issues of interest to the private sector.

(Reference: [http://www.iccwbo.org/home/menu\\_extortion\\_bribery.asp](http://www.iccwbo.org/home/menu_extortion_bribery.asp))

### ***International Federation of Consulting Engineers (FIDIC)***

FIDIC and its Member Associations, representing the leaders of the consulting engineering industry has a program of integrity management to fight corruption. FIDIC has taken a proactive role in joining the worldwide effort to combat corruption by supporting international anticorruption initiatives, promoting high ethical standards, recommending the implementation of integrity management, and cooperating with agencies investigating corruption. To promote conformance to its code of ethics, FIDIC has taken the lead with the FIDIC Business Integrity Management System (BIMS). The BIMS aids compliance with corporate values for integrity by undertaking a due diligence process that lists the practices the firms aims to adopt, and then designing the processes that will comply with the objectives. 10

(Reference: <http://www1.fidic.org/resources/integrity/>)

## **5. Understanding the Public Interest**

Public procurement operations affect many different elements of society. First are the procuring entities that have needs for material support to fulfil their designated national missions. Then there is the business community of actual or potential suppliers to satisfy the government's identified requirements<sup>11</sup>. For the government agency needs to be properly considered by a supplier, they must be expressed in clear terms, compatible with public policies such as competition, social and economic goals, and transparency. Procurement actions should encourage suppliers to value government business and provide satisfactory quality, service and price in good time. Other organizations participating in the broader public procurement system are professional associations, academic entities, and public interest groups, which have important views as to the performance of public management institutions. The general public is more likely to feel

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<sup>10</sup> "FIDIC Initiatives in Fighting Crime in the Construction Industry". Presentation by Richard A. Kell, AM FTSE, President FIDIC at the OECD Global Forum on Governance, 29 30 November 2004.

<sup>11</sup> Traditionally, a need translates into a procurement requirement. The government need may be to move transports across a lake. The requirement under the contract may eventually be described as a bridge, or a ferry or a tunnel or another solution to this need which the government has determined to be the optimum approach to meet the need.

positive about government performance when they know that expenditures made through the public procurement system are economical, rational and fair.

But the "public" also expects that its interests are protected, or at least considered by the government when deciding how national resources are to be spent. The ability of the business community to participate in the national procurement process helps assure its members that they can remain viable employers and productive economic units to build wealth and increase the tax base. Therefore, businesses feel a legitimate need to discuss or promote their interests as part of the overall "public" interest.

The term "public interest" normally covers an activity devoted or directed to the general welfare of a state. This still leaves a lot of room in a political system for justifying special treatment of a narrow segment of the public. The best measure for determining how legitimate the "public interests" being protected are is to consider the extent to which they agree with established public policies. Transparency, or openness, of the decision-making process and actions of government are the most effective tool to directly or indirectly measure the greatest good for the greatest number in a Utilitarian sense. Again, transparency means that established rules are known and followed as provided under the law or regulations. Transparency means that information is released in accordance with the rules, not indiscriminately to all people. For example, information may not be available to the general public in matters classified for national security purposes or which are sensitive in adjudicating the award of a competitive contract. However, a transparent system will allow for some properly authorized representatives for public oversight (e.g. Parliament, Congress, National Assembly) to assure the public that government decisions followed proper procedures.

## **6. Transparency Limits**

The need for information is different for the general public, bidders and government officials.

The public is mainly concerned with knowing that national resources are being managed efficiently and properly. They often rely on independent observers, such as the Press or nongovernmental organizations, to describe the actions of government. If these "observers" have incomplete or incorrect information, it will colour the public perception of government management practices.

Bidders seek information on how their bid was considered and evaluated as well as how their competitors performed in the bid process. This information is essential if a competitor is to learn from the process to sharpen its bid for future opportunities.

Transparency in practice is bounded by considerations of privacy and the proprietary value of information to be released to the public and stakeholders in the process. When information is released can affect the outcome of a bid. Release of the names of potential bidders before the submission of bids can support collusive actions among the bidders. Release of bid prices under a negotiated proceeding received before award could skew the competitive process and safeguards need to be built in to protect against that. Also, release of a bidder's technical approach could be damaging to future business prospects for the company. Sanctions must be sufficient so that the benefits of obtaining information improperly are clearly offset by the costs of such actions.

On-going research on the use of contacts and informal networks in a public procurement setting appear to indicate that "a majority of the requests put to public procurement officials are requests for

favours... accompanied by attempts at influencing the officials”.<sup>12</sup> This study also indicated that procurement officials believe there are legitimate reasons for such contacts to facilitate the tendering process by making available information to which interested parties to the tender are entitled to under law.<sup>13</sup> This difference in view of procurement officials and businesses and other parties may reflect a practical problem facing most public procurement officials. The challenge is to ensure there is a “meeting of the minds” of the parties before a contract is made. In the private sector, this need normally means that there are increasing numbers and intensity of contacts as the buyer and seller try to ensure that the terms and objectives of the contract are understood and will be met. However, in the public sector, rules to control corruption often require that the closer the public buyer and private seller come to making a contract; little or no contact outside of the official documents takes place. Thus, any awkward expressions, or ambiguous meanings cannot be easily clarified and can then become issues for discussion or misunderstanding after the award of a contract.

## **7. Balance between Efficiency and Controls**

Procurement operations and practices are at the core of a well functioning procurement system. Procuring entities must be held accountable for the responsibilities assigned to them. Officers of the Government who have been delegated procurement authority need to be made accountable for the public procurement decisions made by them. They represent the Government in an important interface with the public. They must be accountable for the effectiveness, efficiency, legal and ethical manner in which they conduct procurements.

A serious and sustained review of such decisions is needed to properly manage the public procurement function. Many Governments establish audit entities to review decisions, make recommendations for standards or procedures that can help eliminate any deficiencies found, and provide a management overview of the public procurement function.

When there is inadequate accountability, buyers often conduct procurements in such a way that waste and abuse easily happen. Fraud may become a common part of public procurement because there is no way to correct actions without accountability. But Government buying must also be responsive to the public and to its customers within the Government. They need to strive for an understanding of the various programs undertaken to benefit the public by the organizations they serve.

Being responsive to customers within the government implies that public buyers cannot operate in isolation, but must give attention to the needs and knowledge of the organizations they serve. Public buyers should have a much better understanding of the legal requirements, spending limitations, and methodologies of the Government buying process than do any other Government staff. Likewise, staff members within the requiring organization usually know more precisely the specifications, the required outcomes of the equipment, the parts, and the services necessary to accomplish their own mission. Working together to accomplish the Government’s requirements can accomplish more than working in isolation.

Buyers should have the authority and encouragement to use personal initiative and sound business judgment on a daily basis. Additionally, the professional public buyer should employ knowledge of

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<sup>12</sup> Asa Grodeland, Norwegian Institute of Urban and Regional Research. “The Use of Contacts and Informal Networks in Public Procurement: Findings from In-Depth Interviews with Public Procurement Officials, Representatives of Local and Foreign Companies in the Czech Republic, Slovenia, Bulgaria and Romania”. P.19. Presented at the OECD Global Forum on Governance, Paris, 29-30 November 2004.

<sup>13</sup> Ibid.

industry, trading principles and practices in an ethical manner to help set the tone of doing business within his or her national borders.

Another practical problem with the business aspects of procurement within the government is that in the private sector, communication between buyer and seller accelerates as they get closer to agreeing on a contract. In many countries, just the opposite occurs as less communication is demanded to ensure an "arms length" transaction. Because of this, sometimes the government ends up buying less than what it thought it was buying, or the completely wrong item, resulting in loss of resources. Again, the role of the procurement professional should be to point out how the business aspects of assuring a meeting of minds on the contract are done in a transparent and justifiable manner with a minimum of additional cost.

## **8. Identifying Good Practices**

A growing number of OECD countries have established flexible regulatory frameworks and simplified procedures in recent years. The challenge for OECD countries has been to find solutions on how to harmonize the legal, institutional and procedural frameworks in public procurement while providing managers with sufficient flexibility. In addition, considering that flexible procurement systems imply a degree of uncertainty in control procedures, accountability practices have been evolving in order to verify whether relevant regulations and standards are being met. Coordinating different forms of control (local controls, accounting controls, controls made by fiscal authorities, external controls and audits) to fill-in gaps and maximize the use of information produced by different controls is a concern for OECD countries.

The issue of Control vs. Buyer Discretion for efficient operations is a common public procurement policy concern. Procurement scandals bring calls for control of buyer actions. But to reduce transaction costs and improve procurement operations to serve public needs, more flexibility is often needed for buyers to make good business decisions.

Some Governments have found that the presence of strong institutional support at the top levels of Government is an essential factor for supporting the professionalism of the procurement staff and promoting integrity and proper application of procurement law. This leads to increased efficiency and professional performance in procurement operations.

To obtain best value, quality and service, it is good procurement policy to encourage the most competitive and able suppliers to tender for contracts. To encourage this, the procurement organization must have:

- Procedures which are fair, non-discriminatory, and transparent.
- Requirements which are clear -- using performance and international specifications where possible.
- Standard conditions of contract.
- Adherence to the Government's obligations under the contract, including the terms of payment.
- Good working relationships and trust with suppliers.

It is the responsibility of public buyers to uphold practices, policies, and procedures built around these concepts.

However, public sector organizations in many countries suffer from institutional gaps that manifest themselves at different level of procurement operation. Overcoming these and other institutional gaps through higher transparency and co-operation amongst the different sectors is essential to having an efficient environmental procurement practice.

A cornerstone of a well-functioning public procurement system operating with integrity (fair, transparent, and credible) is the availability of mechanisms and capacity for independent control and audit of procurement operations to provide for accountability and compliance. Similarly, there must be a system for participants to lodge complaints and challenge decisions with administrative and judicial review bodies that also have the legal power to impose corrective measures and remedies against contracting entities in breach of the legal and regulatory framework. Fraud and corruption, including the issue of conflict of interest, should be addressed in legislation as well as through special measures in order to create a sound and fair environment for public procurement operations.

Contract administration is a key element of managing the outputs of a public sector procurement system. It provides oversight on quality, timely performance and provides for early access to information that is needed for good management. In the context of major public investment projects, contract administration is critical to successful implementation. During the process of implementation and administration of contracts, disputes commonly arise. A procedure to resolve such disputes fairly and in a timely manner becomes an important aspect of contract administration.

The procurement system should be perceived to operate with integrity, providing for clear definitions of unacceptable practices and stating the consequences to participants in the procurement system who engage in fraudulent, corrupt or unethical behaviour.

While the overall principles and objectives of good procurement are relatively well known, the extent to which the supporting legal framework knits these principles together to link individual procurement officers and their actions into a web of good governance is less understood. To help address this area and reduce avoid “islands of integrity”, we have developed a framework (Table 2) which allows us to highlight key elements in controlling corruption in public procurement.

### ***Framework for Good Governance***

If we are to control corruption, it must be defined. Sometimes what one person considers corruption may just be the actions of an inexperienced and poorly trained official. Once it is clear what corruption is, it can be more easily exposed and corrective or remedial actions applied to sanction those who perpetuated it. But it is even more important that we avoid corrupt activities and their costly effects as much as possible. In order to do this, we can concentrate on the means of preventing corruption and abuse of the procurement system. This is where the goals of strengthening the professional capacity of individuals and institutions are emphasized. We have set out for further review five topic areas to be discussed below to help prevent corruption. In a Supplement, we will examine how the United States and other selected governments have addressed these areas of concern and how they balance the need for accountability and integrity with efficiency and effectiveness as an example of how any country may approach the task of identifying its own Framework of Good Governance for Public Procurement.

<b>A FRAMEWORK FOR CONTROLLING CORRUPTION IN PUBLIC PROCUREMENT</b>	
	<b>Key Elements</b>
DEFINE Problems	Criminal law, public procurement law, government regulations, professional code of ethics, custom and practice
EXPOSE Problems	Internal and external auditors, whistle blowers, public availability of government information, protests of contract awards, financial disclosure, hotlines, other external oversight, professional diligence
CORRECT Problems	Implementation of law and regulation, protest resolution, suspension or debarment actions, management improvements
PREVENT Problems	<p><b>PROFESSIONAL INDEPENDENCE:</b> Approaches used to assure the professional independence of officials in charge of procurement to make properly balanced decisions on the basis of merit and shield them from improper pressure of higher ranking politically designated officials. (Integrity)</p> <p><b>PROFESSIONAL STANDING AND TRAINING:</b> Approaches used to enhance the professional skills of the officials in charge of procurement and approaches used to train the officials in charge of procurement to prevent corruption and to enhance efficiency. (Professionalism)</p> <p><b>CHALLENGE AND REVIEW SYSTEMS:</b> Approaches used to resolve challenges to the rules promulgated and actions taken within the public procurement system</p> <p><b>QUALITY CONTROL AND REVIEW SYSTEMS:</b> Approaches to conduct pre and post award reviews and establish internal and external controls and process evaluation on the procurement process.</p> <p><b>SYSTEM MANAGEMENT:</b> Approaches to maintain the procurement infrastructure and keep permanent contact with operational officials.</p>

## **9. Prevention Techniques**

### ***1. Professional independence:***

The bigger the influence of government is on individuals, the larger the bag of favours and resources to be dispensed. Since procurement is just one of many functions of government, it has no exclusive claim on corruption -- merely a wide area for its application since public procurement can account for a significant share of a nation's gross domestic product.

Strong institutional support at the top levels of government is needed for procurement personnel to promote integrity and the proper application of procurement law through independent administration and monitoring of the public procurement process. This leads to increased efficiency and professional performance in procurement operations. Strong rules to set out what is acceptable and what is not acceptable for procurement and other government officials can help safeguard this independence and control political influence and its distortions of economic efficiency and fairness. Knowing that strict rules are being enforced by the government can help dissuade any request for favouritism.

Many governments have instituted tougher anti-corruption measures to prevent the erosion of public confidence and loss of national resources. When public sector organizations institute anti-corruption measures, they can also have an effect on private enterprise to the extent that a specific private enterprise does business with that public organization.

To encourage both respect for procurement officials and to help eliminate attempts to bribe or influence decisions by these individuals, the law and regulation should define who is covered by the rules (e.g. all officials or just select officials) and define prohibited actions and what should be done when improper actions occur. For example:

*Disclosing and Obtaining Contractor Bid or Proposal Information or Source Selection Information*

Any official with access to bidding information which could influence the award of a contract should not be permitted to disclose it before the award of a contract

*Offers of Employment*

Offers to employ a procurement official can be perceived to be a form of a bribe and any such offers should be prohibited while the official is actively involved with government business involving the potential employer.

*Reports*

The procurement official should report all attempts to bribe or influence the official and this should be an action subject to suspension or debarment of the briber if the facts are proved.

*Accepting Compensation from a Contractor*

The government official should not be in a position to accept compensation from a source that is currently involved, or can be expected to be involved, in a procurement matter handled by the government official.

A government can address corruption within its own borders or in foreign countries. Historically, countries were much more interested in controlling and punishing bribery that took place within their borders. In the new global economy, there is an increasing awareness among trading nations that their own nationals offering bribes to foreign officials harmed the global economy in which they were becoming more involved.

To diminish one institutional incentive for corruption, member states developed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This Convention, often referred to as The Anti-Bribery Convention, was signed on 17 December 1997 and became effective on 15 February 1999. This international agreement addresses bribery by industry which had been previously an area international bodies avoided. While governmental demand-side bribery must also be addressed, private sector bribery was a logical first step because contractors in OECD countries constitute the greatest potential source of bribe money.

This convention, signed by 35 countries -- all OECD countries<sup>14</sup> and five other countries<sup>15</sup>, obliges its signatories to:

- Adopt national legislation to make bribing a foreign public official a crime.
- Adopt a broad definition of public official -- that is, all persons exercising a public function.

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<sup>14</sup> Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States

<sup>15</sup> Argentina, Brazil, Bulgaria, Chile, and Slovenia.

- Punish such bribery by effective, proportionate and dissuasive criminal penalties similar to penalties used for bribing the nation's own public officials.
- Interpret territorial jurisdiction in as broad a manner as possible (establishing national jurisdiction if compatible with the national legal system).
- Provide criminal liability for private enterprises, or impose dissuasive non-criminal sanctions, including monetary fines.
- Co-operate with other countries in their prosecutions (including the elimination of bank secrecy as a valid legal basis for financial institutions to deny access to their records).

## ***2. Professional standing and training:***

Professionalism can be defined as the status, methods, or standards within a career area. Improving the professionalism of the procurement workforce is a means to link individual practitioners into a network to help control corruption. While being a professional does not eliminate the possibility of individual members being corrupt, it helps control improper behaviour by allowing actions to be judged against standards accepted by the profession.

Government officials performing contracting duties should be seen not as providing a clerical function but as part of the strategic process of controlling the use of government resources through a managed interaction with the private sector. Only by looking at officials in this way can a culture of professionalism and ethical behaviour be developed. This does not mean that every position in the public procurement field needs to be filled with people of the highest skill levels, because many tasks can be routine if properly designed, such as placing orders for supplies under previously negotiated framework contracts. Public procurement personnel need to clearly understand their role and develop the proper culture of responsibility and accountability to properly manage these resources.

It has been said that compliance with anti-corruption programs is mainly a management problem, be it on the Government procurement side or on the side of suppliers and contractors. Management has to show commitment to the policy of adhering strictly to the rules and must communicate to its employees detailed information concerning the Government's – or the company's – policies, objectives and procedures to combat corrupt practices. Management also has to make clear to staff at all levels the benefits of ethical behaviour and the consequences of corrupt behaviour. So, it's apparent that it is in the best interest of each public employee to be committed to combating corruption.

A system of financial disclosure for high level officials will also encourage more transparent information on possible conflicts between personal business interests and public duties. Financial disclosure programs normally involve selected employees to complete confidential forms listing assets (e.g. equity shares, ownership in a business, etc) owned or controlled by them and their family. If there are perceptions of a conflict of duty and interest, such as where a contracting official will approve the selection of a contractor in which the official owns publicly traded shares, the official would then be expected to remove themselves from the approval process. While inconvenient in some ways, such actions are necessary to avoid the perception that an individual is acting in their own interest rather than the interest of the government.

The most effective anti-corruption measure during the procurement process is probably the control exercised by the competitors themselves; through public bid opening (they have the most direct interest in having Government award decisions checked). Besides, when public bid opening has taken place, at least what is witnessed in the minutes cannot be subsequently ignored (bids received or not received, and read out price). In some countries, bids can be reviewed by the other bidders. This practice can also counteract corrupt tendencies.



***Code of Conduct***

A good first step to professionalize the procurement workforce is for the government to adopt a code of ethical conduct, not only for those who make purchases, but also for all its employees. Corruption has extended to those who receive goods and services and those who use them. Some aspect of the procurement system affects each and every employee in the public sector. A cultural change is usually needed to make the business culture compatible with recognized international guidelines for ethical business behaviour. A code of ethics is a rally point for such a change, and should include the following:

Ethical Principles--general statements indicating a professional approach, for example: "Avoid even the appearance of a conflict of interest".

Ethical Rules--these typically take the form of "do's and don'ts" Examples are: Do seek wide participation from industry to fulfil government needs. Do not try to influence an award to your brother for a potential government tender (even if you really think he is the best competitor). Do not accept substantial gifts or favours to yourself or to members of your family.

Practice Principles--general statements about how to achieve what is intended for the good of the user or public (Avoid any involvement in government tenders with companies in which you or your immediate family has a financial interest. Insist that suppliers fulfil their contractual obligations).

Practice Rules--very specific guidance related to professional practice (the possession of minor public stock offerings in a company does not constitute a financial interest, but significant possession of public stock offerings does constitute a financial interest--in cases where there might be differences of opinion as to whether a financial interest is significant, employees must consult with a representative of the appropriate advisory office and comply with the decision provided).

New-employee orientations should include an explanation of any ethical codes adopted by the government. When a code is first introduced or changed, all current employees should be given a briefing on the details of new codes or changed content. Some countries require that employees be briefed at regular intervals (once a year, for example), and that they certify that they have read and understand the ethical codes.

### **Examples of Practice Rules**

**Declaration of Interest.** Employees shall reveal any personal interest that may impinge or might reasonably be deemed by others to impinge on an employee's business dealings with industry.

**Confidentiality and Accuracy of Information.** Employees shall respect the confidentiality of information received in the course of business dealings and shall never use such information for personal gain. Information given by employees in the course of business dealings shall be true and fair and never designed to mislead.

**Competition.** Employees shall avoid any business arrangement that might, in the long term, prevent the effective operation of fair competition.

**Business Gifts.** Employees shall not accept business gifts from current or potential government suppliers unless such gifts are of a very small intrinsic value, such as a calendar or pen.

**Hospitality.** Employees shall refrain from any business hospitality that might be viewed by others as having an influence in making a government business decision as the result of accepting that hospitality

### ***Roles and Responsibilities***

The roles and responsibilities of personnel within a public procurement system to some extent are influenced by the national environment. Nevertheless, some aspects of institutional roles and responsibilities concerning the procurement function are common in all public organizations. The basic procurement process involves the same functions:

- Needs identification.
- Budgeting.
- Purchasing.
- Routine contract administration.
- Disputes settlement.
- Payment.

The general lack of procedures and discipline in many public procurement systems attest to the lack of professionalism in the workforce as a whole. The need for procurement professionalism becomes more critical as a country's economy grows, and the items and services it buys become more complex. If procurement functions are to adequately support this growth, responsibilities of the procurement workforce will become more sophisticated. Enhanced professionalism will mean that the procurement workforce can:

- Make more informed judgments about what is available in national and global markets.
- Possess a knowledge of best domestic - and internationally accepted - procurement and contract management practices; and
- Implement global and national business practices within the government's procurement system.

The other major trend is that "The Global Economy is Growing". This has been largely driven by political and technological change with world financial markets closely linked with 24-hour trading.

These private sector trends are also at work in the public sector. The rapid rise in the use of electronic commerce in world trade is a further example of the need for a well-trained and managed workforce to accommodate new trends within a structured regulatory system like public procurement. How quickly a government takes advantage of this trend depends on the level of professionalism within its workforce.

Improved competitive techniques practiced by a well trained and professional procurement workforce using modern quality standards and business practices can also help improve the efficiency of local suppliers for government contracts. For governments, such efficiencies can directly translate into the acquisition of additional goods and services to meet national needs, funding of higher priority programs, or even reduced taxes on the public, which aid development.

### ***ITC Eight Step Professionalism Program***<sup>16</sup>

Developing a competent team of people to carry out the challenging tasks of public procurement is a national necessity. The International Trade Centre UNCTAD/WTO recommends that an 8-step program be followed to develop the needed public procurement-training infrastructure. This program concentrates on bringing existing training organizations and stakeholders into the process as early as possible to develop the best implementation plan for the country. In summary for, the eight steps involve:

Step 1. Focus responsibility for the procurement workforce in a professional development unit such as a Central Procurement Policy Office.

Step 2. Identify professional performance standards and internationally accepted certification requirements.

Step 3. Identify members of a training provider network to obtain input from interested public organizations, parastatals and non-governmental organizations.

Step 4. Establish and co-ordinate nation-wide plans for training and set the career progression ladder from entry through executive levels tied to demonstrated competence.

Step 5. Write or tailor course materials, encouraging participation by training network members.

Step 6. Distribute final course material to all members of the training network.

Step 7. Identify financial resources for training.

Step 8. Monitor success of the training program and make adjustments as necessary to assure that established standards being met.

### ***3. Challenge and review systems***

Complaints by disappointed bidders of government actions both before and after contract award allow the procurement process to improve. This is an important self-policing mechanism to assure good governance by allowing people most affected by the system to call attention to its shortcomings. Meritorious grievances of suppliers force a review of questionable or improper actions so that the procurement system is strengthened and integrity and accountability of government maintained.

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<sup>16</sup> This material is located at the site for Public Procurement Institutions on the ITC Website <http://www.intracen.org/ipsms/>

A tenderer may also claim to be aggrieved because proper competitive procedures were not followed. Procurement laws that provide a means of recourse should designate an independent forum where remedies for improper actions can be sought. Laws in some countries provide for recourse to be made to administrative bodies or are dealt with judicially through the court system. In some countries, procurement claims are to be resolved by an arbitration tribunal, with its composition sometimes provided in the procurement law. Independent administrative bodies are generally recognized as being an efficient mechanism to deal with procurement claims, rather than mandating that judicial action be taken. This is especially the case where judicial review can still occur even after administrative review.

At every level of review, it is important that the parties have available to them transparent and effective procedures. Any bidder with an interest in a particular tender should be aware of existing rules governing the review process and should be allowed to exert their right to launch a challenge. Acceptance of the complaint and decisions taken by the review body should be communicated to the protesting bidder and to any other bidder who may be affected by the decision in writing, in a timely and comprehensive manner allowing protestors to respond accurately to the decision. The review body should be independent from the procuring entity where practical and should render prompt and timely decisions, preserving suppliers' commercial interests, without discrimination between domestic and foreign bidders. The decisions taken by the review body should be effective and enforceable and provide for adequate measures to correct proven infringements of the suppliers' interests in a tender. To provide the most effective remedy in a case, many states often apply provisional measures, such as the suspension of the tendering process or provide for compensation for the loss or damage suffered (i.e. cost of tender documents).

One example of a challenge procedure that has been adopted by many OECD Member States is that contained in Article XX of the World Trade Organization Agreement Government Procurement set forth below.

**World Trade Organization Agreement on Government Procurement**

**Article XX**

**Challenge Procedures**

**Consultations**

1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

**Challenge**

2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.

3. Each Party shall provide its challenge procedures in writing and make them generally available.

4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for three years.

5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days.

6. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) participants can be heard before an opinion is given or a decision is reached;
- (b) participants can be represented and accompanied;
- (c) participants shall have access to all proceedings;
- (d) proceedings can take place in public;
- (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
- (f) witnesses can be presented;
- (g) documents are disclosed to the review body.

7. Challenge procedures shall provide for:

(a) rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;

(b) an assessment and a possibility for a decision on the justification of the challenge;

(c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.

8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion

#### ***4. Quality control and review systems***

Internal and external checks of the procurement system, done in a reasonable manner, can pay dividends of more uniform policy approaches, improved cost controls and fewer instances of corruption or waste. Within the legal and regulatory environment of a country, the public procurement system must address activities which occur at different stages of the procurement process.

##### ***Review and Approval***

Procurement personnel are involved in every aspect of the contracting process to some extent, but they rely on others within the organization to fulfil major functional responsibilities in many aspects of the process. Those who participate in a public procurement process have assigned roles according to the law of agency. Under the law of agency, one party, known as the principal, appoints another party, known as an agent, to enter into a contract with a third party on the principal's behalf. In public procurement, the principal is the public organization. The agent is an official of the public organization who has been authorized to purchase goods and services. The official authorized to make purchases is typically given such titles as contracting officer, purchasing agent, procurement officer, and so forth. We will use the term contracting officer to identify a person who is authorized to sign public contracts.

In addition to those with direct involvement, indirect roles typically are given to others in the public organization for purposes of providing a system of checks and balances. These include approval authorities and auditors

Approval authorities are public officials who must approve specific actions in the procurement process before they are finalized. To function as an effective internal control, such approval is typically not required for every action.

For example, an approval may be needed before award. Typically, such approvals are only required above a certain monetary threshold, although different thresholds may be specified for specific types of awards. For example, awards that are of a sensitive nature such as military weapons may have a different threshold for approval than awards of office supplies for the bureaucracy.

Other common reviews by approval authorities include:

- Reviews of budgetary documents for budget approval.
- Reviews of the request for tenders prior to its release to the business community.
- Reviews of key milestone dates for larger or time-sensitive purchases.

The level of involvement by approval authorities depends to some extent on the degree of centralization or decentralization with the specific public procurement system. Approval authorities would be more involved in a centralized system than in most other systems. In any event, the system of checks and balances that involve oversight by approval officials is integrated into the regular process of individual purchases.

##### ***Auditing***

Auditing officials oversee the public procurement system as a whole. There may be more than one auditing group that oversees a public procurement system. For example, if a public procurement system is within a finance ministry, the ministry may have an inspector general or internal auditing organization that reviews the contracting office operations on a periodic basis. At the same time, that country's parliament may also have a watchdog organization that takes direction from members of parliament to look into such

matters as conflicts of interest, extent of competition in public purchases, and so forth. It is essential that auditing personnel have an intimate understanding of the manner in which the public contracting office should be operating.

Typically these auditing organizations use sampling and checklists to decide whether the contracting office follows laws and regulations or to what extent they vary from the standards of acceptable contracting practices. Standards for internal auditors who would conduct such policy and program reviews in an organization are needed. The International Organization of Supreme Audit Institutions (INTOSAI) has been formed to provide such standards, working with its members from governments around the world. The Internal Control Standards Committee of INTOSAI issued guidelines<sup>17</sup> in 1992 that define management controls as

*“promoting orderly, economical, efficient, and effective operations and quality products and services consistent with the organization’s mission; safeguarding resources against loss due to waste, abuse, mismanagement, errors, and fraud and other irregularities; adhering to laws, regulations and management directives; and, developing and maintaining reliable financial and management data and fairly disclosing that data in timely reports.”*

As a result of uncovering wrongdoing, the government may deny access to bidders (natural or legal persons) as sanctions for breaking rules to create a deterrent to corruption, including the bribery of foreign public officials. Exclusion from bidding may be governed directly by public-procurement laws or the penal code, or based on regulations and guidelines. Formal exclusion procedures should exist, and exclusion is at the discretion of the competent judicial or administrative authority which will result in suspension or debarment of companies.

### ***Freedom of Information***

Another important method of revealing wrongdoing on the part of government officials as well as simply to assure citizens that proper actions are occurring in their government, is the concept of Freedom of Information. Several countries have now adopted this practice of releasing to members of the public information previously held close in government files. Nevertheless, this right is not absolute since information released to one party may bring harm to another party. Therefore, there are normally exceptions under which information can be withheld. An example of such exemptions can be found in the US Freedom of Information Act, 5 U.S.C. § 552 (FOIA).

Under the FOIA, certain records may be withheld in whole or in part from the requester if they fall within one of nine FOIA exemptions or certain exclusions. In some cases, the agency is able to provide copies of all of the records requested. However, in other instances, a portion or all of the information requested is sensitive and is therefore withheld as permitted under the FOIA. The FOIA exemptions for withholding at least some information fall in the following categories:

- Exemption to protect information that is prohibited from disclosure by other laws, such as Confidential Financial Disclosure Reports.
- Exemption to protect trade secrets and privileged or confidential commercial or financial information.
- Exemption to protect certain inter-agency and intra-agency pre-decisional deliberative communications.

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<sup>17</sup>. *Management Control in Modern Government Administration: Some Comparative Practices.* OECD/GD(96)16 Organisation for Economic Co-operation and Development, Paris 1996 , Annex

- Exemption to protect information about individuals when disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Exemption to protect records or information compiled for law enforcement purposes, if certain interests would be harmed by release, including when disclosure could reasonably be expected to interfere with enforcement proceedings or to constitute an unwarranted invasion of personal privacy.
- Exemption to protect information on regulated financial institutions.
- Exemption to protect information on geological and geophysical information and data, including maps, concerning wells.
- *Exemption to protect information which is classified.*

In the event that an agency relies on one or more FOIA exemptions to deny a requester access to records, the response letter will so inform the requester. The letter will also notify the requester of the right to administratively appeal the initial denial determination to the agency.

### ***Hotlines***

As in the case of the World Bank, some countries have adopted the use of dedicated telephone lines for reporting known or suspected cases of fraud or other corruption through anonymous tips. The cost of maintaining such systems is often an issue. While they may be the source of complaints based only on personality conflicts within a workplace, they have proven their value over the years in revealing significant wrongdoing. A Hotline indicates that the system is aware that some method is needed to surface complaints while protecting the individual from reprisal. In the area of procurement, the US Department of Defense requires that in most contracts over \$5 million the contractor actually post in a prominent place a Hotline number people may call with any information on wrongdoing related to the contract.

### ***5. System management***

Government procurement objectives will not be achieved simply by developing procurement rules. Like in the sport of football, the rules provide the guidelines under which the game is played but compliance with the rules alone does not make a competent or successful team. It requires constant attention to the state of play and devising up-to-the-minute strategies to reach your goal. To do this in public procurement, an organizer or supervisory body is needed to ensure that all the procurement entities are working together to obtain maximum value for the nation.

In any supervisory body, the contracting, monitoring and auditing roles should be clearly separated. Such a separation of function avoids conflicts of interest, encourages competition and improves value for money spent. The separation of the three roles helps ensure that the process is accountable and is seen to be accountable. This is important for developing trust between the public sector and its suppliers. Examples of other general tasks of such a unit could be to:

- Develop and disseminate recommended procurement policies.
- Set professional standards.
- Develop a "code of business ethics".
- Provide professional advice and support to the individual procuring entities.
- Issue "good practice guides" in relation to procurement.



- Undertake research into the needs of procuring entities.
- Undertake research into domestic and international sources of supply.
- Develop a data base of information on which to base procurement decisions.
- Operate a professional development scheme for staff with purchasing and contracting responsibilities.
- Promote economy by facilitating rationalization of demand and intra-government contracting; and
- Rationalize standards for the procurement of information systems and equipment.

## **10. Conclusion**

Public procurement systems can be on opposite poles -- they can either add value to the economy or siphon it away into corrupt, wasteful or unethical purposes. Few countries - developed or undeveloped - are at either one of these poles, yet, like people, many are at some point between perfection and perdition. Because of the domestic and international imperatives that are coalescing around the function of public procurement, all governments should have a clear understanding of where their system lies on this line.

The most effective way to understand the uses of a public procurement system vis-à-vis national goals and interests is to conduct a structured analysis of it. The information above, coupled with examples from actual law and regulation in selected countries in the Supplement, can help formulate that type of review and plan. But the one resource above all which will make the most difference in the task of enhancing values through improved procurement operations is a dedicated, trained, professional procurement workforce. No matter how well intentioned and well written a law or policy document is, its goals can be unmet if not championed by a professional staff. And this staff must be firmly interlinked in a coherent mass of good governance through an effective policy and procedural infrastructure to avoid having the public interest defended only by lonely islands of integrity.

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