

Chapter 2

Improving Colombia's management of conflict of interest in public procurement

Public procurement is a complex activity involving multiple stakeholders at different stages, and this interaction between the public and the private sectors makes public procurement an area highly prone to corruption or integrity breaches. In particular, conflict of interest, generally used to describe the conflict between public official's public duty and his or her private interests, is a growing concern. Effective identification, prevention and management of conflicts of interest by an organisation are not only influenced by the controls and policies it implements, but also by its culture and prevention efforts. Active commitment and involvement from public servants are imperative to maintain an environment that stimulates integrity and rejects corruption and wrongdoing. In this light, this chapter describes the general context of Colombia's management of conflict of interest during the public procurement cycle and provides recommendations to improve it.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Public procurement, an activity prone to corruption

Corruption and integrity breaches are perceived to be common latent risks during the different phases of the public procurement cycle due to the financial interests at stake, the volume of transactions and the close interactions between the public and private sectors. Lack of transparency and weak governance systems particularly expose countries to these corruption risks. Unethical practices can occur in all phases of the public procurement and each phase has shown to be especially prone to different corruption risks, as shown in Table 2.1.

Table 2.1. **Corruption risks associated with the different phases of the procurement cycle**

Phase		Corruption risks
Risks of the pre-tendering phase	Needs assessment	<ul style="list-style-type: none"> • Lack of adequate needs assessment • Influence of external actors on officials decisions • Informal agreement on contract
	Planning and budgeting	<ul style="list-style-type: none"> • Poor procurement planning • Procurement not aligned with overall investment decision-making process • Failure to budget realistically or deficiency in the budget
	Development of specifications/ requirements	<ul style="list-style-type: none"> • Technical specifications are tailored for a specific company • Selection criteria is not objectively defined and no established in advance • Requesting samples of goods and services that can influence • Buying information on the project specifications.
Risks of the tendering phase	Choice of procurement procedure	<ul style="list-style-type: none"> • Lack of procurement integrity for the use of non-competitive procedures • Abuse of non-competitive procedures on the basis of legal exceptions: contract splitting, abuse of extreme urgency, non-supported modifications
	Request for proposal/bid	<ul style="list-style-type: none"> • Absence of public notice for the invitation to bid • Evaluation and award criteria are not announced • Procurement information is disclose and made public
	Bid submission	<ul style="list-style-type: none"> • Lack of competition or cases of collusive bidding: <ul style="list-style-type: none"> ○ cover bidding ○ bid suppression ○ bid rotation ○ market allocation
	Bid evaluation	<ul style="list-style-type: none"> • Conflict of interest and corruption in the evaluation process through: <ul style="list-style-type: none"> ○ familiarity with bidders over time ○ personal interests such as gifts or future/additional employment ○ no effective implementation of the “four eyes-principle”
	Contract award	<ul style="list-style-type: none"> • Vendors fail to disclose accurate cost or pricing data in their price proposals, resulting in an increased contract price (i.e. invoice mark-ups, channel stuffing) • Conflict of interest and corruption in the approval process (i.e. no effective separation of financial, contractual and project authorities) • Lack access to records on the procedure
+ Risks of the post-award phase	Contract management/ performance	<ul style="list-style-type: none"> • Abuses of the supplier in performing the contract, in particular in relation to its quality, price and timing: <ul style="list-style-type: none"> • Substantial change in contract conditions to allow more time and/ or higher prices for the bidder • Product substitution or sub-standard work or service not meeting contract specifications • Theft of new assets before delivery to end-user or before being recorded • Deficient supervision from public officials and/or collusion between contractors and supervising officials • Subcontractors and partners chosen in an on-transparent way or not kept accountable
	Order and payment	<ul style="list-style-type: none"> • Deficient separation of financial duties and/or lack of supervision of public officials leading to: <ul style="list-style-type: none"> • False accounting and cost misallocation or cost migration between contracts • Late payments of invoices • False or duplicate invoicing for good and services not supplied and for interim payment in advance entitlement

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

The close relation between these integrity risks requires a holistic and integrated approach to properly address the issue, involving both public and private actors at different phases of the procurement cycle. If not adequately managed, such integrity risks during the procurement process pose a great threat to sound economic performance and effective governance of public functions.

Corruption, wrongdoing and integrity breaches can have a profound impact on Colombia's capacity to maximise the use of available resources to provide the volume of high quality services required by its citizens. As mentioned, one of these risks is the presence of conflicts of interest that may affect the objectivity of a public official's decisions. As such, it is essential that Colombia takes concrete and strong actions to identify, manage and prevent conflicts of interest in its procurement activities and to implement appropriate remedial actions, thereby increasing the integrity of its procurement function.

Enhancing the policy framework to address conflicts of interest

Providing a clear definition of conflict of interest is essential for a coherent and consistent approach

Serving the public interest is the fundamental mission of governments and public institutions. Thus governments and public institutions are obligated to ensure that public officials do not allow their private interests and affiliations to compromise official decision making and public management. Especially in times of an increasingly demanding society, inadequately identified and managed conflicts of interest on the part of public officials, which can result in corruption, could compromise citizens' trust in public institutions. Therefore, a coherent and consistent policy framework for an adequate management of conflict of interest needs to be built.

The framework needs to rely on a clear definition of conflict of interest to enable an objective and effective identification and management of conflict-of-interest situations. The OECD provides the following definition: a "conflict of interest" involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests that could improperly influence the performance of his/her official duties and responsibilities. In layman's terms, it is a situation in which a public official has a private or other interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties (Reed, 2008).

The "OECD Guidelines for Managing Conflict of Interest in the Public Service" also distinguish between *actual*, *apparent* and *potential* conflict-of-interest situations. Actual conflict of interest is a direct conflict between a public official's current duties and responsibilities and his or her private interests, whereas apparent conflict of interest occurs when a public official's private interests could improperly influence the performance of his/her duties, but this is not, in fact, the case. Furthermore, potential conflict of interest involves a situation in which a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in the relevant official responsibilities in the future.

Implementing appropriate measures for apparent and potential conflicts-of-interest situations are as important as preventing and managing actual conflict-of-interest situations. Along with the rapidly changing public sector environment, new forms of

conflict of interest emerge involving an individual official's private interests and public duties. In this sense, it is crucial to have a clear legal framework for public procurement agents' activities against any actual, apparent and potential conflicts of interest so that their decisions cannot be influenced by personal preferences or those of family, friends or past or future associates.

Countries have implemented different approaches that reflect their country environments, including political systems and culture. The two major approaches can be found in the OECD countries. They define conflict of interest either descriptively or prescriptively.

The descriptive approach defines conflict-of-interest situations in general terms and provides public officials with the general features of the phenomenon. General principles together with exemplified general cases provide guidance for public officials in preventing and avoiding conflict-of-interest situations. In this approach general principles play the primary role by stating what is expected of public officials in general, while specific rules and procedures have a complementary role.

The prescriptive approach defines a range of specific situations that are considered incompatible with public office or in conflict with the public interest and official duties. This rules-based approach provides public officials with detailed enforceable standards, generally in legal regulations. However, these standards are ultimately based on fundamental public service principles that can also embody aspirational goals (Box 2.1).

Box 2.1. The difference between a principles versus rules-based approach to managing conflicts of interest		
	Principles-based approach, e.g. United Kingdom	Rules-based approach, e.g. United States ¹
Responsibility	Dispersed across government	Office of Government Ethics
Authority	No specific conflict of interest legislation. Local guidance. Companies Act applies to directors. Management code specifies some "rules".	Enforceable conflict of interest prohibitions defined in statute with criminal or civil penalties.
Other standards	Behavioural and ethical standards defined in codes of conduct and "Nolan principles".	Civil restrictions for certain outside activities. Administrative standards of conduct.
Disclosure requirements	Devolved, voluntary disclosure system for civil servants. MPs' financial interests are declared and published. Information on Senior civil servants and ministerial hospitality, gifts, travel and external meetings is published.	Central mandatory financial disclosure systems: <ul style="list-style-type: none"> • Public reporting is required for all senior officials. • Other employees make confidential financial disclosures.

1. US Office of Government Ethics, www.oge.gov/Topics/Financial-Conflicts-of-Interest-and-Impartiality/Financial-Conflicts-of-Interest---Impartiality/ and Ley, J. S., "Managing conflicts of interest in the executive branch: The experience of the United States", in OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264104938-en>, pp. 231-249.

Source: National Audit Office (2015), "Conflicts of interest", Report by the Comptroller and Auditor General, Session 2014-15, 27 January, www.nao.org.uk/wp-content/uploads/2015/01/Conflicts-of-interest.pdf (accessed 28 January 2016).

In Colombia, the provisions in regulations and laws list the circumstances and relationships that could lead to a conflict of interest, and thus those that public servants are prohibited from.¹ These specific prohibitions and disqualifications include, among others, parties that have financed the political campaigns of presidents, governors or mayors; former public servants in matters related with their former position; and parties having relationship with the public servants in directive positions within the procuring government agency. According to the aforementioned distinction, Colombia takes a prescriptive approach in addressing conflicts of interest, making reference to: *i*) situations affecting the legal capacity of the contractor and/or the public officials to enter into a contract; and *ii*) special relationships between parties interested in a selection process and public officials affecting the equal treatment. The fact that such potential or apparent conflict-of-interest situations or events are not listed in one regulation makes detection and enforcement difficult. In addition, the prescriptive approach impedes swift action in cases that are not listed yet where the conflict between the public and private interest is evident.

Regardless of the approach a country takes, a clear definition of conflict of interest should be a premise. Without a clear definition of conflict of interest in its legislation, this approach could suffer from incompleteness and inflexibility, especially when new conflicts-of-interest situations arise. Colombia could clearly define conflict of interest in its legislation, especially in its procurement legislation, as found in OECD countries such as Canada and New Zealand (Box 2.2).

Increasing complexity of public sector requires tailored conflict-of-interest policy for public procurement officials

Many governments are experiencing increasing interaction between the public and private sectors and new forms of relationships have been developed between the public sector, businesses and non-profit sector. As all public officials have legitimate interests which arise out of their capacity as private citizens, conflicts of interest cannot simply be avoided or prohibited by imposing restrictions on conflict-of-interest situations that have been observed to date, and must be adequately and appropriately defined, identified and managed.

Recognising the risks associated with specific public functions, increasing number of OECD countries are implementing tailored policy and rules to address them (Figure 2.1). Furthermore, almost 50% of OECD countries have developed specific conflict-of-interest policies for procurement officials to respond to the red flags raised by public procurement as a major interface between the public and private sectors. Despite the relevance of this issue, Colombia has not yet developed specific policy or rules for any particular category of public officials, including for public procurement officials.

Colombia could develop a specific conflict-of-interest policy for procurement officials. This tailored policy for public procurement should include the relationships and situations that are most relevant to the Colombian context to be an effective measure to prevent and manage conflict of interest of public procurement officials, as seen, for instance, in Mexico and the United Kingdom (Box 2.3).

Box 2.2. Definition of conflict of interest adopted by OECD member countries

Canada

Canada's Conflict of Interest Act (S.C. 2006, c.9, s.2) states "a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests" (Article 4). Furthermore, the Act also specifies the general duty expected of public servants in Article 5 – "Every public office holder shall arrange his or her private affairs in a manner that will prevent the public office holder from being in a conflict of interest." While the Conflict of Interest Act is primarily aimed at elected and other senior officials, the Treasury Board Code of Values and Ethics applies this definition and similar responsibilities to every public servant in government.

New Zealand

In New Zealand, the definition of conflict of interest is tailored to targeted groups, such as public servants, ministers or board members of crown companies. Nevertheless, these definitions contain common features. For example, they all cover actual and perceived as well as direct and indirect conflicts. In addition to the general definitions developed for the targeted groups outlined here, supplementing documents also list possible types of conflict-of-interest situations, together with concrete practical examples.

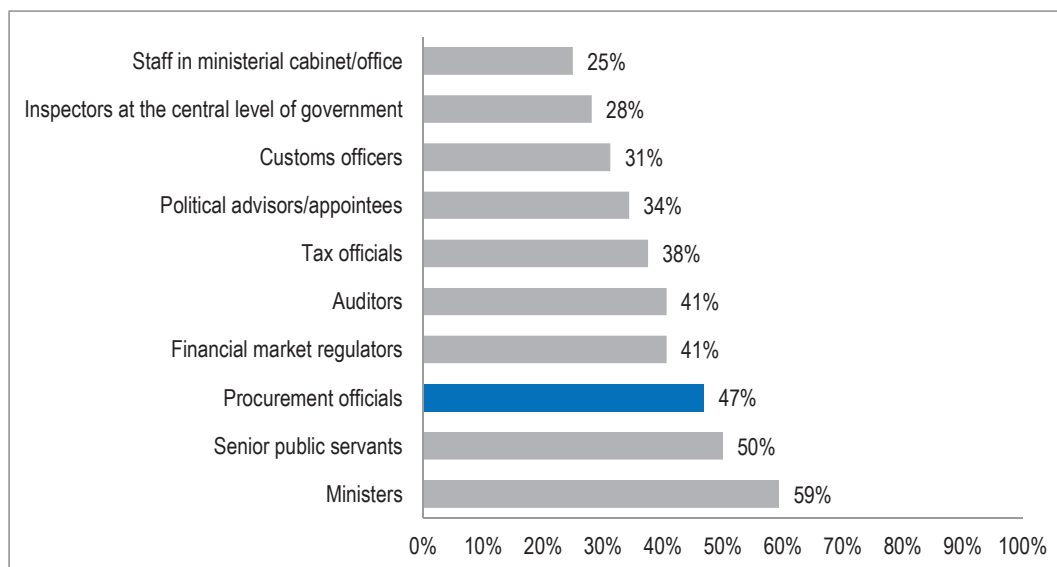
For public servants: "Conflicts of interest are defined as, ... any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties, or the standing of their department in its relationships with the public, clients, or ministers. This would include any situation where actions taken in an official capacity could be seen to influence or be influenced by an individual's private interests (e.g. company directorships, shareholdings, offers of outside employment). [...] A potential area of conflict exists for public servants who may have to deal directly with members of Parliament who have approached the department in a private capacity" (Code of Conduct).

For ministers: "Conflicts of interest can arise because of the influence and power they wield – both in the individual performance of their portfolio responsibilities and as members of Cabinet. Ministers must conduct themselves at all times in the knowledge that their role is a public one; appearances and propriety can be as important as actual conflict of interest in establishing what is acceptable behaviour. A conflict of interest may be pecuniary (that is, arising from the Minister's direct financial interests) or non-pecuniary (concerning, for example, a member of the Minister's family) that may be either direct or indirect" (Cabinet Manual).

For board members of Crown companies, a conflict of interest is defined as a situation in which a board member is "party to, or will or may derive a material financial benefit from" a transaction involving his or her company (The Companies Act 1993, Part VIII, Sections 138 and 139).

Sources: Treasury Board Code of Values and Ethics (2006), "Conflict of Interest Act", Canada, www.tbs-sct.gc.ca/pol/index-eng.aspx?l=V; OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264104938-en>.

Figure 2.1. **Development of specific conflict-of-interest policy/rules for particular categories of public officials in OECD 32**



Source: OECD (2014), “Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection”.

Box 2.3. Conflict-of-interest policies for public procurement officials in OECD member countries

Mexico

In early 2015, the President of Mexico issued a series of Executive Orders to strengthen public sector integrity focused primarily on preventing and managing conflict of interest, including the disclosure of potential conflict of interest of the public servant and his/her family member in their yearly asset declaration. The Executive Orders also require the issuances of a Code of Ethics for all public servants of the Federal Government and guidance for public procurement officials when interacting with suppliers (*Protocolo de actuación de los servidores públicos en contrataciones públicas*); the creation of a classification and registry for procurement officials, the certification of procurement officials, the online publication of sanctioned suppliers; increased collaboration with chambers of commerce; an online “one-stop shop” (*ventanilla única*) for transactions with government to reduce potential opportunities for bribery; and the creation of a Special Unit on Ethics and Conflict of Interests Prevention (*Unidad Especializada en Ética y Prevención de Conflictos de Interés*).

United Kingdom

The Public Contracts Regulations 2015

24. (1) Contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

Box 2.3. Conflict-of-interest policies for public procurement officials in OECD member countries *(continued)*

(2) For the purposes of paragraph (1), the concept of conflicts of interest shall at least cover any situations where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

83. Contracting authorities shall, at least for the duration of the contract, keep copies of all concluded contracts with a value equal to or greater than:

- (a) EUR 1 million in the case of public supply contracts or public service contracts
- (b) EUR 10 million in the case of public works contracts.

84. (1) For every contract or framework agreement covered by this Part, and every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:

[...]

- (i) where applicable, conflicts of interest detected and subsequent measures taken.

Sources: OECD (2015a), *Effective Delivery of Large Infrastructure Projects: The Case of the New International Airport of Mexico City*, OECD Public Governance Reviews, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264248335-en>; UK Government (2015), “The Public Contracts Regulations 2015”, www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf.

Raising awareness through developing and disseminating a dedicated code of conduct

Standards of conduct are recognised as essential for guiding the behaviour of public officials in line with the public purpose of the organisation in which they work. The “OECD Principles for Improving Ethical Conduct in the Public Service” acknowledge the critical role of, and provide guidance to decision makers and public managers on high standards of conduct for a cleaner public administration. Thanks to their concise focus, flexible nature and straightforward language, codes of conduct have proven to be instrumental in promoting integrity in any organisation as they provide a clear benchmark for acceptable behaviour and ethical standards against which personnel and the institution itself can be held accountable. A code of conduct can be seen as a sort of contract among employees within the organisation, as well as a statement to third parties about the ethical standards to expect and respect (CCAB, 2014) (Box 2.4).

Box 2.4. The impact of codes of ethics: Research and empirical findings

Research in public administration into ethics codes has been very limited. In his surveys among members of the American Society for Public Administration (Bowman and Williams, 1997; Bowman, 1990), Bowman found that practitioners tend to think positively about codes and to believe that they have desirable effects. Flake and Grob (1998) performed content analyses on public sector ethics codes and found that they were “dramatically skewed in the low-road direction”, i.e. they emphasised compliance with rules and laws. These and other analyses are interesting, but “a relationship between codes and actual behaviour in fact still awaits examination” (Gilman and Lewis, 1996). One public administration study (among city and county managers) into the topic found “no significant difference in the mean response scores [on a moral reasoning test] that can be attributed to whether or not a jurisdiction has a code of ethics” (Stewart and Sprinthall, 1993).

An interesting descriptive study is the 2007 Survey of the New Zealand State Services Commission, which was conducted by the Ethics Resource Centre among 4 642 State servants. Some 96% of the responding state servants reported that their agency had drafted standards of integrity and conduct. Half of surveyed state servants reported that their agency had a specific person, telephone line, e-mail address, or website where they could get advice about integrity and conduct issues. In sum, the findings were very mixed. This is consistent with the hypothesis that an integrity code will only have a significant impact when it is embedded in and consistent with a wider integrity management framework.

Source: OECD (2013a), *OECD Integrity Review of Italy: Reinforcing Public Sector Integrity, Restoring Trust for Sustainable Growth*, OECD Public Governance Reviews, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264193819-en>.

In addition to code of conduct, guidelines could further complement the policy framework for identifying and managing conflicts of interest. The main roles of such guidelines are providing specific conflict-of-interest situations focused on public procurement activities and a range of practical examples of concrete steps to be taken in order to resolve such situations. The complementing documents regarding conflicts-of-interest regulations should not only remind the public procurement officials what is expected of them in cases of any actual, apparent and potential conflicts-of-interest situations, but also promote the values that they are expected to pursue as an individual public servant as well as a public administration body. They could further benefit the public procurement system from being further extended to all the stakeholders involved in the public procurement, not only for the public procurement officials but also the contractors, suppliers, consultants, auditors, etc. Colombia could develop a code of conduct for procurement officials as well as for those involved in the procurement process, including suppliers, bidders, subcontractors and temporary staff, not covered by public officials rules (see Box 2.5 as an example from Canada).

Box 2.5. Code of conduct for procurement in Canada

The Government of Canada is responsible for maintaining the confidence of the vendor community and the Canadian public in the procurement system, by conducting procurement in an accountable, ethical and transparent manner.

The Code of Conduct for Procurement will aid the Government in fulfilling its commitment to reform procurement, ensuring greater transparency, accountability, and the highest standards of ethical conduct. The Code consolidates the Government's existing legal, regulatory and policy requirements into a concise and transparent statement of the expectations the Government has of its employees and its suppliers.

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

The Code reflects the policy of the Government of Canada and is framed by the principles set out in the Financial Administration Act and the Federal Accountability Act. It consolidates the Federal Government's measures on conflict of interest, post-employment measures and anti-corruption as well as other legislative and policy requirements relating specifically to procurement. This Code is intended to summarise existing law by providing a single point of reference to key responsibilities and obligations for both public servants and vendors. In addition, it describes vendor complaints and procedural safeguards.

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

Source: Public Works and Government Services Canada (PWGSC) (n.d.), "The Code of Conduct for Procurement", www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html (accessed 17 June 2015).

Colombia could also develop practical guidelines and scenarios on conflict of interest to help public officials identify and manage such situations, as done by the Government of Western Australia (Box 2.6).

Box 2.6. Conflict of interest guidelines of the Government of Western Australia

The Integrity Coordinating Group (ICG) of the Government of Western Australia has developed guidelines to help public officers identify and manage conflicts of interest.

The guidelines provide public authorities with information and practical tools about integrity in decision making, which can be used to strengthen and sustain their decision-making processes. The following questions are addressed:

- What is a conflict of interest?
- Is it wrong to have a conflict of interest?
- Who is responsible for identifying and managing conflicts of interest?
- How can officers identify if a conflict of interest exists?

Box 2.6. Conflict of interest guidelines of the Government of Western Australia (continued)

To identify conflict of interest, the ICG suggests considering the “6Ps”.

Public duty versus private interests	Do I have personal or private interests that may conflict, or be perceived to conflict with my public duty?
Potentialities	Could there be benefits for me now, or in the future, that could cast doubt on my objectivity?
Perception	Remember, perception is important. How will my involvement in the decision/action be viewed by others?
Proportionality	Does my involvement in the decision appear fair and reasonable in all the circumstances?
Presence of mind	What are the consequences if I ignore a conflict of interest? What if my involvement was questioned publicly?
Promises	Have I made any promises or commitments in relation to the matter? Do I stand to gain or lose from the proposed action/decision?

The ICG has also provided major options, or “6Rs”, for officers and supervisors to manage conflicts of interest.

Record/register	Recording the disclosure of a conflict of interest in a register is an important first step; however, this does not necessarily resolve the conflict. It may be necessary to assess the situation and determine whether one or more of the following strategies is also required.
Restrict	It may be appropriate to restrict your involvement in the matter, for example, refrain from taking part in debate about a specific issue, abstain from voting on decisions, and/ or restrict access to information relating to the conflict of interest. If this situation occurs frequently, and an ongoing conflict of interest is likely, other options may need to be considered.
Recruit	If it is not practical to restrict your involvement, an independent third party may need to be engaged to participate in, oversee, or review the integrity of the decision-making process.
Remove	Removal from involvement in the matter altogether is the best option when ad hoc or recruitment strategies are not feasible, or appropriate.
Relinquish	Relinquishing the personal or private interests may be a valid strategy for ensuring there is no conflict with your public duty. This may be the relinquishment of shares, or membership of a club or association.
Resign	Resignation may be an option if the conflict of interest cannot be resolved in any other way, particularly where conflicting private interests cannot be relinquished.

The ICG recognises there cannot be a “one-size-fits-all” approach to conflicts of interest across the public sector. These scenarios are designed to provide practical tips for identifying and managing some of the more common conflict-of-interest situations:

- sponsorship from the private sector
- wearing two hats – dual roles as a public officer
- representative members on boards and committees
- allocation of grants for community-based services
- gifts, benefits and hospitality
- recruitment, selection and appointment
- secondary employment
- managing procurement processes, tenders and contracts.

The scenarios illustrate examples of how conflicts of interest may be identified and what strategies may be employed to manage them. The choice of strategies may vary across the sector, and will depend on the operating environment, legislative requirements and practical solutions.

Sources: Integrity Coordinating Group (2011), “Conflicts of Interests Guidelines for the Western Australia Public Sector”, <https://icg.wa.gov.au/sites/default/files/documents/Conflicts%20of%20interest%20-%20Guidelines%20for%20the%20WA%20public%20sector.pdf>; Integrity Coordinating Group (n.d.), “Conflicts of interest - guidelines and scenarios”, <https://icg.wa.gov.au/node/81>.

Training programmes and guidance are effective communicational tools

Adopting a code of conduct or guidelines have a communicational aspect as it sends a strong signal that the organisation is committed to observing the highest standards of integrity and that ethical behaviour is expected from all employees (Transparency International, 2014). Yet, a code of conduct alone would not suffice if it is not complemented by appropriate organisational strategy, managerial guidance and support and training programmes. Ethics or integrity training for procurement officials can raise awareness and develop knowledge of, and commitment to, the critical elements of a culture of integrity in public organisations.

Ethical training displays high importance since it provides practical guidance on ethical behaviour in situations where official rules contradict traditions or do not provide clear answers on how to behave in concrete situations. It is especially important in countries with high levels of corruption where many grey areas have not yet been addressed by formal rules. While lectures appear appropriate for training on rules, interactive and tailor-made practical methods may be more useful for training on values and ethical conduct in risk situations (OECD, 2013b).

In Colombia, trainings are provided within the broader context of procurement system training offered by the Inspector General of Colombia (*Procuraduría General de la Nación*), on an irregular basis. Colombia could greatly benefit from providing dedicated and systematic ethics or integrity trainings that are offered on a regular basis, and eventually extending the training to more stakeholders, including suppliers and contractors (see Boxes 2.7 and 2.8 for examples from Germany and France on specialised trainings).

Box 2.7. Integrity training in Germany

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

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

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

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

Source: Federal Procurement Agency, Germany.

Box 2.8. Specialised training for public procurement in France

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

Issue at stake

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

Stage 1: Checking compliance with public procurement procedures

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

Stage 2: Replying to the losing bidder

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

Stage 3: Suspicions

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

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

Stage 4: Handing the case over to authorities of the Ministry of Justice

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

Conclusion

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

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

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

A balanced management approach is key for sound implementation

A strict approach to manage conflicts of interest could damage efficiency in public procurement

Colombia specifies prohibitions on relationships from which conflicts of interest may arise or materialise in the relevant laws and regulations. Additionally, all the sanctions imposed by government agencies regarding procurement activities are recorded on the suppliers' registry.

During the selection process, each procurement agency is obliged to review the Unique Proponents Registry (RUP, or *Registro Único de Proponentes*) to verify that the public procurement officials and bidders are not subject to any specific prohibitions and disqualifications mentioned in the relevant provisions of regulations and to review the existence of any disciplinary or fiscal decisions on the websites of the Inspector General Office and the General Comptroller Office.

According to the interviews with the public procurement officials during the fact-finding mission, public procurement officials are more concerned with the sanctions in cases of breach in conflicts-of-interest regulations than the private sector actors. In consequence, this could result in excessive application of preclusion of potential bidders, thus limiting the potential economic benefits that could come from increasing competition in the public procurement process. At the same time, preclusion does not mean resolution of conflicts of interest, thus requiring a balanced management approach to uphold integrity through adequately identifying, preventing, and managing conflicts of interest in the public service. In this regard, *Colombia Compra Eficiente* could consider implementing additional declaration and evaluation steps prior to preclusion of the bidders from the process, as seen in Australia (Box 2.9).

Box 2.9. Conflict-of-interest management during tender evaluation in Australia

The Government of South Australia's Department of Planning, Transport and Infrastructure (DPTI) suggests ways to address potential and material conflict-of-interest situations during the procurement process through the Procurement Management Framework. It states that the DPTI staff member should notify the evaluation Panel Chairperson as soon as they notice any apparent conflict-of-interest situation. Even though a potential conflict of interest will not necessarily preclude a person from being involved in the evaluation process, it is declared and can be independently assessed.

It also lists situations that would be considered as a material conflict of interest of a staff in relation to a company submitting a tender including: *i*) a significant shareholding in a small private company which is submitting a tender; *ii*) having an immediate relative (e.g. son, daughter, partner, sibling) employed by a company which is tendering, even though that person is not involved in the preparation of the tender and winning the tender would have a material impact on the company; *iii*) having a relative who is involved in the preparation of the tender to be submitted by a company; *iv*) exhibiting a bias or partiality for or against a tender (e.g. because of events that occurred during a previous contract); *v*) a person, engaged under a contract to assist DPTI with the assessment, assessing a direct competitor who is submitting a tender; *vi*) regularly socialising with an employee of tenderer who is involved with the preparation of the tender; *vii*) having received gifts, hospitality or similar benefits from a tenderer in the period leading up to the call of tenders; *viii*) having recently left the employment of a tenderer; or *ix*) considering an offer of future employment or some other inducement from a tenderer.

Source: Department of Planning, Transport and Infrastructure (DPTI) (n.d.), "Procurement Management Framework: Confidentiality and Conflict of Interest", PR115, http://dpti.sa.gov.au/_data/assets/pdf_file/0015/114351/PR115Confidentiality_and_Conflict_of_Interest.pdf (accessed 16 June 2015).

In addition, implementing a positive management strategy to complement Colombia's prescriptive legal approach could further enhance the framework for identifying and managing conflict of interest by promoting values and ethics among public procurement officials. The "OECD Guidelines for Managing Conflict of Interest in the Public Service" provide for policy options for positive resolution or management of a continuing or pervasive conflict (Box 2.10). In fact, many OECD countries are using several of the following options according to the situations and the seniority or decision-making power of the public officials. Colombia could consider including in their approach options for positive resolution or management of conflict of interest for public procurement officials.

Box 2.10. OECD Guidelines for Managing Conflict of Interest in the Public Service

The "OECD Guidelines for Managing Conflict of Interest in the Public Sector" set the international benchmark to help governments review and develop comprehensive conflict-of-interest policies for the public sector.

The guidelines state the importance of setting clear rules on what is expected of public officials in dealing with conflict-of-interest situations in order to provide a coherent and consistent approach to managing conflict-of-interest situations. They also list options for positive resolution or management of a continuing or pervasive conflict which could include one or more of several strategies as appropriate, for example:

- divestment or liquidation of the interest by the public official
- recusal of the public official from involvement in an affected decision-making process
- restriction of access by the affected public official to particular information
- transfer of the public official to duty in a non-conflicting function
- re-arrangement of the public official's duties and responsibilities
- assigning of the conflicting interest in a genuinely "blind trust" arrangement
- resignation of the public official from the conflicting private-capacity function
- resignation of the public official from his/her public office.

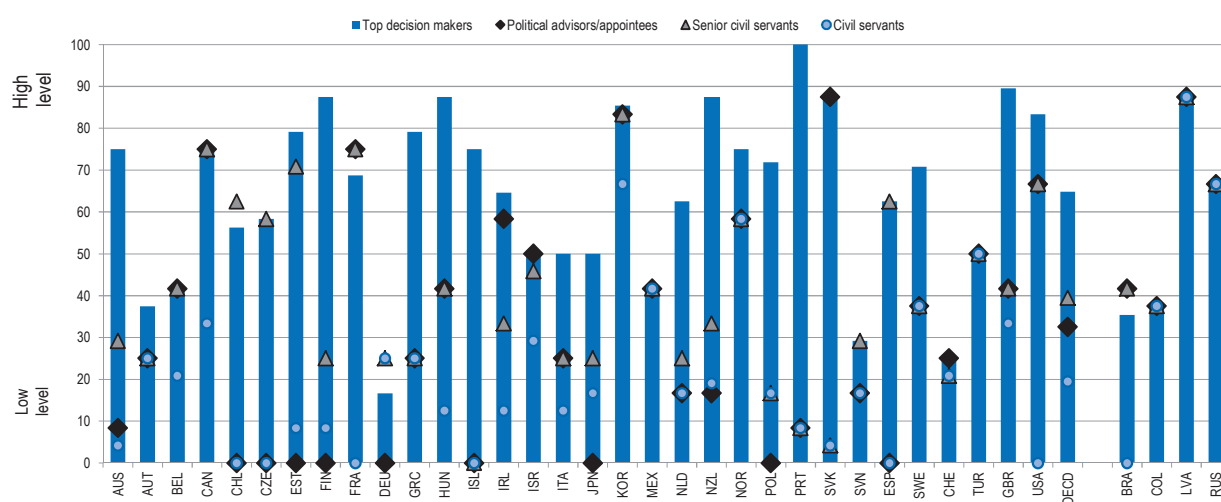
Source: OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264104938-en>.

Proactive management of conflicts of interest through private interest disclosure

Disclosure of private interests by public officials and making them public is an effective tool for managing conflict of interest. On the one hand, it holds public officials more accountable of their actions by making their private interests more transparent. On the other hand, it could raise concern over potential harming of the public officials' privacy. Accordingly, countries should direct efforts to strike the right balance; increasing numbers of OECD countries apply more extensive disclosure requirements according to the seniority of the public officials or the nature of the positions concerned.

In the context of Colombia, public officials are required to register in the *Sistema de Información y Gestión del Empleo Público (SIGEP)*, operated by *Función Pública*. Registration includes a statement of assets and income, as well as information on private economic activities. SIGEP registry is a condition precedent to beginning service as a public official, and must be updated annually and at the end of the term of public service. The head of human resources at each government agency verifies the data registered in SIGEP, but only the previous employment of public officials are disclosed and made publicly available. Furthermore, the same level of disclosure and public availability of private interests apply to all public officials, regardless of the seniority or the position; the public officials in “at-risk” areas, e.g. public procurement officials, tax and customs officials and financial authorities, also have the same requirements. In this regard, Colombia could benefit from implementing a more tailored approach to disclosure and public availability requirements concerning the public officials’ private interests who are exposed to more risks of conflict of interest, in particular, procurement officials (see Figure 2.2 and Box 2.11).

Figure 2.2. Level of disclosure and public availability of private interests by the level of public officials in the executive branch in OECD member countries, 2014



Source: OECD (2015b), *Government at a Glance 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2015-en.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Furthermore, the disclosure forms should be both verified for their completeness and reviewed for accuracy. Among OECD countries, ten countries, including Canada, France, Korea and Switzerland, verify receipt of the submitted disclosure form, verify that all required information was included and audit or review the accuracy of the information submitted in the disclosure form for all those required to disclose private interests. In contrast, Colombia only verifies the receipt of the submitted form for all those required to disclose private interests and verify that all required information was included only for some disclosure forms. The verification of submission or review of disclosure forms does not directly result in resolution of potential or actual conflicts of interest but it can effectively prevent potential conflicts of interest. Colombia could consider implementing

additional measures regarding the disclosed information, such as verifying for completeness and accuracy, in order to increase effectiveness of the private interest disclosures.

Box 2.11. **Financial disclosures and conflicts of interest: State of Illinois, United States**

The Financial Disclosures and Conflicts of Interest form (“form”) must be accurately completed and submitted by the vendor, parent entity(ies), and subcontractors. There are nine steps to this form and each must be completed as instructed in the step heading and within the step. A bid, offer, or proposal that does not include this form shall be considered non-responsive. The agency/university will consider this form when evaluating the bid, offer, or proposal or awarding the contract. The form is divided into eight steps, as follows:

- Step 1. Supporting documentation submittal
- Step 2. Disclosure of financial interest or board of directors
- Step 3. Disclosure of lobbyist or agent
- Step 4. Prohibited conflicts of interest
- Step 5. Potential conflicts of interest relating to personal relationships
- Step 6. Explanation of affirmative responses
- Step 7. Potential conflicts of interest relating to debarment and legal proceedings
- Step 8. Disclosure of current and pending contracts

The requirement of disclosure of financial interests and conflicts of interest is a continuing obligation. If circumstances change and the disclosure is no longer accurate, then disclosing entities must provide an updated form. Separate forms are required for the vendor, any parent entity(ies) and any subcontractors.

The full texts for Steps 4 and 5 are included in Annex 2.A1.

Source: State of Illinois (n.d.), “Financial Disclosures and Conflicts of Interest V.15.2”, www.illinois.gov/cpo/general/Pages/SolicitationandContractTemplates.aspx (accessed 13 June 2015).

Effective enforcement through multi-dimensional approach

An open organisational culture to foster internal reporting and facilitate the detection of wrongdoing

Detection of wrongdoings and breaches play an important role in effective enforcement of conflict-of-interest policies and rules. Often, risks of reprisals or retaliation by managers and colleagues deter internal reporting; such retaliatory measures include dismissal, professional marginalisation, demotion, medical testing or examination and transfer or reassignment. An open organisational culture where public procurement officials are encouraged to report could facilitate detection of misconduct or wrongdoings.

Colombia provides limited protection for whistleblowers through provisions in other laws. The laws include provisions on compensation for unjustified dismissal (Labour

Code of 1950), obligations for public officials to report misconduct of suspected corruption (Law 734 of 2002 and Law 906 of 2004 by means of which the Code of Criminal/Penal Procedure was issued) and prohibition on retaliation against public servants who report cases of corruption (Law 1474 of 2011). The scope of corruption however does not necessarily cover misconduct that could arise from not adequately or appropriately identifying and managing conflicts of interest. Obligation for public officials does not in itself provide for protection against unjust consequences. In this vein, Colombia could include specific provisions in their laws in order to extend the protection to those reporting cases of misconduct, including both public officials as well as other stakeholders in the public procurement cycle, to encourage whistleblowers. For instance, Australia has defined what constitutes a protected disclosure and who will be afforded what kinds of protection under the law (Box 2.12).

Box 2.12. Disclosable conduct as defined by the Australian Public Interest Disclosure Act 2013

The Australian Public Interest Disclosure (PID) Act 2013 defines disclosable conduct as conduct (in Australia or in a foreign country) that contravenes the law, that constitutes maladministration, that is an abuse of public trust, that results in wastage of public money, public property, money of a prescribed authority, property of a prescribed authority, or conduct that results in danger (or a risk of danger) to the health or safety of one or more persons or the environment. In addition, disclosable conduct also includes when a public official abuses his or her position as a public official and conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.

The Act, specifically:

- removes barriers that prevent people who work, or previously worked in the public sector from speaking up about serious problems that impact on public administration
- ensures that reports of wrongdoing are properly investigated and dealt with
- provides protection to public officials who report allegations of wrongdoing under the PID Act.

Source: Australia's Public Interest Disclosure Act 2013, Part 2 Division 2 Section 29; Department of Human Services (n.d.), "Public Interest Disclosure Act", Australian Government, www.humanservices.gov.au/corporate/about-us/public-interest-disclosure-act.

Currently, *Colombia Compra Eficiente* does not receive complaints and does not investigate possible cases of conflicts of interest, as these are not included in its mandate. In order to foster an open organisational culture, safe and clear reporting channels which are well known throughout the organisation with clear rules and procedures, as well as a description of the protection provided for whistleblowers, should be provided. Colombia could consider establishing a hotline to receive reports of suspected corruption cases as well as misconduct during the public procurement cycle, which needs to be clearly defined in law. If a hotline is established outside of *Colombia Compra Eficiente*, co-ordination between the two need to be carefully designed and implemented for it to function effectively (Box 2.13).

Box 2.13. Whistleblower hotline in Austria

In March 2013, the Ministry of Justice set up a whistleblower hotline on the homepage of the Public Prosecutor's Office against Corruption and White Collar Crime. As of September 2013, approximately 590 notifications were submitted via the platform. Only 53 of those notifications were not relevant. The whistleblower hotline has a test phase of two years.

The Federal Ministry of Justice's whistleblowing website enables investigators from the Public Prosecutor's Office against Corruption and White Collar Crime (*Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption*, WKStA) to get in direct contact with whistleblowers, with the anonymity of the latter being assured. In that event, the whistleblower is entitled to decide whether he/she would like to remain anonymous or to identify him/herself to the investigators.

Sources: Transparency International (2013), "Whistleblowing in Europe", www.transparency.de/fileadmin/pdfs/Themen/Hinweisgebersysteme/EU_Whistleblower_Report_final_web.pdf; Shoneherr (2013), "Austria: Whistleblower Hotline is Launched Online", www.schoenherr.eu/knowledge/knowledge-detail/austria-whistleblower-hotline-is-launched-online/.

Regular assessment and evaluation of the policy implementation through diagnostic tools

The system for managing conflicts of interest needs to be assessed and evaluated regularly in order to ensure sound performance. It provides evidence-based feedback on the real impacts of the policy and effectiveness of policy measures that could feed into reforming and improving the system. In particular, 56% of the OECD countries reported in 2014 to have employed diagnostic tools to monitor and evaluate the effectiveness of the policy, rules and procedures on conflicts of interest.² Many of the diagnostic tools are in the forms of surveys done both internally and by an external audit. In some cases, based on the collected data, the responsible bodies and committees draft a report that gets published on a regular basis.

Colombia collects data on sanctions applied during public procurement activities through the supplier's registry, which is an obligation for all procurement agencies applying sanctions. Additionally, when disciplinary sanctions or fiscal responsibility are declared by the General Inspector Office and the General Comptroller Office, they should be registered within the system as well. This data could be an important source to measure effectiveness and identify the weakness of Colombia's system for managing conflict of interest in public procurement. For instance, it could provide public procurement officials with concrete examples of incidences of actual conflict of interest.

Furthermore, the statistical data could be valuable communication tool for not only the public procurement officials but also for the private sector as well as civil society by communicating the government's effort and commitment based on solid evidence in order to adequately identify and manage conflict of interest. Using the statistical data, which are already available, Colombia could use them as an evidence-based assessment and evaluation tool of their system for managing conflict of interest.

Private sector and civil societies can be an additional watchdog during the public procurement process

Many countries involve the private sector and civil societies in different ways to monitor the public procurement process. Integrity breaches in public procurement are often a two-way street resulting from complex relationships between multiple stakeholders. This signifies that adequate and appropriate identification and management of conflict of interest would not be sufficient through public officials alone. In order to have a sound management system, integrity and accountability standards for bidders should be developed and applied as well. Recognising the detrimental effects of integrity breaches, certain suppliers have developed their own standards and programme to enhance integrity, as it is the case in the US Construction Industry Ethics and Compliance Initiative (CIECI) (Box 2.14) and the South Australian Construction Industry (Box 2.15).

Box 2.14. The Construction Industry Ethics and Compliance Initiative in the United States

The Construction Industry Ethics and Compliance Initiative (CIECI) is a non-profit private association that brings together more than 50 companies in the US construction industry to establish a process for the industry to promote integrity and ethical conduct.

The construction industry is the United States' largest industry, ranging from building contractors who construct homes, schools, hospitals, skyscrapers and shopping centres to the heavy construction industry that builds power plants, highways, bridges, airports, dams, water treatment facilities and the like. Vast and diverse, the construction industry consists of architect/engineers, contractors and subcontractors who tend to specialise. The essential goals of the initiative are the advancement of organisational cultures that encourage and support ethical behaviour and compliance with the law, and the sharing of best ethical and compliance practices within the industry.

The Initiative requires each signatory company to pledge to follow six core ethical principles, to adhere to these principles, and to participate in an Annual Best Practices Forum to discuss best ethical and business conduct practices among its members and with representatives from government and other organisations. The core principles are:

- Each member shall have and adhere to a written Code of Business Conduct. The Code shall establish high ethical values and compliance with the law applicable to the US construction industry.
- Each member shall train its personnel as to their personal responsibilities under the Code.
- Each member commits itself to work together toward maintaining open competition in the industry, free of conflicts of interest and undue influences.
- Each member shall be responsible for sharing best ethical and compliance practices in implementing the principles with others.
- Each member shall participate in the Annual Best Practices Forum.
- Each member, through participation in this Initiative, shall be accountable to the public.

Source: CIECI (n.d.), "Construction Industry Ethics and Compliance Initiative", www.ciecinitiative.org/Faqs (accessed 18 June 2015).

Box 2.15. Code of Practice for the South Australia Construction Industry

The Code of Practice for the South Australian Construction Industry and its Implementation Guidelines is a statement of the principles that the industry wants to apply to a range of procedures from project conception and initiation, through tendering and construction, to project completion. The Code of Practice for the South Australian Construction Industry and its Implementation Guidelines aims to: *i)* establish standards of behaviour and standards for the management of relationships between parties in various roles within the industry; and *ii)* introduce reforms as agreed by the industry and by the Government of South Australia. The Code of Practice for the South Australian Construction Industry and its Implementation Guidelines are mandatory on all South Australian Government funded and managed construction projects.

The Code was initiated by the private sector of the State's construction industry as part of the ongoing process of industry development. It is a tool to assist the industry to be nationally competitive by strengthening the best practices that already exist and by introducing new best practices. The Code supports the introduction of asset management policies by the Government of South Australia and the achievement of these delivery standards by the private sector.

The main objectives of the Code are to: *i)* promote action to improve efficiency and productivity; *ii)* eliminate unacceptable practices including those that result from short term and expedient decision making; *iii)* establish standards which the industry requires to be observed; *iv)* improve performance and maintain good practice of all participants in the South Australian Construction Industry; *v)* promote the highest standards within the construction industry by seeking the commitment of all those covered by this Code to comply with the full spirit and intent of all laws, regulations and standards applying to the industry; *vi)* obtain the best value by sharing risks equitably through assigning each risk to the party most able to bear the risk; *vii)* promote the application of sensible and proper practices for the long-term benefit of the industry and all parties involved; *viii)* seek to secure improvements in practice that have been achieved so far; *ix)* seek to promote goodwill in the industry and prevent disputes by observing agreements, statutory requirements and obligations of employment.

Source: Government of South Australia (2012), "Code of Practice for the South Australian Construction Industry", www.infrastructure.sa.gov.au/BuildingManagement/policies (accessed 6 May 2015).

Colombia has developed Pro Ethics Records project in order to promote integrity in the private sector, which include a set of international ethical standards and transparency in the private sector, training of employees, collective action and measure to regulate the relationship between the public and private sectors. However, the main targets of the project are big companies and the level of compliance is estimated to be highly costly for small and medium-sized enterprises (SMEs). In this light, Colombia could further reinforce the impact of the project by extending the aforementioned measures to the private sector and involving the private sector, including SMEs, and civil societies in the development of the project, for example in forms of dialogue or surveys.

In order to avoid conflict of interest during the construction of the New International Airport in Mexico City, the Minister of Transport and Communication (SCT) has developed the following template documents:

- **Declaration of possible conflict of interest:** This document must be presented and signed by the public official in charge of the procurement procedure.
- **Survey on anti-corruption practices for the contracts on public works:** This document needs to be completed and signed by the bidder. It includes questions on the knowledge on anti-corruption legal framework; if investigations and/or

sanctions have been applied to the bidder; the existence of internal anti-corruption policy and if the bidder paid bribes to participate in the bid.

- **Template for the declaration of integrity:** This document must be signed by the bidder.

Colombia could develop similar documents and publish them on line to make bidders more accountable.

Citizens and civil society in public procurement are essential, for they can play a role of “direct social control” on government activities. Not only can they play the role of oversight and monitoring, but involving citizens and civil societies in consultation could further increase transparency in government activities, and aid in restoring public trust. In this light, Colombia could greatly benefit from inviting and involving citizens and civil societies throughout the public procurement cycle, as is done, for example, in Mexico in the form of social witnesses (Box 2.16).

Box 2.16. Social witnesses in Mexico

Mexico is one of the first OECD countries to have introduced such controls through the involvement of social witnesses in the procurement processes, who are legally required to participate in all stages of public tendering procedures above certain thresholds. In 2015, these thresholds are MXN 350 million (approximately USD 23 million) for goods and services and MXN 710 million (approximately USD 47 million) for public works.

Social witnesses are elected by the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP) through public tendering and when a federal entity requires the involvement of a social witness, SFP designates one from the preselected pool. Following their participation in procurement procedures, social witnesses issue a final report providing comments and recommendations on the process. These reports must subsequently be published on the Mexican federal e-procurement platform (CompraNet).

Source: OECD (2015a), *Effective Delivery of Large Infrastructure Projects: The Case of the New International Airport of Mexico City*, OECD Public Governance Reviews, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264248335-en>.

Recommendations

- Colombia could benefit from clarifying conflict of interest regime in their laws by including a proper definition of conflict-of-interest situations.
- Colombia could develop a specific conflict-of-interest policy for procurement officials.
- Colombia could develop a code of conduct for procurement officials and for those involved in the procurement process, including suppliers, bidders, subcontractors and temporary staff, not covered by public officials rules.
- Colombia could greatly benefit from providing dedicated and systematic ethics or integrity trainings that are offered on a regular basis, and eventually extending the training to more stakeholders, including suppliers and contractors.

- *Colombia Compra Eficiente* could consider implementing additional declaration and evaluation steps prior to preclusion of the bidders from the process.
- Colombia could consider including in their approach options for positive resolution or management of conflict of interest for public procurement officials.
- Colombia could benefit from implementing a more tailored approach to disclosure and public availability requirements concerning the public officials' private interests who are exposed to more risks of conflict of interest.
- Colombia could consider implementing additional measures regarding the disclosed information, such as verifying for completeness and accuracy, in order to increase effectiveness of the private interest disclosures.
- Colombia could include specific provisions in their laws in order to extend the protection to those reporting cases of misconduct, including both public officials as well as other stakeholders in the public procurement cycle, to encourage whistleblowers.
- Colombia could consider establishing a hotline to receive reports of suspected corruption cases as well as misconduct during public procurement cycle, which needs to be clearly defined in law. If the hotline is established outside of *Colombia Compra Eficiente*, co-ordination between the two need to be carefully designed and implemented for it to function effectively.
- Colombia could develop “Declaration of possible conflict of interest” and a “Declaration of integrity” and publish them on line to make bidders more accountable.
- Colombia could use the statistical data collected on sanctions and fiscal responsibilities through different systems as an evidence-based assessment and evaluation tool of their system for managing conflict of interest.

Notes

1. Such conflicts of interest are mentioned in, for instance, Articles 23, 36, 40, Item 17 of 48 and 50 of Colombia Disciplinary Code (Law 734 of 2002) as well as Article 8 of the Procurement Law, which states specific prohibitions arising from conflicts of interests in the context of public contracts.
2. Based on the 32 OECD countries' responses to the 2014 OECD Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection.

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*Annex 2.A1***Financial disclosures and conflicts of interest: State of Illinois, United States****STEP 4****PROHIBITED CONFLICTS OF INTEREST**

(All vendors must complete regardless of annual bid, offer, or contract value)

(Subcontractors with subcontract annual value of more than \$50,000 must complete)

Step 4 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above. Please provide the name of the person for which responses are provided:

1. Do you hold or are you the spouse or minor child who holds an elective office in the State of Illinois or hold a seat in the General Assembly? Yes No
2. Have you, your spouse, or minor child been appointed to or employed in any offices or agencies of State government and receive compensation for such employment in excess of 60% (\$106,447.20) of the salary of the Governor? Yes No
3. Are you or are you the spouse or minor child of an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority? Yes No
4. Have you, your spouse, or an immediate family member who lives in your residence currently or who lived in your residence within the last 12 months been appointed as a member of a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor? Yes No
5. If you answered yes to any question in 1-4 above, please answer the following: Do you, your spouse, or minor child receive from the vendor more than 7.5% of the vendor’s total distributable income or an amount of distributable income in excess of the salary of the Governor (\$177,412.00)? Yes No
6. If you answered yes to any question in 1-4 above, please answer the following: Is there a combined interest of self with spouse or minor child more than 15% in the aggregate of the vendor’s distributable income or an amount of distributable income in excess of two times the salary of the Governor (\$354,824.00)? Yes No

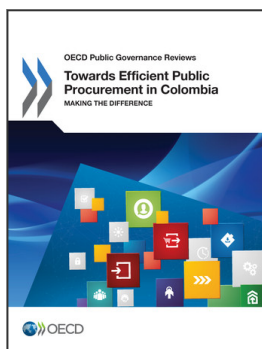
STEP 5
POTENTIAL CONFLICTS OF INTEREST RELATING TO PERSONAL RELATIONSHIPS
 (Complete only if bid, offer, or contract has an annual value over \$50,000)
 (Subcontractors with subcontract annual value of more than \$50,000 must complete)

Step 5 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above.

Please provide the name of the person for which responses are provided:

1. Do you currently have, or in the previous 3 years have you had State employment, including contractual employment of services? Yes No
2. Has your spouse, father, mother, son, or daughter, had State employment, including contractual employment for services, in the previous 2 years? Yes No
3. Do you hold currently or have you held in the previous 3 years elective office of the State of Illinois, the government of the United States, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois? Yes No
4. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding elective office currently or in the previous 2 years? Yes No
5. Do you hold or have you held in the previous 3 years any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois, which office entitles the holder to compensation in excess of expenses incurred in the discharge of that office? Yes No
6. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding appointive office currently or in the previous 2 years? Yes No
7. Do you currently have or in the previous 3 years had employment as or by any registered lobbyist of the State government? Yes No
8. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) that is or was a registered lobbyist? Yes No
9. Do you currently have or in the previous 3 years had compensated employment by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections? Yes No
10. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) who is or was a compensated employee of any registered election or reelection committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections? Yes No

Source: State of Illinois (n.d.), "Financial Disclosures and Conflicts of Interest V.15.2", www.illinois.gov/cpo/general/Pages/SolicitationandContractTemplates.aspx (accessed 13 June 2015).



From:
Towards Efficient Public Procurement in Colombia
Making the Difference

Access the complete publication at:
<https://doi.org/10.1787/9789264252103-en>

Please cite this chapter as:

OECD (2016), "Improving Colombia's management of conflict of interest in public procurement", in *Towards Efficient Public Procurement in Colombia: Making the Difference*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264252103-5-en>

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