

Keeping Government Contracts Clean

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How to improve the management of public resources?

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Introduction

Could countries do more to prevent waste, fraud and corruption in government contracts? Governments and state-owned firms increasingly turn to the private sector for a variety of goods, services and public works, such as buying basic computer equipment or building roads and dams. This is a major economic activity of governments, generating huge financial flows.

Partly because of its sheer size and complexity, public procurement is one of the government activities most vulnerable to corruption. Bribery by international firms in OECD countries is more frequent in public procurement than in utilities, taxation, or the judicial system. Corrupt practices undermine competition in the market, with the result that the government pays an artificially high price for goods and services. On a global scale, millions in taxpayers' money are lost to corruption in major public works such as building schools, power stations or stadiums for major sport events.

Governments realise that taking a pro-active approach pays, and are taking action. OECD countries approved the *Principles for Enhancing Integrity in Public Procurement* in the form of OECD Recommendation in October 2008, which demonstrates their political commitment on this issue. The Principles stress that efforts to improve value for money in public procurement should be accompanied by good governance measures to enhance transparency, accountability, and resistance to fraud and corruption.

The Principles are a pioneer policy instrument at the international level to help governments prevent risks to integrity throughout the entire public procurement cycle, from needs assessment to contract management and payment. A Checklist was developed to provide guidance for the implementation of the Principles at each stage of the procurement cycle. The Principles provide policy guidance for the implementation of international legal instruments on procurement developed in the framework of the OECD as well as other international organisations such as the United Nations, the World Trade Organisation and the European Union. The Principles and Checklist are the result of a multi-disciplinary effort in the OECD. This *Policy Brief* looks at what more governments could do to minimise waste, fraud and corruption in government contracts. ■

How widespread is corruption?

A lot of efforts at the international level has been focused in recent years on improving the process for selecting suppliers for government contracts to promote competitive tendering. But other areas that are as open to abuse, but are less visible, have been overlooked. The process of soliciting and evaluating tenders from different suppliers is the most regulated and transparent part of the process, but it is only the “tip of the iceberg”; there are risks of waste and corruption in the entire procurement cycle (see Figure 1).

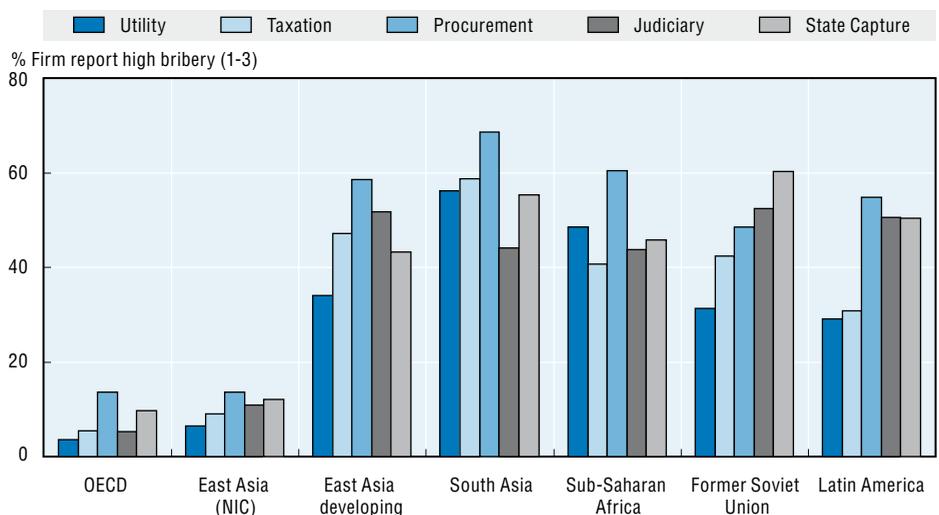
Corruption can rear its head before the tender process even begins. When assessing whether a new road or airport is needed, for example, politicians often put their own agenda first. Once the contract has been awarded, subcontractors and intermediaries involved in contract management have been used to hide corrupt transactions, since they are much more difficult for the government to monitor.

Reform efforts have often neglected exceptions to competitive procedures, such as emergency contracting and defence procurement. Under the cover of national security interests, many countries still bypass transparent tendering to buy clothes, boots, food and other everyday items for the military. Not to mention the common pitfall of emergency procurements with government agencies that are often unprepared, leading to large-scale mismanagement and corruption. ■

How to improve the management of public resources?

OECD governments in 2008 adopted a pro-active approach to prevent waste and corruption in this major risk area by endorsing the Principles in the form of OECD Recommendation on Enhancing Integrity in Public Procurement. The Principles demonstrate a consensus that efforts to enhance good governance in public procurement are essential for efficient and effective management of public resources.

Figure 1.
FREQUENCY OF BRIBERY IN PUBLIC PROCUREMENT



Source: Daniel Kaufmann, World Bank (2006), based on Executive Opinion Survey 2005 of the World Economic Forum covering 117 countries. Question posed to the firm was: In your industry, how commonly firms make undocumented extra payments or bribes connected with permits/utilities/taxation/awarding of public contracts/judiciary?

The Principles and Checklist for implementation take a **holistic view** by addressing various risks to integrity in the entire public procurement cycle, from needs assessment, through the award stage, and contract management and right up to final payment. Their overall aim is to guide policy makers in keeping government contracts clean throughout the entire procurement cycle. The Principles are primarily directed at policy makers in governments at the national level, but may also offer general guidance for sub-national government and state-owned enterprises.

The Principles reflect a **global view** of procurement policies and practices that have proved effective in various regions of the world. They are based on good practices, that were identified through a survey, in governments from OECD countries, as well as from Brazil, Chile, Dubai, India, Pakistan, Romania, Slovenia and South Africa. On the basis of identified good practices, the Checklist was developed to provide guidance for each stage of the procurement cycle.

The Principles and Checklist build on the OECD's **multi-disciplinary** work on public procurement. The approach is to encourage dialogue between different ministries in order to prevent risks to integrity at this interface. They also take into account the perspectives of various stakeholders (see Box 1).

The Principles cover four elements of good governance: **transparency, value for money, resistance to fraud and corruption; as well as accountability and control.** ■

How to keep the public procurement process transparent?

Corruption thrives on secrecy. A key challenge across countries is to ensure transparency in the entire public procurement cycle, no matter what is the stage of the process or the procurement method used.

Box 1. CONSULTING WITH STAKEHOLDERS

The OECD Principles and Checklist went through a series of consultations with OECD representatives from government. This consultation helped reflect the multi-disciplinary approach of the OECD on procurement in the promotion of public governance, aid effectiveness, the fight against international bribery and competition.

They also take into account the views of various stakeholders from government, private sector, civil society, bilateral donor agencies and international organisations. The consultation of representatives from international organisations confirmed that the Principles usefully complement international legal instruments on public procurement and anti-corruption developed within the framework of the United Nations, the World Trade Organisation or the European Union.

The first Principle for Enhancing Integrity in Public Procurement calls on governments to *provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers*. There are several things governments can do to ensure this. For example, if key decisions on procurement are well-documented and easily accessible, inspectors are able to check whether specifications are unbiased or award decisions are based on fair grounds.

The degree of transparency also needs to be adapted according to the recipient of information and the stage of the cycle. In particular, governments should protect confidential information such as trade secrets of tenderers to ensure a level playing field.

The second Principle stresses that governments should *maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering* such as extreme urgency or national security. To ensure sound competitive processes, governments should provide clear rules, and possibly guidance, on the choice of the procurement method. No matter what the procedure used, maximising transparency is key, for example through the publication of notices on-line for low-value purchases. Governments could also set up procedures to mitigate possible risks to integrity. In the case of a hurricane or a flood, a risk mitigation board could be set up to bring together key stakeholders to allow for clear policy directions and increased communication during the emergency. ■

How to achieve value for money?

Common shortfalls in the planning and management of procurement include needs that are not well estimated, unrealistic budgets or officials who are underskilled. Governments realise that procurement should be integrated into a more strategic view of government actions to improve value for money.

The third Principle states that governments need to *ensure that public funds are used in procurement according to the purposes intended*. Procurement plans generally include the related budget planning formulated on an annual or multi-annual basis, with a detailed and realistic description of the financial and human resource management requirements. The management of public funds should be monitored by internal control and internal audit bodies, supreme audit institutions and/or parliamentary committees. When a bridge is to be built, for example, a court of audit may verify not only the legality of the spending decision but also whether the planned bridge responds to a real need.

The fourth Principle calls on governments to *ensure that procurement officials meet high professional standards of knowledge, skills and integrity*. Recognising that working in public procurement is a profession is critical to reducing mismanagement, waste and corruption. Just like the medical or legal professions, public procurement officials could benefit from well-defined curricula, specialised knowledge, professional certifications and integrity guidelines. For example, if a public official sitting on a tendering commission

finds that one of the tenderers is someone with whom he has a personal relationship, the official should be able to identify the potential conflict of interest and take action. ■

How to improve resistance to fraud and corruption?

There is increasing recognition that specific measures are needed in the public and private sectors to identify and address risks of fraud and corruption in public procurement.

The fifth Principle requests governments to *put mechanisms in place to prevent risks to integrity in public procurement*. Risks to integrity can pertain to positions, activities, or projects that are potentially vulnerable. For instance, an anti-corruption agency could draw a “risk map” that identifies the positions of officials who are vulnerable, activities in the procurement where risks arose in the past, and the particular projects at risk due to their value or complexity. These risks can be addressed through mechanisms that foster a culture of integrity in the public service such as integrity training, financial disclosure, or the management of conflict of interest.

The sixth Principle *encourages close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management*. Governments should set clear integrity standards for the private sector and ensure they are followed. For example, officials who systematically record feedback on experience with individual suppliers are in a better position to evaluate future tenders. Potential suppliers should also be encouraged to take voluntary steps to reinforce integrity in their relationship with the government. These include codes of conduct, integrity training programmes for employees, corporate procedures to report fraud and corruption, internal controls, certification and audits by a third independent party.

The seventh Principle calls on governments to *provide specific mechanisms to monitor public procurement as well as detect and apply sanctions in case of misconduct*. For example, a public procurement agency could have “blinking” indicators that track decisions and identify potential irregularities by drawing attention to transactions departing from established norms for a project. Procedures for reporting misconduct could also be established, such as an internal complaint desk, a hotline, an external ombudsman or an electronic reporting system that protects the anonymity of the individual. Governments should not only define sanctions by law but also provide the means for them to be applied in an effective, proportional and timely manner. ■

How to ensure that rules are followed?

The cornerstone of a public procurement system that operates with integrity is the availability and effectiveness of accountability and control mechanisms.

The eighth Principle highlights the importance for governments to *establish a clear chain of responsibility together with effective control mechanisms*. A clear chain of responsibility is key for defining the authority for approval, based on an appropriate segregation of duties, as well as the obligations for internal

reporting. In addition, the regularity and thoroughness of controls should be proportionate to the risks involved. For example, probity advisors could be called upon for purchases that are high value/volume, complex or sensitive in order to advise the procuring authority at key stages of the process and provide a level of independent assistance about the fairness of the procurement.

The ninth Principle stresses that the cornerstone of an integrity system is that governments *handle complaints from potential suppliers in a fair and timely manner*. To ensure an impartial review, an independent body with the power to enforce its decisions should rule on procurement decisions and provide adequate remedies. In particular, potential suppliers should be able to refer to an appeal body. In addition, establishing alternative dispute settlement mechanisms can also be a way to avoid formal litigation and reduce the time for solving complaints. For example, the government could set up an advisory complaint board or a contact point for advice to companies facing problems in cross-border cases.

Last but not least, the tenth Principle calls on governments to *empower civil society organisations, media and the wider public to scrutinise public procurement*. Civil society organisations, media and the wider public should have access to public information on the key terms of major contracts. The reports of supreme audit institutions should also be made widely available to enhance

Box 2. INTEGRITY IN PRACTICE

Professional guidance for procurement officials is increasingly recognised as a key factor for enhancing integrity in public procurement, for instance in the United Kingdom and Italy.

The Office of Government Commerce (OGC), an independent office of the Treasury in the United Kingdom, has developed recommendations, guidance and best practices that cover a wide range of management practices, in particular:

- The Successful Delivery Toolkit – an online guide which brings together procurement policy, tools and good practice for procurement, project and risk management.
- The promotion of Centres of Excellence – within departments to support specific programmes and projects by providing oversight and advice, and working to enhance skills and capacities.
- The Gateway review – an examination of an acquisition project carried out at key decision points of the lifecycle of a project by a team of experienced people, who are independent of the acquisition team.

Consip, a company responsible for the e-procurement system for Italy's Ministry of Economy and Finance, introduced a Code of Ethics. The code sets general standards of behaviour not only for Consip's personnel but also for anyone who co-operates with the company, including employees, consultants, suppliers, the Ministry of Economy and Finance and other stakeholders. It contains provisions in the following areas: general rules on ethics and behaviour in relations with suppliers and stakeholders; conflict of interest; gratuities; interaction with the Public Administration, civil society, politics and the media; confidentiality of information.

public scrutiny. Reviews of procurement activities could also be undertaken. For example, an ad hoc parliamentary committee may investigate large infrastructure projects. Direct control by citizens can complement these traditional accountability mechanisms, for example through the monitoring of high-value or complex procurements by a representative from a civil society organisation. ■

Where do we go from here?

The OECD Principles provide a policy framework for enhancing integrity in the entire public procurement cycle. But following such principles in real-life situations is the test. For that purpose, the Checklist provides **implementation guidance**. It includes both policy options for reform as well as hands-on solutions for practitioners on what to do at each stage of the public procurement cycle. Countries may also refer to the set of acknowledged good practices from governments in various regions of the world (see examples of good practices in the Box 2).

The Principles are a **point of reference** against which policy makers can review, assess and further develop existing policies. Countries can benchmark their procurement systems against the Principles. OECD countries committed to report on **progress made in implementing the Recommendation** in 2011. In addition, the Principles are already used for conducting joint learning studies and formulating capacity development plans in various regions of the world such as Middle East and North Africa, South East Europe and Asia Pacific. Finally the Principles will be used for countries in the accession process to OECD membership in order to benchmark with OECD standards. ■

For further information

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For further reading

OECD (forthcoming 2008), **OECD Principles for Integrity in Public Procurement**, see www.oecd.org/gov/ethics.

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