

MAPPING OUT GOOD PRACTICES FOR INTEGRITY IN PUBLIC PROCUREMENT

DRAFT REPORT

DRAFT REPORT UNDER REVISION

The draft report is currently under revision to reflect the discussions at the Symposium on Mapping out Good Practices in Integrity in Public Procurement and the back-to-back Forum on Good Governance that took place in Paris on 29 November-1 December 2006. The report will be developed in light of participants' comments as well as enriched with further examples of good practices from OECD and non-member countries.

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EXECUTIVE SUMMARY

Public procurement is a **critical economic activity** of government. If available data regarding the size of public procurement markets is limited, existing statistics suggest that the ratio of public procurement markets to Gross Domestic Product is estimated to be about 15 per cent¹. It is also an activity that is global considering the importance of public procurement in world merchandise and commercial service exports. Last but not least it is a major interface between the public and the private sectors, which provides opportunities for both public and private actors to divert public funds for their private gain.

Considering the financial interests at stake, the volume of transactions on a global level and the variety of actors involved, public procurement is a highly **vulnerable area**. For instance, the Executive Opinion Survey 2005 of the World Economic Forum indicates that the frequency of bribery by international firms in OECD countries is perceived to be comparatively higher in connection to public procurement than in other risk areas including utilities, taxation, judiciary and state capture (please refer to the graph in Annex for further details).

At the 2004 OECD Global Forum on Governance: Fighting Corruption and Promoting Integrity in Procurement the **lack of transparency and accountability** were identified as a major threat to fair and equal treatment in procurement and to integrity in public procurement. There has been wide recognition in the international community that corruption thrives on secrecy and that transparency and accountability are key conditions for ensuring integrity in public procurement. However, discussions also emphasised that transparency and accountability must be reconciled with other imperatives, such as ensuring an efficient management of public resources and providing guarantees for fair competition.

Another important conclusion of the Forum was the need to address risk areas for corruption at **all stages of the public procurement** process. The bidding process has been the traditional focus of international efforts but participants considered that the phases of before and after the bidding process are equally at risk.

Approach

Building on the conclusions of the Forum, the OECD has launched an effort to define an adequate framework for promoting integrity in public procurement. The approach taken has been to:

- Consider public procurement from a **good governance** perspective, identifying under what conditions elements of good governance contribute to the overall integrity of public procurement, and in particular what is the role of transparency and accountability.
- Have a solutions-oriented approach by identifying “**good practices**” in countries, i.e. approaches and measures that have been successful in promoting integrity, transparency and accountability in procurement.

¹ The ratio indicates the total government expenditure, including compensation for employees and defence-related expenditure. For further detail, see “The Size of Government Procurement Markets, OECD 2002”.

In order to test the hypotheses put forward by Forum participants, the OECD has launched a **survey** to collect countries' experiences in promoting integrity through effective transparency and accountability mechanisms. The survey has been carried out through the Questionnaire on Integrity in Procurement, which has been developed and tested with an informal task force of OECD experts -- from Canada, France, Germany, Korea, Mexico, Spain, Sweden, the United Kingdom and the United States -- before being applied to all OECD countries and three observers, namely Brazil, Chile and Slovenia.

This activity to collect good practices for promoting good governance in public procurement is complementary part of multidisciplinary efforts in the OECD to fight corruption and promote integrity in procurement. Other linked activities include the development of:

- Typology of bribery in public procurement by the Working Group on Bribery in International Business Transactions (DAF/INV/BR(200624);
- Common Benchmarking and Assessment Tool for Public Procurement Systems by the Aid Effectiveness and Donor Practices Working Party of the Development Assistance Committee (http://www.oecd.org/document/40/0,2340,en_2649_19101395_37130152_1_1_1_1,00.html).

Focus

A particular focus of the survey has been to collect information on “**grey areas**”, i.e. areas that are less subject to transparency requirements and might therefore be vulnerable, mainly:

- Not only the bidding but also the phases of pre-bidding and post-bidding phases that were considered equally at risk;
- Exceptions to competitive procedures (e.g. specificity of the contract, low value, special circumstances such as extreme urgency, etc.).
- Furthermore, the survey focused on collecting **practices, concrete measures and tools** rather than legal and institutional frameworks (results may include elements of laws and institutions when relevant). One cross-cutting issue that has been reviewed is the potential and limitations of new information and communication technologies for promoting transparency, accountability and integrity in public procurement.

Preliminary findings

The results of the survey confirmed the importance of transparency and accountability mechanisms in promoting integrity in procurement. It also revealed that public procurement is regarded increasingly as a **strategic profession** that plays a significant role in preventing mismanagement and minimising the potential of corruption in the use of public funds.

1. A key challenge across countries has been to define an **adequate level of openness and transparency** to ensure fair and equal treatment of providers and integrity in public procurement:

- Governments need to find an adequate balance between the objective of providing equal opportunities for bidders through transparent and open procedures and other concerns, in particular efficiency. Transparency in public procurement bears a cost both for the government and for bidders. When using exceptions to competitive procedures, alternative solutions can be used to ensure the integrity of the process in order to counterbalance the lack of transparency while ensuring overall value for money (e.g. risk management techniques, additional controls,

etc.). The paper highlights solutions used in countries for ensuring integrity in procurements that are less subject to transparency requirements.

- Similarly, if the information provided to bidders is not appropriate (e.g. disclosure of information on other bids in the award in a context of limited competition), it might be counter-active by increasing the risks of collusion between bidders which can monitor precisely the behaviours of their competitors. While countries are progressively disclosing more information on public procurement procedures and opportunities in accordance with Freedom of Information Acts, one emerging issue has been to select the information that cannot be disclosed to bidders and other stakeholders. The paper highlights approaches used in countries to disclose an appropriate level of information primarily to bidders as well as to other stakeholders and the public at large.
- Some countries indicated that the phases before and after the bidding are regarded rather as internal management procedures and therefore not subject to the same transparency requirements as the bidding process. This makes it all the more important to have adequate accountability and control mechanisms to counterbalance the discretionary power of government officials and bidders. Therefore, specific attention has been paid in this paper to highlighting the various approaches and solutions used across countries to ensure integrity in public procurement before and after the bidding, ranging from minimum transparency requirements to control mechanisms.

2. If transparency is an integral part of good governance in procurement, it is a necessary but not a sufficient condition for integrity in procurement. Survey results highlighted that public procurement is a significant factor for successfully managing public resources and should therefore be considered as a **strategic profession** rather than simply an administrative function:

- Driven by considerations of value for money, in recent years governments have put increasing efforts into rationalising and increasing efficiency of procurement. There has been recognition that procurement officials need to be equipped with adequate tools for improving planning and management and that their decisions need to be well informed. For instance, countries have heavily invested in new information and communication technologies to support procurement officials in their daily work and decisions. With emphasis being put on efficiency, some governments have faced difficult choices, with the reduction or stabilisation of the number of procurement officials.
- As most OECD countries have adopted a more decentralised approach, there has also been a growing recognition of the need for enhancing professionalism in procurement. Efforts have been put into providing procurement officials with adequate skills, experience and qualification for preventing risks of mismanagement and minimising the potential for corruption. Procurement officials, who are increasingly required to play a role of “contract manager” in addition to their usual duties, have progressively been gaining new skills, i.e. not only specialised knowledge related to public procurement but also project management and risk management skills.
- There has also been growing recognition that, in a devolved environment, procurement officials also need ethical guidance clarifying restrictions and prohibitions in order to avoid conflict-of-interest situations and prevent corruption both at individual and organisational levels. At the organisational level an emerging challenge has been to ensure the segregation of duties between officials to avoid conflict-of-interest situations while avoiding that these “firewalls” result in a lack of co-ordination between management, budget and procurement officials.

3. Another important finding of the survey is that public procurement, because of the important financial interests at stake and their potential impact on tax payers and citizens, is increasingly regarded as a core element of **accountability of the government to the public** on the way public funds are managed.

- Governments have reinforced their control and accountability mechanisms on public procurement in recent years. A key challenge has been to define a clear chain of approval and responsibility in the public procurement process in a context of devolved procurement. Furthermore, some countries have indicated the difficulty of ensuring the co-ordination of internal controls and external audits in procurement. There has been growing recognition that internal controls and external audits should be based on a more risk-based approach in order to help prevent and detect corruption in procurement, based on the type of procurement (e.g. specificity, complexity, value and sensitivity) and the vulnerable points in the procurement process.
- Procurement officials, bidders, and other stakeholders have been involved in the control of public procurement through the establishment of administrative complaint and recourse systems. Whistleblowing has been used in some countries to help raise concerns about public officials' misconduct, including in public procurement. More importantly, recourse systems for challenging government decisions have become a central mechanism for bidders and other stakeholders to verify the fairness and integrity of the public procurement process. A trend in countries has been to establish a series of alternative resolution systems to judicial decisions for bidders and other stakeholders in order to ensure an effective and timely resolution of bid protests and avoid the cost of litigation.
- Although countries have a variety of accountability and control mechanisms, they have increasingly involved bidders, other stakeholders (e.g. end-users, NGOS representatives) and the wider public in monitoring the public procurement process through increased access to information and active participation. Some countries have also introduced direct social mechanisms by involving stakeholders – not only private sector representatives but also end-users, civil society or the public at large – in scrutinising the integrity of the public procurement process.

The survey results have also confirmed the central role of new information and communication technologies (ICTs) as an instrument for transparency in procurement, for supporting procurement officials' decisions and professionalism, as well as for keeping procurement officials and contractors accountable. ICTs have supported and accelerated these shifts by providing easy and real-time access to information, providing new ways for interactions between bidders and government officials, and facilitating the monitoring and tracking of information on procurement.

Structure

The detailed outline of the report provides an overview of approaches and solutions used by public organisations for promoting integrity in public procurement as well as highlights of good practices in boxes to provide further insights into a specific country experience.

The detailed outline is structured as follows:

I. Risk areas at each stage of the public procurement process

The paper starts with an inventory of risk areas that have been identified in countries at all stages of the public procurement process, i.e. not only in the bidding but also in the pre and post-bidding phases.

II. Potential and limitations of transparency: How to promote a level playing field

The second chapter reviews the potential and limitations of transparency in promoting a level playing field for bidders. It also maps out alternative solutions that have been used in countries to ensure fair and equal treatment and integrity in procurement.

III. Enhancing professionalism to prevent risks of mismanagement and minimise the potential of corruption

The third chapter highlights efforts to equip procurement officials with adequate skills and instruments to increase value for money, as well as a clear set of ethical standards clarifying how to achieve these objectives.

IV. Ensuring accountability and control in public procurement

The fourth chapter reviews existing and emerging mechanisms used for ensuring accountability and control in public procurement².

² An additional chapter will be added on the costs and benefits of introducing such a practice, based on evidence (e.g. basic data) provided by country experts during the Symposium. Specific attention will be paid to providing a critical view of these practices by highlighting their results, limitations and impact.

I. RISKS AREAS AT EACH STAGE OF THE PUBLIC PROCUREMENT PROCESS

Based on the results of the survey questionnaire, this chapter makes an inventory of the risk areas that have been identified in countries. The inventory highlights that there are **critical risks at all stages** of the public procurement process, from planning and budgeting through the bidding to contract management and payment. The following tables indicate the particular concerns that have been mentioned by countries in the response to the OECD Questionnaire on Integrity in Procurement for each stage of the procurement process.

In the **pre-bidding**, the most common risks mentioned in the survey relate to the lack of adequate planning and budgeting of public procurement, the excessive discretionary power of public officials in the decision to procure, and requirements that are not adequately or objectively defined.

Table 1: Risks areas in the pre-bidding

PRE-BIDDING	RISKS IDENTIFIED
- Planning and budgeting	<ul style="list-style-type: none"> - Lack of business case, poor procurement planning (e.g. in New Zealand, Spain, Turkey) - Failure to budget realistically (e.g. in the United Kingdom), deficiency in the budget (e.g. in Spain) - Procurements not aligned with the overall investment decision-making process in department (e.g. in Canada)
- Decision to procure	<ul style="list-style-type: none"> - Excessive discretionary power of public officials (e.g. in Czech Republic, Poland, Slovak Republic), which might for instance lead to an informal agreement upon contract (e.g. in Brazil)
- Definition of requirements	<ul style="list-style-type: none"> - Technical specifications: <ul style="list-style-type: none"> a) tailored for one company (e.g. in Belgium³, Canada, Poland, Spain, the United Kingdom); b) too vague or not based on performance requirements (e.g. in Chile, Germany). - Selection and award criteria: <ul style="list-style-type: none"> a) not clearly and objectively defined (e.g. in Poland, Slovenia); b) not established and announced in advance of the closing of the bid (e.g. in New Zealand); c) Unqualified companies being licensed, for instance through the provision of fraudulent tests or quality assurance certificates (e.g. in the United Kingdom).
- Choice of procedure	<ul style="list-style-type: none"> - Lack of procurement strategy for the use of different procedures depending on the value and complexity that creates administrative costs (e.g. in Canada) - Abusive use of non-competitive procedures on the basis of exceptions (e.g. in Belgium, Finland, Slovenia), through: <ul style="list-style-type: none"> • Contract splitting on the basis of low monetary value contracts; • Abusive use of extreme urgency; • Abusive use of other exceptions based on technicality or exclusive rights, etc. ; • Untested rolling over of existing contracts.
- Preparation of bid	<ul style="list-style-type: none"> - Time frame that is not consistently applied for all bidders (e.g. information disclosed earlier for a specific bidder in Belgium, Norway) - Time frame that is not sufficient (e.g. in New Zealand) for ensuring a level playing field

Source: Response to the OECD Questionnaire

³ For further information on the risks identified in Belgium and the responses developed, please refer to Box no 18.

In the **bidding** phase, countries mentioned risks resulting from an inadequate or irregular choice of the procedure, inconsistent access to information for bidders, unrealistic timeframes as well as conflict-of-interest situations that lead to bias and corruption in the evaluation and in the approval process.

Table 2: Risk areas in the bidding

BIDDING	RISKS IDENTIFIED
- Invitation to bid	- Information on the procurement opportunity not provided in a consistent manner: <ul style="list-style-type: none"> - Absence of public notice for the invitation to bid (e.g. in Finland) - Sensitive or non-public information disclosed (e.g. in Belgium, Mexico, the United Kingdom, the United States) - Collusive bidding including cartels, with illegal price fixing (e.g. in Austria, the United Kingdom)
- Award	- Conflict of interest and corruption (e.g. in Canada, Germany, New Zealand, Norway, the United Kingdom) in: <ul style="list-style-type: none"> a) The evaluation process (e.g. familiarity with bidders over the years, personal interests such as gifts or additional/secondary employment, no effective implementation of the 4-eyes principle, etc.) b) The approval process: no effective segregation of financial, contractual and project authorities in delegation of authority structure - Lack of access to records on the procedure

Source: Response to the OECD Questionnaire

In the **post-bidding** phase, the most frequently mentioned risk factors included the lack of adequate supervision of officials, the insufficient monitoring of the contractor and the deficient segregation of financial duties, especially for the payment (for further details, please refer to the table below).

Table 3: Risk areas in the post bidding

POST BIDDING	RISKS IDENTIFIED
- Contract management	- Failure to monitor performance of contractor (e.g. in Ireland, Norway, New Zealand, Mexico, Slovenia, Spain), in particular lack of supervision over the quality and timing of the process that results into: <ul style="list-style-type: none"> - Change in contract conditions to allow more time and higher prices for the bidder - Products substitution or sub-standard work or service not meeting contract specifications - Theft of new assets before delivery to end-user or before being recorded in the asset register
- Order and payment	- Deficient segregation of duties and/or supervision (e.g. in Belgium, Italy, the United Kingdom) leading to: <ul style="list-style-type: none"> a) False accounting and cost misallocation or cost migration between contracts b) Late payments of invoices, postponement of payments to have prices reviewed so as to increase the economic value of the contract c) False or duplicate invoicing for goods and services not supplied and for interim payments in advance of entitlement

Source: Response to the OECD Questionnaire

Several countries indicated that the phases before and after the bidding are not regulated by procurement laws but rather by civil and contract law. Therefore, the discretionary power of officials – in charge of procurement, budget or overall management - might not necessarily be balanced with strong transparency and accountability mechanisms, which entails risks of mismanagement and even corruption.

In order to address these risks, the following chapters will review a number of common factors, in particular:

- The lack of **transparency** in procurement - This may take various forms such as the provision of inconsistent or incomplete information to bidders, insufficient transparency in the use of non-competitive procedures, or procurement regulations and procedures that are unclear for bidders.
- Insufficient **professionalism** of officials - This may translate into poor planning, budgeting and risk management for procurement, leading to unnecessary delays and cost overruns for projects. In other words, public officials are not necessarily well prepared to keep up with professional standards. Furthermore, officials may not necessarily be aware that their acts are unethical or may bias the process which can lead to conflict-of-interest situations and sometimes corruption.
- Inadequate **accountability and control** mechanisms - Unclear accountability chains for officials, lack of co-ordination between different control mechanisms or insufficient supervision over contractors' performance might lead to mismanagement and even corruption, especially in "grey areas" where there are fewer requirements for transparency.

The next chapters will look at the full procurement cycle, from planning and budgeting, through the bidding to the contract management and final payment.

II. POTENTIAL AND LIMITATIONS OF TRANSPARENCY: HOW TO PROMOTE A LEVEL PLAYING FIELD

Attracting a sufficient number of bidders in public procurement through processes that are open and fair is a key concern in OECD countries. In order to ensure a level playing field for bidders, there is common recognition in all countries of the need for providing:

- **Transparent and readily accessible information** on general laws, regulations, judicial decisions, administrative rulings, procedures and policies on public procurement; as well as
- **Equal opportunities** for participation to bidders through competitive procedures, and providing consistent information to all bidders on the procurement opportunity, in particular on the method for bidding, specifications, as well as selection and award criteria.

Defining an adequate level of transparency

Transparency in the context of public procurement refers to the ability of all interested participants to know and understand the actual means and processes by which contracts are awarded and managed. It represents a key pre-condition to promote wide participation in procurement. The level of transparency and openness of the procurement procedure varies in practice according to:

- **The stage** of the public procurement process

Although the bidding process is strictly regulated, the phases before and after the bidding are less subject to transparency and accountability requirements in a majority of countries.

- **The sensitivity** of the information

There are also a limited number of restrictions on the information provided outside the government in order to protect commercially-sensitive information for bidders (e.g. content of competitive bids such as commercial secrets, individual prices, etc.) or security-sensitive information for the State (e.g. defence, national security) that could harm interests of the bidders or of the State.

- **The specificity and value** of the procurement

There is a balance to be found between the need for transparency and other considerations such as efficiency depending on the type of contract at stake. Therefore, the information made available and the means for its dissemination vary proportionally to the size of the contract and the specificity of the object to be procured. The box below highlights an example of application of the proportionality principle in publicising procurement opportunities in France and how the discretionary power of official for low value contracts has been balanced with accountability mechanisms.

Box 1: Applying the principle of proportionality in publicising procurement opportunities in France

The legal principle of proportionality requires administrative actions be proportionate – in a reliable and predictable way – with the objectives pursued by the law.

In procurement, the proportionality principle requires information make public according to the size of contracts. The new Code of Public Procurement Contracts, came into effect on 1st January 2006, stipulates the principle of proportionality for publicising bidding opportunities in France, namely:

- Public procurement procedures above the threshold defined by the European Directives must be published in the Official Journal of the European Union (OJEU), as well as in the procurement publications part of the official gazette of the French Republic (*Bulletin officiel des annonces des marchés publics, BOAMP*).

- Public bids with value above 90 000 euros but under the European threshold are to be published in the BOAMP, and can be additionally published in specialised journals.

- The publication of bids below the value of 90 000 euros must be adapted to the size and importance of the contract. Finding the most adequate solution for publishing is the responsibility of the procurement officer who has discretionary power to select the most adequate solution amongst available options, including the official gazette, regional or national bulletins, specialised journals or press, etc. In order to balance this increased discretionary power of procurement officers, control has been also strengthened to detect mismanagement or abuse and transfer such cases to court.

- Contracts below 4 000 euros are exempt from the mandatory publication.

Source: France, response to the OECD Questionnaire

There is a common recognition across countries of a number of key conditions for ensuring a level playing field for bidders through transparency: the definition of clear and objective specifications relevant evaluation criteria that are released early and consistently applied during the process; uniform access to information for bidders (including the same information and the same timeframe) and consistent management of deadlines and extensions; appropriate identification and management of any information considered to be commercial-in-confidence; and strategies to deal with any deviation from the process.

Before, during and after the bidding: What level of transparency?

Pre-bidding

In the pre-bidding, there is an opportunity in **a third of countries** for potential bidders and other stakeholders, in particular end-users, to be associated in the drafting of specifications for the object to be procured. Governments consult stakeholders on the specifications of procurement items prior to the bid notice in order to engage in a dialogue with the private sector and encourage innovation, especially for complex contracts (e.g. technical issues, difficulty of estimating prices, etc.). This may take the form of an invitation to companies to submit suggestions on-line, surveys among bidders or of a market study.

One of the concerns is to ensure that the process for integrating their views is **not biased** to avoid specifications being targeted at one company. Countries indicated the necessity to have a sufficiently large number of participants to represent the views of the industry as well as clear restrictions to involve stakeholders to avoid potential conflict-of-interest situations. For instance, in Belgium, a pre-information notice may be used to invite all interested bidders to participate in the preparation of the market study and then the results of this consultation are reviewed in light of the initial market overview prepared by the procuring authority. In Germany, precautionary measures include a formal commitment by stakeholders not to commit misconduct and corruption, its exclusion from follow-up contracts and its potential liability for prosecution in case of breach.

More generally, there has been increasing recognition that the public sector needs to take a more systematic and **strategic approach** to managing major government markets and providing industry with clearer view of public sector demand in order to improve competition and long-term capacity. An emerging practice has been to organise seminars together with bidders early in the process to increase the exchange of information between the public sector and companies and provide the opportunity for the industry to discuss possible solutions (e.g. in Belgium, Finland, Germany, Ireland, the United Kingdom).

Bidding

In the bidding process, three quarters of countries use **new information and communication technologies** (ICTs) in order to release information on procurement opportunities in an open and competitive manner. At the European level, one of the ambitious targets of the Action Plan is that by 2010 all public administrations across Europe will have the capacity to carry out a hundred percent of their procurement electronically, where legally permissible, thus creating a fairer and more transparent market for all companies. The example of Portugal below illustrates how OECD countries are progressively moving the different stages of procurement activities on-line (including contract management and payment) in order to enhance transparency and value for money through increased standardisation.

Box 2: Implementing an on-line platform covering all stages of procurement in Portugal

The Portuguese eProcurement Program was launched in June 2003 as a priority target of the National Action Plan for the Information Society. This new system, implemented by the Knowledge Society Agency (UMIC), was set up with the main objectives of creating a centralised and high-quality technological platform that promotes efficiency and competition through increased transparency and savings in the whole public procurement process.

The National eProcurement Portal (www.compras.gov.pt) started as a portal only providing information, but now it also offers the possibility of downloading the whole bid documentation and specifications free of charge. Besides this, the portal automatically releases the public bid announcements, allows public or restricted procedures, receives suppliers' queries and manages all communication and information exchange on-line. The next steps include the implementation of a Contract Management Tool that allows consulting and monitoring contracts concluded as well as enables e-invoicing. The Information Management System will also help collect, store and systemise information and statistics on the procurement process.

In order to aggregate in a central level the needs of public bodies, an Electronic Aggregation Tool has been developed to promote standardisation of goods and services as well as to facilitate planning, management and control. In the near future, further new tools will be implemented, such as the National Register of Suppliers, which is a central suppliers repository, and the Central Electronic Catalogue with information on products and services from the registered State suppliers.

In addition to increased transparency, the acquired new knowledge and new proactive management orientation, the new system has also produced significant cost and time savings as well as structural rationalisation. Resulted total savings reached 7.8 million euros for a total negotiation value of 39 million euros since September 2003. Eight ministries have already adopted new procedures, 796 public bodies and 1389 people were involved in the project.

Successful implementation of the project requires an adapted human resource management approach in order to motivate and mobilise the stakeholders at all stages of the public procurement process; as well as further improve standardisation of processes on the one hand, and product and service codification and standardisation on the other hand.

Source: Portugal, response to the OECD Questionnaire and The Portuguese eProcurement Program, 2006.

In order to ensure a level playing field in the bidding process, a majority of countries have not only ensured the wide dissemination of the bid notice but also developed specific measures to ensure that bidders:

- Receive clear documentation on the procurement opportunity to ensure an **accurate understanding** of bidders. A vast majority of countries have put significant efforts in recent years to develop of model documents (e.g. through template bid documentation, standard sets of clauses and conditions, standard procurement guidelines, etc.). In Hungary, a legality control before the publication of procurement notices has been established (see box below);
- **Receive information early** about how bids will be evaluated in the process. The **criteria** and relative weightings (if appropriate) must be published in a timely manner so that bidders are aware of them when preparing their bid (e.g. in Mexico, Norway). In Mexico, criteria are included in the bidding conditions and revised by a Bidding Conditions Revising Sub-Committee as well as subject to public scrutiny before the publication of the notice.
- **Receive information at the same time** when bid requirements change. This is done in a written form through on-line notification or additional information published on e-procurement website (e.g. in Belgium, Canada, Ireland, Mexico, Norway), the publication in an official gazette or the use of supplier query mailboxes (e.g. in the United Kingdom); and
- May ask for further **clarifications** or information, keeping in mind that information on questions and answers should be consistently disseminated to all bidders. Countries usually organise information sessions and may provide a contact point for information (e.g. in Belgium, Canada, Germany, Mexico) that sends back information to all bidders or have on-line module to observe clarification meetings (e.g. in Mexico);
- Have **sufficient time to prepare bids** (e.g. additional information must be delivered at least twelve days in the Czech Republic before time limit for receiving bids).

Box 3: Ex-ante legality control of procurement notices in Hungary

It is the task of the Public Procurement Council to monitor the public procurement processes in Hungary. The Council is an autonomous public body reporting directly to Parliament every year on public procurement. It contributes to the development of public procurement policy, and its recommendations also assist in preparing and amending legislation.

In addition to available ex-post control and remedy possibilities, a specific filter mechanism was established to check compliance of procurement notices with national legislation and to detect and prevent any unlawful element before the bidding process start. The Public Procurement Council requires a legality control – by the Editorial Board – before the publication of all procurement notices. In case of noncompliance with the law, the Public Procurement Council calls upon the bidder to complete or modify the notice before submitting it for publication.

According to the statistics available to the year of 2005, from 25000 documents, the Council had to call on nearly 75%, requesting them to adjust the procurement notices before their publication. Once the Public Procurement Council has required precisions and modifications from public authorities, they have generally accepted to modify it in line with the legal requirements. This ex-ante filter mechanism has facilitated to avoid a high number of ex-post remedies, as the law makes mandatory to invalidate and restart the whole procurement process when elements not compliant with the law have remained in the bidding process.

In addition to ex-ante legal control, since its modification in 2004 the Public Procurement Act also requires the contracting authorities to publish a notice on the amendment and execution of the contract in the Public Procurement Bulletin. The new provisions of the Public Procurement Act set out strict conditions for amending the contract, and has narrowed this possibility to such events that were not foreseeable and would jeopardise the legitimate interests of a party in case of executing the contract in its original form.

Source: Hungary, response to the OECD Questionnaire

Communication of award results

Countries have recognised the importance of communicating award results in a transparent manner in order to create a relationship of trust with bidder that process has been conducted in a fair manner and improve value for money for future procurements by providing feedback and advice to bidders on how to improve their bids.

All countries provide at the minimum the name of the successful bidder and the reasons for the rejection of the offer to the unsuccessful bidder. However, the level of information provided varies significantly depending on the country. For instance in the United Kingdom, the Ministry of Defence has decided to publish on-line the information on contract award that it cannot reasonably expect to protect under the Freedom of Information Act, i.e. the contractor's name, nature of goods and services, award criteria, rationale for contract awards, headline price of winning bid, and the identities of unsuccessful bidders. However, no information should be released on the competitor's bid. On the contrary, in Finland, bidders may ask for the winning bid document after **confidential information** has been removed by the successful bidder (e.g. business secrets).

The provision of information is done in **three quarters of countries** through the publication of the contract award as well as a debriefing on request. Some European countries have a double publication at the national level and in the Official Journal of the European Union. Around half of countries use new information and communication technologies to communicate award results.

The debriefing is usually made in writing. Very few countries mentioned the procedure used for approving the debriefing reports (e.g. in Norway, all reports must be approved by the procurement division and normally also by a specific board). In a few countries there is a possibility to request an **oral debriefing** (for instance in Canada, Ireland, the United Kingdom, the United States) that is usually carried after the award. However, in the United States the debriefing can also be requested before the award so that bidders who have been excluded in the pre-qualification receive information early in the process. Some countries have developed detailed guidance for procurement officers to ensure that they do not release commercial in-confidence information (e.g. business secrets) that could contribute to the collusion of bidders and that they have necessary experience or sensitivity to carry out the interview with the bidder successfully. The example of the United Kingdom below illustrates the potential benefits of debriefing for both the procuring authority and the bidders (see box below).

Box 4: The practice of debriefing in the United Kingdom

If regulations require departments to debrief candidates in contracts exceeding European thresholds in the United Kingdom, the Office of Government Commerce (OGC) also strongly recommends debriefing in contracts below these thresholds.

Debriefing candidates not selected for a bid list and unsuccessful bidders is incumbent on the contracting agency or public organisation. Debriefing provides a valuable opportunity for both parties to gain benefit from the process, and thus it is considered as a useful learning tool for the parties.

Debriefing is also **useful for the buyer** department or agency because it may:

- Identify ways of improving processes in the future;
- Suggest ways of improving communications;
- Make sure that good practice and existing guidance would be updated to reflect any relevant issue that have been highlighted;
- Encourage better bids from those suppliers in future;

- Get closer to how that segment of the market is thinking (enhancing the intelligent customer role);
- Help establish a reputation as a fair, open and ethical buyer with whom suppliers will want to do business in the future.

Debriefing has also **potential benefits for the supplier**, by:

- Helping companies to rethink their approach in order to make future bids more successful;
- Offering targeted guidance to new or smaller companies to improve their chances of doing business in the public sector;
- Providing reassurance about the process and their contribution or role (if not the actual result);
- Providing a better understanding of what differentiates public sector procurement from private procurement.

Debriefing discussions – either face-to-face, over the telephone or by videoconference – are held within maximum 15 days after the contract is awarded and all unsuccessful bidders have been formally informed. The sessions are chaired by senior procurement personnel who have been involved in the procurement.

The topics for discussions during the debriefing depends mainly on the nature of the procurement, however, the session follows a predefined structure:

- First, after introductions,, the procurement selection and evaluation process is explained with openness.
- The second stage concentrates on the strengths and weaknesses of the supplier's bid to build a better understanding.
- After the discussion, the suppliers are asked to describe their views on the process and raise any further concerns or questions. It is important to emphasise that at all stages it remains forbidden to reveal information about other submissions.
- Following the debriefing, a note of the meeting is made for the record.

The topics for discussions during the debriefing depends mainly on the nature of the procurement, however, the session follows a predefined structure. Firstly –after any introductions–, the procurement selection and evaluation process must be explained with openness, followed by the second stage that concentrates on the strengths and weaknesses of the supplier's bid with the aim of building the understanding of bidders. After the discussion, the supplier will be asked to describe his view of the process and raise any further concerns or questions. It is important to emphasize that at all stages it remains forbidden to reveal information about the other submissions. Following the debriefing, a note of the meeting should be made for the record.

The most important result of an effective debriefing is that it reduces the likelihood of legal challenge because it proves to suppliers that the process has been carried out correctly and according to rules of procurement and probity. Although the link between the introduction of detailed debriefing and legal reviews cannot be proven, there has been a sharp decrease in the last 10 years in the number of reviews (from approx. 3000 to 1200 in 2005).

Nevertheless, debriefing contains risks and costs if it is not properly conducted. In particular debriefing should never be delegated to employees who do not have the necessary experience or sensitivity to carry out the interview successfully. Inaccurate debriefing has led to complaints resulting in the European Commission beginning infraction proceedings against the United Kingdom and legal proceedings against the contracting authorities themselves in the High Court.

Sources: Supplier debriefing, OGC Publications and Debriefing Unsuccessful Suppliers. Environment Agency, United Kingdom.

In order to provide bidders with sufficient time to challenge the decision before the contract starts, most OECD countries have a **standstill period** between the date of notifying bidders of their contract award decision and the date they may enter into the contract. This standstill period varies significantly in

practice (e.g. 5 days in Portugal, 10 days in Korea, 21 days in Finland). At the European level, the Commission has proposed an amendment to the Remedies Directive to include a mandatory standstill period of ten calendar days. The introduction of a standstill period at the European level has been highly debated. If it does promote the fairness of the procedure by providing a dedicated time for challenging the decision, it also has the potential of influencing decision-makers towards using systematically competitive procedures to avoid that their decision is being challenged. This illustrates the difficulty for officials in procurement to balance concerns of fair and equal treatment with efficiency.

Post-bidding

The post-bidding phase is regarded as an **internal management process** between the administration and the supplier that is subject to less strict requirements for transparency. It is not covered by procurement laws and regulations but rather by contract law. Very few countries indicated in the survey that the contract should be open to the extent that it does not reveal secret information that could harm the interests of the contractor or the State (e.g. in Denmark, Sweden).

In a vast majority of countries, the contract management is only known by the contracting agency and the contractor. As mentioned earlier, a core challenge is to ensure that the project is being carried out in accordance with specifications, in particular in terms of quality and quantity of materials used, timely provision of all components. Another common issue in the post-bidding process is whether the payment is carried out in a timely manner.

Therefore it is all the more essential to strengthen **guidance and accountability** mechanisms for procurement officials and contractors to prevent risks of mismanagement and minimise the potential of corruption in the post-bidding phase. OECD countries have introduced a variety of measures, such as:

- **Adequate planning.** Having an adequate plan for a public procurement can assist the agency to analyse its need and select the best procurement option to prevent mismanagement and even corruption in procurement. For instance, the bid notice includes details on the way the contract is to be managed as well as the plan and method for payment (e.g. in Canada, Ireland and the United Kingdom);
- **Risk management techniques.** An internal risk matrix for the administration helps ensure the involvement of specialist contract staff for high-risk contracts (e.g. in Australia, New Zealand, the United Kingdom). Risk assessment and risk management plan are provided as part of the bidder's solution (e.g. in Canada);
- **Restrictions and controls over change in the terms of the contract.** The procurement authority needs to justify variations (e.g. in Italy, Korea, Mexico, the United Kingdom), which may be subject to an internal or external review;
- **Accurate and timely supervision** by manager, control agencies, with regular reporting on the progress of the project (e.g. Belgium) and/or companies specialised in monitoring (e.g. Spain);
- **Use of new technologies to monitor** the progress of the contract and the payment (e.g. in Mexico, Korea). In Portugal, a contract management tool under current development will allow the change and validation of commercial aspects and the control of compliance to contract terms by suppliers;
- **Shared accountability.** Countries often use models for risk sharing between the contracting authority and the contractor, such as performance bonds (for example, the government receives a substantial sum in the event of default in the execution of the contract in Japan). On the other

hand, if invoices are not paid within the term established in the contracts, the government agency agrees to pay interest, which may be a cause of liability for the procurement officer in charge (e.g. in Mexico);

- **Public scrutiny.** A key condition of public scrutiny is the access of the stakeholders and the public to records (e.g. through the archiving of contracts and all related documents available to the press in Norway), especially if there have been changes to the contract (e.g. recording of all amendments in writing in the United Kingdom). In very few countries, public scrutiny is ensured through the involvement of stakeholders in the post-bidding phase (see box below on the experience of Korea in using new technologies to involve third parties).

Box 5: The use of new technologies to monitor contract management and payment in Korea

A nationwide integrated Government e-Procurement System (GePS) was established in September 2002 by the Korean Government to enable on-line processing of all procurement from purchase request to payment. Through the digitalised system, customer organisations and companies are involved in scrutinising the way public funds are managed in the procurement process. The System covers all stages of the procurement process, from the pre-bidding – for example, the Public Procurement Service releases specifications of procurement items on the GePS *prior* to the bid notice in order to encourage interested suppliers to submit suggestions -- to contract management and payment.

The Korean experience illustrates how new technologies can support the involvement of a third party - an insurance company - that provides a guarantee for the contract between the administration and the bidder. The successful bidder and the contracting agency establish an e-contract through GePS, and in the process, a surety insurance company, as a third party, shares part of that information regarding the contract. In practice, the contracting official receives both the contract documents provided by the contractor and the written guarantee for the contract provided by the surety insurance company, and replies to the guarantee. The contracting officer drafts the final version of the contract after clarification and sends it to the contractor and the end-user organisations.

Another interesting feature of the information system is that it also helps monitor the payment and prevent risks of mismanagement and minimise the potential for corruption that have been frequently encountered during the payment. The contractor submits a payment request and receives payment upon use of receipts, which are sent by an inspector from an end-user organisation. Since the e-payment is connected to the Finance Settlement, the end-user organisation, contractor and bank share information in the flow of payment. Payment is automatically completed online within 2 working hours upon payment request to avoid overdue payment.

Source: South Korea, response to the OECD Questionnaire

Exceptions to competitive procedures: How to ensure integrity?

If open procedures are favoured in all OECD countries, there are a number of alternative procedures -- restrictive/selective as well as negotiated/limited procedures. The choice of method depends on the **type** of product or service and its **overall value**. The choice will have to make balance the need for transparency with other considerations, in particular efficiency (e.g. in the case of low value contracts). At the European level, a new procedure, competitive dialogue, can also be used for complex contracts where the open or restricted procedure is not appropriate, but there are no grounds for using the negotiated procedure.

In order to ensure a level playing field, the procurement laws and regulations in OECD countries define a **strict list of exceptions** to competitive procedures that are based on the following circumstances:

- Specific nature of the contract to be procured which results in a lack of genuine competition in the market (e.g. technical or artistic reasons, proprietary rights, etc.);

- Low value of the contract: the national thresholds under which direct purchasing is allowed vary across countries (e.g. 17.500 euros⁴ in Canada, 6.000 in Poland, 5.000 in Portugal);
- Commodity (e.g. goods that are traded at the same price);
- Exceptional circumstances such as extreme urgency (as a principle, the factors giving rise to extreme urgency must be unforeseeable and outside of the control of the contracting authority);
- Confidentiality of the procurement to protect State interests (e.g. national security and other public interests)

A key challenge is to ensure equal and fair treatment for bidders through competitive procedures, even when using procedures that are less subject to publicity requirements. In these circumstances, **alternative measures** have been used in countries for ensuring the fairness and integrity of the procurement process, in particular:

- The strict definition of criteria for using non-competitive procedures and their application under verified conditions (e.g. impossibility to have follow on contracting for contracts of low value in order to avoid splitting of contracts);
- The publication of an advance contract award notice in order to provide an opportunity for potential bidders to participate in the procedure in cases where there is not absolute certainty that only one firm has the ability to perform the contract (in Canada, see box below);

Box 6: Ensuring a level playing field: the Advance Contract Award Notices in Canada

The Advance Contract Award Notice (ACAN) is an electronic bidding methodology that normally arises when it is possible that only one supplier can perform the work defined in the bid documentation. In circumstances where detailed market knowledge confirms this as fact then the contract should be awarded on a non-competitive basis with transparency achieved through a contract award notice.

The objectives of the Advance Contract Award Notice process are to:

- Provide a procurement process that is efficient and cost effective;
- Provide potential suppliers with the opportunity to demonstrate, by way of a statement of capabilities, that they are capable of satisfying the requirements set out in the ACAN; and
- Respect the principles of government contracting by enhancing access and transparency.

An Advance Contract Award Notice contrasts with non-competitive contracts in a number of ways:

- ACANs provide all suppliers with an opportunity to signal their interest in bidding, through a statement of capabilities.
- ACANs are posted for a minimum of 15 calendar days on the Internet on the government's electronic bidding service. The system operates 24 hours a day, seven days a week.
- ACANs open the process to additional electronic or traditional processes if a supplier's statement of capabilities is valid.

The Advance Contract Award Notices may be used when there is a justifiable reason not to call for bids, provided that the notice clearly explains the nature of the work to be done, the name of the proposed contractor, the estimated cost, why bids are not being called, and sufficient time (15 days) is allowed for potential challengers to come forward. If there is a valid challenge to the proposed contract award, it must not be ignored.

Sources: Canada, response to the OECD Questionnaire and Guide for Managers – Best Practices for Using Advance Award Notices (ACANs), www.tbs-sct.gc.ca

⁴ Calculated as an equivalent to 25,000 Canadian dollars.

- The opening of bids in an official manner, involving several persons, especially for negotiated/direct procedures, supported by double signatures (e.g. in Belgium).
- Specific guidance to procurement officials for ensuring the fairness of the procedure through directives and internal policies (e.g. in Czech Republic, Ireland, etc.)
- The setting up of additional controls in the approval phase by specific internal control agencies or departments (e.g. in Belgium, Canada, Ireland) or through the creation of committees bringing together officials involved in procurement and representatives from internal control agencies (e.g. in Mexico);
- Specific reporting requirements for using exceptions to competitive procedures (e.g. in Australia, Belgium, Luxemburg, Mexico, Portugal, Slovak Republic, the United States, etc.);
- The verification of the justification for using direct procedures by the Supreme Audit office (e.g. in Germany, Ireland, Norway, Portugal)
- Minimum transparency requirements, ranging from the publication of the contract award notice to ensure sufficient publicity (e.g. in New Zealand, Korea) to a written record on the justifications of derogation from competitive procedures (e.g. in Australia, Ireland, New Zealand). In a few countries (e.g. in the Netherlands, Sweden), publicity rules apply for all procedures, only the means for communication vary (see below the example of Sweden).

Box 7: Ensuring a minimum of transparency below the European Union threshold in Sweden

In Sweden, the public procurement is regulated by the Public Procurement Act (LOU), which is mainly based on the Directives of the European Commission. After 1992, when the Swedish Government implemented the Public Procurement Act, the share of openly advertised public procurement in the GDP increased significantly, until it reached the highest level among the member states of the European Union in 2000 (nearly 5 per cent of the GDP).

The Government took one step further by making the publication of notices below the European Union threshold mandatory in Sweden through a legislative amendment, which went into force in July 2001. Before this date, there were no laws regarding advertisement, only rules that the public bodies had to invite at least three bidders in an open procurement process.

The Swedish procurement procedures below European thresholds are very similar to the ones above the thresholds. Having one set of rules above and below the threshold helps promote transparency and equal treatment for bidders. In accordance with the Public Procurement Act, all three options that could be used for procurement procedures below the threshold ensure a minimum of publicity in procurement, namely:

- The simplified procurement procedure, the most commonly used procedure below the threshold, requires publicising of notices through an electronic database readily accessible for all potential bidders.
- In a selective procurement procedure (the equivalent of the selective procedure in the case of procurements over the European threshold values), the notices must also be published through an electronic database accessible to all.
- Even in case of direct procurement procedures, the notice must be openly accessible to all stakeholders on the public procurement website.

Information on stages of the public procurement process from the pre-bidding, through the selection and award, to the debriefing of award results and contract management and payment are openly accessible on the procurement website.

Sources: Sweden, response to the OECD Questionnaire, A Brief Description of LOU by the National Board for Public Procurement, and OECD Economics Department Working Paper no 388 on Product Market Competition and Economic Performance in Sweden, 2004.

III. ENHANCING PROFESSIONALISM TO PREVENT RISKS OF MISMANAGEMENT AND MINIMISE THE POTENTIAL FOR CORRUPTION

Public procurement has been recently recognised as a profession that plays a significant role for the successful management of public resources. As countries have become increasingly aware of the importance of procurement as a risk area for mismanagement, they have initiated efforts to integrate procurement in a more strategic view of government actions. This has also led some countries to recognise procurement as a **strategic profession** rather than simply an administrative function, which requires specific guidelines, restrictions and prohibitions to prevent mismanagement and minimise the potential for corruption.

Using public funds according to the purposes intended

There has been growing recognition in countries that public officials need to be equipped with **instruments** for improving the planning and management as well as a range of procurement, project and risk management **skills** to properly plan and execute procurement processes.

Planning

As part of an effort to adopt a long term and strategic view of their procurement needs and management, more than a third of countries have used annual procurement planning. Procurement authorities are required to review their purchasing processes, and identify improvement goals, targets and milestones that closely link with their business plans, outputs and government objectives. Annual procurement plans may also be publicised as to inform providers of forthcoming procurement opportunities (e.g. in Australia, Chile, Mexico, Poland). These plans usually contain a short strategic procurement outlook for the agency supported by details of any planned procurement, in particular the subject matter of and the estimated date of the publication of the bid notice.

In addition, project-specific procurement plans can also be prepared for specific purchases of goods and services that are considered high value, strategic or complex (e.g. in Australia, Finland, New Zealand). The purpose of these plans is then to assist the agency to analyse its need and select the best procurement option for large-scale procurements that are particularly vulnerable to risks of mismanagement (e.g. overrun costs) and even corruption (see box for illustration an example of Integrity Planning Checklist).

Box 8: Integrity Planning Checklist

The probity plan, in line with established probity guidelines and procedures, is mainly used when the procurement is of high value and in need of careful management, or if the procurement is likely to encounter ethical problems. Where utilised, probity plans carefully take into consideration the relevant characters of the procurement case, such as its size, complexity and risks. The following **checklist of probity issues** can be used in the construction of a probity plan:

PROBITY PLANNING ☒

Determine whether a probity auditor and/or adviser is needed ☐

Obtain conflict of interest declarations from team members ☐

Obtain confidentiality agreements from external participants ☐

Finalise the probity plan, if one is being used ☐

Consider confidentiality requirements ☐

Set up physical security procedures, such as the document register or data room ☐

Ensure team members are familiar with all relevant policies and documents ☐

Set up procedures so all potential suppliers have access to the same information ☐

PROCUREMENT PROCESS ☒

Review probity at the end of the bid preparation process ☐

Set up a process for receiving, recording and acknowledging submissions ☐

Set up a procedure for opening the bid box ☐

Document any changes that occur, and notify all potential suppliers ☐

Ensure evaluation of submissions is fair, consistent and competitive ☐

Review probity at the end of the evaluation process ☐

Notify the successful bidder as soon as possible ☐

Notify the unsuccessful bidders as soon as possible ☐

Debrief unsuccessful bidders ☐

Ensure all actions are documented, and the documents are stored appropriately ☐

Review probity at the end of the process ☐

Source: Australia, Guidance on Ethics and Probity in Government Procurement, Financial Management Guidance no 14, January 2005.

In order to ensure that public funds are used according to the purposes intended, annual procurement planning might encompass various aspects linked to the attainment of government or department objectives, in particular:

- Financial and human resources requirements for attaining objectives, initiatives and planned results (e.g. over one year in Belgium, 3 years in Canada). For instance, in Belgium, it is necessary to justify not only the object but also the amount, and prove that the amount is based on a realistic price assessment.
- Departmental or individual performance to provide accounts of results achieved in the most recent fiscal year against performance expectations (e.g. in Canada, Chile). For instance, balanced scorecards are a tool (e.g. in Belgium, Korea) that can be used to translate the strategy into action and provide feedback on a regular basis in order to improve strategic performance and results.

Budgeting

Appropriately budgeting procurement is a key element of transparency and accountability in the way public funds are managed. The budget is the single most important policy document of governments, whereby policy objectives are reconciled and implemented in concrete terms⁵.

countries have indicated that financial commitments need to be approved before starting the procurement. The first step is usually the control of the commitment and the order to pay of all expenses, and the verification of the availability of credits, the correctness of the budgetary commitment, the regularity of proofs and the correct execution of internal controls (e.g. Luxemburg). Public agencies are also required to justify the expense and show they fit in the objectives of the budget allocated.

A key challenge highlighted by the survey is the difficulty of **defining a budget consistent with the expected costs of a solution ensuring value for money**. To develop a sound cost estimate for procurement based on a good understanding of the market and solutions available, countries have used various solutions, such as:

- Using knowledge of prior procurements of a similar nature (this is a common practice across countries);
- Developing cost estimating methodologies (e.g. in Turkey);
- Making reference to established market prices such as commercial catalogues (e.g. in the United Kingdom);
- Engaging with a representative group of suppliers to that market early in the process (e.g. in Belgium, Netherlands, Turkey).

Providing adequate guidance to procurement officials in a changing environment

Providing adequate skills

Procurement officials have to deal with a substantial amount of work - the number of procurements has significantly increased in recent years - while their number has often been stable or sometimes reduced.

⁵ For further details, please refer to the OECD Best Practices for Budget Transparency, OECD, May 2001.

Some countries have initiated efforts to **attract and retain well-skilled professionals**, for instance through adequate incentives (e.g. in Chile, the United Kingdom). The example of Chile in the box below illustrates how performance indicators can be developed within a management improvement programme and linked to rewards at individual and organizational levels in order to enhance professionalism in procurement.

Box 9: Establishing performance indicators in procurement in Chile

The Public Management Improvement Programme (*Program de Mejoramiento de Gestión, PMG*) is a national programme – run by the Directorate of Budgets of the Ministry of Finance – in order to achieve measurable improvement in key aspects of public management. In particular, the programme focuses on the followings: human resources, customer assistance, planning and implementation, internal audit, financial management and quality of service. Public procurement is identified as an important issue in the programme, and the procurement goals are included in the field of financial management.

The public procurement component of the management improvement programme specifies key performance indicators and establishes rewards at individual and organisational levels. In order to give recognition to the procurement function through adequate salaries, and therefore improved capacity, the programme has included agency and employees incentives linked to achieved improvement and thus salary increases are tied to achievement of PMG goals. **Performance indicators**, among others, include:

- The rate of acquisitions made as an emergency purchase process;
- How much of the acquisition's budget was executed via public bids; and
- The difference between annual plan and actual acquisitions made during the year.

The agency responsible for fixing goals and evaluating improvement results in the field of procurement is the Directorate of Public Procurement Contracting (DCCP). By the end of 2003 some 131 agencies had included procurement in their PMG plans and nearly all of them had achieved a higher quality level of the procurement function. These results can be partly explained by the efforts on employees' training, in which about 7900 individuals were included until 2004 and the investments into information services.

Sources: Chile, response to the OECD Questionnaire and Country Procurement Assessment Report of the World Bank on the Republic of Chile, 2004.

From procurement officer to “contract manager”

Public procurement systems in countries have moved increasingly from a situation where procurement officers are expected to comply with rules to a context where they are given more flexibility to achieve the wider goal value for money. As countries have developed flexible regulatory frameworks and simplified procedures, an emerging trend has been to develop uniform documentation to ensure consistent implementation of rules. Furthermore, most governments have adopted a more **decentralised approach** with responsibility for procurement being passed to individual public sector entities while overall oversight of public procurement activities remained with the central public procurement body. In this evolving context a key challenge has been to develop adequate guidance and incentives for procurement officials to ensure value for money in procurement.

In order to raise awareness about evolving procurement standards, procurement officials have been involved — directly and/or through professional associations — in the **drafting or revision of procurement laws, regulations and guidelines**. This has contributed to building a mutual understanding among officials of expected standards and to facilitating their implementation. More than one third of countries have consulted officials involved in the procurement process and some have even sought public comment to reflect the views of other actors, in particular of business and non-governmental organisations (e.g. in Finland).

A growing concern has also been to ensure that available staff has appropriate skills, experience and qualifications for preventing risks of mismanagement and minimising the potential for corruption. This applies not only to management of the procurement process itself, but also to **essential skills** such as project management and risk management. In a context of devolved management of the procurement process, officials who have never managed a contract are now required to do so in addition to their usual duties. There is growing recognition that organisations need to provide managers with the opportunity to acquire the necessary skills and personal attributes to increase the likelihood of successful contract management.

Helping officials make informed decisions

There has also been an effort to equip procurement personnel with a number of tools and practices to help them make informed decisions regarding purchase operations. Several governments have developed in recent years internal information systems to support officials in making informed decisions about procurements.

In order to help officials make informed decisions about procurements, internal information systems may contain data on:

- **Bidders/contractors**, in particular their potential or actual performance and integrity (e.g. technical capability of bidders, list of parties excluded, past performance, etc.), which is particularly useful in the process of selection (e.g. in Ireland, Italy, Korea, the United States);
- **Former procurement contracts**, in particular on the types of goods and services and their individual prices, which could help define the needs in a realistic manner and facilitate the evaluation of procurements (e.g. in Turkey, the United Kingdom, the United States, projects in Belgium and Portugal);
- **The execution of the contract**, in particular to monitor the progress and actual performance of the contractor (e.g. in Korea, Mexico).

In a few countries, this information is also filtered and integrated at the government wide-level in a statistical report analysing **trends and patterns** in procurement, which is available to the public. This may even be used at the supranational level (for instance, in Poland, the data entered in the Public Procurement Office database is processed in a national statistical report for the European Union). The box below illustrates how the United States have used a variety of databases to support decisions not only of procurement officials but also of policy-makers by providing trends and patterns on public procurement.

Box 10: The use of information systems to support decisions on procurement in the United States

Numerous databases collect, structure and communicate information about public procurement in the United States. Several of them serve as a decision support tool for procurement officers by providing information on the performance of suppliers, and the details of products or services to be purchased. The following information systems - among others -- simplify, unify and streamline the federal acquisition process:

- The Central Contractor Registration (CCR) is the Federal Government's primary vendor database that collects, validates, stores, and disseminates vendor data in support of agency acquisition missions. Both current and potential vendors are required to register in the CCR to be eligible for federal contracts. Once vendors are registered, their data will be shared with other federal electronic business systems that promote the paperless communication and co-operation between systems. (see www.ccr.gov)
- The Excluded Parties Lists System (EPLS) is a Web-based system that identifies parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits. The EPLS is updated to reflect government-wide administrative and statutory exclusions, and also includes suspected terrorists and individuals barred from entering the United States. The user is able to search, view, and download current and archived exclusions. (see <http://www.epls.gov>)

- The Past Performance Information Retrieval System (PPIRS) is a Web-based, government-wide application that provides timely and pertinent information on a contractor's past performance to the federal acquisition community for making source selection decisions. PPIRS provides a query capability for authorised users to retrieve report card information detailing a contractor's past performance. Federal regulations require that report cards be completed annually by customers during the life of the contract. The PPIRS consists of several sub-systems and databases (e.g. Contractor Performance System, Past Performance Data Base, Construction Contractor Appraisal Support System, etc. (see www.ppirs.gov).
- The Federal Procurement Data System (FPDS) facilitates decision making of procurement officers by raising their knowledge and awareness on annual trends in government purchasing. The FPDS collects information from purchasing agencies concerning their number and value of bids awarded, the dates and conditions of the contracts, the contracting partners and methods, the form of payment, etc. The system structures and forwards the information to the President, the Congress, the Government Accountability Office, executive agencies and the general public, in order to measure and assess the impact of federal procurement on the nation's economy, the extent to which awards are made to businesses in the various socio-economic categories, the impact of full and open competition on the acquisition process, and other procurement policy purposes. (see www.fpds.gov)

Source: United States, response to the OECD Questionnaire

Furthermore, some countries have also encouraged the exchange of information between government officials through the creation of **networks and centres of expertise in the administration** to identify and disseminate good practice. For instance, in the United Kingdom, the centres of procurement expertise in the various ministries provide detailed and constantly updated advice documentation regime, regular process quality assurance in conjunction with auditors and networking with departments and the Office of Government Commerce. Other ways to increase the exchange of information in the administration include for instance the creation of multi-disciplinary committees involving representatives of various parts of the administration to review and discuss specific issues of concern related to procurement. There has been a clear trend in countries (e.g. in France, Ireland, Netherlands, New Zealand, Norway, the United Kingdom) to invest in the development of good practice guidance for procurement officials. This trend is illustrated in the box below with the example of Irish Government Contracts Committee, whose role has evolved towards a general guidance role on issues of concern for public procurement.

Box 11: From approval to guidance: The evolution of the role of the Irish Government Contracts Committee

Initially created to provide external approval for contract awards above 25 000 euros that are not using competitive procedures in exceptional circumstances, the role of the Government Contracts Committee (GCC) has evolved since January 2003 towards a more general guidance role on issues of concern for public procurement.

The GCC is a committee of procurement officers from central government departments and agencies, which have a significant procurement function or have responsibility for key procurement sectors. The GCC therefore concentrates on advising on procurement issues of general concern to the State sector. It also has a role in developing, together with the National Public Procurement Policy Unit in the Department of Finance, good practice guidance for supplies, services and construction procurement. Departments benefit from guidance material to enable them to comply with fair and transparent public procurement rules and to secure value for money. The national public procurement website also plays an important role in disseminating guidance and relevant procurement information.

With the suppression of the approval by the GCC, internal control over non-competitive procedures has therefore been strengthened to ensure the integrity and efficiency of those contracts being awarded under exceptional circumstances (such as extreme urgency, or when only one product or producer meets the contract requirements). A review should be completed within the department concerned, preferably by the Internal Audit Unit or by a senior official who is not part of the procurement process. The reporting procedures have also been revised with the completion of an annual report signed off by the Accounting Officer for these contracts, which should be forwarded to the Comptroller and Auditor's General Office, with a copy to the National Public Procurement Policy Unit of the Department of Finance. Each department should also maintain a central up-to-date register of such exceptional purchases and contracts.

Source: Ireland, response to the OECD Questionnaire and Circular 40/02: Public Procurement Guidelines - revision of existing procedures for approval of certain contracts in the Central Government Sector, 2003

Preventing conflict of interest and corruption

In a devolved management context, enhancing professionalism requires not only management procedures but also a clear set of values and ethical standards clarifying how to achieve these objectives. Specific ethical guidance has been developed in several countries defining clear restrictions and prohibitions for procurement officials in order to avoid **conflict-of-interest** situations and prevent corruption both at individual and organisational levels.

Organisational measures

At the organisational level, there are requirements that are used across countries for ensuring the **separation of duties and authorisations**, in particular between:

- Entities of the administration that require specific goods and services and the procuring entities (e.g. in Austria, Germany)
- Strategic planning, budget and performance program, accounting and reporting, and internal control functions (e.g. in Turkey).
- Stages of the procurement process: for instance, the approval of spend, the approval of key procurement milestones, the recommendations of awards and the payment should be conducted separately (e.g. in the United Kingdom).
- Commercial and technical duties: for instance, the commercial and technical evaluations are conducted separately and information is brought together to independently inform the recommendation of award (e.g. in the United Kingdom);
- Financial duties: ex ante control in the financial services unit and the financial transaction process should be conducted separately, i.e. the duty of authorizing officer and accounting officer cannot be combined in one person (e.g. in Ireland, Luxemburg, Turkey).

An emerging challenge has been to ensure the segregation of duties between officials to avoid conflict-of-interest situations while avoiding that these “**firewalls**” result into a lack of co-ordination between management, budget and procurement officials.

In order to **avoid prolonged contact** between government officials and bidders, some countries have encouraged the rotation of officials involved in procurement, particularly in sensitive posts or those giving staff the opportunity for long-term commercial connections, possibly in an environment of non-competitive procurement. Time limits may vary significantly depending on the post and the country (for instance, accounting-related officers in Korea are rotated every 1 to 3 years, financial controllers every 3 to 5 years in Luxemburg, commercial officials within a period of maximum 5 years in the United Kingdom). Other measures used in procurement to avoid this direct contact include the use of new information and communication technologies (e.g. use of e-auctions in Brazil, Mexico, etc.) as well as limitations set up for procurement officials in their interactions with bidders at different stages of the procurement (e.g. during negotiations).

Another commonly used method for controlling risk internally is the “**four-eyes**” principle (segregation of various functions, double signatures, cross-checking), which ensures the joint responsibility of several persons in the decision-making. For instance, public bid committees are usually formed to balance the discretionary power of a procurement official in the process as well as benefit from the expertise from various specialisations (e.g. accountants, economists, procurers, etc.). As the importance of

the project increases, the number of officials involved may also increase. For instance, in Korea, for contracts of high value or difficult decisions, the responsibility is delegated to the Contract Review Committee, which consists of independent experts, including NGOs and academics. A key condition of the effectiveness of the Committee is to define an appropriate organisation and composition as well as clear obligations and restrictions for its members, in particular when involving experts from outside the government.

Defining ethical standards for public officials

At the individual level, core values guide the judgement of public servants on how to perform their tasks in daily operations. To put the values into effect, a vast majority of countries have legislated standards expected of officials across the whole public service.

Table 4. Guidance for public servants

Laws, regulations, legal documents	Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Korea, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Turkey, the United States
Code of conduct, code of ethics, civil service code	Australia, Canada, France, Greece, Ireland, Italy, Japan, the Netherlands, New Zealand, Switzerland, the United Kingdom
Guides, guidelines, directives	Australia, Canada, Denmark, France, Germany, Ireland, the Netherlands, New Zealand, the United Kingdom, the United States

Source: Trust in Government: Ethics Measures in OECD Countries

In addition to the general standards applicable to all public servants, a majority of countries have developed a more detailed description of the **standards of conduct** expected, restrictions and prohibitions for procurement officials to ensure that their private interests do not improperly influence the performance of their duties and responsibilities. These potential conflict-of-interest situations may be in relation to:

- Personal, family or business interest, outside activities in particular in relationship to contract (e.g. in Chile, Ireland, Mexico, Netherlands, New Zealand, Poland);
- Gifts and hospitality (e.g. in Belgium, Ireland, Japan);
- Involvement into political party (e.g. in Turkey)
- Disclosure of confidential information (e.g. in Belgium, Mexico, Turkey, etc.);
- Future employment (e.g. in the Netherlands, the United States).

The description of these specific standards may be included in formal laws and regulations (e.g. in Mexico, New Zealand, the United States), specific ethics codes/codes of conduct for procurement officials (e.g. in Austria, Belgium, Canada, Korea, Mexico) and guidance materials (e.g. in Australia).

A key challenge across countries has been to find solutions to ensure the protection of officials involved in procurement from any pressure and influence, including political influence, in order to ensure the impartiality of decision-making and promote a level playing field for procurement officers. Key conditions for protection from political influence include clear ethical standards for procurement officials (see for example the box below that describes the efforts initiated in Turkey), an adequate institutional framework, budgetary autonomy, human resource management based on merit (e.g. appointment) as well as working independence for procurement officials (e.g. procurement officials are solely responsible for decisions).

Box 12: Setting clear ethical standards for procurement officials:

The 2002 public procurement reform in Turkey

The Turkish public procurement system underwent a major reform in 2002 in order to address shortcomings identified such as:

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

With the 2002 Public Procurement Law (PPL), the Public Procurement Authority (PPA) – was established at the central governmental level to regulate and monitor public procurement. In order to prevent problems encountered previously, some measures have been introduced by the PPL to prevent pressures from interest groups and set higher ethical standards for PPA's officials. These include:

- The Authority shall be independent in fulfillment of its duties. No organ, office, entity or person can issue orders or instructions for the purpose of influencing the decisions of the Authority.
- The Authority is comprised of the Public Procurement Board, the Presidency and service units. Members of the Public Procurement Board are appointed by the Council of Ministers and must fulfill criteria, including higher education, more than 12 years of experience in public institutions, and knowledge and experience in the field of national and international public procurement procedures. Candidates cannot be actively engaged in the activities of a political party. Members of the Board are nominated for a five-year term and, once appointed, cannot be revoked before the expiry of their term.
- The Board members shall take an oath in witness of the First Bureau of Assembly of the High Court of Appeal, that they will fulfill their duties in an honest and impartial manner, that they will not violate and let others violate the provisions of this Law and the related legislation throughout their memberships.
- The members of the Board, unless based on a specific Law, can not be involved in any official or private jobs, trade or freelance activities, and can not be a shareholder or manager in any kind of partnerships based on commercial purposes. The members of the Board are obliged to dispose off any stocks or securities they have acquired prior to starting their offices, belonging to legal entities carrying out activities in the market or their subsidiaries, via transferring or selling off to persons other than their relatives by blood up to third degree or by marriage up to second degree, within thirty days following the start of their service periods, except for those securities issued by the Under secretariat of Treasury for domestic borrowing purposes. The members who do not act in compliance with this provision shall be deemed resigned from their memberships.
- The Board members are obliged to submit a declaration of property, within one-month following the date of commencement and expiry of office, and every year during their service period.
- When executing their duties, the Board members and the staff of the Authority cannot disclose any confidential information or document concerning the related officials or third parties to any entity except for those authorized by law for such disclosures, and cannot use them for the benefit of their own or third parties. This liability of confidentiality shall also continue after they leave their offices.

Source: Response to the Questionnaire and Public Procurement Law (no: 4734) of Turkey, 2002

Putting standards of conduct into effect starts with **recruitment**. However, very few countries indicated that they take into account ethical considerations in the recruitment process by using measures such as:

- Issuing security clearance for positions representing a potential risk to national security or other important national interests (e.g. Ministry of Defence in the United Kingdom):

- Verifying the background of officials before their appointment (e.g. in Mexico, public officials have to show evidence that they have not been barred or disqualified to hold positions in the Federal Administration)
- Evaluating candidates capacity to handle ethical dilemmas (e.g. certification process that assesses competence and skills as well as preparedness to handle ethical risks)

A growing number of countries use **training** to build public officials competence and skills for handling complex procurement procedures and to raise awareness about possible risks to integrity. Trainings on procurement and integrity issues may be induction, i.e. prior to joining the office and/or offered on an on-going basis. For instance, in the United Kingdom, all commercial officers within the Ministry of Defence are required to undertake training courses before being issued with a commercial licence by a senior officer. Trainings may also be done on a voluntary basis (e.g. in Norway, open training programs are offered to public officials by important agencies, private sector and the National Public Procurement Board) or mandatory (e.g. in the United States).

Some governments have developed procedures that enable procurement officials to identify and **disclose relevant private interests** that potentially conflict with their official duties. It may be restricted to financial interests (e.g. shareholdings, investments) or also include other interests such as relationships, additional/secondary employment, etc. Such disclosure is usually required to be provided periodically, generally on commencement in office and thereafter at regular intervals, usually annually, and in writing. Some countries have made it mandatory for procurement officials to disclose relevant private interests (e.g. in Korea, Spain, Turkey, the United Kingdom). For this tool to be effective, an important question is whether there is an effective mechanism for verifying the veracity and completeness of the information disclosed on a regular basis.

A few countries have in recent years introduced specific restrictions and prohibitions for procurement officials not only for the time of their tenure but also for employment after leaving their public office. The box below illustrates the specific **post-employment** prohibitions that have been developed in the United States for officials involved in procurement and contract administration for contracts over USD 10 million.

Box 13: Specific post-employment prohibitions for procurement and contract administration in the United States

In addition to the generally applicable post-employment restrictions for federal employees in the executive branch, there are certain post-employment prohibitions in place for those involved in procurement functions and contract administration.

Former officials may not accept compensation from a contractor for one year as an employee, officer, director or consultant of the contractor if they:

- Served, at the time a contract exceeding USD 10 million was awarded as a procuring contracting official, or a source selection authority, or a member of the source selection evaluation board, or chief of a financial or technical evaluation team; or
- Served, for a contract exceeding USD 10 million as administrative contracting officer, or programme manager or deputy programme manager; or
- Personally made a decision to award a contract, subcontract, task order or delivery order over USD 10 million, establish overhead or other rates in excess of USD 10 million; approve issuance of contract payment(s) in excess of USD 10 million, or pay or settle a claim for more than USD 10 million.

Source: Avoiding conflict of interest in post-public employment: Comparative overview of prohibitions, restrictions and implementing measures in OECD countries, OECD 2006.

Preventing conflict of interest and corruption in the public service in relationship with bidders

Most countries also require bidders to **demonstrate** at least that they have adequate financial resources to perform the contract and a satisfactory record of integrity. In Poland, bidders are required to make a declaration that they fulfil the requirements to participate in the public procurement, i.e. having required authorisations, appropriate knowledge, experience, technical and human capacity to perform the contract, being in a financial and economic situation to ensure the performance of the contract and not being subject to exclusion from the award procedure. In Ireland, bidders go through a selection process that verifies the company's tax law compliance, as well as its professional standing, financial capacity and expertise. There is increasing awareness that further efforts should be put into verifying the information provided by the prospective bidder and comparing it with other sources of information to verify its capacity to participate in the procurement process. The question remains how to **track changes** and whether there is a periodic review of the bidders' status once they have been registered.

An emerging practice in countries has been to **deny access** to bidders in the public procurement process when irregularities or corruption have been proven in order to promote the integrity of the procurement process and discourage bidders from engaging in illegal or corrupt activities. The basis for denial of access in a procurement procedure may take different forms, such as the exclusion of a company to participate in a specific procurement (e.g. Belgium), the permanent or temporary disqualification for a firm to participate in future public procurements (e.g. deletion from the list of entrepreneurs in the Slovak Republic) or the disqualification based on criminal activities in the past that are not necessarily linked to procurement⁶. One question is **how information is made available and shared across the administration** (e.g. the list of registers is shared between Länder in Germany).

Some countries have also created partnerships for integrity with business and non-governmental organisations. When using **integrity pledges**, both officials conducting contract award procedures and bidders are required to testify - under penal liability - the absence of conflict-of-interest situations (e.g.

⁶ For further information on debarment, please refer to the OECD report Fighting corruption and promoting integrity in procurement, 2005.

family or personal relationship with bidder, relationship of employment or service with bidder, etc.). There is a mutual commitment by the principal and all bidders to refrain from and prevent all corrupt acts and submit to sanctions in case of violations. Bidders also disclose all payments to agents or any other third parties in connection with the contract in question, responding to the concern that independent agents and other intermediaries are frequently used by exporting companies to obtain contracts. For instance, an Integrity Pact has been used recently for major international airport project in Berlin-Schönefeld in Germany.

IV. ENSURING ACCOUNTABILITY AND CONTROL IN PUBLIC PROCUREMENT

Within the public sector, procurement is being seen as increasingly important in delivering value to governments and ultimately to tax payers and society. Procurement officials are **in the public eye** because of the significant impact of procurement on the economy.

The cornerstone of a public procurement system operating with integrity is the availability of mechanisms and capacity for ensuring effective internal control and audit. Furthermore, mechanisms for lodging complaints and challenging administrative decisions contribute to ensuring the fairness of the process. In order to respond to citizens' demands for greater accountability in the management of public expenditures, some governments have also introduced direct social controls mechanisms by involving stakeholders – not only private sector but also end-users, civil society or the public at large – in scrutinising integrity in procurement.

Accurate records: A key condition for effective accountability and control mechanisms

Accurate written records of the different stages of the procedure are essential to maintain transparency, provide an audit trail of procurement decisions for controls, serve as the official record in cases of administrative or judicial challenge and provide an opportunity for citizens to monitor the use of public funds. Agencies need to have procedures in place to ensure that procurement processes are documented, defensible and substantiated in accordance with relevant laws and policies in order to promote accountability.

These written records may be kept in paper and/or electronic form. Some OECD countries have used information systems for coercively supporting the documentation of all steps of the public procurement process and for allowing real-time monitoring of officials' performance and integrity (see below the example of the Procurement Agency of the Ministry of Interior in Germany).

Box 14: Using information systems for recording – The experience of the Federal Ministry of the Interior in Germany

The Federal Procurement Agency is a government agency under the Federal Ministry of Interior, which acts as a central purchasing organisation in the German federal government sector. Its main activity is to manage purchasing for 26 different federal authorities, foundations and research institutions that fall under the responsibility of the Federal Ministry of the Interior.

It has set an electronic workflow that helps centralise all information related to the procurement system and provide a record of the different stages of the procurement procedure. Employees are assisted by an electronic workflow, which leads through the process and coercively supports the application of the four-eyes principle. Each decision is to be well founded and documented along the milestones of a procurement procedure. All files are stored in a document management system.

The Federal Procurement Agency has also recognised the importance of accurate records for maintaining transparency and providing an audit trail of procurement decisions. Supervisors may additionally access to any document at anytime. In case of suspicion the contact person for prevention for corruption may also have an access to documents for inspection. This access is not visible for the official concerned. The department for quality management randomly examines documents in the system, while the internal audits review transactions of the previous year. These inspections are not exclusively used to prevent corruption but also to ensure lawful and economically advantageous public procurement.

Sources: Germany, response to the OECD Questionnaire and Das Beschaffungsamt. A procurement agency that does more! Bonn, 2004.

These information systems often have the advantage of recording information per user, which keeps officials accountable for their actions and can help track irregularities in the process. Information systems have been used to record and analyse data on:

- The **financial aspects** of procurement (e.g. accounting records in Brazil, Italy);
- **Characteristics of procurement** processes, such as the criteria used, the frequency and reasons for using exceptions to competitive procedures (e.g. Germany, Mexico, Portugal, Turkey);
- The number of **administrative complaints and recourse mechanisms** (e.g. Poland, Mexico, Turkey);
- The number and types of **controls** carried out on procurement (e.g. Poland), irregularities detected and sanctions applied (e.g. Mexico).

The types of records will vary depending on the objective sought. The most frequent objective of records is to provide an **audit trail**. For instance, the maintenance of proper accounting records are an important element of internal control and they can also contribute to the safeguarding of assets, including the prevention and detection of fraud. The type of records, level of documentation and retention time on procurement may be proportionate to the nature and risk of the procurement. For instance, the types of records will vary depending on the procedure used (e.g. will be stricter for exceptions to competitive procedures), the complexity and the sensitivity of the purchase.

In most countries, appropriate records are not only kept by the procurement agency and/or internal control agencies but also made available to the public. The objective is then to provide bidders and other stakeholders with the necessary information for **challenging the fairness of the procedure**. These records might cover part of the procedure (e.g. contract award in Turkey) or the whole procurement process (e.g. in Norway, a recent reform has introduced the obligation of documenting all steps of procurement process for contracts above national threshold). The records might be restricted to bidders, or on the contrary open to other stakeholders (e.g. citizens and consumers associations that have a concrete interest in Italy, anybody who has an interest in Sweden).

In a few countries (e.g. Brazil, Chile, Poland, the United States), records on procurements are public available in order to provide an opportunity for citizens to **monitor the use of public funds** and more generally government actions. For instance, in Brazil, it is mandatory for Federal public administration bodies to disseminate through Internet all the information relative to budgetary and financial execution, including for public procurements. Another example is the General Controller's Office in Mexico that makes public the list of all administrative sanctions applied since 2001 to federal public servants, as a result of disciplinary investigations (see box below).

Box 15: Publicising information on sanctions related to procurement in Mexico

The Ministry of Public Administration – through its Unit of Normativity of Procurement, Public Works, Services and Federal Patrimony – gathers and publishes information regarding bidders, intermediaries and contractors as well as public officials that have been sanctioned for breaches of public procurement laws and regulations. This information is made available to the public in the Report of Activities of the Ministry of Public Administration.

During 2005, 1153 *bidders, intermediaries and contractors* were sanctioned with disqualification, debarment from participating in procurements and fines. The list of sanctioned bidders, intermediaries and contractors can be consulted on the Ministry's web site.

In regard to *public officials*, 3592 administrative sanctions have been applied against 2618 *public officials* between January and August 2005. Among the sanctions imposed, 2% of them were warnings, 27% were admonishments, 20% were suspensions, 7% were dismissals, 24% were disqualifications and 20% were economic sanctions for a total amount of 3733.7 million pesos.

Among the causes that motivated the imposition of administrative sanctions, 1931 were due to administrative negligence, 1193 occurred due to violation of laws or norms that regulate the Federal Expense Budget, 235 derived from noncompliance with procurement procedures, 174 were due to abuse of authority and 59 resulted as consequence of acts of bribery.

The primary sources for revealing such breaches were unsuccessful bidders and other external stakeholders. Of the administrative sanctions imposed, 1612 originated from a complaint or citizen accusation, 1480 were the result of audits practiced at the agencies or entities of the Federal Public Administration and 500 emerged from internal investigations.

Source: Mexico, response to the OECD Questionnaire

The retention time also varies significantly among countries. In Australia, records have to be retained for at least 3 years and may be kept longer depending on the circumstances while they are usually kept in Korea and Japan for 5 years, and 10 years in Sweden.

Internal control

Without an adequate internal control system, an environment is created in which assets are not protected against loss or misuse; good practices are not followed; goals and objectives may not be accomplished; and individuals are not deterred from engaging in dishonest, illegal, or unethical acts. It is particularly important to have **functioning internal controls** in procurement, including financial controls, internal audit and management control.

It is the **responsibility of procurement authorities** to set up effective internal control systems that monitor the performance of procurement officials, assist compliance with laws and regulations and help ensure the reliability of internal and external reporting. This responsibility is all the more important in a context of decentralised procurement. For instance, in Brazil, the Internal Control of the Federal Executive Branch is carried out by the General Controller's Office through the Federal Secretariat of Internal Control and decentralised units. Decentralised units play a fundamental role in implementing control efforts.

A clear chain of responsibility

An important condition of accountability is to clearly define the **delegated levels of authority** for approval of spending and sign off and approval of key stages. In OECD countries, the level of authorities responsible for the approval process may vary proportionately to:

- The value of the procurement, for which a chain of approval hierarchies should be in place (e.g. in Portugal, procedure might have to go through the authorisation of the Ministerial Council in certain cases);
- The business needs of the organisation and the official's experience. For instance, in the United Kingdom, the maximum value that a commercial officer is able to contractually commit is determined by their grade and the likely amount that will be required in their post.

Managers have a crucial role in ensuring proper supervision over procurement. In OECD countries, internal procedures in agencies often require senior-level review of key decision points in procurement. For instance, in the United States, the definition of evaluation criteria, evaluations and contract award selections are usually subject to senior-level reviews. Furthermore, internal guidance through policies and guidelines can help define the level of responsibility and the obligations for reporting to different authorities (e.g. in Mexico, the United Kingdom). In Mexico, the policies and guidelines must be published on the website of each government agency.

There might also be **additional controls**, for instance by a team of people independent of the acquisition team (e.g. the Gateway Reviews in the United Kingdom, see box below) or by the internal audit of the authority (e.g. in Belgium, Finland). More formalised reviews are usually required for projects of high value. For instance, in Ireland, independent peer review is required for ICTs projects over 5 millions in regard to business case and good project management, which also includes a post implementation review.

Box 16: Independent examination of acquisitions: The Gateway Review in the United Kingdom

A Gateway Review is, in simple terms, an examination of an acquisition project carried out at key decision points by a team of experienced people, who are independent of the acquisition team. There are five types of Gateway Reviews designed by the Office of Government Commerce (OGC) during the lifecycle of a project:

- Up to and including contract award – Gateway Reviews 1–3;
- Post contract award – Gateway Reviews 4–5.

The review is conducted on a confidential basis for the person that takes personal responsibility for the successful outcome of the project (the Senior Responsible Owner). This approach promotes an open and honest exchange between the acquisition team and the review team. The Gateway reports are frankly written and deal with the strategic, business and personnel aspects of the project, including instances of good practice that may be transferable to other projects.

All acquisition programmes and procurement projects in central civil government are subject to the OGC Gateway Process without any minimum financial limits. However, the financial value is one factor to consider when deciding on the level of risk faced by a project, and it is recognised within the Risk Potential Assessment (RPA), which must be completed to each procurement project. The composition of the review team reflects the assessed potential risk of the project, namely in case of:

- High risk projects – RPA Score 41 or more –, the Gateway Review is undertaken by an independent Review Team Leader (RTL who is independent from the department that carried out the project) with independent Operations Team;
- Medium risk projects – RPA Score 31-40 –, the Review Team Leader is still independent from the department but the team members are provided by the department (independent from the project);
- Low risk programmes – RPA Score less than 31 –, all team and the leader are resourced from the sponsoring department but all are independent from the project.

Each review takes about three or four days. At the end of their investigations, the review team produces a report summarising their findings and recommendations, together with an assessment of the project's status as Red, Amber or Green.

- "Red" status means that remedial action must be taken immediately; however not necessarily stop the project.
- "Amber" status indicates that the project should go forward with recommendations for actions to be carried out.
- "Green" status shows that the project is on target to succeed but may benefit from the uptake of recommendations.

The OGC Gateway Review Process provides assurance and support for Senior Responsible Owners in discharging their responsibilities to achieve their business aims by ensuring that:

- The best available skills and experience are deployed on the projects;
- All stakeholders are covered by the project; and
- The project can progress to the next stage of development or implementation.

From 2001 by the end of 2004, OGC Gateway Teams have conducted over 800 OGC Gateway Reviews covering over 500 projects. The feedback from Senior Responsible Owners has been highly supportive.

Source: United Kingdom, response to the OECD Questionnaire, OGC Gateway Frequently Asked Questions; OGC Gateway Publications: A Manager's checklist, Gateway to Success, Running an effective review

In addition to strengthening controls, some countries have ensured **enforcement** through effective, proportional and timely sanctions. In the United States, there have been numerous investigations in the last 5 years by Inspectors General into individual procurements, which have resulted into criminal convictions, penalties and loss of employment for public officials and contractor employees. In Norway, a contracting authority that conducts direct illegal purchasing might be subject to an administrative fine up to 15% of the contract value from January 2007.

External audits

Countries have recognised the essential role of audit in **detecting and investigating** fraud and corruption in procurement as well as suggesting systemic improvements. If internal audit is used in some countries (e.g. in Belgium, Finland, the United Kingdom), the vast majority of countries use external audits conducted mainly by supreme audit institutions with jurisdiction over the whole public service. For instance, in Finland, the State Audit Office carries out external financial audits and performance audits of procurement. Furthermore, the Government Financial Controller established in 2004 plays the role of advisor and controller for developing the quality of the control and reporting system on central government finances and operations. Similarly in Austria, the Court of Audits plays a key role in conducting external audits of procurement and **making recommendations for the improvement of procurement** processes (see box below).

Box 17: Recommendations of the Austrian Court of Audit for procurement audits

The administration of public procurement and contracts is considered by the Austrian Court of Audit as a particularly vulnerable area to mismanagement and even corruption. Procurement audits are among the most important, most discussed and observed reports of the Austrian Court of Audit.

The following criteria are taken into account for selecting public procurement cases for audit:

- Total value and complexity of the procurement -- complex and high-value procurements are more likely to be audited;

- New acquisition – audits rather focus on new acquisitions than routine procurements;

- Order value per contractor and number of orders per contractor – whether specific contractors receive unusually often or unusually large orders;

- General aspects – such as critical statements of external and internal supervision authorities (e.g. Ministry of Finance, internal auditors), handling in political committees, coverage in the media, (anonymous) complaints, legal proceedings or professional experience of auditors.

Based on good practices, the recommendations of the Austrian Court of Audit for procurement audits cover all stages of the procurement process, in particular:

1. General procedure:

Organisation: Organisational units responsible for different procurement aspects (definition of needs, specification, awarding of a contract, financing) should be separated organisationally. Dependencies as well as parallel structures should be avoided.

Documentation: The documentation of procurement procedures should be in writing and covering all important aspects. Internal procurement regulations should be binding and verifiably notified to the employees concerned.

2. Planning and preparation of procurements:

Planning concept: Planning should be completed before conducting a specific procurement procedure and should be updated on time.

Financing: Procurement preparation should include a statement of the prospective total expenses of the project and a long-term planning. The required funds should be guaranteed on time.

Analysis of demand: Preparation of procurement should also include cost–benefit and make–or–buy considerations. Core duties should be performed by public authorities. External experts should only be consulted if special knowledge or specialised technologies are not available within the awarding authority or if they substantially increase the quality of a project and the probability of success.

Time frame: Procurement planning should contain realistic time targets.

3. Execution of procurement:

Completion of the preparations: Procurement procedures should only be initiated and conducted after all necessary prearrangements have been completed (e.g. purchase of property in connection with construction projects).

Choice of and justification for the procurement procedure. Special attention should be turned to the choice of procurement procedures as they are often reasoned or justified by unfounded circumstances (e.g. urgency, demand for special abilities or experiences).

Specifications: Specifications should be neutral, based upon completed planning and define standardised products, if possible. Off-the-shelf products should be preferred. The relevant documentation should be complete, clear, understandable and calculable.

Bidding period: When defining the bidding period the complexity of the specific procurement should be taken into account.

Opening of bids: At the opening of bids all formal requirements have to be fulfilled. This has to be documented sufficiently.

4. Evaluation of bids:

Evaluation catalogue: The evaluation catalogue has to be completed and approved before the opening of bids. The evaluation catalogue should concentrate, if possible, on a limited number of key criteria. Award criteria, which have to refer to the demanded product, should not be mixed with qualification or selection criteria, which have to refer to the bidders.

Weighting of award criteria: If standardised products are purchased, the price component must be weighted sufficiently.

Comparative bids: The price adequacy of the offered or awarded products has to be evaluated in any case, also when applying the negotiated procedure.

Supplementary amendments: After the opening of bids, price negotiations or supplementary amendments of the specifications or the weighting of the award criteria have to be avoided (except for the negotiated procedure).

5. Conclusion of the contract:

Performance requirements: The specifications of the invitation for bids and the contract should correspond.

Model contracts: It has been recommended to develop model contracts.

6. Contract management and payment:

Supplementary amendments: Supplementary amendments and extensions of contracts should be avoided.

Acceptance: The management of contracts requires accurate and timely supervision. Defects have to be rejected immediately in writing.

Payment: Payment should be made punctually; early payments should be avoided.

Logistics: Logistics has to include timely provision of all components that are necessary for the operation and maintenance of the procured goods (e.g. training, documentation, servicing, special tools, spare parts).

Stock management: Over-stocking should be avoided.

Source: Austria, response to the OECD Questionnaire

In order to keep the public informed, external audits are routinely **published in two thirds of the countries**. Several countries also highlighted the fact that procurement expenditures are also reported to the Parliament. For instance, in Canada, reports on plans and priorities, which are individual expenditure plans for each department and agency, are tabled in Parliament by the President of the Treasury Board. In Slovenia, reports of the Court of Accounts and the Ministry of Finance are addressed to the Committee for control of public finance, which has also the right to invite parties for hearings.

Co-ordinating controls

Public procurement operations are subject to various controls: local controls, accounting controls, controls made by fiscal authorities, as well as external controls and audits. As public procurement become more decentralised, an emerging concern in OECD countries has been the **lack of co-ordination** between

these various controls, which has led to some loopholes and overlaps in controls over the procurement process. Only few countries have mentioned in the survey the existence of mechanisms to ensure co-ordination of control mechanisms. For instance, the Austrian Court of Audit co-ordinates its audits at an early stage with other external audit institutions and internal auditors of procurement authorities through the review of their audit plans and results and through regular reporting on its own activities.

A related difficulty has been to **maximise the use of information produced by different controls**. While generally information related to internal audits is not released to the public, in the United States, both internal investigations conducted by Inspectors General in procuring agencies and external investigations conducted by the General Accountability Office are usually released to the Public and the Congress. These investigations have resulted into Congressional hearings and enactment of laws, primarily the procurement integrity statutory provisions.

Taking a risk-based approach

There has been growing recognition across countries that a sound system of internal control therefore depends on a thorough and regular evaluation of the nature and extent of the risks to which the organisation is exposed. In order to prevent and detect individual irregularities and systemic failures in procurement processes, governments have increasingly used methodologies to **map out risk factors and vulnerabilities** in public procurement (e.g. in Belgium, Brazil, Korea, Netherlands, etc.). For instance, in Brazil, the internal control system is supported by a set of indicators that provides guidance to auditors in the verification of the legality and effectiveness of the public procurement, based on most frequently observed occurrences. In Korea, ex-post audits focus on specific corruption-prone work areas that are identified through an annual internal survey on the level of integrity. This contributes to raising awareness among auditors as well as public officials about the areas most prone to inefficiencies, illegalities and corruption. It can also be used for providing recommendations on vulnerable points of the public procurement process (e.g. see the example of Belgium below).

Box 18: Mapping risks and providing recommendations for prevention measures in Belgium

With the help of internal and external control mechanisms, the Belgian federal public procurement service has **identified potential risks areas** at various points of the public procurement process, including:

- *Definition of specifications*: The definition of specifications of a concrete project has been adjusted in order to favour a specific bidder.
- *Selection procedure*: When using restricted procedures, the selection of potential suppliers is not based on objective criteria, with the risk of limiting the number of participating bidders.
- *Bids submitted after the delay of submission*: Bids have been accepted after the delay of submission, including during the official opening of the submitted bids.
- *Change in bid description*: Certain elements of the initial contract notice have been changed during the selection and award process, which can positively influence the matter of a privileged bidder.
- *Award*: When selection criteria have been defined in too general terms, the risk of a subjective evaluation that favours a specific bidder has been more common.
- *Contracts with low monetary value*: Overestimated prices have been detected for purchases of low monetary value, resulting into significant mismanagement of public funds.
- *Contract management*: Contracts have been invoiced but not completed.

In order to reduce these risks identified, several **recommendations** have been elaborated by the Consultancy and Policy Office on Federal Public Procurement, including:

- In order to avoid bias in the definition of specifications, the public official who is responsible for the definition of specifications must justify that these are based on the results of a market study about the needs. There should also be efforts to ensure that the definition of specifications is clear and detailed.

- To avoid modifications of the bid during the process, it was recommended to use the 4 eyes principle, with several persons signing the bid project.
- Effective accountability mechanism need to be set up in order to balance the discretionary power of the public official who is responsible for inviting suppliers in a restricted procedure.
- Several public agents should attend the official opening of the submitted bids.
- A database should be created containing information on past purchases to be used as a price reference system.

Source: Belgium, response to the OECD Questionnaire

Some countries have also started to employ a “probity auditor” for conducting external audits of procurements that are at risk because of their complexity, high-value or sensitivity. A **probity auditor** is an independent person that verifies that processes followed by an agency are consistent with Government regulations and good practice principles in terms of fairness, transparency and openness in procurement (e.g. in Australia, Canada, New Zealand). The objective is to provide additional oversight of the procurement process, especially in procurements that are particularly vulnerable to mismanagement and even corruption. In order to be effective, the circumstances in which a probity auditor may be required should be clearly defined. One potential pitfall is that probity audits are used by agencies as an ‘insurance policy’ to avoid accountability for decisions made. The box below illustrates the guidelines developed in Australia for determining circumstances in which a probity plan could be used as well as the criteria for selecting the probity auditor (see below the box on the experience of Australia).

Box 19: Probity Auditors in Australia

The objective of an engagement of a probity auditor is to provide a level of independent assurance about the conduct of a bid process, in particular its openness and fairness to all parties concerned. The probity auditor is an independent auditor who confirms if a government procurement process has been conducted fairly through monitoring, assessing and, where necessary, correcting a bidding process. In Australia, all probity auditors’ reports are made available in full for scrutiny by the Parliament, the Auditor-General and anyone else with an interest.

The probity auditor is responsible for providing an independent view of the procurement process with the provision of opinions, conclusions and findings that are impartial and are viewed as impartial by knowledgeable third parties. The probity auditor should possess adequate professional proficiency for the tasks required, including technical procurement abilities and a good knowledge of the government’s probity framework.

The probity auditor should only be used in specific circumstances to verify that processes followed by an agency are consistent with Government regulations and good practice principles, in particular when the project is:

- Politically sensitive and/or potentially controversial;
- Very complex or has a significant financial impact.

This has proved particularly useful for projects where the integrity of the process may be called into question or to avoid perception of favouritism.

In order to ensure that probity auditors are not used as an ‘insurance policy’ to avoid accountability for decisions made, or be allowed to become a substitute for good management practices, the Independent Commission Against Corruption (ICAC) has developed guidelines and criteria that should be used by public sector agencies in determining whether and how a probity auditor should be engaged.

Sources: Australia, response to the OECD Questionnaire, Memorandum No: 98-12 to all Ministers on the Use of Probity auditors by public sector agencies and Whole-of-Government Contract for Probity Auditors.

Challenging government actions: the central role of administrative complaints and recourses

A sound procurement system uses the participation of bidders, procurement officials and other stakeholders as part of the control system by establishing a clear regulated process that enables the submission and timely resolution of complaints.

Reporting mechanisms for officials

If two thirds of countries have developed procedures for public officials to facilitate the exposure of wrongdoing in the administration (e.g. complaint desk, hotline, etc.), few countries have developed **whistle blowing protection** in the public service, in particular for procurement (e.g. Canada, Germany, Korea, the United Kingdom, the United States). One of the reasons may be the fact that whistle blowers are often the target of retaliations such as harassment, intimidation, demotion, and dismissal. A number of countries (e.g. in Canada, Korea, Norway) have recently initiated reforms to introduce or strengthen the protection for whistleblowers in the public service, the most commonly safeguards being legal protection, anonymity or the setting up of a protection board. A new approach has been introduced with the possibility of financial reward or advantage in career progress (e.g. in Korea, proposed by a bill before Parliament in Canada).

If the number of cases detected through whistle blowing is still limited, there is growing recognition of the potential of this mechanism for detecting large-scale irregularities in the use of public funds, in particular in procurement, which would not have identified by other control mechanisms.

Recourse systems for challenging procurement decisions

Recourse systems, similarly to audit systems, fundamentally serve a procurement oversight function. They provide a means of monitoring the activities of government procurement officials, enforcing their compliance with procurement laws and regulations, and correcting improper actions. Furthermore, they provide an opportunity for bidders and other stakeholders to contest the process and verify the integrity of the award. For instance, in the United States, any interested party - actual or potential bidder - can file a protest with the Government Accountability Office.

If there is common recognition that effective recourse systems for challenging procurement decisions should provide timely access, independent review, efficient and timely resolution of complaints and adequate remedies, the practice varies significantly across countries:

Timely access to recourse mechanisms

Both the procurement and the recourse system itself must be organised in a manner that permits bidders to initiate recourse before the contract starts. An emerging practice has been to define a **mandatory standstill period** between the contract award and the beginning of the contract to provide the bidder with a reasonable opportunity for the award to be set aside (e.g. Norway, the United Kingdom, etc.). In Portugal, a report with the intention of award is sent to all bidders after evaluation by the committee so that suppliers may question the results (i.e. procedure, applicability and choice of solution for procurement) and challenge procurement actions accordingly in the next 5 days.

While countries generally provide a recourse mechanism after the award, bidders are also able in some countries to challenge procurement decisions at other stages of procurement, and even sometimes after the end of the contract. For instance, in Sweden, there is a possibility to make a complaint at **any stage of the procurement** process and even after one year through a claim for damage in civil court. The records for the procedure are made available not only for bidders but also for other interested parties.

Independence of review

In order to avoid litigation and provide an opportunity for contracting authorities to make the necessary adjustments, a vast majority of countries encourage and in some cases make it mandatory for

bidders to submit their complaints to the **procuring authority**. Independence in this context refers to the extent to which the review is prevented from external influence and is not biased by the public official or the procuring agency's interests. For instance, in Belgium, the heads of procuring agencies are called for rather than contracting officers to determine whether protests have merit in order to avoid individual conflict-of-interest situations. Furthermore, recourse is also available to Mediators that provide independent oversight over actions of the administration.

Efficient resolution of complaints

In order to improve the efficiency of the resolution of complaints, an emerging trend in countries has been to create a **specific mechanism** for dispute resolution to encourage informal problem solving (e.g. in Canada, Denmark, Japan, Norway, etc.). This might contribute to reducing the time for resolving complaints and reinforcing the legitimacy of decisions that are grounded on specific professional knowledge (see the box below on the experience of Norway). Other solutions include for instance the possibility of a decision in a shorter period of time if the complaint is related to the award (e.g. in the Netherlands).

Adequate remedies

The recourse system must have the authority to define and enforce **interim measures** as well as **final remedies** that correct inappropriate procuring agency actions and compensate disappointed bidders. In Ireland, a complainant may seek to have an award process suspended, an award decision rescinded or be awarded compensation for loss or damages. In the United States, when a bidder files a timely protest, the procuring agency is required to put the procurement on hold until the protest is resolved, whether the protest is raised pre- or post-award to the agency or to the General Accountability Office.

Box 20: Efficient and timely resolution of complaints: Informal problem solving in Norway

In Norway, dissatisfied suppliers in a public procurement procedure have had the choice to take a formal complaint to ordinary courts since 1994. This formal review has been available to secure correct and effective application of procurement rules, as required by the Remedies Directives of the European Commission. The courts have had the power to suspend procurement process before awarding the contract and also grant compensation for damages (e.g. loss of expenses, profit, etc). However, the courts have received only very few complaints (in the past over a decade period).

In January 2003 a **new advisory complaint board** – the Public Procurement Complaint Board (KOFA) –, was created with the objectives to:

- Make the enforcement of the public procurement regulations more efficient
- Solve disputes in a faster and more flexible way (e.g. lower the litigation costs), and
- Increase the level of competence on public procurement (e.g. through publishing the opinions and clarifying the interpretation of the rules and principles).

The Public Procurement Complaint Board is an independent advisory body that consists of ten highly qualified lawyers. Three members of the Board participate in the handling of each complaint. Although its decisions are not legally binding, due to the high quality of its recommendations, the Board's opinions are followed by the parties in nearly all cases. The Board's activity has led to a noticeable increase in knowledge of the application of public procurement rules.

The public procurement legislation grants involved bidders the right to complain after a contract has been rewarded. The complaint must be submitted to the Complaint Board within six months after the contract has been signed.

When the complaint is submitted within the standstill period the Complaint Board asks the contracting authority to postpone the signing of the contract until the case is closed. Furthermore, the Board gives priority for reviewing those complaints where the contracts are not yet signed. By January 2006 the average time for decisions was:

- 51 days in case of contracts that had not been signed; while
- 224 days in case of already signed contracts.

The Board has handled approximately 850 cases since its creation in 2003.

The Norwegian administration has not experienced any major problems related to this open and public process of handling complains. The principle that all written information is recorded in public archives, also apply in this field, however, the Freedom of Information Act provides exceptions from this principle.

An evaluation of the Public Procurement Complaint Board is under way by an external firm to assess whether the original objectives have been achieved or adjustments are necessary to accomplish them, for example in the Board's composition, competence, and the capacity in the Board and its Secretariat.

Sources: Norway, response to the OECD Questionnaire; Report concerning the Study on Pre-Contract Problem-Solving Systems, August 2002⁷

Ensuring public scrutiny

There has been an emerging trend in several countries to involve more and more stakeholders – not only private sector organisations but also end-users, civil society and the public at large – in the procurement process. Interestingly, some countries have introduced in recent years direct social control mechanisms by involving stakeholders in scrutinising integrity in public procurement.

Independent oversight bodies

In order to ensure public scrutiny, it is common in countries for the legislative branch to undertake reviews of procurement activities, either through a permanent committee or an ad hoc committee for investigating a specific issue. For instance, several countries mentioned the practice of forming a **parliamentary committee** to review, conduct investigations and/or organise hearings on large-scale procurements, which hold important risks of mismanagement and even corruption (e.g. in Greece, Mexico, the Netherlands, Slovenia, Turkey).

Another common form of independent oversight is the Ombudsman/Mediator, which may conduct investigations into procurement activities and resolve matters by conciliation (e.g. Australia, Belgium, Brazil, Luxemburg, New Zealand, the United Kingdom, etc.). Last but not least, **Supreme Audit Institutions** also play an important role in scrutinising government actions, with the preparation of reports for Parliaments. For instance, in Poland, the award of the contract is subject to control from the Supreme Chamber of Control, which is a constitutional body independent from the government administration that reports to the Parliament. This scrutiny keeps public servants accountable for their actions, ultimately, to the public.

Direct social control

An emerging practice in countries has been to use direct social control by involving stakeholders in scrutinising integrity in public procurement. The involvement of stakeholders – private sector, end-users,

⁷ The report outlines at the national reports at the Danish Competition Authority. http://www.publicprocurementnetwork.org/pdf/01_precontract.pdf

civil society or the public at large – aims at ensuring integrity in procurement, either through the monitoring of the process (as a simple observer) or the direct participation of stakeholders at key decision-making points.

Although a majority of OECD countries have strong accountability mechanisms, more and more countries have involved representatives from NGOs, academics, end-users organisations and/or industries to **scrutinise the integrity of the procurement process**. In particular Integrity Pacts have been used in various regions of the world to bind both government officials and stakeholders to ethical conduct, using civil society as an independent eye in the process. Stakeholders may be involved in monitoring the whole process from the pre-bidding to the contract management and payment (e.g. in Mexico) or at specific vulnerable points in the process (e.g. observation of the opening of bids, of the negotiations, etc.). It is usually organised on an ad hoc basis (e.g. signature of a specific agreement between the procuring authority and the bidders) but may take a more permanent institutionalised form. For instance, in Luxemburg, members of the Chamber of Commerce and of the Association of Professions are systematically invited to attend the opening of bids.

Direct social control mechanisms have a potential not only to promote the integrity of the process but also to **improve overall efficiency** of public procurement processes. The example of the use of Social Witnesses highlights how stakeholders may not only testify the integrity of the process but also provide recommendations to improve procurement processes (see box below).

Box 21: Direct social control in procurement: Social Witnesses in Mexico

The social witness is a representative of civil society, who acts as an external observer in a specific public procurement process. In order to promote transparency, diminish the risk of corruption and improve overall efficiency of procurement, this practice has been used for several years in Mexico, following Transparencia Mexicana's recommendation. The social witness not only provides a public testimony on the procurement process but may also provide recommendations during and after the process.

The social witness must be a highly honourable, recognised and trusted public figure who is independent from the parties involved in the process. The social witness has full access to the information and documentation in the procedure and also has the right to participate in critical stages of the procurement process, in particular:

- Checking the basis of the bid and the bidding notice;
- Observing all the sessions that are held with possible bidders to clarify any doubts they may have;
- Receiving the unilateral integrity declarations from the parties;
- Witnessing the delivery of technical and economic proposals;
- Observing the session in which the awarding will be announced.

Since December 2004, a strict regulation specifies the criteria for participation of the social witnesses in procurement. In order to obtain a registration, they should in particular:

- Prove that they are not public officials;
- Have no penal antecedents nor have been sanctioned or disqualified;
- Declare formally that they will not participate in a procurement that could lead to a conflict-of-interest situation (e.g. family or personal relationship, business interest, etc.);
- Have knowledge of legal regulations related to procurement (if not they will attend a training session provided by the government).

In case of disrespect of ethical standards or disclosure of information on the procedure, the social witness is liable to sanctions.

The use of social witness has proved successful for instance for the procurement of hereditary insurances of the *Comision Federal de Electricidad (Federal Electricity Commission)*. The recommendations of the social witness have led to significant improvements, including an increase by 50% of the number of suppliers that have submitted bids, the expansion of the time limit for the presentation of bids and the provision of more precise and clear answers to the questions of bidders. It has been estimated that the involvement of the social witness has led to a saving of 26 millions dollars in the overall cost of this procurement of hereditary insurances.

The actual list of registered social witnesses in Mexico can be found in the website of the Ministry of Public Administration (<http://www.funcionpublica.gob.mx/unaopspf/unaop1.htm>).

Source: Mexico, response to the OECD Questionnaire

Alternatively, stakeholders may be actively **participating in decision-making points** of the public procurement process. Active participation means that stakeholders take a role in the exchange on policy-making, for instance by suggestions policy options (e.g. advisory commission for important projects in Belgium). In some cases, decisions are to be made in co-operation and consent between authorities and representatives of stakeholders (e.g. Korea, the United States, Turkey). This is an advanced two-way relation between government and stakeholders based on the principle of partnership.

The participation is usually carried out on an ad hoc basis. For instance, the procuring team in the United States balances many competing interests in the acquisition process, by involving not only representatives of the technical, supply and procurement communities but also sometimes the customers they serve, and the contractors who provide the products and services. Furthermore, in some countries, the participation is integrated in the procurement process. For instance, two of the members of the Public Procurement Board in Turkey, which is the decision-making organ of the Public Procurement Authority, are selected by the Cabinet among persons who have necessary qualifications and are nominated by the Union of Chamber of Commerce and Trade and the Confederation of Turkish Businessman Union.

A concern has been to ensure that the process for selecting stakeholders is based on sound criteria for selection (e.g. personal integrity of stakeholder, relevant expertise) and that clear restrictions are defined to prevent conflict-of-interest situations (e.g. absence of relationship with contracting parties, etc.). Furthermore, both officials and stakeholders should be **liable for their actions**. In Korea, the Memorandum of Integrity Pact for suppliers, that is included in contract terms and conditions, includes the possibility of cancellation of contract, forfeiture of bond, liquidated damages and debarment of suppliers in case of proven corruption. Similarly, all employees from the Public Procurement Service who submit integrity pledges based on the Integrity Pact are held liable for compensation when they, on purpose or by critical mistake, cause damage to assets of government organisations.

Box 22: Integrity Pact in Korea

The Integrity Pact (IP) is a multilateral and mutual pact against corruption among government organisations and bidders to prevent corruption in public procurement which establishes mutual rights and obligations. Integrity Pacts have been used in 15 countries in different economic contexts and in various regions of the world from Colombia through Korea to Germany (e.g. procurement of international airport in Berlin-Schönefeld). They have two main objectives, namely to enable:

- **Companies** to abstain from corruption by providing assurance to them that the competitors will similarly refrain from corruption, and the government agencies are also committed to prevent corruption; and
- **Governments** to reduce the high costs and the distortion effect of corruption in public procurement.

In Korea, the Seoul Metropolitan Government adopted the concept of Integrity Pact in July 2000, followed by the Public Procurement Service of Korea that implemented the Pact in March 2001. For the monitoring and full implementation of the Integrity Pacts, an IP Ombudsman System with 5 Ombudsmen has been introduced that organizes public hearings at critical stages of the process for sizeable construction, supply or consultant contracts. To date, Integrity Pacts have involved more than 200 public institutions, universities, and companies. A TI Korea's survey in 2004 shows that after the adoption for Integrity Pacts:

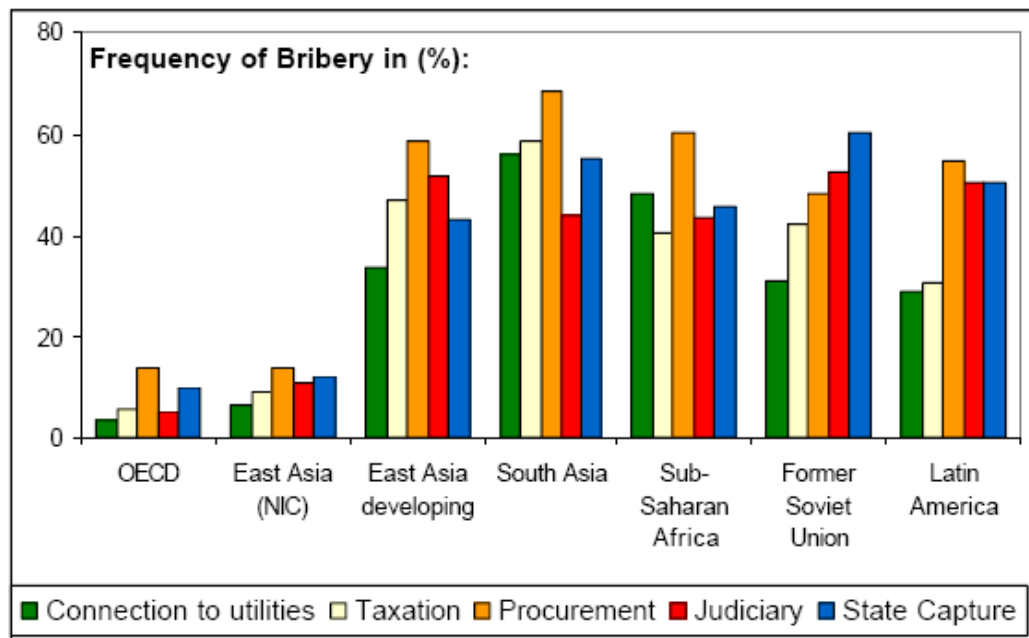
- 91.4% of private sector respondents have noticed a positive change in public sector officials' attitudes in connection with corruption; and
- 72.2% of public sector officials have noticed a positive change in private sector actors' attitudes in connection with corruption.

Source: Transparency International Integrity Pact and Public Contracting Programme; Fighting Corruption and Promoting Integrity in Public Procurement, OECD 2005.

ANNEX I.

EXECUTIVE OPINION SURVEY, 2005

B: Frequency of Bribery (WEF Executive Opinion Survey, 2005)



Source: Kaufmann (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? (“common”... “never occurs”).

ANNEX II.

QUESTIONNAIRE INTEGRITY IN PUBLIC PROCUREMENT

Introduction

As a follow-up to the conclusions of the Global Forum* the expert meeting on Integrity in Public Procurement on 20-21 June 2005 provided insights into countries' views on the relevant focus and methodology for launching the activity on integrity in public procurement:

- Focus: The activity focuses primarily on **practices** - but may also include relevant formal laws and institutions - for promoting integrity in public procurement at **all stages** of the procurement process. There is an increasing recognition that risks of corruption often lie before or after the bidding process, in the definition of needs and the contract management.
- Methodology: The Questionnaire has been developed in close co-operation with volunteer country experts. It will help collect information on OECD countries' experiences at the **central level** in fostering transparency, integrity and accountability in public procurement. Country representatives will review the information collected to **identify good practices**, to be included in a Report.

Approach

In accordance with the focus of the future Report, the Questionnaire will collect OECD countries' experiences at the central level on three key aspects:

- I. Government practices that help **provide a level playing field for bidders through an adequate level of transparency** at all stages of the public procurement process. The first part of the Questionnaire explores recent trends in the information disclosed to bidders, potential and limits of procedures for providing equal and timely access to information, as well as limitations to transparency.
- II. Preventative mechanisms that help **identify and address risks of mismanagement and corruption** in procurement. The second part of the Questionnaire focuses on risk management instruments and techniques that increase the predictability, transparency and integrity of procurement processes.
- III. Mechanisms to **ensure control and accountability**, from definition of needs (e.g. planning, budgeting) to contract management (e.g. payment). The third part of the Questionnaire reviews traditional as well as emerging mechanisms to keep public officials and bidders/intermediaries/contractors accountable.

The Questionnaire comprises **10 main questions**. In addition, guidance is provided in the **Annex** to help experts fill in the answers by clarifying the type of expected information.

*http://www.oecd.org/document/28/0,2340,en_2649_34135_34339740_1_1_1_1,00.html.

I. PROVIDING A LEVEL PLAYING FIELD FOR BIDDERS THROUGH AN ADEQUATE LEVEL OF TRANSPARENCY IN PUBLIC PROCUREMENT: FROM POLICY TO PRACTICE

- How is information made available in practice to bidders/intermediaries/contractors at the different stages of the procurement process?
- What specific instruments and procedures are used for providing equal, timely and consistent access to information for bidders, and in particular what is the role of information and communication technologies?
- Under what circumstances are exceptions made to the general public procurement rules? In these circumstances, what are the measures available for ensuring a level playing field for bidders/intermediaries/contractors?

II. Preventative mechanisms to identify and address risks of mismanagement and corruption in public procurement

- Where have the risks for mismanagement and corruption been identified in the procurement process, from the definition of needs (e.g. planning, budgeting) to contract management (e.g. payment)?
- What are the internal instruments and techniques for ensuring that public funds are used in public procurement according to the purposes intended, for minimising risks of mismanagement, and for improving value for money?
- What specific anti-corruption and conflict-of-interest policies help promote integrity in public procurement?

III. Mechanisms for ensuring control and accountability in the public procurement process

- What have been the developments in your country in the last five years to balance the discretionary power of public officials (including procurement officers, elected officials, etc.) with the need for accountability?
- How are public officials and bidders/intermediaries/contractors kept accountable at all stages of the public procurement process?
- Have stakeholders – in particular private sector, end-users, civil society or the public at large – been involved in the procurement process, if so how?
- How do you ensure fair and timely resolution of formal administrative complaints related to the procurement process?

Additional information:

- Please take this opportunity to share **the document(s) that include good practices** related to procurement that might have been developed in your country (e.g. guidebook, audit report, etc.). Please indicate how these good practices have been identified and the conditions for their effective functioning.
- In addition, please provide a description in a few lines of the **relevant legal and institutional frameworks**, including the legislative framework for public procurement processes (e.g. reference to relevant laws and regulations), the central institutions for supervising and monitoring public procurement, the mechanism for handling complaints, and the institutions and procedures for internal and external control and audit.

GUIDANCE FOR COMPLETING THE QUESTIONNAIRE

1. The sub questions in the Annex are intended to **help you fill in the answers** by clarifying the type of expected information.
2. The primary aim of the Questionnaire is to collect **good practices** at the **central level**, to be included in the Report. In order to gain a better understanding of the conditions for ensuring integrity in public procurement, you might also provide examples of problems, highlighting the reasons and factors for failure.
3. In your answers, please focus on the measures used in **daily practice**. You may also include information on formal laws and institutions when relevant.

1. How information is made available in practice to bidders/intermediaries/contractors at the different stages of the procurement process?

Please use the **table** below to summarise:

- a) How is **information** made available in: (a) definition of needs/specifications (b) selection and award/criteria (c) debriefing of award results, and (d) contract management/payment.
- b) **Who** can have access to the information (e.g. supplier, unsuccessful bidders).
- c) To what extent procurement regulations define specific **restrictions on release of privileged information** related to procurement.

	How information is made available in practice	To whom (supplier/ bidders/intermediaries/contractors)	Specific restrictions on release of privileged information
Definition of needs/Specifications			
Selection and award/ Criteria			
Debriefing of award results			
Contract management/Payment			

2. What specific instruments and procedures are used for providing equal, timely and consistent access to information for bidders, and in particular what is the role of information and communication technologies?

Please specify in particular:

- a) The main features of the **procurement information system** and in particular the contribution of information and communication technologies in providing a level playing field for bidders (e.g. an e-procurement system that provides a one-shop service, avoids personal contact, etc.). Please provide the Web link to the e-procurement system.
- b) What instruments are used for ensuring timely and **consistent disclosure** of information (e.g. model tender documentation including terms and conditions of the contract), how they are tailored to the type of goods and services, updated to reflect the needs of stakeholders and communicated to them.
- c) In case of **change in information**, or **demand for clarification** of information, what are the procedures for ensuring that the same level of information is provided to each bidder (e.g. criteria for defining how to disclose additional information, contact points for enquiries, etc.)

3. Under what circumstances are exceptions made to the general public procurement rules? In these circumstances, what are the measures available for ensuring a level playing field for bidders/intermediaries/contractors?

Please describe the circumstances and specify what precautionary measures ensure a level playing field (e.g. transparency, additional guidance, monitoring, etc.) in these circumstances, such as:

- a) **When the procedure cannot be fully completed** (e.g. none of the bids fulfil the technical requirements as defined in the call for tender, requirements turn out to be unrealistic in the contract management).
- b) **When general public procurement rules do not apply**, i.e. the difference between procurement procedures used **above and below the threshold** as well as the procedures used in **specific circumstances** (e.g. national security, emergency, etc.).
- d) **When using pre-qualification** (e.g. restricted tender, agreed vendors' list, framework agreement etc.).
- e) **When taking into account economic and social considerations in procurement** (e.g. favouring bidders from economically disadvantaged areas).

4. Where have the risks for mismanagement and corruption been identified in the procurement process, from the definition of needs (e.g. planning, budgeting) to contract management (e.g. payment)?

Please specify in particular:

- a) **What risks** have been identified in the procurement system, to whom these findings have been disclosed, and whether these findings have resulted in **recommendations** (e.g. suggested modifications in laws, development of specific preventative instruments, etc.).
- b) How the risks have been identified: the **mechanism** used (e.g. government-wide spending control and public finance management programme, internal management accountability framework, audit, etc.), and the **technique** (e.g. random sample testing of risk areas in procurement)
- c) The **focus** of the review, such as contracts below thresholds (e.g. the number of contracts per year just below approval thresholds, aggregated value of procurement contracts over a year to prevent "contract splitting") or circumstances that require exceptions to public procurement procedures (criteria used under the tender threshold, justification for invoking emergency in procurement contract variations, etc.).

5. What are the internal instruments and techniques for ensuring that public funds are used in public procurement according to the purposes intended, for minimising risks of mismanagement, and for improving value for money?

Please specify in particular:

- a) The management mechanisms to ensure that public funds for procurement are **used for the purposes intended** (e.g. procedure for approval and monitoring of funding by government and within departments in accordance with laws and budget documents, ability to report publicly on procurement expenditures, etc.)
- b) The main instruments for improving the **planning and implementation process** in public organisations - particularly in the case of decentralised units (e.g. annual procurement plans, internal control based on materiality⁸ and risk, procedures for management approval of business cases to justify major contracts, model for risk sharing between government and bidder, etc.).

⁸ Materiality can be defined as the magnitude of an omission or misstatement of accounting information that make it probable that the judgment of a reasonable person relying on the information would have been

- c) Whether there is a **system/database for collecting statistical information** on public procurement (e.g. national statistical office), the main **objective** of the system (e.g. procurement planning, benchmarking, detection of possible corrupt practices, etc.), and how it is used in **policy making** (type of data collected, integration of data in financial reporting, capacity to analyse patterns and trends in a department or at a government-wide level, data reported publicly and fed back into the system).
- d) The accountability chain for **officials working in vulnerable positions** in relation to procurement (e.g. general managers such as budget holder, procurement officials, etc.) and what **capacity-building measures** are in place to ensure **integrity** (e.g. professional training that includes integrity issues) and to respond to a potential need or dilemma (e.g. advisory service).

6. What specific anti-corruption and conflict-of-interest policies help promote integrity in public procurement?

Please specify in particular:

- a) The general **requirements** for officials/contractual staff involved in procurement to prevent corruption in the process (e.g. clear separation of duties and authorisations between the individuals/bodies, rotation of officials, “four eyes” principle, disclosure requirements such as declarations of financial interests, etc.), and the exceptions to their application (e.g. discretionary power below threshold).
- b) What **ethical standards, prohibitions and restrictions** apply to officials/contractual staff involved in procurement as well as bidders/intermediaries/contractors, in what form (e.g. anti-corruption clause, integrity pact, code of conduct, Business Integrity Management Systems, etc.) and how they are communicated and enforced (e.g. condition for entry into an awarding procedure).
- c) Whether there are **specific policies to establish or verify the integrity of bidders/intermediaries/contractors** (e.g. “white listing”, assessment of integrity and/or financial competence, disclosure of commissions paid to individuals/firms for services provided in the procurement process) and whether they apply to all contracts.

7. What have been the developments in your country in the last five years to balance the discretionary power of public officials (including procurement officers, elected officials, etc.) with the need for accountability?

Please specify in particular:

- a) In a context of delegated authority, how **standards, incentives** (e.g. staff performance evaluation process) as well as **accountability mechanisms for procurement officers** help find the right balance between flexibility (e.g. being rapid and responsive) and control (e.g. preventing and detecting corruption) in procurement.
- b) **How the integrity of public officials’ decisions is verified** at different stages of the procurement process (e.g. review of how criteria for the selection and evaluation of tenders are determined, whether they are strictly applied in decisions, how selection requirements can be waived, whether specifications are defined in a non-discriminatory manner, reasons for delays in payment, etc.).

changed or influenced by the omission or misstatement. Therefore risk is a measure of uncertainty whereas materiality is a measure of magnitude or size.

8. How are public officials as well as bidders/intermediaries/contractors kept accountable at all stages of the public procurement process?

Please specify in particular:

- a) The main **accountability mechanisms** for public officials and bidders/intermediaries/contractors, in particular in the contract management phase (e.g. policies for approving/monitoring/recording/reporting contract variations, policies for ensuring due diligence in payment processes, etc.).
- b) What **internal control processes** over individual transactions ensure the management of the procurement function, and how **co-ordination** is ensured between internal control and external audit of procurement processes.
- c) Whether information is available on the number and type of **breaches** filed (for example, in 2005) and the **sanctions applied** for suppliers/intermediaries as well as public officials.

9. Have stakeholders – in particular private sector, end-users, civil society or the public at large – been involved in the procurement process, if so how?

Please specify in particular:

- a) Whether their role was rather **advisory** (e.g. consultation of private firms in the definition of needs through preparation of a study, etc.) or **control-oriented** (e.g. verifying the integrity of the process), and at what stage of the procurement process they were involved.
- b) How you ensure that the process for integrating the views of stakeholders is **not biased** (e.g. criteria for selection, representative sample, identification of conflict-of-interest situations, etc.)
- c) Whether **independent watchdogs** are also involved in monitoring the process (e.g. role of the legislative power in providing a framework for integrity in public procurement, for instance a Parliamentary Committee monitoring the management of large procurement projects).

10. How do you ensure fair and timely resolution of formal administrative complaints related to the procurement process?

Please specify in particular:

- a) The internal and external **complaint mechanisms**, in particular whether a procedure to report mismanagement and corruption exists for procurement personnel, suppliers and other stakeholders.
- b) What information is kept in the **records**, the protection available against retaliation when making a complaint, the precautionary measures to limit the number of unfounded complaints.
- c) The **institution(s)** in charge of handling administrative complaints, the average time for resolution, and whether the procedure provides the possibility of challenging government actions prior to or after the award.