

CURBING CORRUPTION IN PUBLIC PROCUREMENT
A PRACTICAL GUIDE

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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CURBING CORRUPTION IN PUBLIC PROCUREMENT

A PRACTICAL GUIDE

This guide provides government officials, businesses and civil society with a practical introduction to the risks of corruption in public procurement. It outlines key principles and minimum standards which, when respected, can protect public contracting from corruption.

Every year huge sums of taxpayers' money are spent by governments on goods and services. With so much money changing hands, few government activities create greater temptations or offer more opportunities for corruption.

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INTRODUCTION

This guide provides a basic introduction for government officials, civil society groups and the private sector on eliminating corruption risks in public procurement. It is intended to inform and guide participants in public procurement, as well as civil society groups, on what can be done to strengthen the procurement process against corruption and its damaging effects.

Procurement is a complicated and sometimes opaque process, through which a large, if not the largest, percentage of public money is spent. Worldwide, procurement spending averages between 13 per cent and 20 per cent of gross domestic product.¹ Every year an estimated average of US\$9.5 trillion of public money is spent by governments through public procurement.² With such vast sums at stake, few government activities create greater temptations or offer more opportunities for corruption than public sector procurement.

Corruption in public procurement means public funds are wasted on an enormous scale, and the benefits these funds should have brought are lost. Taxpayers' money to pay for hospital equipment, books for schools or safer roads, for example, ends up sitting in the pockets of the corrupt.

The European Commission calculated that in the Member States around €120 billion³ (around US\$163 billion) is lost each year to corruption – only marginally less than the European Union's total annual budget.⁴ According to the European Commission, public procurement is particularly vulnerable to corruption.

According to Organisation for Economic Co-Operation and Development (OECD) estimates, money drained through corruption amounts to between 20 per cent and 25 per cent of the procurement budget, that is around US\$2 trillion annually.⁵

The cost of corruption in public contracting is not only measured by money lost. Corruption distorts competition, can reduce the quality, sustainability and safety of public projects and purchases, and reduce the likelihood that the goods and services purchased really meet the public's needs. When procurement is corrupted by private interests and not directed by the public good, trust in governments is eroded.

This guide sets out basic principles to be followed and minimum standards to be adopted by governments, which, in collaboration with the private sector, have the responsibility to ensure the full integrity of the public contracting process. Civil society can use the enumerated principles and minimum standards to advocate for steps to reduce corruption and waste in public contracting. This guide also emphasises and explains the important role that civil society organisations can play in the procurement process as monitors and watchdogs acting against corruption.

In addition, this guide identifies some critical issues in procurement processes that are often overlooked, and details steps that public officials, the private sector and civil society can take, acting separately and together, to significantly curb corruption in public procurement.

This guide draws extensively and builds on Transparency International's 2006 Handbook for Curbing Corruption in Public Procurement. It reflects the international legal and regulatory framework governing and guiding national procurement processes, which has grown significantly since publication of the handbook. Annex I provides an outline of these international obligations and guidelines and standards that are applicable to public procurement.

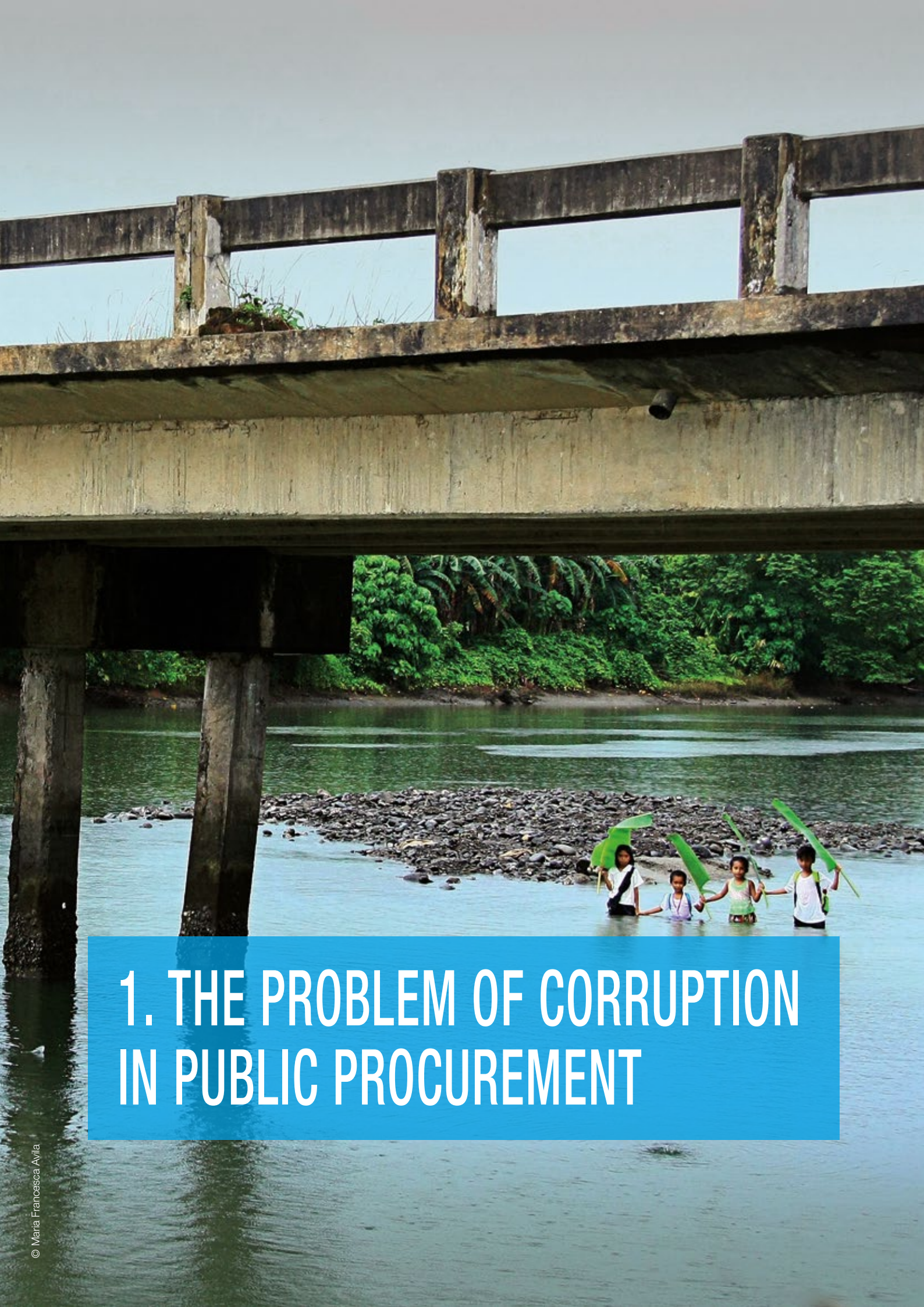
1 OECD, *Fighting Corruption in the Public Sector* (February 2013): www.oecd.org/gov/ethics/meetingofleadingpractitionersonpublicprocurement.htm

2 Caroline Spruill, "Open Contracting: Factivists fighting Procureaucrats" (9 December 2013): www.open-contracting.org/open_contracting_factivists_fighting_procureaucrats

3 Transparency International takes "billion" to refer to one thousand million (1,000,000,000).

4 European Commission, *Report from the Commission to the Council and the European Parliament – EU Anti-Corruption Report* (February 2014): www.ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

5 OECD, *Implementing the OECD Principles for Integrity in Public Procurement* (November 2013), p. 22: www.oecd-ilibrary.org/governance/implementing-the-oecd-principles-for-integrity-in-public-procurement/why-clean-public-procurement-matters_9789264201385-3-en;jsessionid=951fbj6h46u4a.x-oecd-live-01. See also, OECD, *The Size of Government Procurement Markets* (2002): www.oecd.org/news-room/1845927.pdf

A photograph of a concrete bridge over a river. The bridge has a weathered metal railing and a concrete deck. Below the bridge, four children are standing in the shallow water, holding green umbrellas. The background shows a lush green forest. A blue banner with white text is overlaid on the bottom of the image.

1. THE PROBLEM OF CORRUPTION IN PUBLIC PROCUREMENT

1. THE PROBLEM OF CORRUPTION IN PUBLIC PROCUREMENT

1.1 PROCUREMENT AND CORRUPTION

WHAT IS PROCUREMENT?

Public procurement refers to the acquisition by a government department or any government-owned institution of goods or services, ranging from bed sheets for hospitals and textbooks for schools to financial and legal services, as well as the commissioning of large-scale construction works, such as roads, bridges and airports.

Public procurement refers to all the stages of the contracting process, covering the initial needs assessment, budget allocations and initial market research⁶ through to the preparation of the tender, evaluation of applications and award of contracts. The contract implementation and administration (including the common practice of change orders), as well as auditing and evaluation, are also captured within the public procurement process. Major procurements such as water projects or large-scale construction works can involve numerous contract awards, forming a broader project cycle.

Although processes vary from country to country and sector to sector, the procurement process can usually be broken down into four phases.

CORRUPTION IN PUBLIC PROCUREMENT

Transparency International defines corruption as “the abuse of entrusted power for private gain”.⁷ “Private gain” must be interpreted widely to include gains accruing to the government official, his or her family members, close friends, political party, favourite charity, hometown or a corporate or other entity in which the official or the official's family or close friends have a financial or social interest.

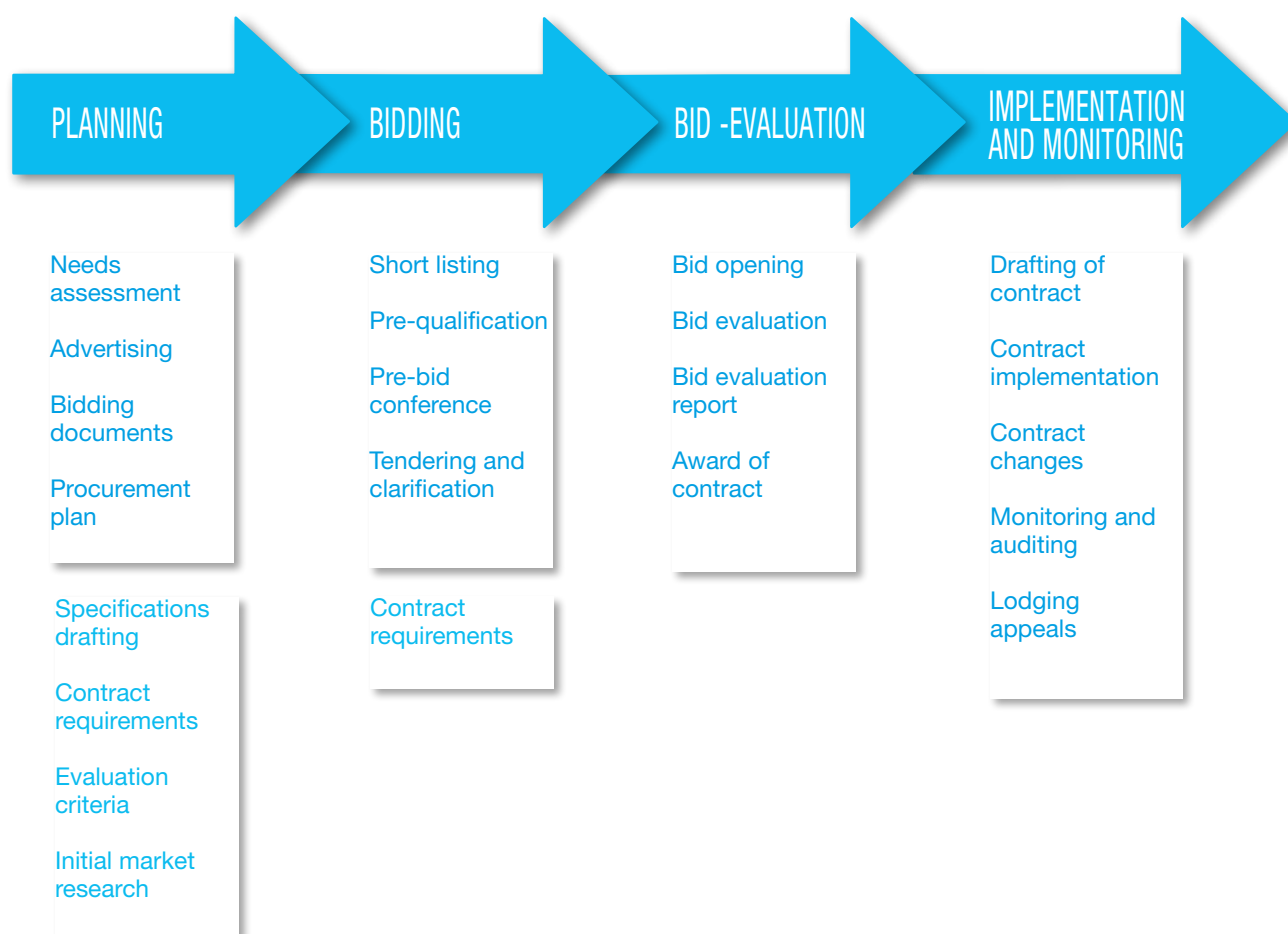
Corruption in all its forms can arise in every phase of the procurement process outlined above, regardless of sector or scale. Corruption in the form of everyday abuse of entrusted power by low- and mid-level public officials occurs in smaller-scale procurements, such as purchasing office equipment or textbooks, or in local service delivery, such as hospital and school admissions. At the other end of the scale, corrupt acts committed at a high level of government, which distort social or economic policies or the central functioning of the state, can occur in public works projects, procurement of large quantities of goods and privatisation projects. Political corruption also occurs when policies, institutions and rules of procedure in the allocation of resources are manipulated during the needs assessment and budget planning phases, for example. Financing by political decision-makers can also undermine the integrity of public procurement processes.

Corruption can be initiated by the private sector (either directly or through agents and middlemen) – the supply side – or by a government official – the demand side. The most obvious form of corruption associated with public procurement is bribery of government officials to obtain a favourable contract decision where no right or claim to such a decision exists. More subtle forms of corruption occur when bribes are used to manipulate budget allocations and project selection, even before the contracting process begins, through the manipulation of eligibility criteria in the tender documents, or having technical specifications that are biased and without merit. Bribes could take the form of gifts, money, favours, jobs for family members and donations to political parties or charities.

⁶ The contracting authority should undertake initial market research to assess whether exceptional circumstances exist (for example, a monopoly situation in the market), which may justify the use of “exceptional negotiated procedures”. Market research should be used as a basis to estimate the contract value.

⁷ Transparency International, *The Anti-Corruption Plain Language Guide* (2009), p.14: www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide

BOX I: THE FOUR KEY STAGES OF THE PUBLIC PROCUREMENT PROCESS



Procurement processes are also vulnerable to collusion, that is “secret agreements between parties, in the public and/or private sector, to conspire to commit actions aimed to deceive or commit fraud with the objective of illicit financial gain.”⁸ Collusion between government officials and bidders can result in arrangements to inhibit competition by deceiving or depriving others of their rights in order to secure an unfair advantage. Collusion among bidders can rig the bid to manipulate the award decision and can be a particular problem in smaller markets where there are fewer competitors.

Public procurement can also suffer from coercion and extortion, which are other damaging forms of corruption. Extortion is the act of utilising, either directly or indirectly, one’s access to a position of power or knowledge to demand unmerited cooperation or compensation as a result of coercive threats.⁹ Extortion occurs when a government official demands something of value in return for assisting a company to win a bid or for taking a required action, such as making a valid contract payment. Coercion can occur when one bidder threatens another to keep them from bidding.

Fraudulent practices would also count as corruption, for example when a government official or a bidder deliberately misleads or misrepresents the facts by submitting false invoices or statements of prior work experience, or fails to share key bidding information with all bidders.

Public procurement procedures are often complex and in many countries the transparency of the process is extremely limited and manipulation hard to detect. In addition, few people who become aware of corrupt activity will report it. This could be for a range of reasons: perhaps the money wasted is seen as merely the ‘government’s’ money rather than their own, there may be no easy way to report what they know, or a feeling that complaining is futile or could result in retaliation.

⁸ Id. at p. 9.

⁹ Id. at p. 19.

1.2 IMPACT OF CORRUPTION IN PUBLIC PROCUREMENT

Few government activities create greater temptations or offer more opportunities for corruption than public sector procurement. And with around US\$2 trillion estimated to disappear annually from procurement budgets, few examples of corruption cause greater damage to the public purse and harm public interests to such a grave extent.

The ultimate goal of public procurement is to satisfy the public interest. A good procurement process is one that obtains goods, works or services in the correct quantity, of the appropriate quality, at the required time, from the best supplier, with the optimum terms and under appropriate contractual obligations. Good procurement should meet public needs, secure value for money for the people and be fair to bidders.

Corruption entering and influencing the public procurement process diverts funds away from social needs, engenders bad decisions, distorts markets and competition, raises prices and costs, and increases the likelihood that services and goods will be poor quality, potentially putting sustainability, the environment and human life at risk.

FINANCIAL IMPACT

- Escalated cost of purchases, investments, services, or diminished income from licences, permits and concessions.
- Poor quality of goods or works, not justifying the price paid.
- Burdening a government with financial obligations for purchases or investments that are oversized, not needed or not economically justified.
- Governments forced to commit resources for repairs needed due to poor construction of roads or buildings.
- Public investments/purchases made that do not benefit the country's economic development.

→ EXAMPLES

- Over several years, an official with US Army Corps of Engineers pocketed bribes from contractors in exchange for certifying bogus or inflated invoices for services that were never provided.¹⁰
- The World Bank cancelled a US\$1.2 billion credit facility to build the Padma bridge in Bangladesh after evidence of a “high-level corruption conspiracy” came to light.¹¹

ENVIRONMENTAL IMPACT

- Environmental impact of projects overlooked or inadequately considered.
- Failure to meet proper environmental standards, or to achieve environmental goals, set in the project during implementation of contracts.
- Illegal or irresponsible use of natural resources.

→ EXAMPLES

- Illegal logging in Indonesia and illegal harvesting of caviar in Azerbaijani waters both proceeded with government permission.¹²

10 “19-Year Corruption Sentence for Ex-Manager With Army Corps of Engineers”, *New York Times*, 12 July 2013: <http://www.nytimes.com/2013/07/12/us/19-year-corruption-sentence-for-ex-manager-with-army-corps-of-engineers.html>

11 “World Bank Statement on Padma Bridge” (29 June 2012): <http://www.worldbank.org/en/news/press-release/2012/06/29/world-bank-statement-padma-bridge>

12 Environmental Science and Policy Workshop, Columbia University, School of International & Public Affairs, Report for Transparency International: Corruption & the Environment (April 2006), pp. 72-73: <http://mpaenvironment.ei.columbia.edu/news/projects/spring2006/Transparency%20International%20final%20report.pdf>

IMPACT ON HEALTH, HUMAN SAFETY AND OTHER SOCIAL GOALS¹³

- Sub-standard products increase health and safety risks.
- Sub-standard construction of buildings, roads and bridges leads to dangerous accidents.
- Public funds that could be used to provide or improve essential amenities and services, such as healthcare, access to clean water and education, are lost to corruption in procurement.

→ EXAMPLES

- Over-payments for seven drugs in 32 hospitals in Colombia cost more than US\$2 million per year, an amount sufficient to cover health insurance costs for 24,000 of the country's people.¹⁴
- Violations of building codes and faulty inspections resulted in fires and building collapses killing hundreds of textile workers in Bangladesh.¹⁵

IMPACT ON INNOVATION

- Failing to provide for competitive procurement limits access to innovative solutions and products.
- Inhibiting competition reduces market access and discourages investment in innovation by potential bidders.

EROSION OF VALUE AND TRUST IN GOVERNMENT

- Corrupt behaviour by government officials or toleration of corrupt behaviour encourages bad practice by companies and citizens.
- Lack of integrity in procurement decreases the validity of government decisions in other areas and diminishes trust in other government processes.

¹³ Many more examples of the negative impact of corruption on health, human safety and other social goals can be found in a number of Transparency International publications, including the Global Corruption Report 2013: Corruption in Education and the Global Corruption Report 2010: Climate Change.

¹⁴ R. Di Tella and W. D. Savedoff, "Shining Light in Dark Corners" in R. Di Tella and W. D. Savedoff (eds) *Diagnosis Corruption: Fraud in Latin America's Public Hospitals* (2005) in Taryn Vian, *Corruption in Hospital Administration* (2005), p. 52: http://www.bu.edu/actforhealth/actfor-health04/Part%201_3_corruption%20in%20hospitals.pdf

¹⁵ Transparency International, "In Bangladesh, Corruption Kills Hundreds", April 2013: www.transparency.org/news/feature/in_bangladesh_corruption_kills_hundreds; "Bangladesh Building Collapse", New York Times, 15 April 2013: http://www.nytimes.com/2013/04/25/world/asia/bangladesh-building-collapse.html?_r=1& See also: "Bangladesh accuses 17 over disaster factory construction", Global Post, 15 June 2014: <http://www.globalpost.com/dispatch/news/afp/140615/bangladesh-accuses-17-over-disaster-factory-construction>

A photograph of a surgical room. In the center, a patient table is draped in white plastic. Above it, a large white C-arm X-ray machine is suspended from the ceiling. The machine has 'KLS martin' written on it. To the left, another part of the machine is visible, also draped in white plastic. The room has a white floor and walls. A blue banner with white text is at the bottom.

2. PRINCIPLES AND MINIMUM STANDARDS

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2.1 PRINCIPLES

Respecting principles of integrity, transparency, accountability, fairness, efficiency and professionalism throughout the procurement process will minimise corruption risks and maximise the chance that the economic, social, environmental and political benefits of public procurement will be realised. These principles underpin and provide guidance on the essential standards to be met and elements needed to help ensure procurement systems are corruption free.

INTEGRITY

Integrity is defined by Transparency International as “behaviours and actions consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions, that create a barrier to corruption.”¹⁶ The principle of integrity applies to the procurement process and its participants. Integrity means that the procurement is carried out in compliance with the relevant laws and regulations. The best and most suitable technical expertise available is employed in a non-discriminatory manner. It means fair and open competition leads to a quality product at a fair price, which takes into account the legitimate aspirations and concerns of all the stakeholders.

Transparency can imply additional time and cost in the short term but in the long run, ensuring transparency saves time as well as reduces costs. Projects prepared in secret, or with severely limited information available for stakeholders, increase risks of corruption and public resistance down the line, both of which cause serious delay and expense.

Some people argue that transparency can facilitate collusion among firms and reduce competition by putting sensitive information out in the public domain. This is not convincing. By increasing the likelihood that corrupt agreements will be discovered, transparency deters all types of corruption including collusion. Furthermore, transparency and disclosure of information does not include proprietary or legally protected information, but rather only information that can and should be accessible.

TRANSPARENCY

Transparency is a “characteristic of governments, companies, organisations and individuals of being open in the clear disclosure of information, rules, plans, processes and actions.”¹⁷ In the context of public procurement, it means that laws, regulations, institutions, processes, plans and decisions are accessible to all potential bidders and the public at large.

Transparency needs to pervade all steps in the procurement cycle, from the earliest decisions on needs assessments, developing a procurement plan and budget allocation, to bid evaluation, implementing the contracts and auditing performance.

Transparency enables processes and decisions to be monitored, reviewed, commented upon and influenced by stakeholders, and helps ensure that decision-makers can be held accountable. Transparency also means that all stakeholders in a major procurement process are fully informed and consulted about relevant aspects of the project.

Transparency is not achieved by government entities grudgingly allowing access to certain internal documents to selected people; rather, information about potential options, plans, designs and programmes should be published voluntarily and proactively.

¹⁶ Transparency International, *The Anti-Corruption Plain Language Guide* (2009), p. 24

¹⁷ Id. at 44.

ACCOUNTABILITY

Accountability means that governments (including government-owned/controlled institutions), individual officials, and companies and their executives and agents must be accountable for the execution of their duties and for decisions and actions taken in their area of responsibility. There are many ways to promote accountability:

- Effective record-keeping of decisions made and the reasons for those decisions enables others to review the decisions.
- Mechanisms to uncover and investigate corruption increase the chances of getting caught and act as a deterrent.
- Systematic and credible enforcement of the rules, including establishment of independent oversight and the use of effective, proportionate and dissuasive sanctions, makes it less likely that a person will risk offering or accepting a bribe.
- The dismissal of individuals or debarment of companies and imposition of civil and criminal penalties, including fines and imprisonment, act as significant deterrents to improper behaviour.

FAIRNESS AND EFFICIENCY

Contract award and implementation decisions should be fair and impartial. Public funds should not be used to provide favours to specific individuals or companies; standards and specifications must be non-discriminatory; suppliers and contractors should be selected on the basis of their qualifications and the technical and financial merits of their offers; there should be equal treatment of all bids, including equal provision of information, deadline-setting and confidentiality.

The procurement process should be efficient. The procurement rules should be proportionate to the value and complexity of the items to be procured.

PROFESSIONALISM

Where procurement officials are poorly paid, badly trained or lacking a viable career path the risk of corruption increases. Procurement should be professionalised and not treated as an administrative task. Governments should allocate sufficient resources to their procurement and auditing offices to attract highly qualified individuals, allow for the payment of bonuses and provide training courses to enhance professional levels. There should be well-defined career paths for procurement officials.¹⁸

In addition to procurement-specific laws and regulations, other legal instruments are essential for ensuring transparency and accountability. Laws prohibiting conflicts of interest and mandating asset disclosure and disclosure of information on the beneficial ownership of corporations are essential. A well-functioning right to information law is also important. That information requested is provided in full, within a reasonable time and in an open format enables effective oversight of public procurement.

¹⁸ The lack of professionalism is not just an issue for developing countries. The OECD has noted that more than one-third of OECD countries do not recognise procurement as a profession; see Elodie Beth, *Transforming Procurement into a Strategic Function: What are the Challenges Faced?* (2013): www.oecd.org/gov/ethics/Session%201_Elodie_OECD%20Challenges.pdf.

2.2 MINIMUM STANDARDS

These standards are informed by, and in some cases flesh out, the well-developed international legal and regulatory framework that governs and guides national procurement processes. This framework has developed significantly over the past few years and a growing majority of countries are obligated to implement and follow a number of international anti-corruption provisions and standards relating to public procurement.

The most comprehensive and widely ratified anti-corruption convention – the United Nations Convention against Corruption (UNCAC),¹⁹ along with its regional counterparts – obligates states to criminalise, investigate and prosecute all forms of corruption, as well as reduce corruption risks in procurement processes.

Annex I of this guide provides an outline of the international obligations, guidelines and standards that are applicable to public procurement, including those set by the United Nations and the World Bank. It is important to note that the responsibility to abstain from corrupt conduct and work to reduce corruption risks should be taken on by both parties, that is the procuring government entity and its officials as well as the private sector bidders/contractors and their employees.

Based on the broad principles set out above and taking into consideration the international legal and regulatory framework, Transparency International believes that governments should adopt the following minimum standards to make the principles operational and protect public procurement from corruption:

Model anti-bribery codes for the private sector are available to businesses, including Transparency International's Business Principles for Countering Bribery,²⁰ the International Chamber of Commerce Rules on Combating Corruption²¹ and APEC's Anti-Corruption Code of Conduct for Business.²²

INTEGRITY

1. Administrative processes and decisions should be characterised by compliance with rules. The rules should allow limited scope for discretionary decision-making.
2. Governments should implement and provide training on a code of conduct that commits the contracting authority and its employees to a strict anti-corruption policy. The policy should:
 - Outline a commitment to integrity and ethical behaviour, including an obligation to abstain from collusion, giving or accepting bribes and facilitation payments.
 - Describe, and manage, conflicts of interest.
 - Require disclosure by officials involved in the procurement process of financial assets, the amount and source of any non-government income, the amount and source of income of close family members and any outside activities in which an official has a leadership role, such as membership of charitable boards of directors.
 - Make the financial asset reports for senior managers available to the public.
 - Include mechanisms for appealing decisions during the procurement process.
 - Provide anonymous and safe mechanisms for whistleblowers.²³

¹⁹ United Nations Convention against Corruption: www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

²⁰ See Transparency International's *Business Principles for Countering Bribery 2013*: www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery/1/.

²¹ International Chamber of Commerce, *Rules on Combating Corruption* (2011): www.iccwbo.org/advocacy-codes-and-rules/document-centre/2011/icc-rules-on-combating-corruption/

²² APEC, *Anti-Corruption Code of Conduct for Business* (2007): www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Task-Groups/~/_media/Files/Groups/ACT/07_act_codebrochure.ashx

²³ See Transparency International's *International Principles for Whistleblower Legislation: Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest* (2013): www.transparency.org/whatwedo/pub/international_principles_for_whistleblower_legislation.

3. A policy for the private sector bidders should include codes of conduct for executives and employees that outline commitments to integrity and ethical behaviour and to abstain from corrupt conduct, and should also address issues of political donations, donations for charitable purposes and the sponsoring of government functions.
4. A company should only be permitted to tender if it has implemented a code of conduct under which the company and its employees commit to a strict anti-corruption policy and certify that they have not engaged in illegal conduct as part of their bid.
5. A company should only be permitted to tender if its ownership structure is clear and publicly available.
6. All contracts between the procuring agency and its contractors, suppliers and service providers should require the parties to comply with strict anti-corruption policies.

For procurements above a certain threshold, the contacting authority should consider requiring “Integrity Pacts”, where commitments to abstain from corrupt conduct are overseen by an independent monitor.²⁴

7. Staff for the planning phase should be separate from those working with the other phases of procurement and, as far as possible, staff involved in the evaluation of contract implementation should be separate from those involved in other phases. However, one official should be responsible for overseeing the whole process.
8. Key decisions should be made “under four eyes”, using committees such as evaluation committees at crucial decision-making junctures.
9. Staff in sensitive positions should be rotated regularly.

TRANSPARENCY

1. Make public the following information, except when information is legally protected, such as, for reasons of national security or protection of intellectual property or other confidential information:²⁵
 - Activities carried out prior to initiating the contracting process, such as needs assessment, the development of a procurement plan and budget allocation
 - Procurement budgets and plans
 - Tender opportunities
 - Technical specifications
 - Selection criteria
 - The key elements of all bids in a public tender opening event. The key elements include bidder identity, beneficial ownership for corporate bidders and information responsive to the evaluative criteria
 - The key elements of the bid evaluation process
 - The award decision and its justification
 - The issuing authority
 - The contract and any amendments (including significant change orders)
 - Implementation, evaluation, oversight and auditors’ reports
 - Dispute-settlement mechanisms and procedures
2. The information specified above should be made available through an open web portal that is centralised at each level of government, to the extent possible. If a web portal is not available or little used, the information should be widely disseminated through alternative media.

²⁴ Integrity Pacts are described in more detail in Section 4 of this guide.

²⁵ The Construction Sector Transparency Initiative provides an exhaustive list of information that should be proactively made available and information that should be disclosed upon request. See *Guidance Note 6, Designing a Disclosure Process* (October 2013/VI): www.construction-transparency.org/documentdownload.axd?documentresourceid=31.

3. Digital information should be published in widely used formats that are non-proprietary, searchable, sortable, platform-independent and machine-readable.
4. Stakeholders in a major procurement process should be fully informed and consulted on relevant aspects of the project. For example, on large dam projects all those affected by potential resettlements as well as by upstream and downstream changes in the water flow regime should be allowed and encouraged to participate in decision-making processes.
5. Public comment on needs assessments and budget plans should be requested, through written submissions or public hearings. This increases the flow of information.
6. Both the government and private sector must practise transparent and comprehensive book-keeping and prohibit “off-the-books” accounts.

The UNCAC and the OECD Anti-Bribery Convention²⁶

obligate states to impose, when applicable, “effective, proportionate and dissuasive” criminal and non-criminal sanctions for corrupt conduct as well as for breaching anti-corruption measures.

Sanctions can be considered effective, dissuasive and proportionate when corrupt conduct is thoroughly investigated and sanctions matching the gravity of the offence and outweighing the financial proceeds originating from the offence are consistently applied.

The OECD Anti-Bribery Convention requires that parties must take such measures necessary to provide that the bribe received by a government official and profits received by the giver as a result of the bribe are either confiscated or their value reflected in monetary sanctions.

Sanctions must be available for corporations or other organisational participants, as well as individuals, both in the government and the private sector.

ACCOUNTABILITY

1. Administrative or judicial processes able to impose sanctions upon a determination of fraud, bribery or collusion should be established and maintained to effectively deter corrupt practices.
2. Sanctions should be effective, proportionate and dissuasive and include monetary and criminal penalties (where available) against companies and individuals. Sanctions should include confiscation of illicitly gained profits and debarment from tendering for a particular period of time. At a minimum, governments should respect the debarment lists prepared by appropriate international financial institutions. Information about sanctions that have been imposed should be publicly available.
3. Corporations and other legal persons should be liable for the corrupt acts of their employees.
4. Internal and external control and auditing bodies should function independently and effectively and the external reports should be accessible to the public.
5. Audits should assess both financial data and the performance of the implementation of the procurement process itself and the actual contract.
6. The participation of civil society organisations as independent monitors overseeing all stages of the procurement process should be promoted.
7. Contract change orders that alter the price or description of work beyond a cumulative threshold (for example, 15 per cent of contract value) should be monitored and approved at a high level.
8. Robust, independent and effective appeals processes should be in place for aggrieved bidders and accessible at any time during the procurement process. The appeals process should not be overly complex, time-consuming or expensive and should be capable of suspending the procurement until a judgement is made.

²⁶ Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), www.oecd.org/daf/anti-bribery/oecdantibriberyconvention.htm.

9. Whistleblowing mechanisms should be in place. According to Transparency International, all employees and workers in the public and private sectors need:

- accessible and reliable channels to report wrongdoing
- robust protection from all forms of retaliation
- mechanisms for disclosures to promote reforms that correct legislative, policy or procedural inadequacies and prevent future wrongdoing²⁷

Independent Complaints Mechanisms

Services, mechanisms and officials that can provide or support an independent complaints mechanism include:

- Anti-corruption or ethics officers in government agencies and the private sector, available to insiders and outsiders, who can advise on correct conduct, review financial disclosure forms for potential conflicts of interest and act on complaints of misconduct.
- A Central Anti-Corruption Office or an Ombudsperson in a national or sub-central government to investigate allegations of corruption.
- A hotline for reporting allegations of corruption anonymously and confidentially.
- Engaging resources (apart from the procuring entity) to conduct performance audits.
- A voluntary disclosure programme that allows contractors and bidders to report fraud and corruption in their organisations in return for immunity or reduced sanctions.

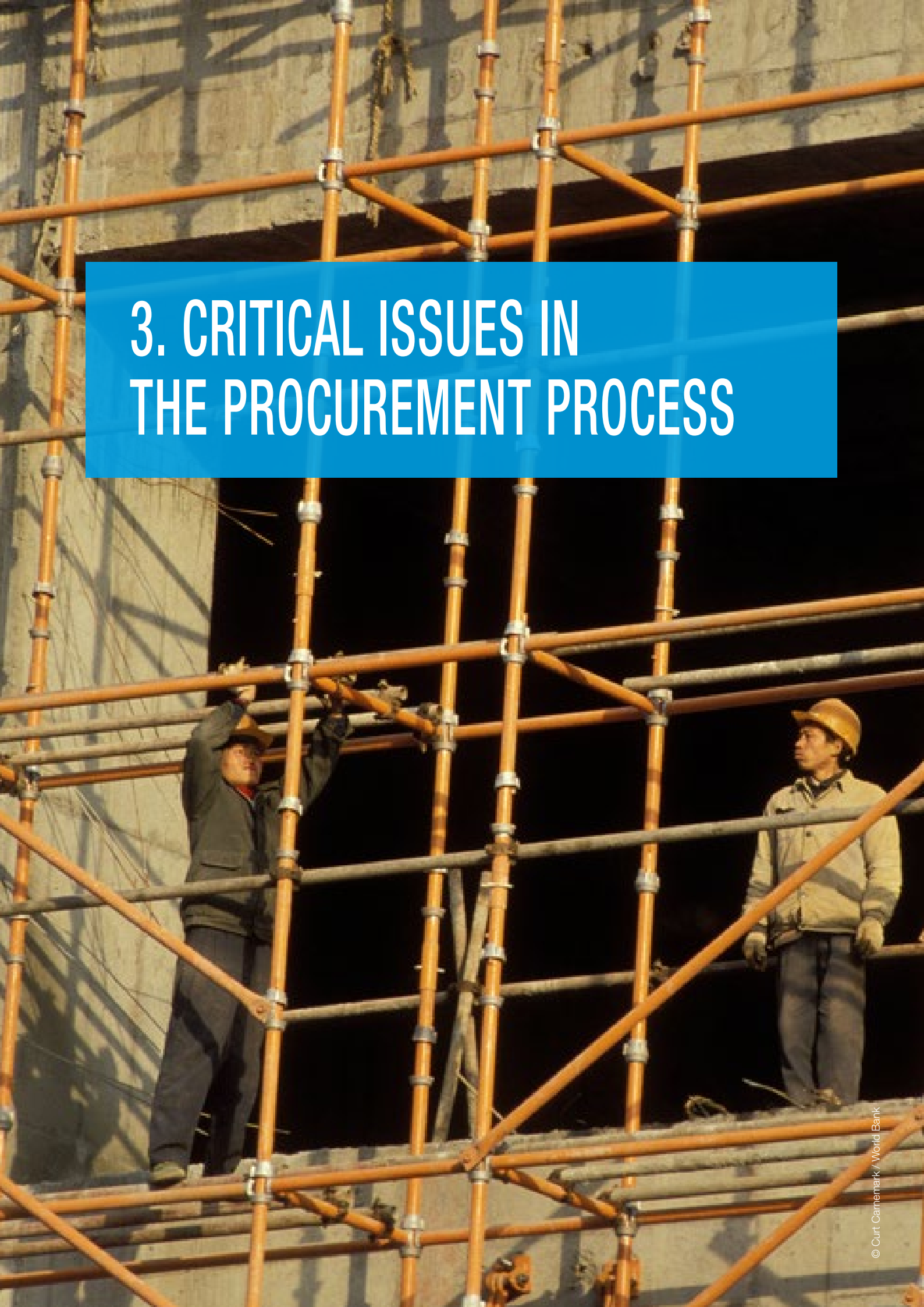
FAIRNESS AND EFFICIENCY

1. Public contracts above a certain (low) threshold, which is clearly established in law or regulations, should be subject to open competitive bidding. Exceptions to this must be limited and clear justifications documented and publicly available.
2. No bidder should be given access to privileged information at any stage of the contracting process, and bidding opportunities should be widely published.
3. Bidders should have sufficient time for bid preparation and pre-qualification, when applicable. A reasonable amount of time should be left between publication of the contract award decision and the signing of the contract, in order to give an aggrieved competitor the opportunity to challenge the award decision.
4. Open competitive bidding should be the norm for procurement above a certain value; this will ensure efficiency and avoid the difficulties inherent in selecting the process on a case-by-case basis.
5. Procurement officials should, where relevant, use standardised bidding documents and internationally accepted product standards across all levels of government, instead of creating their own.

PROFESSIONALISM

1. Procurement positions should be adequately remunerated in order to attract well-qualified staff, while training and other avenues for career enhancement should be available.
2. Positions should be filled and duties assigned on the basis of abilities and talent and not on origin, family connection, political influence or other unrelated qualities.

²⁷ Transparency International, *International Principles for Whistleblower Legislation: Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest* (2013), p.4: www.transparency.org/whatwedo/pub/international_principles_for_whistleblower_legislation

The background image shows a construction site with a complex network of orange metal scaffolding. Two workers are visible: one on the left, wearing a dark jacket and a brown hard hat, is reaching up to adjust a horizontal bar; the other on the right, wearing a light-colored jacket and a yellow hard hat, is standing and looking towards the left. The scaffolding is set against a light-colored, textured wall, possibly concrete or stone. The lighting suggests it's daytime with shadows cast across the structure.

3. CRITICAL ISSUES IN THE PROCUREMENT PROCESS

3. CRITICAL ISSUES IN THE PROCUREMENT PROCESS

3.1 SPECIAL RISK FACTORS

Recognising the risks enables procurement officials to take steps to avoid corruption or take corrective action. It is important to note that actions can appear corrupt but actually may result from other causes, such as incompetence, errors made in good faith, desire for more efficiency or extraordinary circumstances. A “bad” outcome may result from any of these causes, but the responses are different – any indication that a procurement process is going off-track, for whatever reason, needs to be investigated.

There are particular factors and circumstances during the procurement process that increase risk.

“URGENT PURCHASES”, ESPECIALLY NEAR THE END OF A FISCAL YEAR

Urgent purchases made at the end of a fiscal year often involve corrupt elements, most likely due to the fact that transactions in this period are less strictly controlled. In many government agencies the unspent portions of the public budget cannot be carried over into the next fiscal year. This creates pressure to spend available monies as the fiscal year draws to a close. Sometimes this is called an “emergency” situation, which enables direct contracting procedures when otherwise only open bidding would be possible.

EMERGENCY RESPONSES TO NATURAL DISASTERS AND OTHER EVENTS

Procurement in cases of natural disaster or other emergencies is particularly at risk from corruption because of the large sums of money usually involved, particularly for the provision of basic needs such as food, shelter, water and sanitation. Procurement activities in emergency situations often take place in difficult environments, including war zones in which aid may be caught up in the dynamics of the conflict. In such cases, procurement occurs with enormous pressure to deliver relief quickly and often with high staff turnover.

Preventing corruption in emergency situations must be seen in the context of other competing management priorities; there may well be a need for considered, documented trade-offs, such as between efficiency in rapidly meeting the needs of the people and the economy.²⁸

INADEQUATE ACCESS TO INFORMATION

Corruption thrives in the dark. Whenever a government has neither a dynamic proactive information policy nor a proper right-to-information law that is actually implemented and operational, lack of information on government activity and decision-making can easily hide corrupt manipulation of decisions in a procurement process.

USE OF NON-STANDARDISED BIDDING DOCUMENTS AND LOCALLY CREATED PRODUCT STANDARDS

Standardised bidding documents, use of e-procurement and other procurement documentation help ensure predictability and systematic treatment of tenders. Non-standard bidding documents can create space for manipulation and lead to opaque decision-making. Non-standardised documents also raise the possibility that they have been tailored to favour a certain bidder.

In most cases, using technical specifications that are created solely for a particular procurement or are applicable only nationally can be evidence of corruption.²⁹ This is particularly the case if relevant international standards and guidelines are readily available.

²⁸ Transparency International, *Handbook of Good Practices: Preventing Corruption in Humanitarian Operations* (2010): http://www.transparency.org/whatwedo/pub/handbook_of_good_practices_preventing_corruption_in_humanitarian_operations. Jessica Schultz and Tina Soreide, *Corruption in Emergency Procurement* (U4 Issue 7, 2006): <http://www.u4.no/publications/corruption-in-emergency-procurement/>

²⁹ There are instances where technical specifications must be created for a particular procurement, such as procurement of information technology systems or civil works systems.

PARTICIPATION OF COMPANIES OWNED BY GOVERNMENT OFFICIALS

The participation of bidders owned fully or partly by government officials is highly problematical because of the potential conflict of interest or chance of undue influence on decision-making. The problem is heightened when the ownership of a company participating in a procurement process is not disclosed. Disclosure of ownership should be mandated for privately held companies. Special due diligence is required to make sure that all bidders are treated exactly the same. In all cases, government officials with a financial interest (either directly or indirectly through family members) in any bidder should be excluded from participating in any aspect of the procurement.

PARTICIPATION OF FRONT OR SHELL COMPANIES

A front or shell company is a corporation that has no physical presence, no employees and no commercial activity in the jurisdiction in which it is created and its sole or main purpose is to insulate the real beneficiaries from taxes, disclosure or both. It can be used to disguise the identity of government officials and their families and for collusive agreements between bidders.³⁰ Where the real beneficial ownership of a bidding company is not obvious, procurement officials should conduct due diligence to determine who ultimately owns, controls and benefits from it – and if that is not possible, require beneficial ownership information as part of the bid package.

PARTICIPATION OF STATE-OWNED ENTERPRISES

There is often an inherent conflict of interest presented by state-owned enterprises (SOEs) competing with the private sector for procurement opportunities in their home country. Every SOE is controlled by a specific government agency, either through controlling shareholdings or the ability to control the management. Information about shareholdings and managerial control of SOEs is often not publicly available, so it is impossible to measure the danger of a conflict of interest in a given tender. The opportunities for corruption are heightened when a SOE is bidding for a tender from its controlling government agency.

DECENTRALISATION OF PROCUREMENT TO NATIONAL AND SUB-NATIONAL LEVELS

Movement of procurement decisions from a national to sub-national government presents significant corruption risks. In OECD countries, over 50 per cent of public procurement occurs at the sub-national level.³¹ In other countries, the share of local government procurement has increased substantially in the context of decentralization reforms. In Indonesia, procurement by sub-central governments in 2006 accounted for about 40 per cent of total government spending.³² There are a number of factors which create corruption risks at the sub-national levels of government:

- Procurement officials on the sub-national level are not as well-trained.
- The local government may have its own procurement rules that are not consistent with those of the national government.
- Local officials are more likely to know the significant companies in their locality and regularly interact with company officials.
- Procurements are often issued in smaller values, avoiding the need for open competitive bidding.
- Accountability structures can be weaker than at the national level. Internet connectivity and computer literacy may not be as robust, which could preclude the use of e-procurement and hinder effective disclosure of information.

30 Collusive bidders can bid with a shell company to give an appearance of competition.

31 OECD, *Government at a Glance 2013: Procurement Data* (GOV/PGC/ETH, 2013, 2), p. 4: www.oecd.org/gov/ethics/Government%20at%20a%20Glance%202013_Procurement%20Data%20GOV_PGC_ETH_2013_2.pdf

32 Transparency International USA, *APEC Procurement Transparency Standards in Indonesia: A Work in Progress* (2011), p. 12: <http://www.cipe.org/sites/default/files/publication-docs/TI-Report-Indonesia.pdf>

SECTOR VULNERABILITY

There are some sectors of the economy that are more prone to corruption. According to Transparency International's Bribe Payers Index, construction and public works rank as the industry sector most prone to corruption.³³ The extractive industries of oil, gas and mining follow close behind.

NEGOTIATED PROCEDURES

A negotiated procedure is an exceptional procedure which allows contracting authorities to negotiate the terms of the contract with a bidder and award a contract without a sealed bid. Although limited to situations, for example, where the nature of the works, supplies or services are such that prior overall pricing is not possible or where collusion is suspected, the negotiated procedures can be used to subvert the competitive bidding process and therefore should only be used when objectively and publicly justified.

3.2 CHECKLIST FOR GOVERNMENT OFFICIALS

This section highlights some of the key elements of each procurement phase and “red flags” that should lead procurement officials to “think twice” about the integrity of the process. There are some red flags that arise at every stage of procurement: complaints by bidders about the conduct of the procurement, the absence of an independent appeals process and anonymous complaint mechanism and the failure of procurement officials to quickly resolve appeals and respond to complaints.

Much more detailed guides to the procurement steps and red flags can be found in U4 Corruption Resource Centre's The Basics of Integrity in Procurement and Transparency International – USA's Procurement Monitoring Guide: A Tool for Civil Society.³⁴

³³ Transparency International, *Bribe Payers Index* (2011): <http://bpi.transparency.org/bpi2011/results/>

³⁴ See U4 Anti-Corruption Resource Centre, *U4 Basics of Integrity in Procurement*: www.u4.no/publications/the-basics-of-integrity-in-procurement/; Transparency International USA, *Procurement Monitoring Guide: A Tool for Civil Society*: www.monitoring.transparency-usa.org/.

1. PLANNING

→ RED FLAGS

- Lack of transparency in the assessment of needs and development of a procurement plan.
- Failure to publish a procurement plan or announcement of procurements that are not included in a procurement plan.
- Series of procurements of similar goods or services in amounts below the threshold for open competitive bidding.
- Construction project planned near the house of a government official or politician.
- Use of non-standard bid documents that are narrow or appear tailored.
- Lack of publication of bidding opportunity.

→ ACTIONS TO TAKE

- Seek public participation by the private sector and civil society through public hearings or solicitation of comments on budgets and procurement plans.
- Analyse economic, environmental, social and human rights impact of the procurement plan.
- Publish an annual procurement budget and breakdown of expenditures.
- Carry out market surveys to determine pricing, quality levels and suppliers.
- Establish deadlines that are reasonable for the type of procurement.
- Use standard bidding documents and internationally accepted technical standards, if available.

2. BIDDING

→ RED FLAGS

- Exclusion of experienced bidders on minor technicalities.
- Requirement to be pre-registered on a government-approved roster or unnecessary capital requirements.
- Failure to answer requests for clarification in good time or giving evasive answers.
- Failure to keep accurate minutes of pre-bid meetings, including questions and answers.
- Clarification sought by bidders is not answered in writing and circulated to all bidders.
- Delay between deadline for submitting bids and opening them.
- Different location for receiving bids and opening them.
- Bid tampering during storage.
- Bids submitted and accepted after the submission deadline.
- Bids are not opened publicly in the presence of the bidders and/or key elements of all bids are not made public.

→ ACTIONS TO TAKE

- Clearly define in the bidding documents the quantity and quality of goods/services or scope of work required and the applicable time frames.
- Make bidding documents easily accessible, including to civil society, free of charge.
- Use technical specifications that allow for the supply of alternative goods.
- Except for highly technical or complex procurement, base evaluation criteria on cost provided in the technical specifications are met.
- Adhere to established deadlines, unless extensions are notified to all bidders.
- Conduct minimum due diligence on bidders to determine whether they are shell companies or are debarred.
- Use open competitive bidding whenever possible. Use non-competitive processes only where truly justified, fully explained and documented.
- Require bidders to provide integrity assurances and disclose any convictions or investigations relating to corruption.
- For procurements above a certain threshold, implement Integrity Pacts before the process has started.
- Ensure that bids are opened transparently in a public tender opening event in the presence of the participating bidders and that key elements of all bids are shared transparently with the bidders.
- Require that important pages of all the opened bids are counter-signed by tender opening officers (typically up to three) in the presence of the participating bidders – this is to help ensure that bids are not tampered with post-opening.

3. BID EVALUATION

→ RED FLAGS

- There are political figures on the evaluation committee.
- Qualified bidders drop out voluntarily as the bidding process progresses so that only one bidder is left.
- Unreasonable delays in evaluating the bids and selecting the winner.
- Evaluation criteria are amended after receipt of bids.
- Similarities between competing bids (e.g. format of bid, identical or nearly identical unit prices, identical spelling, grammatical and/or arithmetic errors, photocopied documents).
- The Bid Evaluation Report is revised or re-issued in an unrealistically short time.
- The lowest bidder is disqualified and either without an explanation or with a weak explanation.
- There are unreasonable delays in negotiating and executing the contract.
- Contract is not in conformity with bid documents (e.g. specification and quantities) or includes allowances for variations which are not part of the bidding documents.
- Sub-contracting requirements are imposed.

→ ACTIONS TO TAKE

- Restrict or manage contact between bidders and procurement staff or members of the evaluation committee and rotate staff in sensitive positions to the extent possible.
- Ensure that the bid evaluation team has the technical expertise needed and have no conflicts of interest.
- Publicise the award decision immediately, notify unsuccessful bidders and offer to explain why their bid was not accepted.
- Provide sufficient time between contract award and commencement for unsuccessful bidders to appeal the decision.
- Confirm that the bid evaluation report conforms to the evaluation criteria specified in the tender document.

4. CONTRACT IMPLEMENTATION, MONITORING AND EVALUATION

→ RED FLAGS

- Staff involved in contract award decisions is involved in contract supervision.
- Contract specifications or scope of work altered after contract awarded.
- Excessive number of change orders.
- Site inspection indicates that work performed or materials provided is not in accordance with technical specifications, project completion is less than that certified or a completed project is not operational.
- Goods or services are not being used, or being used for purposes inconsistent with intended purposes.
- Delays in the delivery of goods or services in any part of the project implementation process or delivery of wrong quantities.
- Instructions are not given in writing to contractors.
- Failure to pay progress payments and invoices on a timely basis.
- Excessive number of signatures required to approve progress payments.
- Evaluation of contractors' performance not recorded.
- Cost overruns are inadequately explained or justified.
- Failure to publish financial and performance audit reports.

→ ACTIONS TO TAKE

- Make the contract publicly available.
- Set up an independent monitoring system that will check contract implementation.
- Perform random on-site checks.
- Have clear and pre-established limits for contract change orders and require senior management approval of contract changes over an established value or in excess of an established timetable.
- Conduct financial and performance audits on a regular basis, with staff who are independent from those involved in previous phases of procurement, and make the reports public.
- Invite civil society to monitor implementation of the project.

4. TOOLS TO IMPROVE THE PROCUREMENT PROCESS



4. TOOLS TO IMPROVE THE PROCUREMENT PROCESS

There are tools that can improve the procurement process, based on a collaborative approach including procuring agencies, the private sector and civil society. Procuring agencies and potential bidders can for example enter into an Integrity Pact, with the objective of curbing corruption. Civil society, together with government agencies and companies, can collaborate on implementing Integrity Pacts. On its own, civil society can play a key role in monitoring the procurement processes, providing expertise and acting as an independent voice to raise issues and difficult questions.

4.1. INTEGRITY PACTS

Transparency International developed the Integrity Pact as a tool to establish a level playing field in a contracting process by encouraging companies to abstain from bribery by providing assurances that their competitors will also refrain from bribery, and that government procurement, privatisation or licensing agencies will commit to preventing corruption (including extortion) by their officials and to following transparent procedures.³⁵

An Integrity Pact is signed for a particular procurement project between the government agency undertaking the procurement (the “principal”) and companies submitting a tender for that specific project (the “bidders”). The major elements are:

- An undertaking by the principal that its officials will not demand or accept any bribes, gifts or payments of any kind and maintain appropriate disciplinary, civil or criminal sanctions in case of violation.
- A statement by each bidder that it has not paid, and will not pay, any bribes in order to obtain or retain the contract.
- An undertaking by each bidder to disclose all payments made in connection with the contract in question to anybody (including agents and other middle men as well as family members of officials).

- The explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force for the winning bidder until the contract has been fully executed.
- Undertakings on behalf of a bidding company will be made “in the name and on behalf of the company's Chief Executive Officer”.
- Bidders must have a company code of conduct and a compliance programme for the implementation of the code of conduct throughout the company.
- A set of sanctions for any violation by a bidder of its statements or undertakings, including:
 - Denial or loss of contract
 - Forfeiture of the bid or performance bond or other security
 - Liability for damages to the principal and the competing bidders
 - Debarment of the violator by the principal for an appropriate period of time
- An independent external expert monitor, who is usually selected jointly by the procuring agency and civil society and has wide-reaching rights and functions.

Through 2013, Integrity Pacts have been implemented in many countries, including India, Korea, Pakistan, Argentina, Mexico, Colombia, Austria and Germany, involving more than 300 contracts.³⁶ Often the Integrity Pact is used for large-scale construction projects. It is also useful for selection of engineering, architectural or other consultants, bidders for government assets in a privatisation programme and bidders seeking licences or concessions in the extractive sector. As an example, the construction of the Greater Karachi Water Supply in Pakistan was subject to an Integrity Pact, monitored by Transparency International, and the final project came in under budget by 15.83 per cent.³⁷

³⁵ For more information, see Transparency International, *Integrity Pacts in Public Procurement: An Implementation Guide* (2013): www.transparency.org/whatwedo/pub/integrity_pacts_in_public_procurement_an_implementation_guide.

³⁶ The guide contains examples of different kinds of Integrity Pacts and related memoranda of understanding, with specific case studies of the construction of the airport in Berlin, Germany and two large-scale hydro-electric projects in Mexico.

³⁷ Transparency International Pakistan, *Integrity Pact: A Pakistan Success Story* (November 2003), p. 5: www.transparency.org.pk/documents/KW&SB.pdf

4.2. EXTERNAL MONITORING OF THE CONTRACTING PROCESS

E-PROCUREMENT

Although not a stand-alone anti-corruption measure, the use of e-procurement – procurement processes being conducted online – has been a transformative element in public contracting, providing opportunities to reduce corruption during all phases of the procurement process. In particular, e-procurement increases and improves opportunities for civil society to monitor procurement processes. Conducting procurement online can help civil society gain access to information, monitor individual processes and facilitate citizen monitoring.

E-procurement can increase the number of suppliers and the amount of competition by making access easier and significantly enhancing transparency by centralising all information related to the procurement process in a publicly available web portal. E-procurement can limit the opportunities for corruption by automating procedures and reducing the amount of discretion exercised by procurement officials and their personal contact with private sector representatives.

E-procurement systems facilitate access for all stakeholders to:

- Budgets and procurement plans for all government agencies.
- Tender notices and bidding documents.
- Minutes/records of bidders' conferences and bid clarification information.
- Record of bids received and publicly opened.
- Names of contract awardees and price information.
- Statistics on suppliers, purchases by government entities and suppliers.
- Consolidated reports on all transactions (by region, by purchaser, by supplier or by other criteria, such as by official approving the award).

One of the primary benefits that can result from the adoption of e-procurement is cost savings. South Korea estimated using e-procurement saved US\$8 billion annually in transaction costs and brought the average transaction time down from 30 hours to two.³⁸ The Sao Paulo (Brazil) State Government's Electronic Purchasing System, between 2000 and 2006, brought an average procedural cost reduction of around 51 per cent and actual price reductions averaging 25.5 per cent.³⁹ The World Bank estimates that potential savings using e-procurement can range from 6 per cent to 13 per cent.⁴⁰

Many of the cost savings result from the increased efficiency of e-procurement. It can be used to standardise documents and make them easily accessible, reduce man-power needs by automating steps in the procurement process such as bidder registration, price and data analysis, and enables bids to be tracked, all of which reduces the time required for procurement.

E-procurement, however, is not a panacea; it will reduce the opportunities for corruption but may not eradicate them. Sufficient care must be taken in the design and use of e-procurement platforms to ensure high levels of confidentiality when necessary, accountability (the use of e-signatures can help support this) and transparency (especially when the bids are opened). Unless duly tested and certified ready-to-use e-procurement products are adopted, implementation is likely to take many years and require a significant initial financial investment as well as training. It requires robust connectivity for internet access, computers and computer literacy. In addition, implementation may be fragmented, with procuring entities using different websites so that the transparency and data tracking functions cannot be fully realised. Finally, when poorly managed or reliant on a sub-standard online platform, e-procurement could actually enhance corruption risks.

³⁸ Ho In Kang, *E-Procurement Experience in Korea: Implementation and Impact* (2012): www.europarl.europa.eu/document/activities/cont/201207/20120710ATT48620/20120710ATT48620EN.pdf

³⁹ See www.relogiodaeconomia.sp.gov.br/br/home_results.asp.

⁴⁰ Robert Hunja (presenter), "E-Procurement Opportunities and Challenges", ec.europa.eu/internal_market/publicprocurement/docs/eprocurement/conferences/speeches/robert-hunja_en.pdf

THE SOCIAL WITNESS PROGRAMME

Civil society groups can help identify and reduce corruption risks in public procurement by acting as independent monitors throughout the process – this practice has been adopted in Mexico⁴¹ and the Philippines.⁴² Known in Mexico as a “Social Witness”, the civil society organisation and individuals selected by it must meet the following criteria: 1) be well regarded and trusted by the public; 2) possess expertise on the relevant subject area; and 3) be absolutely independent of any of the parties to the Integrity Pact and the contracting process. In Mexico, the Social Witness has full access to all information about procurement and performs, at a minimum, the following activities:

- Reviews the terms of reference and other basic bidding documents, including the invitation to participate.
- Takes part in all meetings that take place with the potential or current bidders.
- Receives the unilateral integrity declaration from the bidders.
- Serves as witness to the presentation of bids and also during the session in which the award decision is communicated.
- Prepares a final report that is publicly available.
- Communicates through the media the development of the process, including both negative and positive aspects.

In Mexico, the Social Witness is part of the contracting process through an agreement signed by the government procuring agency. One half of the operation costs of the monitoring system is covered by the participating bidders and the remaining half by the selected winner. In the Philippines, there is no guaranteed source of funding so civil society organisations are often unable to participate.

OTHER FORMS OF CIVIL SOCIETY MONITORING

In the absence of an authorised role in procurement, civil society can still play an effective role in preventing and uncovering corruption by monitoring selected procurements. Monitors can be key to maintaining the integrity of the process; simply the fact that someone is watching can deter corruption. Civil society participation increases transparency by engaging the public more fully in the procurement process and providing information about different aspects of procurement. Monitors can enhance accountability by identifying corrupt actors and seeking government sanctions against them. Finally, they support fairness and efficiency by identifying irregularities in the procurement process and independently investigating them.

In the USA, Transparency International has developed a Procurement Monitoring Guide and an online Procurement Monitoring Tool⁴³ to assist civil society organisations. The guide and the tool are designed to help civil society organisations overcome obstacles to effective monitoring, such as poor access to information, lack of technical resources and insufficient financial resources.

41 See Transparency International USA, Center for International Private Enterprise and Transparencia Mexicana, *APEC Procurement Transparency Standards in Mexico: Time to Engage the Private Sector* (2011), pp. 14-15: <http://www.cipe.org/publications/detail/apec-procurement-transparency-standards-mexico-time-engage-private-sector?lang=en>.

42 See Transparency International USA and Procurement Watch, Inc., *APEC Procurement Transparency Standards in the Philippines: A Work in Progress* (2011), pp. 12-13.

43 See www.monitoring.transparency-usa.org/. See also Francesco De Simone and Shruti Shah, “Civil Society Procurement Monitoring: Challenges and Opportunities”, in Transparencia Mexicana, *A New Role for Citizens in Public Procurement* (2012), pp. 39-47: www.corruptionresearchnetwork.org/marketplace/resources/C-M%20SERIES%20-%20A%20new%20Role%20for%20Citizens%20in%20Public%20Procurement.pdf/. The information in this section is derived from this article.

According to the Procurement Monitoring Guide, civil society organisations can deal with a lack of information in a number of ways:

- Focus on the delivery of goods and completion of works at the local level, for example to verify that the right quantity has been delivered or to document that works are incomplete or defective.
- Use right-to-information laws, if they exist, to access relevant information.
- Sign memoranda of understanding with government agencies to ensure access.
- Rely on the disclosure policies of international financial institutions or donors when the procurement is funded by them.
- Reach out to the media to exert pressure on the procuring entity.

To deal with a lack of technical resources, civil society organisations can rely on partnerships with universities or professional or industry associations, or focus on a particular sector and develop the necessary expertise over time. One of the most difficult aspects is finding the financial resources to support monitoring – even if the monitor donates his or her time, expenses remain, such as the costs involved in obtaining bidding documents, other administrative costs and transportation expenses.

In the face of these constraints, the Monitoring Tool provides an internet-based process for uncovering red flags and determining how to respond once a red flag has surfaced.

4.3 SECTOR SPECIFIC ACTION

In recent years, sector-specific efforts have developed to address corruption in the procurement cycle. These are transparency and accountability programmes to monitor preparatory activities, procurement and implementation of public expenditure and investment projects. Their distinguishing feature is that they deploy a multi-stakeholder approach involving the relevant industry sector, government officials and civil society. The Extractive Industries Transparency Initiative (EITI), Construction Sector Transparency Initiative (CoST) and the Medicines Transparency Alliance (MeTA) are the most prominent examples.

SECTOR SPECIFIC ACTION	
EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)	The EITI is a multilateral initiative to promote revenue transparency and accountability in the extractives sector.⁴⁴ Based on the belief that natural resources such as oil, gas, coal and minerals belong to a country's citizens and should be managed for their economic and social benefit, EITI attempts to fight corruption and mismanagement through a multi-stakeholder approach. A group composed of government, private sector and civil society decides the scope of EITI in their country and oversees the effort by an independent entity to reconcile what companies in the extractive industries pay to governments in fees, royalties, rents, licences, taxes, etc. and what governments receive. The result of this effort is a publicly available report. Twenty-two countries have met the EITI standards and at least 13 others are in the candidacy stage.
CONSTRUCTION SECTOR TRANSPARENCY INITIATIVE (CoST)	The CoST brings together government, private sector and civil society to “improve the value for money spent on the construction of public infrastructure.”⁴⁵ It does so by providing support to: • “governments to put systems in place that allow public access to reliable and detailed construction project information” • “multi-stakeholder groups to oversee the validation and interpretation of the information and build the capacity of the target audiences to understand what the information means to them.”⁴⁶ CoST focuses on three elements: (i) adequate disclosure; (ii) implementation of an assurance process; and (iii) participation by a multi-stakeholder group. It has conducted pilot projects in Malawi, Tanzania, Zambia, the UK, Ethiopia, Guatemala, Philippines and Vietnam.
MEDICINES TRANSPARENCY ALLIANCE (MeTA)	The MeTA applies the principles of transparency, accountability and multi-stakeholder involvement to improve the pricing, quality, availability and promotion of medicines.⁴⁷ This effort goes beyond government procurement of medicines to issues such as quality control, pricing by the government and the private sector, distribution channels, etc. It relies on the creation of a multi-stakeholder group charged with the generation, release, discussion and analysis of information on the quality, availability, pricing and promotion of medicines, as well as the widespread dissemination of the information collected.⁴⁸ To date, MeTA has implemented pilot projects in Ghana, Jordan, Kyrgyzstan, Peru, Philippines, Uganda and Zambia.

⁴⁴ See www.eiti.org/eiti

⁴⁵ See www.constructiontransparency.org/home

⁴⁶ See CoST, “Objectives”: www.constructiontransparency.org/the-initiative/objectives?forumboardid=3&forumtopicid=3

⁴⁷ See www.medicinestransparency.org/

⁴⁸ See www.medicinestransparency.org/key-issues/transparency-and-accountability/

ANNEX I.

INTERNATIONAL OBLIGATIONS, PRINCIPLES, STANDARDS AND GUIDELINES RELATING TO PUBLIC PROCUREMENT

INTERNATIONAL CONVENTIONS	RELEVANT PROVISIONS	MORE INFO
UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) (171 STATE PARTIES) ⁴⁹	- Requires states to criminalise and sanction a range of corrupt activities, including bribery of national public officials, embezzlement, trading in influence and illicit enrichment – all of which are at risk of occurring during a procurement process. - Article 9 of UNCAC relates specifically to procurement and requires parties to “take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.”	A guidebook for governments, international organisations, the private sector, academia and civil society describing good practices in implementation of the UNCAC Article 9 was published in 2013 by the UN Office on Drugs and Crime. ⁵⁰ It includes a checklist of practices to meet the article’s minimum requirements.
OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS (OECD ANTI-BRIBERY CONVENTION) (41 STATE PARTIES) ⁵¹	States Parties are required to investigate and sanction, where possible as a criminal offence, individuals and companies for bribing foreign public officials in the course of business.⁵² This is especially pertinent for public procurement contracts, as many high-value public tenders attract interest from international bidders.	The OECD’s 2007 publication on “Bribery in Public Procurement: methods, actors and counter measures” presents a typology of bribery in public procurement and lists some key preventative measures to help reduce it. It also draws on some anonymised case studies. ⁵³
INTER-AMERICAN CONVENTION AGAINST CORRUPTION (IACAC)⁵⁴ and the AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION (AUCPCC)⁵⁵	- Both these regional anti-corruption conventions have specific provisions relating to public procurement. - IACAC, Article III, 5: States Parties agree to consider creating, strengthening and maintaining “systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems.” - AUCPCC, Article 5: States Parties agree to “adopt legislative and other measures to create, maintain and strengthen internal accounting, auditing and follow-up systems, in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services.”	

49 Correct as at 2 April 2014. For the complete list of States Parties, see: www.unodc.org/unodc/en/treaties/CAC/signatories.html.

50 UNODC, *Guidebook on Anti-corruption in Public Procurement and the Management of Public Finances – Good Practices in Ensuring Compliance with Article 9 of the United Nations Convention against Corruption* (2013): www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf

51 Correct as at 8 April 2014. For the complete ratification list, see: www.oecd.org/daf/anti-bribery/WGBRatificationStatus_May2014.pdf

52 The OECD Anti-Bribery Convention, Article 1. For the full text of the Convention, see www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

53 OECD, *Bribery in Public Procurement* (2007): www.oecd.org/daf/anti-bribery/anti-briberyconvention/44956834.pdf

54 Article III (5) of the Inter-American Convention against Corruption, “System of Government Hiring and Procurement of Goods and Services”, requires that states work to establish open, equitable and efficient procurement processes. For the full text of the convention, see: www.oas.org/juridico/english/treaties/b-58.html. The Organisation of American States assessed the openness, equity and efficiency of member states’ procurement systems in the second round of their review of the Convention’s implementation. For the questionnaire, reports and recommendations, see: www.oas.org/juridico/english/mesicic_rounds.htm

55 Article 5 (4) of the African Union Convention on Combating Corruption requires states to adopt legislative and other measures to create, maintain and strengthen public procurement processes with the aim of preventing and combating corruption. See: http://www.auanticorruption.org/uploads/au_convention_on_preventing_and_combating_corruption.pdf

INTERNATIONAL PRINCIPLES, STANDARDS AND GUIDELINES	DETAILS
The ASIA PACIFIC ECONOMIC COMMUNITY (APEC) has adopted TRANSPARENCY STANDARDS FOR GOVERNMENT PROCUREMENT ⁵⁶	The APEC Transparency Standards focus on enhancing transparency in the procurement process through very broad principles.
The WORLD TRADE ORGANIZATION'S recently revised GOVERNMENT PROCUREMENT AGREEMENT (WTO GPA) ⁵⁷	The WTO GPA sets minimum standards for its members for procurement. It is drafted with the intention of allowing international access to national procurement through application of national treatment and other non-discriminatory measures.
UN COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) developed a MODEL LAW ON PUBLIC PROCUREMENT	Drawing on UNCAC procurement obligations, "the UNCITRAL Model Law is, internationally speaking, one of the most commonly recognised public procurement codes. One of the main purposes of the UNCITRAL Model Law is to serve as a template available to national governments seeking to introduce or reform national public procurement legislation". ⁵⁸ It is also aimed at "achieving value for money and avoiding abuses in procurement processes". A guide to enacting the UNCITRAL Model Law is available online. ⁵⁹
WORLD BANK PROCUREMENT GUIDELINES ⁶⁰	These guidelines detail the policies that should govern procurement of goods, works and non-consulting services connected to projects funded, in whole or in part, by the World Bank and used by other international financial organisations. ⁶¹

⁵⁶ APEC Transparency Standards for Government Procurement: www.apec.org/Meeting-Papers/Leaders-Declarations/2002/2002_aelm/statement_to_implementation1.aspx

⁵⁷ WTO Government Procurement Agreement: www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

⁵⁸ UNODC, *Guidebook on Anti-corruption in Public Procurement and the Management of Public Finances – Good Practices in Ensuring Compliance with Article 9 of the United Nations Convention against Corruption* (2013): www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf

⁵⁹ See *Guide to Enactment of the UNCITRAL Model Law on Public Procurement* (June 2012): www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2012Guide.html

⁶⁰ World Bank, *World Bank Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants* (January 2011): web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentMDK:20060840~menuPK:93977~pagePK:84269~piPK:60001558~theSitePK:84266,00.html

⁶¹ Id. p. 2.

OPEN CONTRACTING PARTNERSHIP'S (OCP) OPEN CONTRACTING GLOBAL PRINCIPLES	These principles guide “governments and other stakeholders to affirmatively disclose documents and information related to public contracting in a manner that enables meaningful understanding, effective monitoring, efficient performance and accountability for outcomes.”⁶² Building on the Principles, the OCP produced the Open Contracting Guide to encourage and help civil society to increase its participation in public procurement processes.⁶³ Transparency International is currently a member of the OCP steering group.
OECD PRINCIPLES FOR INTEGRITY IN PUBLIC PROCUREMENT ⁶⁴	These principles are directed towards guiding governments to develop and implement “an adequate policy framework for enhancing integrity in public procurement.”⁶⁵ The OECD describes the types of procedures and mechanisms essential to ensuring: - transparency - good management - prevention of misconduct - compliance - monitoring and accountability - control
U4 ANTI-CORRUPTION RESOURCE CENTRE	U4 has provided for development practitioners and their government counterparts an introduction to the core issues of corruption in procurement, including the main risk areas, anti-corruption best practices, red flags and an extensive list of online resources for more information.⁶⁶

⁶² Open Contracting Partnership Principles: www.open-contracting.org/global_principles.

⁶³ The Open Contracting Partnership: www.open-contracting.org/open_contracting_guide.

⁶⁴ OECD is in the process of revising these principles by promoting a global recommendation on public procurement. The Draft OECD Recommendation on Public Procurement will be available for external consultation in the second semester of 2014.

⁶⁵ OECD, Principles for Integrity in Public Procurement (2009), p. 18: www.oecd.org/gov/ethics/48994520.pdf

⁶⁶ U4 Anti-Corruption Resource Centre, The Basics of Integrity – The Basics of integrity in Public Procurement (2011), p. 1: www.u4.no/publications/the-basics-of-integrity-in-procurement/

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