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PUBLIC GOVERNANCE COMMITTEE**

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**ENHANCING INTEGRITY IN PUBLIC PROCUREMENT: A TOOLBOX**

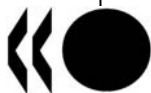
**40th session of the Public Governance Committee  
22-23 October 2009  
OECD Conference Centre, Paris**

*The Committee is invited to discuss the toolbox and approve its overall approach and content for dissemination. Delegates are welcome to provide comments on the draft toolbox and suggestions for additional tools until 5th November 2009.*

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## ENHANCING INTEGRITY IN PUBLIC PROCUREMENT: A TOOLBOX

1. Procurement has received renewed attention in the current global economic and financial crisis: greater flows and use of accelerated procedures for government procurement in stimulus programmes give rise to additional risks. During the OECD Global Forum on Public Governance on 4-5 May 2009 in Paris, countries agreed that practical tools are needed to safeguard integrity in public procurement.
2. The toolbox provides practical guidance on how to apply the 2008 OECD Recommendation on Enhancing Integrity in Public Procurement. It also contains tools to ensure integrity in accelerated procurement procedures. The toolbox is part of the contribution of the Public Governance Committee to the OECD strategy for building stronger, cleaner, and fairer economies.
3. To ensure that the toolbox reflects stakeholders' evolving needs, it is designed as a "living" web-based document that will be regularly updated as different audiences provide their ideas and tools.

### **Action**

4. The Committee is invited to discuss the toolbox and approve its overall approach and content for dissemination.
5. Delegates are also invited to provide guidance on the involvement of representatives from the private sector, civil society, and non-OECD member countries in order to include additional tools. After completing the consultation, a consolidated version of the toolbox will be submitted to the Committee for approval.
6. Delegates are welcome to provide comments on the toolbox and suggestions for additional tools until 5th November 2009.

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## PART I. OVERVIEW TO THE TOOLBOX

### A. PURPOSE OF THIS TOOLBOX

#### Why the need for a toolbox?

*To provide policy makers and practitioners with information on generic tools to enhance integrity in public procurement*

7. Procurement tools can help enhance integrity and avoid bias in daily work and decisions by procurement practitioners. Public procurement is a key instrument for governments and it supports value-for-money in public administration and the delivery of public services. In the context of the current financial and economic crisis, where billions of dollars are being channelled through public procurement to reinvigorate the economy, governments must be more vigilant than ever as to how tax payers' money is spent, especially in the competition for contracts. Public procurement has also been increasingly used to support secondary objectives such as environmental, social and innovation policies.

*To serve as an input into the training programmes and syllabi for public procurement practitioners*

8. Not only do tools serve to support the daily work and decisions, they also serve as an input to training programmes and syllabi for procurement practitioners. The existence of a group of professional procurement practitioners is key in enhancing integrity throughout the whole procurement cycle: including the pre-tendering, tendering and post-award phases. In order for this group to successfully manage the procurement process, it is crucial that adequate tools be available to improve management and oversight of the entire procurement process.

*To exchange knowledge between policy makers and procurement practitioners*

9. Through the discussion of procurement tools, policy makers and procurement practitioners in both OECD member and non-member countries can share practical ways for enhancing integrity throughout the procurement cycle. The tools contained in this document are generic in nature and may be adopted to suit different country contexts and all levels of government — national, state and municipal governments as well as other public organisations. Although generic in nature, they have been compiled from practices which have already successfully been tested in a number of countries.

*To support the implementation of the OECD Recommendation on Enhancing Integrity in Public Procurement*

10. A practical toolbox will also support policy makers and procurement practitioners in facilitating the implementation of the 2008 **OECD Recommendation on Enhancing Integrity in Public Procurement** in daily operations. The Recommendation provides a framework made up of 10 principles to guide governments in preventing waste, fraud and corruption in public procurement. The principles represent a consensus that efforts to enhance good governance are essential throughout the entire

procurement cycle, from needs assessment to the tender process and post award contract management. In 2011, OECD member countries will report on progress made in implementing the Recommendation.

11. Enhancing integrity in public procurement should not constitute a separate institutional and legislative framework. It needs be considered in light of the broader context within which procurement operates in each country.

12. The toolbox does not provide guidance on the appropriate organisational or institutional setting in which the tools operate. Nor is it designed to function as a roadmap to sequence necessary steps in undertaking procurement reform. As many other policy instruments, procurement is context dependent and the tools are unlikely to suit every set of circumstances. Therefore they need to be adapted to the context in which they are implemented.

### Who should use the toolbox?

13. The toolbox is intended to be of equal value for policy makers and procurement practitioners. Policy makers may consider these tools to include in establishing procedures and issuing supporting guidelines for enhancing integrity in the procurement cycle. Procurement practitioners may consider integrating the tools to strengthen the management and accountability of their actions.

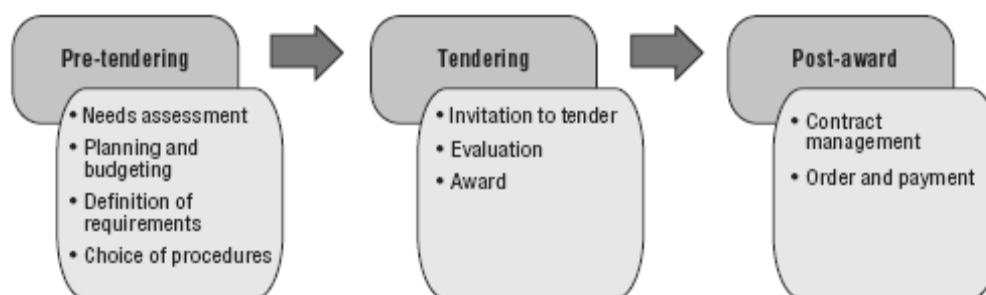
14. Policy makers and procurement practitioners may be located at both the national and sub-national government. This will depend on the state structure (i.e. federal or unitary) and the extent of decentralisation of policy formulation and execution.

15. Civil society and businesses can also use the toolbox to inform themselves about the procedures and mechanisms to safeguard integrity in public procurement.

### How to use the toolbox?

16. This toolbox is structured in three parts. The remainder of Part I discusses the building blocks for public procurement systems. In particular, it highlights the legal and institutional conditions necessary for the implementation of the OECD Recommendation. Part II presents the tools according to their use in the procurement cycle. Tools that are applicable in the pre-tendering phase appear first, followed by those applicable to the tendering and post-award phases respectively. Tools that are applicable throughout the entire cycle are placed last. An index has also been provided at the beginning of Part II to guide the reader in searching for tools not only according to their stage in the procurement cycle, but also according to the OECD pillars underlying the OECD Recommendation. Part III includes a glossary of terms used in the toolbox.

Figure IA.1. The procurement cycle



Source: OECD (2009), OECD Principles for Integrity in Public Procurement, OECD Publishing Paris.

**The tool brief and snapshot**

17. The description of each tool (the “tool brief”) is succinct and generic. Each brief includes a snapshot of the tool, its purpose and a general description of how each tool may be applied. This enables policy makers and procurement practitioners to consider whether individual tools are beneficial for their needs and how it may be adopted to their political, legal and institutional context without being prescriptive about its application. At times, however, references to a particular country example are provided for clarification. Further resources have been included where available to direct readers to concrete country examples, surveys and papers of the application of generic tools.

**Figure IA.2. Tool snapshot**

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
● = Applicable						

18. The “tool snapshot” highlights the link of each tool to the procurement cycle and the four integrity pillars. The first panel of the snapshot provides a link to the three main phases of the procurement cycle (see figure above). The second panel provides a link to the four pillars of the OECD Principles for Enhancing Integrity in Public Procurement.

The OECD Principles for Enhancing Integrity in Public Procurement, which are today recognised as good practice, reflect a global view of policies and practices that have proved effective for enhancing integrity throughout the procurement cycle. The Principles are anchored in four pillars: transparency, good management, prevention of misconduct and accountability and control.

**Box IA.1. OECD Principles for Enhancing Integrity in Public Procurement**

The OECD Principles build on the OECD good governance approach to public procurement, which analyses procurement from a public and corporate governance in addition to a development perspective. As such, it was elaborated in collaboration with the Competition, Anti-Bribery and Aid Effectiveness divisions within the OECD. New areas of collaboration include as a secondary objective the use of public procurement as a policy instrument to encourage innovation, environment and social policies.

**Transparency**

1. Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for suppliers/bidders.
2. Maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.

**Good management**

3. Ensure that public funds are used in procurement according to the purposes intended.
4. Ensure that procurement practitioners meet high professional standards of knowledge, skills and integrity.

**Prevention of misconduct, compliance and monitoring**

5. Put mechanisms in place to prevent risks to integrity in public procurement.
6. Encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.
7. Provide specific mechanisms to monitor public procurement as well as detect misconduct and apply sanctions accordingly.

#### **Accountability and control**

8. Establish a clear chain of responsibility together with effective control mechanisms.
9. Handle complaints from suppliers/bidders in a fair and timely manner.
10. Empower civil society organisations, media and the wider public to scrutinise public procurement.

19. A tool may be applicable to more than one stage in the cycle or more than one of the pillars within the OECD Principles. For instance, a code of conduct for procurement practitioners is necessary throughout the entire procurement cycle. Similarly, while the main purpose of a code of conduct for procurement practitioners is good management it also plays a role in the prevention of misconduct by defining what is the expected behaviour of procurement practitioners. In this regard, the snapshot for this tool will tick all three options in the procurement cycle panel and the two relevant pillars in the OECD Principles.

**Figure IA.3. Generic code of conduct for procurement practitioners**

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●	●	●		●	●	
● = Applicable						

20. Tools may be interlinked with one another and cross referencing to other tools have been made where applicable. This is in part inevitable because of the complexity of the procurement cycle - actions taken in one phase of the cycle need to be followed up in subsequent phases. For example, the risk indicators tool has connections to other tools as an understanding of where risks lie in the procurement chain will inform training needs for staff in particular areas. Likewise, the development of a risk indicators list will require that procurement practitioners understand their duties and responsibility to report irregularities, which has a direct connection with a code of conduct for procurement professionals.

#### **Can you add to these tools?**

21. The tools presented in this report are generic and based on practices that have been tested in a number of countries. They do not exactly match those used in OECD member and non- member countries, nor do they represent an exhaustive compilation of the tools that may exist. In this regard the toolbox is a living document that will be periodically updated. Should you have variations of these tools or altogether new tools (that have been proved to be effective) please send them to the following email address: [GOV.integrity@oecd.org](mailto:GOV.integrity@oecd.org).

## B. BUILDING BLOCKS OF PUBLIC PROCUREMENT

### Box IB.1. Note of the terminology used in this toolbox

Part III includes a glossary of terms that are used throughout the toolbox. Before continuing, however, defining how a number of terms are used in the remaining document is useful.

A **supplier** is a person, commercial company or other organisation that provides goods, services or works in the market. A supplier need not have responded to a request from a public organisation. It relates to market actors in the pre-tendering phase of the procurement cycle.

A **bidder** is a person, commercial company or other organisation that offers to provide goods, services or works in response to a request from a public organisation. It relates to market actors involved in the tendering phase of the procurement cycle.

A **contractor** is a person, commercial company or other organisation who through a *contract* agrees to provide goods, services or works under the conditions specified in the contract. It relates to market actors involved in the post-award phase of the procurement cycle.

A **procuring authority** is responsible for organising and conducting the tender. It relates to the pre-tender and tender phases of the procurement cycle.

A **contract authority** is responsible for contract management. It relates to the post-award phase of the procurement cycle. The *procuring authority* may be the same as the contract authority in a number of cases for example, under a system of centralised purchasing.

A **public sector organisation** includes any unit that is part of the government, including ministries and agencies. It may include units in the national and sub-national government.

A **public official** includes people who hold a legislative, administrative or judicial office (either appointed or elected); any person exercising a public function, including for a public agency or a public enterprises (e.g. a state owned enterprise); any official or agent of a public international organisation.

A **procurement practitioner** includes people who are involved in the different stages of the procurement cycle regardless of whether they hold a public official role or not. In this sense, the term captures a broader spectrum of professionals than the term public procurement official may refer.

### Public procurement is both an area of risk...

22. Public procurement is a process that public sector organisations set in place in order to purchase goods, services, and works. Within this process, public procurement may involve payment to contractors in exchange for goods, services and works for the public administration in order to deliver public services which benefit citizens indirectly. They may also include goods, services and works directly provided to citizens. Some of these services may also be provided by public sector organisations.

23. Public procurement (general government and public services/utilities) in ordinary times accounts for 16% of GDP, on average, in OECD member countries. It is the governance activity most vulnerable to waste, fraud and corruption due to the financial interests at stake, the volume and regularity of transactions, the close interaction between the public and the private sectors, and the complexity of the procurement process. An additional tension is created by introducing other policy goals such as environmental, social and innovation. These tensions may relate to an evolving legislative framework, closer interface between

the public and private sectors, balance risk transfers between the procuring/contract authority and the contractor, as well as equip procurement practitioners with the necessary skills to successfully manage the process. Enhancing integrity in public procurement recognises these risks and moves to use public funds, resources, assets and authority efficiently, in accordance to the intended official purpose and in line with the public interest.

24. Increasing the efficiency of public procurement requires moves to ensure that the maximum benefit from the goods, services and works procured is achieved for the resources available. It measures not only the cost but also takes into account the mix of quality, fitness for purpose, timeliness and convenience. Minimising integrity violations requires moves to prevent:

- fraud and theft of resources, for example through product substitution in the delivery which results in lower quality materials;
- corruption including bribery, “kickbacks”, nepotism, cronyism and clientelism, collusion and bid rigging;
- conflict of interest in the public service and in post-public employment; and
- abuse and manipulation of information and the discriminatory treatment in the public procurement process.

25. Enhancing integrity in public procurement should not constitute a separate institutional and legislative framework. It must be considered in the context of the broader frameworks within which procurement policy operates in each country.

### **...and opportunity for the public organisation**

26. The importance of enhancing integrity in procurement has received renewed attention particularly in the current global economic and financial crisis: greater flows and accelerated tender procedures for government procurement under countries’ fiscal stimulus programmes raise additional risks. A clean recovery needs to proactively promote a level playing field and fair competition in government contracting. It is crucial to address the issues of enhanced transparency, good management, accountability and control throughout the entire procurement cycle — from the definition of needs to bidding, contract management and payment. Actions taken today will have a lasting impact as public funds are used to renew public infrastructure and invest in new technologies in the future.

#### **Box IB.2. Accelerated public procurement procedures in the context of the financial crisis**

Accelerated public procurement procedures establish alternative procedures to operate during times that demand enhanced flexibility, responsiveness and accountability by public organisations. Within this category there are two types of accelerated procurement: emergency procurement and non-emergency accelerated procurement. Emergency procurement is used in contexts where life, property or equipment is immediately at risk or standards of public health, welfare or safety need to be re-established without delay. Examples include government responses to natural disasters (such as earthquakes, floods and typhoons) and epidemics risks.

Non-emergency accelerated public procurement procedures are used in contexts where unforeseen circumstances arise and require an urgent response by public organisations. In comparison to emergency procedures, non-emergency accelerated procurement should be used as an exception and not the norm. Justifying the use of emergency procedures is necessary regardless of the time pressures on public organisations to acquire the necessary goods, services and works.

The risk of waste, fraud and corruption in accelerated procurement is higher than regular public procurement for

a number of reasons, including:

- procurement practitioners with high levels of discretion in identifying beneficiary needs;
- participation of fewer suppliers/bidders in order to execute procurement quickly; and
- reduced *ex ante* controls to enable fast-track delivery of supplies, services and works.

The current economic crisis has also been considered by many governments and international organisations as justifying grounds for accelerating procurement procedures. It is important however, to differentiate between acquisition of goods, services and works within fiscal stimulus programmes and other fiscal policy instruments. A fiscal stimulus may include more than increased funds for government ministries to expand or accelerate existing acquisitions. They also include transfers, tax cuts, grants, loans, guarantees, extra-budgetary entities and central bank fiscal activities. For example, of the major stimulus packages enacted in the United States since 1953 only three out of nine — 1957/58, 1960/61 and 1973/1975 — included increases in public acquisition spending.

Large investments in infrastructure are a common part of the stimulus packages in the current financial crisis. In the United States, it includes over EUR 68 billion (more than 3% of GDP) for infrastructure projects that support energy efficiency and long-term environmental sustainability alone. In other OECD member countries, infrastructure spending in stimulus packages equals EUR 4 billion in Canada, EUR 23.6 billion in Australia, and EUR 18 billion in Germany.

In December 2008 the European Commission decided that the severe economic downturn constitutes grounds of urgency and justified the use of accelerated restricted procurement procedures for all major public projects throughout 2009 and 2010. Public Procurement Directive 2004/18/EC allows recourse to accelerated procedures where justified on the grounds of urgency. The accelerated restricted procedure allows procuring authorities to reduce the overall time limit of the procedure from 87 to 30 days. It does this by shortening the time limit for requests to suppliers from 37 to 10 days (if the contract notice was sent by electronic means) and the subsequent time limit for bidders to submit their tenders from 40 to 10 days. However, a standstill period of 10 days remains before the contract can be concluded.

*Notes:*

A restricted procedure is a two-stage process in which the procuring authority first advertises for suppliers that may be interested in submitting a tender for a specific contract before drawing up a short list of suppliers based on their technical capability, capacity and financial standings. Only the short list of suppliers is invited to submit a bid.

The exchange rate for conversion from USD, AUD and CAD to EUR are as follows: USD1.00=EUR0.68; CAD1.00=EUR0.62; AUD1.00=0.59

*Sources:*

Schultz, J. and T. Soreide (2008), Corruption in Emergency Procurement, *Disasters*, 32(4): 516-536.  
 Schick (2009), "Crisis Budgeting," 30th Annual Meeting of OECD Senior Budget Officials, 4-5 June 2009, Paris, GOV/PGC/SBO (2009)6.  
 New American Foundation (2008), "Fiscal Stimulus: Do It Right or Don't Do It At All", January 22, 2008 [www.newamerica.net/files/StimulusStatementJan2008.pdf](http://www.newamerica.net/files/StimulusStatementJan2008.pdf), accessed 14 August 2009.  
 European Commission (2008), "Public procurement: Commission recognises need for accelerated procurement procedure," IP/08/2040, Brussels, 19 December 2008, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/2040&format=HTML&aged=0&language=EN&guiLanguage=en>, accessed 21 August, 2009.

## Legal and institutional conditions for the implementation of the OECD Recommendation

27. In order to implement the OECD Recommendation, governments should ensure that the effort to enhance integrity in public procurement at the policy level is also supported by the country's leadership and by an adequate public procurement system. The following items are commonly regarded as the essential structural elements of a public procurement system:

- a legislative framework in compliance with international good practice and appropriate procurement policies and rules on the effective, efficient and proper use of resources;

- well–developed and credible administrative infrastructure with sufficient capacity for effective implementation of the legislative framework and other policies;
- review and remedies systems capable of providing rapid and effective response to supplier/bidder’s complaints;
- professional group of public procurement practitioners to manage the procurement process, including contract management;
- internal management control and audit systems with sufficient capacity for effective identification and countering of risk; and
- independent external audit with sufficient capacity to detect irregularities involving the waste and misuse of public funds and identify related weaknesses in management controls.

28. As mentioned previously, the tools compiled do not attempt to provide guidance on the appropriate organisational and institutional setting for a procurement system or on the sequencing of measures to undertake procurement reform. Each country context will define the procurement structure. However, there are a number of systemic issues that need to be in place to guarantee integrity and trust in the public procurement process.

**Box IB.3. OECD/World Bank self assessment methodology**

A joint OECD/World Bank Procurement Round Table Initiative has developed a methodology to measure the performance of developing countries’ procurement systems. The methodology provides a harmonised tool to assess national procurement systems and to monitor the success of reform initiatives over time. It focuses on four dimensions: the legislative framework, institutional and management capacity, operations and markets, as well as integrity and transparency. The Round Table Initiative was established in 2002 to increase the effectiveness, efficiency and transparency of public procurement systems in developing countries.

***A legislative framework in compliance with international good practice***

29. The legislative framework establishes the procurement procedures to be followed as well as the rules to guarantee that public procurement is conducted in a fair and open manner while ensuring effective, efficient and proper use of resources. It may be articulated in a number of sources that can be broadly categorised as either primary or secondary law. Primary law typically outlines the guiding principles and responsibilities and is generally supplemented by secondary law to provide more precise details on practices and procedures.

30. Although legislative frameworks have developed differently over time in different countries, a number of standard provisions should be included. These include: definition of public sector organisations that are covered under the legislation; the types of tender methods/or procedures available and thresholds; selection and award criteria to be used in the tender process; exemptions from standard procurement procedures; the review and remedies system; and enforcement mechanisms to ensure the well function of the public procurement system.

31. In some cases the legislative framework has been amended to ensure compliance with international treaties and standards set by the World Trade Organisation and the European Commission.

#### **Box IB.4. International and pluri-lateral legal instruments**

The objective of the World Trade Organisation Government Procurement Agreement (WTO GPA) is to make laws, regulations and procedures regarding public procurement more transparent and ensure that they do not discriminate against foreign products or suppliers. It includes general rules and obligations, many of which concern the tender process that signatories must build into their legislative frameworks.

The European Commission directives on public procurement set out detailed procedural rules based on the principles outlined in the EC Treaty which are intended to support the single market. Two directives exist: Directive 2004/17/EC coordinates the procurement procedures of entities operating in the water, energy, transport and postal services sectors; and Directive 2004/18/EC coordinates the procurement procedures for the award of public works contracts, public supply contracts and public service contracts for all European Union member countries.

The United Nations Commission on International Trade Law (UNCITRAL) has developed a Model Law on Procurement of Goods, Constructions and Services, with Guide for Enactment in 1994 which is an international resource to harmonise standards, norms, practices and vocabulary related to procurement regulations. However, the Model Law does not mandate changes in a country's legislative framework for public procurement.

It must be noted that UNCITRAL Model Law is less detailed than the WTO GPA and EC directives. For example, the UNCITRAL Model Law opens up the possibility of a preference for domestic suppliers which violates the WTO GPA and EC directives on public procurement.

*Notes:*

1. The EC Procurement Directives apply to Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom. The Directives can be accessed from: [http://ec.europa.eu/internal\\_market/publicprocurement/legislation\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm). The reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

2. The World Trade Organisation Government Procurement Agreement apply to Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hong Kong (China), Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and United States. The Agreement can be accessed from: [www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm).

3. According to UNCITRAL a number of countries have drawn upon the model law including Afghanistan (2006), Albania, Azerbaijan, Bangladesh, Croatia, Estonia, Gambia (2001), Ghana, Guyana, Kazakhstan, Kenya, Kyrgyzstan, Madagascar, Malawi (2003), Mauritius, Moldova, Mongolia, Nepal, Nigeria (2007), Poland, Romania, Rwanda, the Slovak Republic, Tanzania, Uganda, Uzbekistan and Zambia. See UNCITRAL [www.uncitral.org/uncitral/en/uncitral\\_texts/procurement\\_infrastructure/1994Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/1994Model.html).

#### ***Well-developed and credible administrative infrastructure***

32. The basic condition of a procurement administrative infrastructure is the precise definition of the roles played by public sector organisations and officials in the procurement process. Many countries have established a central public procurement organisation with responsibility for developing the procurement rules and regulations, creating a government-wide information and publication system, ensuring government procuring authorities employ trained personnel, developing a training system and maintaining general supervision of the public procurement system.

33. The degree to which the purchasing function is centralised or decentralised varies from country to country and no standard model can be recommended. Developments in the last decade—e-government, the emergence of procurement as a strategic profession, modern financial management practices from the government's side, as well as e-commerce and new production technologies from the private sectors side—dilute the strength of some of the arguments of the centralisation vs. decentralisation debate. A system that mixes elements of decentralisation and centralisation is likely to work well in many countries.

34. Within procuring and contract authorities, however, particular attention is necessary to ensure clear separation of responsibilities. In particular, staff roles and responsibilities with regards to specifying requirements, giving financial authority and making purchasing commitments must be clearly delineated.

**Box IB.5. Key arguments for centralised and decentralised public procurement systems**

The key arguments put forward in support of centralised procurement include:

- better value-for-money (price and quality) of procured supplies, services and works through increased purchasing power of the centralised agency, including through reduced government overheads;
- increased concentration of procurement expertise, better delivery of training and more focused performance management of procurement staff; and
- greater standardisation of technical requirements, procurement contracts and transactions, management controls and reporting to support greater transparency of government operations.

The key arguments put forward in support of decentralised procurement include:

- reduced scope for large scale corruption and mistakes through affecting large volume purchases that result in overspending;
- closer matching of supplies, services and works delivered to the requirements of end-users (both government agencies and citizens); and
- greater possibility for small and medium enterprises to successfully compete for government tenders.

Source Adopted from OECD (2000), "Centralised and Decentralised Public Procurement," CCNM/SIGMA/PUMA (2000)108, 25 October 2000, OECD Publishing, Paris.

***Professional group of public procurement practitioners***

35. Public procurement systems have increasingly moved from a situation where procurement practitioners are expected to comply with rules and procedures to a more flexible and goal orientation. Recognising practitioners who work in the area of public procurement as a profession is critical to enhancing resistance to mismanagement, waste and corruption. One of the key building blocks to equip professionals is to provide them with well-defined curricula, specialised knowledge, professional certifications and integrity guidelines to ensure that they have the necessary knowledge, skills and integrity for successfully perform their tasks.

### ***Rapid and effective review and remedies systems***

36. An effective review and remedies system allows unsuccessful suppliers/bidders to challenge decisions taken by public authorities in awarding contracts and supports the appropriate functioning of a procurement system. Procedures which provide effective mechanisms to seek redress in cases where suppliers/bidders deem that contracts have been unfairly awarded is essential to establishing trust with both the private sector and the general public.

37. The main objective of a public complaints review and remedies system is to enforce the practical application of public procurement legislation. It serves as a deterrent to breaking the law and thus encourages compliance. Moreover, violations of the law and genuine mistakes can be corrected. Therefore, an effective functioning public procurement review and remedies system may ultimately contribute to the achievement of the objectives of the substantive procurement rules, such as transparency, non-discrimination and equal treatment, and value for money.<sup>1</sup>

### ***Internal management control and audit system***

38. The existence of independent control systems in financial and technical aspects related to procurement is crucial to enhance integrity and detect fraud and corruption. Internal control systems are intended to provide assurances that management's objectives are being achieved and contribute to continuous improvements in programme management, service delivery and accountability. Internal audit covers administrative and accounting reporting on the procedures governing decision making processes, as well as the preparation of reliable financial records. They provide management with an assessment of the adequacy and functioning of an organisation's risk management, control and governance processes.

39. The OECD Best Practices for Budget Transparency states that a dynamic system of internal financial controls, including internal audit should be in place to assure the integrity of information provided in the reports.<sup>2</sup> The International Organisation of Supreme Audit Institutions (INTOSAI) has identified the following objectives of internal control systems:

- produce orderly, economically, efficient and effective operations;
- safeguard resources against loss owing to waste, abuse, mismanagement, errors and fraud;
- adhere to laws, regulations and management directives; and
- develop and maintain reliable financial and management data; and disclose this data in timely reports.

40. To be effective, internal controls must be appropriate, function consistently throughout the procurement cycle, and be cost-effective.<sup>3</sup>

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<sup>1</sup> See OECD (2007), *Public Procurement Review and Remedies Systems in the European Union*, Sigma Paper No. 41, GOV/SIGMA(2007)5, OECD Publishing, Paris

<sup>2</sup> OECD (2002), "OECD Best Practices for Budget Transparency", *OECD Journal on Budgeting*, Vol. 1, No. 3, pp. 7-14.

<sup>3</sup> INTOSAI is an autonomous, independent and non-political organisation. It is a non-governmental organisation with special consultative status with the Economic and Social Council (ECOSOC) of the United Nations.

**Box IB.6. INTOSAI guidelines for internal control standards**

**General standards**

- Specific control objectives are to be set for each activity of the organisation, and are to be appropriate, comprehensive, and reasonable and integrated into the organisation's overall objectives.
- Managers and employees are to maintain a supportive attitude to the standards at all times, and are to have the integrity and sufficient competence to meet the standards.
- The system provides reasonable assurance that the objectives of an internal control system will be met.
- Managers are to monitor their operations continually and take prompt remedial action where necessary.

**Detailed standards**

- Full documentation of all transactions and of the control system itself is to be provided.
- Transactions and events should be promptly and properly recorded.
- Execution of transactions and events should be properly authorised.
- Key responsibilities at different stages of a transaction should be divided among individuals.
- Competent supervision is to be provided to ensure that control objectives are being achieved.
- Access to resources and records is to be limited to authorised individuals who are accountable for their custody or use.

*Source:* INTOSAI (1992), Guidelines for Internal Control Standards for the Public Sector, INTOSAI General Secretariat, Vienna

***Independent external audit***

41. External audit is conducted by a supreme audit institution. A core component of this audit is the regularity audit. A regularity audit generally covers the attestation of financial accountability of public organisations and the government as a whole. It also includes an audit of financial transactions and internal control functions. In some countries, the supreme audit institution may also conduct specific audits on the functioning of the public procurement system. Upon completion of an audit, the supreme audit institution expresses a written opinion on its findings. The auditor may give an unqualified opinion if it is sufficiently satisfied that the systems are in compliance with statutory requirements and regulations; are consistent with the auditor's knowledge of the public organisation; and adequately disclose relevant information.

## PART II. PUBLIC PROCUREMENT TOOLS

### Typology of public procurement tools

42. Public procurement tools help policy makers and procurement practitioners to design, implement and improve the public procurement system within the existing institutional setting. While there exist many procurement tools applied in different country contexts, Table II.1 provides a broad typology of public procurement tools intended to provide readers with an additional classification system based on the type of function that tools play in the procurement process. Public procurement tools can be grouped into five categories: legislative and regulatory tools; information-based tools; evaluation and decision tools; reporting and monitoring tools; as well as training and communication tools.

**Table II.1. Typology of public procurement tools**

Type	Examples
Legislative & regulatory tools	<ul style="list-style-type: none"> <li>• Model legislation, regulations and clauses</li> <li>• Guidelines for procurement practitioners</li> </ul>
Information-based tools	<ul style="list-style-type: none"> <li>• Databases and catalogues</li> <li>• Questionnaires</li> </ul>
Evaluation & decision tools	<ul style="list-style-type: none"> <li>• Evaluation methodologies</li> <li>• Approval forms</li> </ul>
Reporting & monitoring tools	<ul style="list-style-type: none"> <li>• Templates &amp; checklists</li> <li>• Indicators</li> </ul>
Training & communication tools	<ul style="list-style-type: none"> <li>• Modules &amp; courses</li> <li>• Networks &amp; conferences</li> </ul>

*Source:* Adapted from Siemens, R. (2007), "A Review and Critical Evaluation of Selected Greener Public Purchasing Programmes and Policies," in OECD, *The Environmental Performance of Public Procurement: Issues of Policy Coherence*, OECD Publishing, Paris

### Toolbox index

43. The tools are ordered in accordance with the procurement cycle. As such, tools that are applicable in the pre-tendering phase appear first followed by those in tendering and post-award phases respectively. Finally, tools that are applicable throughout the entire cycle are placed last. Tables II.2a and II.2b present an index of the different tools highlighting their linkage to the procurement cycle and the pillars of the OECD procurement principles.

44. There are a number of crucial tools related to enhancing transparency in public procurement that are currently under development. These include:

- templates for public procurement plans, standard tender documents, tender and contract award notices;
- checklists for clear, transparent and objective criteria for selection and contract award;

- blueprints for the content of an electronic public procurement portal such as procurement legislation and guidelines, tender notices and bid submission, information on review and remedy mechanisms; and
- generic content of training modules for public procurement practitioners at every stage of the cycle.

45. It is intended that subsequent iterations of the toolbox will include an additional table to highlight tools that support integrity for accelerated procurement procedures, public procurement for environmental, social and innovation goals.

**Table II.2a. Index of procurement tools, according to the procurement cycle**

Page	Tool	Procurement cycle phase		
		Pre-tendering	Tendering	Post-Award
	<b>Pre-tendering phase</b>			
	Template for market study report	•		
	Template to solicit supplier information	•		
	Criteria for selecting appropriate tender methods	•		
	Checklist to enhance integrity in non-competitive tender methods	•		
	Template for non-competitive tender method reporting	•		
	Guidelines for accelerated public procurement procedures	•		
	Checklist to design tender methods to reduce bid rigging	•		
	<b>Tendering phase</b>			
	Guidelines for detecting bid rigging in public tenders		•	
	Anti-collusion tender clause		•	
	Certificate of independent bid determination		•	
	Access to contractor information clause		•	
	Guidelines for supplier debriefings		•	
	Model format for supplier debriefings		•	
	Template for supplier questionnaire		•	
	<b>Post-award phase</b>			
	Online public procurement reporting			•
	Post-award risk assessments of financial vulnerability of contractors			•
	<b>Entire procurement cycle</b>			
	Code of conduct for procurement practitioners	•	•	•
	Registration of personal interests—generic reporting form	•	•	•
	Gifts and gratuities checklist	•	•	•
	Procurement management dashboard	•	•	•
	Checklist Record keeping	•	•	•
	Indicators of procurement risk	•	•	•

**Table II.2b. Index of procurement tools, according to the OECD integrity pillars**

Page	Tool	OECD integrity pillars			
		Transparency	Good management	Prevention of misconduct	Accountability & control
	Template for market study report		•	•	
	Template to solicit supplier information		•	•	
	Criteria for selecting appropriate tender methods	•	•	•	•
	Checklist to enhance integrity in non-competitive tender methods		•	•	
	Template for non-competitive tender method reporting	•	•	•	•
	Guidelines for accelerated public procurement procedures	•	•	•	•
	Checklist to design tender methods to reduce bid rigging			•	
	Guidelines for detecting bid rigging in public tenders		•	•	
	Anti-collusion tender clause		•	•	
	Certificate of independent bid determination		•	•	
	Access to contractor information clause				•
	Guidelines for supplier debriefings	•	•		•
	Model format for supplier debriefings	•	•		•
	Template for supplier questionnaire		•		•
	Online public procurement reporting	•			•
	Post-award risk assessments of financial vulnerability of contractors		•		
	Code of conduct for procurement practitioners		•	•	
	Registration of personal interests—generic reporting form			•	•
	Gifts and gratuities checklist			•	•
	Procurement management dashboard		•	•	•
	Checklist for record keeping	•	•	•	•
	Indicators of procurement risk		•	•	

## A. PRE-TENDERING PHASE

46. In the pre-tendering phase, common risks to integrity have been identified as including:
- a lack of adequate needs assessment, planning and budgeting;
  - a lack of adequate information on the market and suppliers;
  - influence of external actors, including politicians;
  - inadequate or non-objective tender requirements; and
  - inadequate or irregular choice of tender methods.
47. The procurement tools in this section aim:
- to define realistic and unbiased tender requirements, assist in the choice of tender method, facilitate planning and budgeting, and inform tender evaluation through the collection and analysis of information on the market structure, suppliers' capabilities and price trends. See **market study reporting template** and **solicitation of supplier information template**.
  - to provide clear and documented guidance to procurement practitioners on the choice of the tender methods taking into consideration the type, value and risk of goods, services and works to be procured. See **criteria for selecting the appropriate tender method; checklist to enhance integrity in non-competitive tender methods; and non-competitive tender method reporting template**.
  - to promote effective competition in public procurement and achieve better value for money through targeting bid rigging risks in the design of the tender methods. See **checklist to design tender methods to reduce bid rigging**.

## 1. TEMPLATE FOR MARKET STUDY REPORT

Procurement cycle			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of	Accountability & control
●				●	●	
● = Applicable						

### Purpose

- To define realistic and unbiased tender requirements, assist in the choice of tender method, facilitate planning and budgeting, inform tender evaluation through the collection and analysis of information on the market structure, suppliers' capabilities and price trends.
- It may also be used to assess the validity and justification of potential changes in contract clauses in the post-award phase of the procurement cycle.

### Description

48. A template for a market study report provides a means to document and file information collected and analysed by procurement practitioners during the pre-tendering phase of the procurement cycle. Standardised templates help to ensure that information can be readily shared between procuring authorities, as is recognised as a good practice in market studies, and to serve as materials in training programmes.

49. Market studies serve to collect information as input to the procurement of goods, services and works for all tender methods. Such information generally includes at a minimum: the market structure, suppliers capabilities and price trends. The information can be used by procurement practitioners as input to define procurement requirements, select the appropriate tender method, analyse and evaluate proposals/submissions from bidders/suppliers and better determine the outcome of the best solution in terms of outcomes, price and risk.

50. A market study may also be used to solicit ideas and opinions on the feasibility of particular requirements and the capability and capacity of the market to deliver. (See **solicitation of supplier information template**.) Market studies can be tailored to also collect and analyse information on possible second-order objectives (e.g. innovation, environmental and social) as input into designing tenders and validating proposals/bids.

51. The information gathered through the study may be used as input to other procurement tools, e.g. **checklist for detecting bid rigging**, to mitigate the risk of bias, fraud and corruption.

52. The advantages of a market study are:

- To increase awareness of the characteristics of the market and recent market developments or trends that may affect competition for the tender or that may make collusion more likely (e.g. small number of suppliers, standardised or simple products, little or no entry, etc.).
- To collect information on suppliers, their products, prices and cost structures. If possible, a comparison of prices offered in business-to-business procurement is recommended.



## 2. TEMPLATE TO SOLICIT SUPPLIER INFORMATION

Procurement cycle			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●				●	●	
● = Applicable						

### Purpose

- To complement market studies research with firsthand knowledge from the market suppliers. This knowledge will assist in refining tender requirements and the choice of tender method, inform tender evaluation through the collection and analysis of information on the market structure, suppliers capabilities and price trends. It may also encourage suppliers who have never participated in a request to gain knowledge on the procuring authorities needs and future plans
- To document the contacts the procuring authority has established with suppliers

### Description

54. A template to solicit supplier information is a complementary tool to conduct a market study. It serves to structure information, ideas and opinions solicited from suppliers to be used in market studies. This information can be used by procurement practitioners as input to define procurement requirements, select the appropriate tender method, analyse and evaluate proposals/submissions from bidders/suppliers and better determine the outcome of the best solution in terms of outcomes, price and risk. The template may be particularly helpful to encourage participation from suppliers that have previously not participated in public tenders, including those that do not have a readily available catalogue of their goods and services. It may also help solicit information on goods and services currently under development.

**Box IIA.2. Generic template to solicit supplier information**

- Company details (name, address, telephone number, fax number, email address)
- Area or expertise
- Information on good, service, idea or opinion
- How and to what extent this good, service, idea or opinion could contribute to achieving the unmet need and operational requirements of the public organisation?
- Details of operation, financial benefits and contributions
- Details of innovation, environmental and social benefits and contributions
- Is this solution currently commercially available, in whole or in part? If not how far away is this from the market? What would be needed to successfully commercialise this idea? (Development of supply chain, product development, pre-commercial trials etc.)
- Other supporting material or additional information

Signed: .....

Company: .....

Date: .....

Thank you for completing this survey. The results will be used to improve the service of procuring authority.

Please return by post to: ..... Or e-mail: .....

**Further resources**

Office of Government Commerce (United Kingdom), *Finding and Procuring Innovating Solutions*, [www.ogc.gov.uk/documents/Finding\\_and\\_Procuring\\_Innovative\\_Solutions\\_\(3\).pdf](http://www.ogc.gov.uk/documents/Finding_and_Procuring_Innovative_Solutions_(3).pdf).

### 3. CRITERIA FOR SELECTING APPROPRIATE TENDER METHODS

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●			●	●	●	●
● = Applicable						

#### Purpose

- To provide clear and documented guidance to procurement practitioners on the choice of the tender methods taking into consideration the type, value and risk of goods, services and works to be procured.

#### Description

55. A criteria to select the appropriate tender method provides clear guidance to procurement practitioners and enforceable rules to monitor for divergence of acceptable practices. The criteria should be consulted by procurement practitioners during the pre-tendering phase of the procurement cycle based on the results of the needs assessment and information collected using market surveys. Exceptions to competitive methods such as direct purchase or negotiated procedures are more vulnerable to bias, fraud and corruption. The use of non-competitive methods should be regulated and clearly defined within the legal framework to provide a supporting environment limiting the risks to integrity.

56. In considering the appropriate tender method, attention may go beyond the transparency and competitiveness of the process. Consideration may be given to the potential benefits and additional costs (time and money) associated with using single or multiple stage tenders, whether the tender process should focus solely on price or other dimensions, or whether other instruments like framework agreements may suit the public organisation better.

57. Accelerated public tender methods establish alternative procedures to operate during times that demand enhanced flexibility, responsiveness and accountability by public organisations. There are two types of accelerated procurement: emergency procurement and non-emergency accelerated procurement (see Box IB.2). Justification of the use of accelerated procedures is necessary regardless of the time pressures on public organisations to procure the necessary goods, services and works. (See **guidelines for accelerated procurement procedures**.)

58. The European procurement directives (Directive 2004/17/EC and 2004/18/EC) establish harmonised criteria for choosing procurement procedures. They establish a thresholds by procurement type (i.e. supplies, works or services) above which the tender must be published in the Official Journal of the European Union (OJEU). According to the directives, exceptions to competitive procedures may be permitted when a tender can only be assigned to particular supplier because of specific and justified technical requirements.

**Box IIA.3. Generic criteria for selecting the appropriate tender method**

- the value and strategic importance of the acquisition;
- the specific nature of the acquisition;
- the public's interest in the acquisition (e.g. national security); and exceptional circumstances that warrant accelerated procurement.

**Further resources**

European Commission (2004), Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 Coordinating the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Postal Services Sectors.

European Commission (2004), Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the Coordination of Procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts.

#### 4. CHECKLIST TO ENHANCE INTEGRITY IN NON-COMPETITIVE TENDER METHODS

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●				●	●	
● = Applicable						

#### Purpose

- To assist procuring authorities and procurement practitioners to increase value for money and transparency, and to mitigate risks in public procurement that may arise when using non-competitive tender methods.

#### Description

59. A checklist to enhance integrity in non-competitive tender methods can guide procurement practitioners to take due diligence to avoid bias, fraud and corruption. The checklist may also be used to guide procurement practitioners in completing the necessary record keeping associated with non-competitive tender methods (see **non-competitive tender method reporting form**). The use of non-competitive tender methods may also be supported with clear guidelines or criteria (see **criteria for selecting the appropriate procurement procedures**). Guidelines for accelerated public procurement procedures may also supplement this and clearly outline the types of situations that permit the use of non-competitive procurement procedures (see **guidelines for accelerated public procurement procedures**).

60. The generic checklist below has been structured using a question and answer format (see Box III.X). These are intended to prompt procurement practitioners to consider whether they have, for example, introduced some element of price competition (e.g. multiple quotes) or comparison of current prices against previous procurement or market analysis. The checklist also allows to assess whether risks related to the procurement and conflict of interest have been identified. An additional objective is to check whether documentation and filing of information related to the procurement transaction have been undertaken as well as verify that notification of the procurement has been made publicly available.

**Box IIA.4. Generic checklist to enhance integrity in non-competitive tender methods**

Price competition & comparability	Have multiple quotes or some form of price competition for procurement been sought?
	Have price comparisons or reconciliation been made with previous procurement?
	Where highly specified goods or services are required, have existing and proven suppliers been considered?
Risk identification	Have potential risks associated with the procurement been identified and considered (e.g. insurance, warranties, deliverables, etc.)?
	Have adequate efforts been made to identify and address potential conflict of interest?
	Is the scope and term of contracts entered into under non-competitive been limited to the minimum required to appropriately and effectively respond?
Documentation & reporting	Have conversations, communications and instructions associated with the procurement been documented and filed?
	Have contracts in excess of [specified price] been published in the relevant government gazette/online procurement portal?
	Have contracts in excess of [specified value] been noted as non-competitive procedures in the procuring authorities' reports

## 5. TEMPLATE FOR NON-COMPETITIVE TENDER METHOD REPORTING

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●			●	●	●	●
● = Applicable						

### Purpose

- To assist procurement practitioners to document, justify and file decisions that use non-competitive procurement procedures as the basis for approval by authorising officials.
- Equally, the template may be used as input into internal and external ex-post reviews, and for training purposes.

### Description

61. Establishing a template to document and file information related to non-competitive tender methods allows procurement officers to justify and document why the procuring authority has chosen a non-competitive method thereby ensuring consistency across procuring authorities and support internal and external ex-post evaluation.

62. The use of non-competitive procurement procedures may also be supported with clear guidelines or criteria (see criteria for selecting the appropriate procurement procedures), checklist to enhance integrity in the use of non-competitive procurement procedures, or guidelines for accelerated public procurement procedures.

**Box IIA.5. Template for non-competitive tender method report**

Contract authority: .....

Date: .....

Good / service / works being procured: .....

Total value (including taxes): .....

Supplier contact details: .....

Describe why adherence to competitive tender methods will hinder your ability to effectively and appropriately respond to the immediate need:.....

Outline, or attach a summary of, the tender procedures followed:  
.....

Describe, or attach a description of, the procurement protocols have been considered and/or addressed:  
.....

Authorising officials (if necessary): .....

## 6. GUIDELINES FOR ACCELERATED PUBLIC PROCUREMENT PROCEDURES

Procurement cycle phase			OECD procurement pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●	●		●	●	●	●
● = Applicable						

### Purpose

- To alert civil society to the procedures that can be followed by public organisations during emergencies and other situations of urgency.
- To record and consolidate knowledge collection and to serve as a base for an internal *ex post* review of the use of accelerated procurement procedures.
- To provide a basis for auditors to assess the actions of public sector organisations in the use of accelerated procurement procedures.

### Description

63. Governments may consider publishing guidelines for accelerated public procurement procedures to provide a single reference for contracting authorities and procurement practitioners covering the entire procurement cycle. There is growing awareness that accelerated public procurements procedures raise the risk of waste, fraud and corruption. These may result from human error, lack of co-ordination and the sheer amount of funds that are transferred in a short period of time. Accelerated public procurement procedures establish alternative processes to operate during times that demand enhanced flexibility, responsiveness and accountability by government operations. Within this category there are two types of accelerated procurement: emergency procurement and non-emergency accelerated procurement.

64. Accelerated procurement procedures establish alternative procedures to operate during times that demand enhanced flexibility, responsiveness and accountability by public organisations. Within this category there are two types of accelerated procurement: emergency procurement and non-emergency accelerated procurement. Emergency procurement is used in contexts where life, property or equipment is immediately at risk or standards of public health, welfare or safety need to be re-established without delay. Examples include government's responses to natural disasters (e.g. earthquakes, floods and typhoons) and epidemics risks. Non-emergency accelerated procurement procedures are used in contexts where unforeseen circumstances arise and require an urgent response by public organisations. In comparison to emergency procedures, non-emergency accelerated procurement should only be used as an exception and not the norm.

65. The United States, for example, has issued Emergency Acquisitions guidelines to help procuring authorities and procurement professionals prepare and respond to unforeseen situations. The document is developed jointly by the Office of Federal Procurement Policy and the Chief Acquisition Officers

Council's working group on emergency contracting. The most recent guide was released in 2007 and includes a number of management and operational best practices that contracting authorities developed in response to Hurricane Katrina and other emergency situations.

**Box IIA.6. Generic content of guidelines for accelerated procurement procedures**

Guidelines for accelerated public procurement procedures may include:

- Strategies for effective response planning and a list of acquisition reminders when contracting during emergencies;
- Operational definition of situations where accelerated procedures may be used;
- Limitations on the types of contracting authorities that can use accelerated procedures;
- Checklists/protocols for using non-competitive procedures (for example see "checklist for non-competitive emergency bidding procedures");
- Permitted shortened procurement timetables for competitive procedures and increased thresholds for uncompetitive procedures;
- Acceptable adjustments to internal procedures, e.g. contract review procedures, documentation and reporting;
- Time limits on the use of accelerated procurement procedures beyond which it is considered reasonable to publish a contract notice and award a service contract in accordance with normal procedures, invoking urgency as a grounds for use of shorter deadlines; and
- A framework for procurement practitioners to evaluate past use of accelerated procedures for the purpose of identifying training needs.

**Further resources**

European Commission (1992), Public Procurement in the European Union Guide to the Community Rules on Public Procurement of Services other than in the Water, Energy, Transport and Telecommunications Sectors, Directive 92/50/EEC, European Commission, Brussels, [http://ec.europa.eu/internal\\_market/publicprocurement/docs/guidelines/services\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/guidelines/services_en.pdf).

European Commission (1993), Public Procurement in the European Union Guide to the Community Rules on Public Supply Contracts other than in the Water, Energy, Transport and Telecommunications Sectors, Directive 93/36/EEC, European Commission, Brussels, [http://ec.europa.eu/internal\\_market/publicprocurement/docs/guidelines/supply\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/guidelines/supply_en.pdf).

European Commission (1993), Public Procurement in the European Union Guide to the Community Rules on Public Works Contracts other than in the Water, Energy, Transport and Telecommunications Sectors, Directive 93/37/EEC, European Commission, Brussels, [http://ec.europa.eu/internal\\_market/publicprocurement/docs/guidelines/works\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/guidelines/works_en.pdf).

Office of Federal Procurement Policy (2007), *Emergency Acquisition*, [www.whitehouse.gov/omb/assets/procurement\\_guides/emergency\\_acquisitions\\_guide.pdf](http://www.whitehouse.gov/omb/assets/procurement_guides/emergency_acquisitions_guide.pdf).

## 7. CHECKLIST TO DESIGN TENDER METHODS TO REDUCE BID RIGGING

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●					●	
● = Applicable						

### Purpose

- To promote effective competition in public procurement and to achieve better value for money through targeting bid rigging risks in the design of the tender methods.

### Description

66. Policy makers may use the checklist to design policies, practices and guidelines to minimise collusion and fight against anti-competitive behaviour in the procurement process. The legislated rules that govern public procurement, the way in which a tender is designed can act to hinder competition and help sustain bid rigging practices. It is critical that procurement regulations do not unwittingly facilitate collusive arrangements.

67. Bid rigging occurs when suppliers/bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. Suppliers/bidders can eliminate competition in public procurement through many simple ways, for example:

- Cover bidding: A competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.
- Bid suppression or withdrawal: A competitor agrees not to bid or to withdraw a bid from consideration.
- Market sharing: A competitor agrees to submit bids only in certain geographic areas or only to certain public organisations.
- Bid rotation: Competitors agree to take turns at winning business while monitoring their market shares to ensure they all have a predetermined slice of the pie.
- Non-conforming bids: Competitors deliberately include terms and conditions they know will not be acceptable to the procuring authority.

68. Although the schemes used to rig bids vary, they all a common point: the suppliers/bidders agree to eliminate competition so that prices are higher and public organisations pay more.

69. The presence of certain factors increases the need for vigilance against bid rigging, including:

- Small number of suppliers/bidders. The probability of bid rigging is higher if there are few suppliers/bidders. Bid rigging requires suppliers/bidders to reach an agreement that eliminates competition. It is also easier to reach an agreement if the same suppliers/bidders are involved in repeated procurements.

- Standardised or simple products. The chances of bid rigging are greater if the products, services or works being purchased are standardised, simple and do not change over time. Under these circumstances it is easier to work out an agreement and have it last.
- Little or no entry. If entry in a certain market is costly, hard or time consuming, suppliers/bidders are protected from the competitive pressure of potential new entrants. The protective barrier helps support bid-rigging efforts.

70. Professional training is important to strengthen procurement practitioners' awareness of competition issues in public procurement. Efforts to fight bid rigging more effectively can be supported by collecting historical information on bidding behaviour, by constantly monitoring bidding activities, and by performing analyses on tender data. This helps procurement (and competition) authorities to identify problematic situations. It should be noted that bid rigging may not be evident from the results of a single tender. Often a collusive scheme is only revealed when one examines the results from a number of tenders over a period of time.

#### **Box IIA.7. Checklist to design the tender methods to reduce bid rigging**

##### **Be informed before designing the tender process**

Collecting information on the range of products and/or services available in the market that would suit the requirements of the purchaser as well as information on the suppliers/bidders of these products is the best way for procurement practitioners to design the procurement process to achieve the best "value for money". Develop in-house expertise as early as possible.

##### **Design the tender process to maximise the potential participation of genuinely competing suppliers/bidders**

Effective competition can be enhanced if a sufficient number of credible suppliers/bidders are able to respond to the invitation to tender and have an incentive to compete for the contract. For example, participation in the tender can be facilitated if procurement practitioners reduce the costs of bidding, establish participation requirements that do not unreasonably limit competition, allow firms from other regions or countries to participate, or devise ways of incentivising smaller firms to participate even if they cannot bid for the entire contract.

##### **Define the requirements clearly and avoid predictability**

Drafting the requirements is a stage of the procurement cycle which is vulnerable to bias, fraud and corruption. Requirement should be designed in a way to avoid bias and should be clear and comprehensive but not discriminatory. They should, as a general rule, focus on functional performance, namely on what is to be achieved rather than how it is to be done. This will encourage innovative solutions and value for money. How tender requirements are written affects the number and type of suppliers/bidders that are attracted to the tender and, therefore, affects the success of the selection process. The clearer the requirements, the easier it will be for suppliers/bidders to understand them, and the more confidence they will have when preparing and submitting bids. Clarity should not be confused with predictability. More predictable procurement schedules and unchanging quantities sold or bought can facilitate collusion. On the other hand, higher value and less frequent procurement opportunities increase the suppliers/bidders' incentives to compete.

##### **Design the tender process to effectively reduce communication among suppliers/bidders**

When designing the tender process, procurement practitioners should be aware of the various factors that can facilitate collusion. The efficiency of the procurement process will depend upon the bidding model adopted but also on how the tender is designed and carried out. Transparency requirements are indispensable for a sound procurement procedure to aid in the fight against corruption. They should be complied with in a balanced manner, in order not to facilitate collusion by disseminating information beyond legal requirements. Unfortunately, there is no single rule about the design of an auction or procurement tender. Tenders need to be designed to fit the situation.

##### **Carefully choose your criteria for evaluating and awarding tender**

All selection criteria affect the intensity and effectiveness of competition in the tender process. The decision on what selection criteria to use is not only important for the current project, but also for maintaining a pool of potential credible suppliers/bidders with a continuing interest in bidding on future projects. It is therefore important to ensure that qualitative selection and awarding criteria are chosen in such a way that credible suppliers/bidders, including small and medium enterprises, are not deterred unnecessarily.

**Further resources**

OECD (2009), Guidelines for Fighting Bid Rigging, [www.oecd.org/competition/bidrigging](http://www.oecd.org/competition/bidrigging) (available in 15 languages).

OECD (n.d.), Cartels and Bid Rigging, [www.oecd.org/competition/cartels](http://www.oecd.org/competition/cartels).

Norwegian Competition Authority (*Konkurransetilsynet*) (n.d.), Checklist: Avoid Tender Cooperation in Public Procurement (*Sjekkliste: Unngå anbudssamarbeid ved offentlige anskaffelser*), [www.konkurransetilsynet.no/ImageVault/Images/id\\_1802/ImageVaultHandler.aspx](http://www.konkurransetilsynet.no/ImageVault/Images/id_1802/ImageVaultHandler.aspx).

## B. TENDERING PHASE

71. In the tendering phase, common risks to integrity include:
- inconsistent access to information in the invitation to tender;
  - lack of competition or, in some cases, big-rigging or collusion;
  - bias and corruption in the selection, evaluation and contract award; and
  - lack of access to records on the procedure in the award.
72. The procurement tools in this section aim:
- to assist procurement practitioners to detect suspect bid rigging in a timely manner, communicate to suppliers that bid rigging is an unacceptable practice in public procurement and support competition authorities to investigate suspected cases of bid rigging. See **guidelines for detecting bid rigging in public tenders**, **anti-collusion tender clause** and **certificate of independent bid determination**.
  - to give procuring and audit authorities access to information held by contractors for the purpose of audits in exceptional circumstances. See **access to contract information clause**.
  - to assist procurement practitioners to handle complaints from suppliers/bidders in a fair and timely manner, improve suppliers' understanding of the procurement process and open feedback on their bids/proposals and identify areas for improvement while encouraging their participation in future tenders. See **guidelines for supplier debriefings**, **model formal for supplier debriefings** and **template for supplier questionnaire**.

## 8. GUIDELINES FOR DETECTING BID RIGGING IN PUBLIC TENDERS

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
	●			●	●	
● = Applicable						

### Purpose

- To assist procurement practitioners detect suspect bid rigging in a timely manner.
- To communicate to suppliers that bid rigging is an unacceptable practice in public procurement.
- To support competition authorities to investigate suspected cases of bid rigging.

### Description

73. Bid rigging occurs when suppliers/bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. Suppliers/bidders can eliminate competition in public procurement in many simple ways, for example:

- Cover bidding: a competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.
- Bid suppression or withdrawal: a competitor agrees not to bid or to withdraw a bid from consideration.
- Market sharing: a competitor agrees to submit bids only in certain geographic areas or only to certain public organisations.
- Bid rotation: competitors agree to take turns at winning business while monitoring their market shares to ensure they all have a predetermined slice of the pie.
- Non-conforming bids: competitors deliberately include terms and conditions they know will not be acceptable to the procuring authority.

74. Although the schemes used by firms to rig bids vary, they all have one thing in common: the suppliers/bidders agree to eliminate competition so that prices are higher and public organisations pay more.

75. Procurement practitioners should look for evidence of anti-competitive bid rigging agreements throughout the tender process. The checklist provides detailed information to help procurement

practitioners identify anti-competitive practices during the bidding process. Designed to be used by specialists and non-specialists alike, the checklist highlights seven areas for active vigilance.

### **Box IIB.1. Generic guidelines for detecting bid rigging in public tenders**

#### **Look for markets that are more susceptible to bid rigging**

The presence of certain factors increases the need for vigilance against bid rigging, including:

- Small number of suppliers/bidders. The probability of bid rigging is higher if there are few suppliers/bidders. Bid rigging requires suppliers/bidders to reach an agreement that eliminates competition. It is also easier to reach an agreement if the same suppliers/bidders are involved in repeated procurements.
- Standardised or simple products. The chances of bid rigging are greater if the products or services being purchased are standardized and simple, and do not change over time. Under these circumstances, it is easier to work out an agreement and have it last a long time.
- Little or no entry. If entry in a certain bidding market is costly, hard or time consuming, firms in that market are protected from the competitive pressure of potential new entrants. The protective barrier helps support bid-rigging efforts.

#### **Look for opportunities that the suppliers/bidders have to communicate with each other**

Suppliers/bidders need to know and communicate with each other to reach an agreement. Once suppliers/bidders know each other well enough to discuss bid rigging, they need a convenient location where they can talk. Of course, communications can occur by telephone, email, fax or letter, and they often do; however, many bid-riggers believe that they are less likely to leave evidence of their communications if they have face-to-face meetings. These meetings occur most often at, or in association with, trade association meetings, or other professional or social events. They are also likely to occur prior to the opening of the tender process.

#### **Look for indications that the suppliers/bidders have communicated with each other**

Bid rigging requires actual and often repeated communications between the suppliers/bidders. Procurement practitioners may hear or come across statements indicating that information may have been shared, such as a supplier/bidder having knowledge of another supplier/bidder's pricing, or not expecting to be the low supplier/bidder, or perhaps when a bidder refers to "industry" or "standard" practices or prices. Sometimes procuring authorities can infer that suppliers/bidders are communicating. For example, if one supplier/bidder picks up or submits bidding material for another firm, then some communication must have taken place between them. In other instances, a supplier/bidder may say something that indicates that certain non-public information, or an answer to a question, was learned through talking to another supplier/bidder.

#### **Look for any relationships among the bidders after the successful bid is announced**

In some cases, bidders may attempt to split the extra profit that is earned through bid rigging. This is especially true if one large contract is involved. Sometimes the winning firm may pay the other bidders directly; however, the 'profit split' can also be passed on through lucrative sub-contracts to do some of the work or to supply inputs to the project. Joint bids can also be used as a way to split profits.

#### **Look for suspicious bidding patterns**

Suppliers/bidders may have devised a scheme that reveals itself as a pattern over the course of many bids. For example, there may be a pattern to the winner (A, B, C, A, B, C), or it may be that the same supplier/bidder always wins bids of a certain type or size, or that some suppliers/bidders only bid in particular geographic areas. Perhaps a supplier/bidder never wins but keeps bidding; or a supplier/bidder wins whenever it bids, even if it bids rarely. A supplier/bidder may show a pattern of submitting relatively high bids for some tender offers and relatively low bids for other, similar tender offers. Pricing may be unusual. All bids may be unexpectedly high, or discounts or rebates may be unexpectedly small. Bids may also be different from previous, similar procurements, but the differences are unrelated to any change in the underlying economic conditions. Bid levels may change when a new supplier/bidder (i.e. one who has not bid in the past) submits a bid. Pricing may not make sense when you consider transportation costs to different locations.

**Look for unusual behaviour**

You would expect the winning supplier/bidder to accept the contract, so it could be considered 'unusual', for example, if the winner chose not to accept it, or withdrew before the award was made. Submitting a bid without normal detail or required documentation, or without the necessary information from suppliers/bidders, may also constitute unusual behaviour, as does a situation where the number of suppliers/bidders is unexpectedly small, with some normal suppliers/bidders not participating.

**Look for similarities in the documents submitted by different suppliers/bidders**

Bid-riggers sometimes have a single person prepare all the bids. Alternatively, a number of people may work on the bids, but they may work closely with each other. If you put the bid documents side-by-side, you may notice the same type of paper, the same postmarks, the same misspellings, the same handwriting, the same wording, the same alterations or changes, the same miscalculations or the same amounts. Eventually, most bid-riggers become careless and make mistakes.

**What to do if bid rigging is detected?**

Finding signs of possible bid rigging does not necessarily mean that bid rigging is occurring; it simply shows that there may be a problem. In this instance, the best thing for procurement practitioners to do is to contact the public authority responsible for competition enforcement and request it to investigate the signs detected. Procurement practitioners should also review the bidding process and the bids carefully, looking for any additional signs of possible bid rigging. Importantly, they should not tell any of the suppliers/bidders about their concerns, as this may result in the destruction of evidence. All detailed notes, records and documents should be kept safe.

**Further resources**

Australian Competition and Consumer Commission (2009), *Cartels, Deterrence and Detection, A Guide for Government Procurement Officers*, Commonwealth of Australia, [www.accc.gov.au/content/item.phtml?itemId=869010&nodeId=9384dc992a38fe36816e9e0f0dc8e555&fn=Cartels:%20deterrence%20and%20detection%20guide.pdf](http://www.accc.gov.au/content/item.phtml?itemId=869010&nodeId=9384dc992a38fe36816e9e0f0dc8e555&fn=Cartels:%20deterrence%20and%20detection%20guide.pdf)

OECD (n.d.), "Guidelines for Fighting Bid Rigging," [www.oecd.org/competition/bidrigging](http://www.oecd.org/competition/bidrigging) (available in 15 languages).

OECD (n.d.), "Cartels and Bid Rigging," [www.oecd.org/competition/cartels](http://www.oecd.org/competition/cartels).

United States Department of Justice (n.d.), "Price Fixing, Bid Rigging and Market Allocation Schemes: What they are and what to look for: An Antitrust Primer," [www.usdoj.gov/atr/public/guidelines/211578.pdf](http://www.usdoj.gov/atr/public/guidelines/211578.pdf)

## 9. ANTI-COLLUSION TENDER CLAUSE

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
	•			•	•	
• = Applicable						

### Purpose

- To assist procurement practitioners detect suspect bid rigging in a timely manner.
- To communicate to suppliers that bid rigging is an unacceptable practice in public procurement.
- To support competition authorities to investigate suspected cases of bid rigging.

### Description

76. Bid rigging occurs when suppliers/bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. Suppliers/bidders can eliminate competition in public procurement in many simple ways, for example:

- Cover bidding: a competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.
- Bid suppression or withdrawal: a competitor agrees not to bid or to withdraw a bid from consideration.
- Market sharing: a competitor agrees to submit bids only in certain geographic areas or only to certain public organisations.
- Bid rotation: competitors agree to take turns at winning business while monitoring their market shares to ensure they all have a predetermined slice of the pie.
- Non-conforming bids: competitors deliberately include terms and conditions they know will not be acceptable to the procuring authority.

77. Although the schemes used by firms to rig bids vary, they all have one thing in common: the suppliers/bidders agree to eliminate competition so that prices are higher and public organisations pay more.

78. An anti-collusion tender clause may be included in the tender documents to warn suppliers/bidders that procuring authorities are aware of the risks of bid rigging and will take the necessary actions to prevent such behaviour. It complements **guidelines on detecting bid rigging in public tenders**

by soliciting a guarantee from suppliers/bidders when submitting a bid that they have not engaged in bid rigging practices.

79. The clause should include:

- an explicit right of the procuring authority to report all suspected instances of bid rigging and share otherwise confidential tender information with the relevant competition authority;
- an explicit right of the procuring authority to receive information and approve any subcontractors; and
- an implicit guarantee that a bid has been developed independently and that no consultation, communication, contract, arrangement or understanding has been made between the supplier/bidder and any competitor.

80. The clause may also include the obligation of the supplier/bidder to report if they, or any organisation or person associated with their tender, including directors and senior managers, have ever been subject to proceedings related to anti-competitive conduct domestically or overseas. This information should not, however, be used to automatically exclude any supplier/bidder from the tender process. Instead, it can be used to raise a “red flag” that may be taken into consideration in the evaluation.

#### **Box IIB.2. Anti-collusion tender clause**

##### **1. Facilitating reporting to the relevant competition authority**

The procuring authority reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by bidders to the appropriate regulatory authority and to provide that authority with any relevant bidder information.

##### **2. Disclosure of subcontracting**

Suppliers/bidders must indicate if they intend any person (or organisation) who is not an employee to perform work on the services, and they must provide their details. The contract with the successful bidders will require the procuring authority's prior written approval for any changes to these arrangements, and any further subcontracting.

##### **3. Warranty**

The supplier/bidder warrants that their tender has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor, other than:

- a. where certain joint venture arrangements exist between the bidder and a competitor;
- b. where the bidder and a competitor have an agreement that has been authorised by the relevant competition authority; and
- c. where the supplier/bidder has communicated with a competitor for the purpose of subcontracting a portion of the tender, and where the communication with that competitor is limited to the information required to facilitate that particular subcontract.

In such a situation the bidder agrees to fully disclose the full nature and extent of any agreements with competitors to the tendering body. In the event that no such disclosure is made, the bidder warrants that their bid has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor regarding:

- a. prices;
- b. methods, factors or formulas used to calculate prices;
- c. the intention or decision to submit, or not submit, a bid;
- d. the submission of a bid that is non conforming;
- e. the quality, quantity, specifications or delivery particulars of the products or services to which this call for bids

relates; and

- f. the terms of the bid.

The supplier/bidder acknowledges that if the procuring authority accepts the supplier/bidder's offer and completes any contract the procuring authority will do so in reliance of this warranty.

#### **4. Disclosure of prior anti-competitive conduct**

Suppliers/bidders must indicate if they, or any corporation or person associated with their tender, including directors and senior management, are or have ever been subject to proceedings related to anti-competitive conduct domestically or overseas. The information must include:

- a. the names of the parties to the proceedings;
- b. the case number;
- c. the general nature of the proceedings; and
- d. the outcome or current status of the proceedings.

The procuring authority reserves the right, at its discretion, to exclude any supplier/bidder from the procurement process if the supplier/bidder, or any organisation or person, including directors or senior managers associated with their tender, have ever contravened the anti-competitive provisions of [the relevant competition laws] or equivalent laws overseas.

The procuring authority reserves the right, at its discretion, to exclude any supplier/bidder from the procurement process if full disclosure of any or all contraventions of the anti-competitive provisions of the [the relevant competition laws] equivalent laws overseas has not been made.

*Source:* Adapted from Australian Competition and Consumer Commission (2009), Cartels, Deterrence and Detection, A Guide for Government Procurement Officers, Commonwealth of Australia, [www.accc.gov.au/content/item?itemId=869010&nodeId=9384dc992a38fe36816e9e0f0dc8e555&fn=Cartels:%20deterrence%20and%20detection%20guide.pdf](http://www.accc.gov.au/content/item?itemId=869010&nodeId=9384dc992a38fe36816e9e0f0dc8e555&fn=Cartels:%20deterrence%20and%20detection%20guide.pdf).

#### **Further resources**

OECD (n.d.), "Guidelines for Fighting Bid Rigging," [www.oecd.org/competition/bidrigging](http://www.oecd.org/competition/bidrigging) (available in 15 languages).

OECD (n.d.), "Cartels and Bid Rigging," [www.oecd.org/competition/cartels](http://www.oecd.org/competition/cartels).

## 10. CERTIFICATE OF INDEPENDENT BID DETERMINATION

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
	•			•	•	
• = Applicable						

### Purpose

- To assist procurement practitioners detect suspect bid rigging in a timely manner.
- To communicate to suppliers that bid rigging is an unacceptable practice in public procurement.
- To support competition authorities to investigate suspected cases of bid rigging.

### Description

81. Bid rigging occurs when suppliers/bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. Suppliers/bidders can eliminate competition in public procurement in many simple ways, for example:

- Cover bidding: a competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.
- Bid suppression or withdrawal: a competitor agrees not to bid or to withdraw a bid from consideration.
- Market sharing: a competitor agrees to submit bids only in certain geographic areas or only to certain public organisations.
- Bid rotation: competitors agree to take turns at winning business while monitoring their market shares to ensure they all have a predetermined slice of the pie.
- Non-conforming bids: competitors deliberately include terms and conditions they know will not be acceptable to the procuring authority.

82. Although the schemes used by firms to rig bids vary, they all have one thing in common: the suppliers/bidders agree to eliminate competition so that prices are higher and public organisations pay more.

83. A certificate of independent bid determination requires suppliers/bidders to sign a written confirmation that their bid has been developed independently from their competitors and that no consultation, communication, contract, arrangement or understanding with any competitor has occurred. The certificate aims to deter bid-rigging by requiring suppliers/bidders to disclose to the procuring authority all material facts about any communications and arrangements which bidders have entered into with competitors regarding a tender.

### Box IIB.3. Certificate of independent bid determination

I, the undersigned, in submitting the accompanying bid to (*Name of procuring authority*) for:

(*Name and number of bid*) in response to the call or request (hereinafter “call”) for bids made by: (*Name of supplier/bidder*) do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: (*Name of supplier/bidder*) that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorised by the supplier/bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the supplier/bidder;
4. each person whose signature appears on the accompanying bid has been authorised by the supplier/bidder to determine the terms of, and to sign, the bid, on behalf of the supplier/bidder;
5. for the purposes of this Certificate and the accompanying bid, I understand that the word “competitor” shall include any individual or organisation, other than the supplier/bidder, whether or not affiliated with the supplier/bidder, who:
  - a. has been requested to submit a bid in response to this call for bids;
  - b. could potentially submit a bid in response to this call for bids, based on their qualifications, abilities or experience;
6. the supplier/bidder discloses that (check one of the following, as applicable):
  - a. the supplier/bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b. the supplier/bidder has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this call for bids, and the supplier/bidder discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
7. in particular, without limiting the generality of paragraphs (6)(a) or (6)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a. prices;
  - b. methods, factors or formulas used to calculate prices;
  - c. the intention or decision to submit, or not to submit, a bid; or
  - d. the submission of a bid which does not meet the specifications of the call for bids; except as specifically disclosed pursuant to paragraph (6)(b) above;
8. in addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the products or services to which this call for bids relates, except as specifically authorised by the procuring authority or as specifically disclosed pursuant to paragraph (6)(b) above;
9. the terms of the accompanying bid have not been, and will not be, knowingly disclosed by the supplier/bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening, or of the awarding of the contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (6)(b) above.

Name, title and dated signature of authorised agent of supplier/bidder

Source: Industry Canada (n.d.), Certificate of Independent Bid Determination, [http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/certificate\\_bid\\_e.pdf/\\$file/certificate\\_bid\\_e.pdf](http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/certificate_bid_e.pdf/$file/certificate_bid_e.pdf).

### Further resources

OECD (n.d.), “Guidelines for Fighting Bid Rigging,” [www.oecd.org/competition/bidrigging](http://www.oecd.org/competition/bidrigging) (available in 15 languages).

OECD (n.d.), “Cartels and Bid Rigging,” [www.oecd.org/competition/cartels](http://www.oecd.org/competition/cartels).

## 11. ACCESS TO CONTRACTOR INFORMATION CONTRACT CLAUSE

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
	●					●
● = Applicable						

### Purpose

- To give procuring and audit authorities access to information held by contractors for the purpose of audits in exceptional circumstances.

### Description

84. An access to contractor information contract clause provides contracting and audit authorities' additional scope for their respective accountability and control functions that can be used in exceptional circumstances. This can be used to mitigate risks of waste, fraud and corruption associated with accelerated procurement procedures. These risks may stem from increased discretion provided to procurement practitioners in identifying needs; less competition because of pressures to execute procurement quickly reduced *ex ante* controls to enable fast-track delivery of supplies, services and works.

85. An access to contractor information contract should include:

- the type of records and necessary reporting standards to be maintained by the contractor and subcontractors related to a specific procurement contract;
- the duration for which a contractor and subcontractors must keep the records related to a specific procurement contract;
- the procuring and contract authorities' rights to access contractor and subcontractor records related to a specific procurement contract;
- the contractor's obligations and rights to have their records related to a specific procurement contract accessed; and
- the responsibility for the cost for maintaining the records and audits.

86. It does not reduce the procuring or contract authority's responsibilities. It is considered as complementary to other standard contractual clauses and it does not override a contract authority's responsibility to manage a contract in accordance with all contract provisions.

**Box IIB.4. Access to contractor information contract clause**

**1. Contractor records**

**1.1 Types of records that must be kept by the contractor**

(a) keep and must require its subcontractors to keep adequate records, in accordance with [appropriate accounting standards], in sufficient detail to enable the amounts payable by the contract authority under this contract to be determined; and

(b) retain and require its subcontractors to retain for a [specified time period] after termination or expiration of this contract all records relating to the goods, services or works provided.

**1.2 Costs of contractor's record keeping**

The Contractor must bear its own costs of complying with this clause.

**1.3 Maintenance of contractor's records**

This clause applies for the contract period and for a [specified time period] from the termination or expiry of this contract.

**2. Contract authority's access to records**

**2.1 Right to conduct audits**

The contract authority or a representative may conduct audits relevant to the performance of the contractor's obligations under this contract. Audits may be conducted of:

(a) the contractor's operational practices and procedures as they relate to this contract, including security procedures;

(b) the accuracy of the contractor's invoices and reports in relation to the provision of the goods, services or works under this contract;

(c) the contractor's compliance with its confidentiality, privacy obligations and security obligations under this contract;

(d) material (including records) in the possession of the contractor relevant to the goods, services or works under this contract; and

(e) any other matters determined by the contract authority to be relevant to the goods, services or works under this contract.

**2.2 Access by the contract authority**

The contract authority may, at reasonable times and on giving reasonable notice to the contractor:

(a) access the premises of the contractor to the extent relevant to the performance of this contract;

(b) require the provision by the contractor, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the contract authority by use of the public organisation's existing computer hardware and software;

(c) inspect and copy documentation, books and records, however stored, in the custody or under control of the contractor, its employees, agents or subcontractors; and

(d) require assistance in respect of any inquiry into or concerning the goods, services or works or this contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the public organisation), any request for information directed to the contract authority, and any inquiry conducted by legislature.

The contract authority must provide access to the contractor's computer hardware and software to the extent necessary for the contract authority to exercise its rights under this clause, and provide the contract authority with any reasonable assistance requested by the contract authority to use that hardware and software.

**2.3 Conduct of audit and access**

The contract authority must use reasonable endeavours to ensure that:

(a) audits performed pursuant to clause 2.1; and

(b) the exercise of the general rights granted by clause 2.2 by the contract authority,

do not unreasonably delay or disrupt in any material respect the contractor's performance of its obligations under the contract.

#### **2.4 Costs**

(a) Except as set out in clause 2.4(b), each party must bear its own costs of any reviews and/or audits.

(b) If the contractor is able to substantiate that it has incurred direct expenses in the contract authority's exercise of the rights granted under clause 2.1 or clause 2.2 which, having regard to the value of this contract, are substantial, the contract authority and the contractor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

#### **2.5 Supreme audit institution**

The rights of the contract authority under clause 2.2(a) to 2.2(c) apply equally to the supreme audit institution for the purpose of performing supreme audit institution's statutory functions or powers.

#### **2.6 Contractor to comply with supreme audit institution's requirements**

The contractor must do all things necessary to comply with the supreme audit institution's notified under clause 2.3, provided such requirements are legally enforceable and within the power of the supreme audit institution.

#### **2.7 No reduction in responsibility**

The requirement for, and participation in, audits does not in any way reduce the contractor's responsibility to perform its obligations in accordance with the contract.

#### **2.8 Subcontractor requirements**

The contractor must ensure that any subcontract entered into for the purpose of this contract contains an equivalent clause granting the rights specified in this clause.

#### **2.9 No restriction**

Nothing in this contract reduces limits or restricts in any way any function, power, right or entitlement of the supreme audit institution. The rights of the contract authority under this contract are in addition to any other power, right or entitlement of the supreme audit institution.

#### **2.10 Duration of this clause**

This clause applies for the contract period and for a [specified time period] from the termination or expiry of this contract.

Source: Adapted from Department of Finance and Deregulation, Australia (2007), "Standard Contract Clauses to Provide ANAO Access to Contractors' Information," [www.finance.gov.au/publications/anao-access-to-contractor-information/docs/ANAO\\_Access\\_Clauses\\_With\\_Header.12.12.07.pdf](http://www.finance.gov.au/publications/anao-access-to-contractor-information/docs/ANAO_Access_Clauses_With_Header.12.12.07.pdf), accessed 20 August, 2009.

### **Further resources**

Department of Finance and Deregulation (Australia) (2007), "Standard Contract Clauses to Provide ANAO Access to Contractors' Information," [www.finance.gov.au/publications/anao-access-to-contractor-information/docs/ANAO\\_Access\\_Clauses\\_With\\_Header.12.12.07.pdf](http://www.finance.gov.au/publications/anao-access-to-contractor-information/docs/ANAO_Access_Clauses_With_Header.12.12.07.pdf).

OECD (n.d.), "Guidelines for Fighting Bid Rigging," [www.oecd.org/competition/bidrigging](http://www.oecd.org/competition/bidrigging) (available in 15 languages).

OECD (n.d.), "Cartels and Bid Rigging," [www.oecd.org/competition/cartels](http://www.oecd.org/competition/cartels).

## 12. GUIDELINES FOR SUPPLIER DEBRIEFINGS

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
	●		●	●		●
● = Applicable						

### Purpose

- To assist procurement practitioners handle complaints from suppliers/bidders in a fair and timely manner.
- To improve suppliers' understanding of the procurement process and open feedback on their bids/proposals and identify areas for improvement while encouraging their participation in future tenders.

### Description

87. Supplier debriefings promote a constructive and transparent dialogue between procuring authorities and suppliers. For suppliers, a debriefing provides:

- a better understanding of the procurement process, evaluation methodology and due diligence taken by procurement practitioners during the tendering phase of the procurement cycle; and
- an opportunity to receive open feedback on bids/proposals in order to identify areas for improvement while encouraging their participation in future tenders.

88. A debriefing can also be made available to successful suppliers (*i.e.* contractors) as a first step in establishing a sound working relationship and a precedent for a constructive feedback.

89. The benefits of a supplier debriefing are not, however, confined to suppliers alone. The procuring authority can also benefit in a number of ways: As mentioned above, debriefings provide an opportunity for procurement practitioners to demonstrate the procedures, evaluation methodology and due diligence taken during the tendering phase. It may also identify ways of improving the procurement process and encourage better bids from suppliers in the future.

90. Guidelines for supplier debriefing provide clear direction to procurement practitioners on when, where and how to conduct debriefings — as well as what can and cannot be disclosed in the process. It serves to avoid different interpretations and application of the debriefing process. Although a procuring authority may have no legal obligation to provide a debriefing, attention should be given to the value and complicity of the public procurement and the possible benefits that debriefing may produce. Guidelines may be used as input into specialised training on supplier debriefing and specialised communications for procurement practitioners. It can also serve as a basis to review practices and ensure a continuous improvement in the process.

**Box IIB.5. Generic content of guidelines for supplier debriefings**

**The necessity of debriefings**

- What types of tenders should debriefings be offered or granted?
- Who should be offered or granted a debriefing?
- Should debriefings be offered to suppliers/bidders that are not invited to submit a tender or suppliers/bidders that withdraw from the tender process?

**Timing and location of debriefings**

- How long after the selection of the supplier or bid award should a debriefing be held?
- How long should be allocated to receive requests for debriefings?
- When can debriefings be held off the premises of the procuring authority?
- How are debriefings to be conducted for suppliers located in a distant location?

**How to approach debriefings**

- How communications between the procuring authority and suppliers be managed in preparing debriefings?
- How can debriefings be tailored for written, verbal and face-to-face debriefings?
- What types of information can be prepared ahead of debriefings to ensure that appropriate information is available and so as not to disclose any confidential information?
- How can debriefings be tailored to different suppliers needs (e.g. small and medium enterprises)?

**Attendance at debriefings**

- Who may and may not attend debriefings from the procuring authority?
- When is the attendance of more senior or specialised procurement practitioners warranted?

**Information that may be — and may not be — divulged in debriefings**

- As a general rule, information about proposals/bids, where information is commercially sensitive or has been provided in confidence must not be divulged during a debriefing session
- Under what circumstances can information of other suppliers' prices be revealed?
- What types of questions should not be answered?

**Expected conduct of suppliers do during debriefings**

- As a general rule, suppliers/bidders are generally not allowed to take notes or record the debriefing sessions.

**Link between debriefings and other practices**

- What information should be recorded after a debriefing by a procurement practitioner?
- How can information from debriefings be used to update/amend the guidelines, market studies, etc.?

**Further resources**

Office of Government Commerce (United Kingdom) (2003), *Supplier Management, Supplier Debriefing*, OGC Publications, London, [www.ogc.gov.uk/documents/Supplier\\_Debriefing.pdf](http://www.ogc.gov.uk/documents/Supplier_Debriefing.pdf).

Office of the Procurement Ombudsman (Canada) (2009), “Chapter 2: Supplier Debriefings” in *Procurement Practices Review*, <http://opo-boa.gc.ca/prapp-prorev/chptr-2-eng.html><http://www.contractscanada.gc.ca/en/debrief-e.htm>.

OECD (2007), “Public Procurement Review and Remedies Systems in the European Union,” *Sigma Paper*, No.41, GOV/SIGMA(2007)5, OECD, Paris.

### 13. MODEL FORMAT FOR SUPPLIER DEBRIEFINGS

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
	●		●	●		●
● = Applicable						

#### Purpose

- To assist procurement practitioners handle complaints from suppliers/bidders in a fair and timely manner.
- To improve suppliers' understanding of the procurement process and open feedback on their bids/proposals and identify areas for improvement while encouraging their participation in future tenders.

#### Description

91. Supplier debriefings promote a constructive and transparent dialogue between procuring authorities and suppliers. For suppliers, a debriefing provides:

- a better understanding of the procurement process, evaluation methodology and due diligence taken by procurement practitioners during the tendering phase of the procurement cycle; and
- an opportunity to receive open feedback on bids/proposals in order to identify areas for improvement while encouraging their participation in future tenders.

92. A debriefing can also be made available to successful suppliers (*i.e.* contractors) as a first step in establishing a sound working relationship and a precedent for a constructive feedback.

93. The benefits of a supplier debriefing are not, however, confined to suppliers alone. The procuring authority can also benefit in a number of ways: As mentioned above, debriefings provide an opportunity for procurement practitioners to demonstrate the procedures, evaluation methodology and due diligence taken during the tendering phase. It may also identify ways of improving the procurement process and encourage better bids from suppliers in the future.

94. The supplier debriefing model format provides a clear guidance to procurement practitioners on how to conduct a debriefing. It serves to avoid differences in the interpretation and application of the process. The guidelines may be used as input into specialised training on supplier debriefing and specialised communications for procurement practitioners. It can also serve as a basis to review practices, through the structured collection and analysis of information about debriefing, and ensure a continuous improvement in the process.

**Box IIB.6. Model format for a supplier debriefing**

**Opening statement**

- Welcome and introduce the meeting participants
- Explain the purpose of the debriefing and expectations by procuring authority
- Outline the parameters of the meeting (i.e. what can/ cannot be discussed)
- Outline the structure of debriefing session

**Supplier assessment**

- Outline the tendering and evaluation process
- Describe the evaluation strategy and criteria (e.g. compliance issues, weighting and scoring)
- Outline the size of the field and suppliers relative position (e.g. to the mean score for different criteria)
- Show how supplier scored against main criteria (strengths as well as weaknesses)
- Offer constructive criticism and ways to improve future bids
- Assess the overall performance, including cost

**Supplier feedback**

- Provide opportunity to suppliers to comment or ask questions about the supplier assessment, noting again what can/cannot be discussed

**Wrap up**

- Enquire about the supplier's views on how the procurement experience can be improved
- Enquire whether the feedback was useful or if any surprises in the feedback were received

*Source:* Adopted from Office of Government Commerce (United Kingdom) (2003), *Supplier Management, Supplier Debriefing*, OGC Publications, London, [www.ogc.gov.uk/documents/Supplier\\_Debriefing.pdf](http://www.ogc.gov.uk/documents/Supplier_Debriefing.pdf).

**Further resources**

Office of Government Commerce (United Kingdom) (2003), *Supplier Management, Supplier Debriefing*, OGC Publications, London, [www.ogc.gov.uk/documents/Supplier\\_Debriefing.pdf](http://www.ogc.gov.uk/documents/Supplier_Debriefing.pdf).

Office of the Procurement Ombudsman (Canada) (2009), "Chapter 2: Supplier Debriefings" in *Procurement Practices Review*, <http://opo-boa.gc.ca/prapp-prorev/chptr-2-eng.html><http://www.contractscanada.gc.ca/en/debrief-e.htm>.

OECD (2007), "Public Procurement Review and Remedies Systems in the European Union," *Sigma Paper*, No.41, GOV/SIGMA(2007)5, OECD, Paris.

## 14. TEMPLATE FOR SUPPLIER QUESTIONNAIRE

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
	●			●		●
● = Applicable						

### Purpose

- To assist procurement practitioners handle complaints from suppliers/bidders in a fair and timely manner.
- To improve suppliers' understanding of the procurement process and open feedback on their bids/proposals and identify areas for improvement while encouraging their participation in future tenders.

### Description

95. 96. Supplier debriefings promote a constructive and transparent dialogue between procuring authorities and suppliers. For suppliers, a debriefing provides:

- a better understanding of the procurement process, evaluation methodology and due diligence taken by procurement practitioners during the tendering phase of the procurement cycle; and
- an opportunity to receive open feedback on bids/proposals in order to identify areas for improvement while encouraging their participation in future tenders.

97. A debriefing can also be made available to successful suppliers (*i.e.* contractors) as a first step in establishing a sound working relationship and a precedent for a constructive feedback.

98. The benefits of a supplier debriefing are not, however, confined to suppliers alone. The procuring authority can also benefit in a number of ways: As mentioned above, debriefings provide an opportunity for procurement practitioners to demonstrate the procedures, evaluation methodology and due diligence taken during the tendering phase. It may also identify ways of improving the procurement process and encourage better bids from suppliers in the future.

99. A supplier questionnaire provides an alternative approach to gather information from suppliers on the tendering process. It helps procuring authorities to identify ways of improving the procurement process. It is not, however, a substitute for a supplier briefing.

**Box IIB.7. Template for a supplier questionnaire**

**General view of tender documentation**

- Were the instructions to suppliers easy to understand?
- Were the find the specification clear and unbiased?
- Was the time for response reasonable?
- What is your assessment of the overall documentation?
- Compared to other public tenders, how was the amount of work associated with the tender?

**Contact with procuring authority**

- Was the procuring authority contacted to clarify any issues that you may have had with the tender documentation?
- If so, were the queries dealt with professionally?
- Was it easy to contact the staff of the procuring authority?
- Were queries dealt with speedily?
- Were the staff helpful and courteous?
- Were staff able to answer technical questions?
- Do you have any further comments on the support received?

**Tender Feedback**

- If unsuccessful, were you offered a debriefing?
- If an offer was accepted, was the feedback provided useful and constructive?
- What other information did you request?

**General**

- Have you completed a tender for the procuring authority before?
- How did you find out about the tender?
- Any suggestions to improve overall service (e.g. systems in place, documentation, service levels)?
- Other areas suggested for improvement?

Signed: .....

Company: .....

Date: .....

Thank you for completing this survey. The results will be used to improve the service of procuring authority.

Please return by post to: ..... or e-mail: .....

Source: Adopted by Office of Government Commerce (United Kingdom) (2003), *Supplier Management, Supplier Debriefing*, OGC Publications, London, [www.ogc.gov.uk/documents/Supplier\\_Debriefing.pdf](http://www.ogc.gov.uk/documents/Supplier_Debriefing.pdf).

**Further resources**

Office of Government Commerce (United Kingdom) (2003), *Supplier Management, Supplier Debriefing*, OGC Publications, London, [www.ogc.gov.uk/documents/Supplier\\_Debriefing.pdf](http://www.ogc.gov.uk/documents/Supplier_Debriefing.pdf).

### C. POST-AWARD PHASE

100. In the phase following contract award, common risks to integrity include:

- abuse by contractors in performing the contract, in particular in relation to its quality, price and timing;
- deficient supervision by procurement practitioners;
- collusion between contractors and procurement practitioners and other public officials supervising the delivery of goods, services and works;
- lack of supervision of procurement practitioners; and
- deficient separation of financial duties, especially for payment.

101. The procurement tools in this section aim:

- to increase transparency and accountability of post-award public procurement performance to the public. See **online public procurement reporting**.
- to facilitate procurement practitioners' task to screen contractors' financial resources in order to ensure the timely and pertinent delivery of supplies, services or works stipulated in the contract agreement. See **post-award risk assessments of financial vulnerability of contractors**.

## 15. ONLINE PUBLIC PROCUREMENT REPORTING

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
		●	●			●
● = Applicable						

### Purpose

- To increase transparency and accountability of post-award contract performance to the public.

### Description

102. Online public procurement reporting provides a centralised website for the public to access information on public procurement. Information may relate to both the financial and non-financial performance status of procurement packages — both quantitative and qualitative in nature. Such reporting is often accompanied by information on the public procurement system including

- procurement policies, regulations and guidelines within which procurement practitioners operate;
- the responsibilities of different public organisations in the procurement process; and
- public redress mechanisms such as whistleblower or corruption hotlines.

103. Online reporting is generally run by the finance ministry or equivalent responsible for the government procurement system. In specific situations it may also be hosted by the public organisation in charge of overseeing stimulus/recovery spending or post-disaster rehabilitation and reconstruction.

104. It is important to note that online reporting is not meant to duplicate existing reporting processes for contracting authorities. Rather, it provides a user friendly interface to access information on contracting authorities. Information is extracted from the government's procurement systems. In cases of disaster, reconstruction may also include donor reporting—though the latter is made difficult because of different reporting formats.

105. Experience to date suggests that online procurement reporting has often been used in emergency situations, e.g. fiscal stimulus/economic recovery and natural disasters reconstruction programmes. Two examples include Indonesia and Australia respectively. In **Australia**, the Treasurer launched a website, Nation Building ([www.economicstimulusplan.gov.au](http://www.economicstimulusplan.gov.au)) in March 2009 to provide a one-stop shop for information on the Australian Government's Economic Stimulus Plan.

106. In **Indonesia**, the National Development Planning Agency and Rehabilitation and Reconstruction Agency launched *e-aceh-nias.org* in March 2005 as a portal for the reporting and tracking of donor funds used in rehabilitation and reconstruction financing. In addition, information on government reconstruction funds was available on the Indonesian Ministry of Finance Special State Treasury Service Office's website ([www.danarrapbn.org/monitor/asp/laporan.asp](http://www.danarrapbn.org/monitor/asp/laporan.asp), only available in Indonesian).

107. A few countries have launched more permanent procurement reporting and fund tracking systems for government expenditure for routine budget operations. The **United States**, for example, has launched *USASpending.gov* to make publicly available information on spending relating to all federal contracts. This can be searched by contractor, principal place of performance and contract authority. This is different to *Recovery.gov* that was launched by the Recovery Accountability and Transparency Board in July 2009 to provide information specifically on stimulus spending.

108. The functionality of online public procurement reporting varies significantly between countries. Information may be searchable by location, department, type of activity, contract size.

**Box IIC.1. Generic content of online public procurement reporting website**

**Information on contracts**

- General project information: project name, project description, total project cost, etc.;
- Project management information: organisational division, project manager and contact details;
- Contractor information: company name and contact details;
- Implementation schedule: project schedule (payment, deliverables), deviation between aggregated planned and actual project milestones;
- Evaluation framework, comments from procurement staff, date/time of last data update, expected future reporting update. Can be applied to overall project, cost dimensions, schedule dimensions, qualitative assessments of contractor performance etc.;
- Payment schedule: expected spending by year, payment, variance from cost information
- Information may be coded to give an overall rating of projects, together with information on calculation methodology; and
- Project documentation: contract documents, meeting minutes, audit reports, etc.

**Information on public procurement systems**

- Procurement laws and regulations;
- Responsibilities of procuring and contract authorities; and
- Responsibilities of audit authorities.

## 16. CHECKLIST FOR POST-AWARD RISK ASSESSMENTS OF THE CONTRACTOR FINANCIAL VULNERABILITY

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
		●		●		
● = Applicable						

### Purpose

- To facilitate procurement practitioners' task to screen contractors' financial resources in order to ensure the timely and pertinent delivery of supplies, services or works stipulated in the contract agreement.

### Description

109. It is advisable for procurement practitioners to adopt a proactive approach to risk management during periods of severe economic and financial uncertainty. Assessments of contractor providers' financial soundness are a standard component of a risk assessment during the tender process.

110. It is prudent for procurement practitioner to reassess the risk profile of their major contractors and consider strategies to mitigate risks in times of severe economic and financial uncertainty. During economic and financial crises the cash flow of many contractors is constrained as demand for their services decline.

111. Financial institutions are also likely to cut back credit advances to contractors. Thus, contractors that previously had adequate financial resources may be left with very thin balance sheets during financial crises raise concern for government agencies involved in major procurements.

112. In developing adequate contingency plans procurement practitioners may simply approach other suppliers. In some cases alternative strategies for meeting may need to be considered. Advice may also be necessary from government legal experts and the finance ministry/treasury. In some cases, the financial strain of the contractors may be eased by changing the payment schedules.

113. Escrow agreements and guarantees for information and communications technology, research and development and other knowledge based tenders may also be required to ensure that all necessary information and documentation is accessible to the government in the event that the originating organisation has gone out of business, or is no longer maintaining or interested in maintaining, modifying or supporting the goods, services or works.

**Box IIC.2. Checklist for post-award risk assessment of contractors financial vulnerability**

- Have procurement practitioners updated their financial viability assessments of contractors, and their parent company and related entities, to ensure they have not fallen into financial stress?
- Have procurement practitioners developed contingency plans if a major contractor falls over — together with ensuring that they have sufficient resources available for the contingency plans?
- Have procurement practitioners identified any discretionary contractual rights that can be enforced to mitigate risk exposure of the government; e.g. guarantees by parent company or insurance certificate?
- Have payment regimes and invoices been reviewed to ensure payment for goods or services are not made in advance, where not required, or that additional charges have not accrued for incidental services?
- Is it possible to renegotiate more far-reaching arrangements, such as escrow arrangements or financial guarantees, thus varying the contract?
- Have all contract changes been made according to the procedure set out in the contract to ensure that the variation is enforceable?

#### **D. WHOLE OF PROCUREMENT CYCLE**

114. The procurement tools in this section include:
- Code of conduct for procurement practitioners;
  - Registration of personal interests — generic reporting form;
  - Gifts and gratuities checklist;
  - Procurement management dashboard; and
  - Record keeping checklist.
  - Procurement risk indicators

## 17. CODE OF CONDUCT FOR PROCUREMENT PRACTITIONERS

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●	●	●		●	●	
● = Applicable						

### Purpose

- To set out values and clear guidance on expected behaviour as well as conflict of interest and post-employment measures for procurement practitioners and other stakeholders.
- To support policy-makers in maintaining public trust in the integrity of the procurement process.

### Description

115. A clear code of conduct may provide concrete examples of situations that officials may face in the course of their work. It must also give the contact details of person(s) that can provide advice and guidance to procurement practitioners.

116. Many countries have codes of conduct that set general rules by which all public officials are to govern themselves. These general rules are sometimes supplemented by more specific codes related to a high ranking and specific high risk positions, of which public procurement is one.

117. A generic code of conduct for public officials may include:

- **Serving the public interest.** Public officials are expected to maintain and strengthen the public's trust and confidence in public institutions, by demonstrating the highest standards of professional competence, efficiency and effectiveness, upholding the constitution and the laws, and seeking to advance the public good at all times.
- **Transparency and accountability.** Public officials are expected to use powers and resources for the public good, in accordance with the law and government policy. They should be prepared to be accountable for the decisions they make and to justify their official decisions and actions to a relevant authority, or publicly, as appropriate in the circumstances.
- **Integrity.** Public officials are expected to make decisions and act without consideration of their private interests. Public service being a public trust, the improper use of a public service position for private advantage is regarded as a serious breach of professional integrity.
- **Legitimacy.** Public officials are required to administer the laws and government policy, and to exercise legitimate administrative authority under delegation. That power and authority should be exercised impartially and without fear or favour, for its proper public purpose as determined by the legislature or the official's organisation as appropriate in the circumstances.

- **Fairness.** Public officials should make official decisions and take action in a fair and equitable manner, without being affected by bias or personal prejudice, taking into account only the merits of the matter, and respecting the rights of affected citizens.
- **Responsiveness.** As agents and employees of the elected government, public officials are required to serve the legitimate interests and needs of the government, public organisations, other civil servants, and citizens in a timely manner, with appropriate care, respect and courtesy.
- **Efficiency and effectiveness.** Public officials are required to obtain best value in expenditure of public funds, and efficient use of assets deployed in or through public management, and to avoid waste and extravagance in the use of resources in public programmes and official activities.

118. A code of conduct for procurement practitioners sets out values and clear guidance on expected behaviour. Clear and known rules of behaviour applicable to all will foster mutual respect and increase public confidence in procurement practitioners. It will place emphasis on the risks in different stages of the procurement cycle. These may be identified using checklists for identifying conflict of interest and **procurement risk indicators**.

119. In all cases, a code of conduct must be an integral part of the procurement practitioner's contract and must be signed as proof that it has been read and agreed. A clear system of enforcement and sanctions in case of breach of these rules is also necessary to avoid gaps in implementation.

**Box IID.1. Generic code of conduct for procurement practitioners**

**General conduct**

1. Procurement practitioners must ensure that they are never beholden to an economic operator.
2. Throughout the procurement cycle, procurement practitioners must exhibit responsible behaviour and strive for transparent and collegial decisions.
3. Information on the procurement process must not be disclosed to persons who have no need to know.

**Information and conduct during the pre-tendering phase**

4. Procurement practitioners, and in particular buyers, may need to establish contacts with the private sector. The procurement practitioners benefits from acquiring technical familiarity with the goods, services and works within his competence in order to more effectively draft tender requirements, evaluate offers received and assess whether a contract must undergo.
5. Buyers may accept requests from economic operators for meetings. They may also request a meeting, provided this will enhance their knowledge of the market. To improve their knowledge, beyond the Internet or the specialised press, buyers may attend exhibitions or fairs to obtain information on the characteristics of a competitive market.
6. Economic operators are interested to know the organisation and activity of the procurement services in their field. To encourage such exchanges, joint exhibitions or forums should be encouraged with the professional partners (local chambers of commerce, professional federations, labour unions etc.).
7. In this context, the information that may be exchanged or disclosed concerns:
  - a. information on completed procedures, when a contract has been awarded, subject to the protection of industrial and commercial confidential information; and
  - b. the description of the organisation and the activity of the procurement services and other administrations involved in the process.
8. In order to preserve equal treatment of suppliers/bidders, information on the estimated value of a project or the

scheduled date of the consultation, etc., must not be disclosed.

9. Any communication or information on a draft contract may be disclosed only through the advertising or publication procedures defined in the procurement code.
10. The drafting of the statement of needs is the sole responsibility of the contract authority, in order to avoid gearing the requirements to a specific offer.

**Information and conduct during the tendering phase**

11. Except in the case of correction notices, the procurement code governs the conditions for achieving equality of treatment among candidates, and the transparency of procedures.
12. To avoid any risk of favouritism or suspicion, when private operators come to the office to obtain the consultation papers, those papers must be delivered by an officer not involved in the procurement process, or who has no information on the proposed contract.

**Information and conduct during the post-award phase**

13. All decisions taken by a procurement practitioner must be based exclusively on the provisions in the contract as previously agreed, particularly with regards to the definition and application of penalties.
14. Supervision and management of contract performance require collegiality and a paper trail of decisions, particularly with respect to penalties, certification of performance, and possible amendments to the contract.
15. Relations established with economic operators under public contracts may not serve as a pretext for any private contracting.

**Information and conduct at all phases of the procurement cycle**

16. Procurement practitioners must not solicit or accept gifts, favours or other advantages for themselves, their family their friends, or for persons with whom they have business or political dealings.
17. Regardless of the position occupied, and under all circumstances, procurement practitioners must exhibit good judgment and responsibility. They have the duty to inform their correspondents that they are subject to this code and cannot deviate from it.
18. Customs or usages may treat certain gifts and other advantages as acts of courtesy or hospitality that are appropriate in contacts between procurement officers and economic operators. This applies to minor gifts and conventional gestures of hospitality, in the form of modest invitations, calendars, and pens of low value, advertising materials, and minor office furnishings.

**Gifts**

19. Every procurement practitioner is advised to consider each of the following points before accepting any gift, which must be minor, of low value, not regularly provided, and neutral.
20. Regardless of the nature of the gift received, procurement practitioners must:
  - a. report them immediately to their hierarchical superior in order to avoid any suspicion;
  - b. mention them in a specific document, including the origin, nature and destination of the good delivered in order to guarantee traceability in case of subsequent challenge or audit;
  - c. use them, to the extent possible, for the benefit of the entire office (for example, passing a box of chocolates, sharing calendars or distributing pens); and
  - d. request their supervisor's advice in case of doubt, as to what is acceptable or not and on the steps to take.

21. Gifts or invitations that do not fall within the framework described above must also be recorded, with the name of the company concerned, and returned to the sender with a letter.
22. Invitations to receptions or promotional, cultural, sporting or charitable events are subject to the same rules. Being on holiday is no defence against the rules defined more broadly in this code. Procurement practitioners must in no case solicit such invitations from a supplier.
23. Any participation in an activity in the course of duty must be assessed in light of the context. In the case of participation at a professional seminar for one or more days, for example, the administration may pay the cost of registration and the officer will be placed on mission expenses.
24. Participation in visits or trips may only be justified on purely professional grounds. The costs of travel and accommodation must be covered by a mission order.

### Further resources

OECD (2003), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris.

OECD (2005), *Managing Conflict of Interest in the Public Sector, A Toolkit*, OECD Publishing, Paris.

OECD (2005), "Conflict of Interest Policies and Practices in Nine EU Member States: A Comparative Review", *SIGMA Paper*, No. 36, GOV/SIGMA(2006)1/REV1, OECD, Paris.

OECD (n.d.), Conflict of Interest website, [www.oecd.org/gov/ethics/conflictinterest](http://www.oecd.org/gov/ethics/conflictinterest).

Government of Canada (n.d.), Code of Conduct for Procurement, [www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html](http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html).

## 18. TEMPLATE FOR THE REGISTRATION OF PRIVATE INTERESTS

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●	●	●			●	●
● = Applicable						

### Purpose

- To increase transparency and trust in the procurement process and avoid legal and negative public perception consequences
- To ensure the ethical and objective behaviour of procurement practitioners by establishing and enforcing appropriate standards to foster integrity.
- To support policy makers in preparing effective procedures to identify risks and manage conflicts of interest in daily operations.

### Description

120. Registration of private interests for procurement practitioners and immediate family is an example of concrete tool to support a conflict-of-interest policy. Registration must be signed by procurement practitioner and be filed in the contract file for future reference.

121. A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official's private-capacity interest could improperly influence the performance of his/her official duties and responsibilities. This basic definition conveys three elements of conflict of interest: an unacceptable possibility of conflict between a public official's interest as a private citizen and their duty as a public official.

122. It is crucial to differentiate between potential, apparent and an actual conflict of interest. A potential conflict is where a public official might have a private interest. An apparent conflict is where people may assume that a public official has a private interest. An actual conflict is where a public official does have a private interest.

123. A conflict of interest is not the same as corruption or a violation of integrity. A conflict of interest becomes corruption when a public official misuses their official power/resources for improper personal gain. Having an apparent conflict of interest can be as serious as having an actual conflict of interest because of the potential for doubt to arise about a public official's integrity and the integrity of the public sector organisation where the public official is employed.

124. Preventing conflict of interest is necessary throughout the entire procurement cycle, including in the design of contract requirements or terms of reference, the selection of tender methods, evaluation and award of contract, contract monitoring and payment. Thus, conflict-of-interest controls must be established at key points during the procurement cycle and take steps to strengthen training and record-keeping techniques.

125. The public availability of the registration of private interests by procurement practitioners can vary. It may be submitted to an independent public authority that will use the information should a situation arise that requires it to be used. It may be disclosed only to members of the different commissions (possible conflicts are judged by peers). It may be made publicly available, emphasising transparency but raising questions of how to balance an individual privacy.

126. The generic registration of private interest template is intended to be used to identify the relevant personal assets and beneficial interests which are most likely to cause a conflict-of-interest situation. The administrative procedure surrounding the completion, submission and processing of the registration needs to be supported by an enforceable law or government policy. Failure to provide a complete return when required could be made the subject of sanctions (e.g. disciplinary action or disqualification from participation on tender committees), or criminal sanctions as appropriate.

127. The process does not require procurement practitioners to identify assets disposed of during the reporting period. Optionally, a stronger form of this declaration process would do so, by means of a question (which could be inserted as a new item after Question 11) to identify any assets which were identified as owned on the previous declaration form, and which have since then been disposed.

**Box IID.2. Generic template for the registration of private interests**

To: [Head of public organisation or relevant public authority]

Particulars of my private interests and those of my immediate family of which I am aware are set out in the attached form.

I hereby undertake to advise you should a situation arise when an interest of mine, or an interest of a member of my immediate family of which I am aware, conflict, or may reasonably be thought to conflict with my public duty, whether that interest is pecuniary or otherwise.

Signature: .....

Date: .....

**1. Real estate/immovable property**

Owner	Location	Nature of interest held	Purpose (e.g. investment, domicile, etc.)
-------	----------	-------------------------	---

**2. Shareholdings**

Indicate all holdings of shares and like instruments, including holding companies and subsidiary companies if applicable: exclude nominal shareholdings by way of qualification for membership of a credit union, building society or other co-operative society:

Name of company	Owner of shares
-----------------	-----------------

**3. Trusts/nominee companies**

a. Identify any beneficial interest held in a family or business trust or a nominee company

Trust or nominee company	Nature of interest	Nature of operations of trust or company	Name of person holding interest	Date commenced
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b. Identify any interest held as a trustee of a family or business trust established under a law

Trust or nominee company	Nature of interest	Nature of operations of trust or company	Name of person holding interest	Date commenced
--------------------------	--------------------	--	---------------------------------	----------------

**4. Directorships, appointments, and ancillary employment in other enterprises**

Indicate all directorships currently held, whether a director's fee is paid or not:

Name(s) of directors	Name of company [whether public or private]	Activities of company	Date commenced
----------------------	---	-----------------------	----------------

**5. Partnerships, etc**

Identify all current business and professional partnerships and similar arrangements

Person holding interest	Type of activities	Date commenced:
-------------------------	--------------------	-----------------

**6. Investments**

Identify all investments in bonds, debentures, savings or investment accounts with banks or other financial institutions. Where the cumulative value of such investments is less than the threshold [€x,000] no registration is required:

Person holding investment	Type of investment	Body in which investment is held	Date obtained
---------------------------	--------------------	----------------------------------	---------------

**7. Other assets**

Identify each asset valued at over [€x,000]: [principal family home, household contents, personal effects and motor vehicles for personal use could be excluded]:

Owner of asset:	Type of asset:	Source:	Date obtained:
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**8. Other significant sources of income**

Identify current salary and income from all appointments/employment including those identified in Item 4: salary from primary public service/official position is to be excluded:

Person receiving income	Source/nature of income
-------------------------	-------------------------

**9. Reportable gifts, (including substantial travel, hospitality or other forms of valuable benefit)**

Identify all "reportable gifts" [see definition – such as provided in Tool #9] of current market value exceeding [€00], received in the past financial year:

Person receiving gift:	Nature of gift:	Market value of gift:	Donor:	Date received:
------------------------	-----------------	-----------------------	--------	----------------

**10. Liabilities**

Identify current financial liabilities, loans, mortgages etc (minor debts such as ordinary short term credit arrangements, charge cards, etc. are to be excluded):

Person liable:	Nature of liability (loan, mortgage etc):	Creditor:
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**11. Other personal interests which could constitute a potential conflict-of-interest situation**

Include for example, previous relevant employment or positions held, (e.g. in business ventures, professional bodies/unions, non-governmental organisations or community organisations), continuing rights of return to previous employment or position, and standing offers or agreements about future employment, etc. Note: Political and religious affiliations, etc. are not required to be notified unless they could reasonably constitute a specific conflict-of-interest situation relevant to the position held by the person making this declaration.)

**Further resources**

OECD (2003), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris.

OECD (2005), *Managing Conflict of Interest in the Public Sector, A Toolkit*, OECD Publishing, Paris.

OECD (2005), "Conflict of Interest Policies and Practices in Nine EU Member States: A Comparative Review", *SIGMA Paper*, No. 36, GOV/SIGMA(2006)1/REV1, OECD, Paris.

OECD (n.d.), Conflict of Interest website, [www.oecd.org/gov/ethics/conflictinterest](http://www.oecd.org/gov/ethics/conflictinterest).

### 19. GIFTS AND GRATUITIES CHECKLIST

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●	●	●			●	●
● = Applicable						

#### Purpose

- To provide procurement practitioners with guidance on the appropriateness on gifts.

#### Description

128. Codes of conduct in the public sector often give a lot of attention to the issue of gifts to officials – what gifts can be received, what is prohibited, and under what conditions. A gift and gratuities checklist reduces the potential for confusion to four simple tests, arranged under a mnemonic – **GIFT** – to make the tests easier to remember. Each element of the **GIFT** mnemonic recalls one of the principles of public ethics, rather than a set of complex administrative definitions and criteria or processes.

129. “Reportable gifts” are distinguished from those gifts which are not required to be reported by the officials who receive them. Defining which gifts are reportable is a policy decision to be made by each organisation. An organisation’s conflict-of-interest policy should outline situations which procurement practitioners should avoid, and actions to be taken if a problematic situation does arise. Prohibitions, for example, a provision that monetary gifts should not be accepted in any circumstance, should be clearly stated.

130. It is not the value of the gift that is the main policy issue in most cases: it is the question of how to deal appropriately with the actual or presumed relationship between giver and receiver that matters most. Gifts to procurement practitioners in their private capacity (as opposed to official gifts to the official’s organisation), should raise the question of whether there is a relationship between the giver and the receiver which could constitute a serious risk to the integrity of the individual official, or to the organisation.

131. In developing systems, a public organisation should consider other relevant matters, including, for example, the Criminal Code, and any law or policy about ethics, corruption, misconduct, and conflict of interest applicable in the public sector. Because of the nature of the reportable gifts, the details and circumstances of the gift should be recorded and documented to form an official record of the gift. This should discourage officials from acting unethically.

**Box IID.3. Gift and gratuities checklist**

**Genuine:** Is this gift genuine, in appreciation for something I have done in my role as a procurement practitioner, and not requested or encouraged by me?

**Independent:** If I accept this gift, would a reasonable person have any doubt that I could be independent in doing my job in the future, especially if the person responsible for this gift is involved or affected by a decision that I may make?

**Free:** If I accept this gift, would I feel free of any obligation to do something in return for the person responsible for the gift, or for his/her family or friends/associates?

**Transparent:** Am I prepared to declare this gift and its source, transparently, to my organisation and its clients, to my professional colleagues and to the media and the public generally?

**Further resources**

OECD (2003), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris.

OECD (2005), *Managing Conflict of Interest in the Public Sector, A Toolkit*, OECD Publishing, Paris.

OECD (n.d.), Conflict of Interest website, [www.oecd.org/gov/ethics/conflictinterest](http://www.oecd.org/gov/ethics/conflictinterest).

## 20. MANAGEMENT PROCUREMENT DASHBOARD

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Compliance & monitoring	Accountability & control
	●	●		●	●	●
● = Applicable						

### Purpose

- To provide procurement practitioners with consolidated and up-to-date information on individual contracts and pending tasks to support good contract management.

### Description

132. A management procurement dashboard provides consolidated and up-to-date information to procurement practitioners on the procurement tenders/contracts they are directly responsible. Information may relate to both the financial and non-financial performance status of procurement packages—both quantitative and qualitative in nature. It may also include information on pending tasks to support good contract management.

#### Box IID.4. Generic content of a management procurement dashboard

**General project information:** project name, project description, total project cost, etc.

**Project management information:** organisational division, project manager and contact details

**Contractor information:** company name and contact details.

**Implementation schedule:** project schedule (payment, deliverables), deviation between aggregated planned and actual project milestones.

Evaluation framework, comments from procurement staff, date/time of last data update, expected future reporting update. Can be applied to overall project, cost dimensions, schedule dimensions, qualitative assessments of contractor performance etc.

**Payment schedule:** expected spending by year, payment, variance from cost information,

Information may be coded to give an overall rating of projects, together with information on calculation methodology.

**Project documentation:** contract documents, meeting minutes, audit reports, etc.

## 21. CHECKLIST FOR RECORD KEEPING

Procurement cycle phase			OECD integrity principles			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●	●	●	●	●	●	●
● = Applicable						

**Purpose**

- To allow access to relevant parties within a procuring authority or from an audit institution to an official record of the entire procurement transaction.
- To equip procurement practitioners' with the necessary information to analyse the overall performance of the process as well as assess capacity building needs.
- To maintain documentary records which can be used to take the necessary steps to reduce risk of error, fraud or corruption in subsequent procurement processes.

**Description**

133. Record-keeping regulations are usually provided in procurement legislation. A procuring authority must be able to verify the conditions under which a contract was awarded, performed and supervised in order to guarantee transparency in the process and trust in the parties that participated in it.

134. Moreover, documentation must be readily accessible for consultation by both the contracting authorities and by any auditors, as well as the general public (including competitors of the winning firm).

135. *What should be conserved?* Everything that could affect the course of proceedings. There is no single list, but the following items may be cited as examples:

- |               |   |
|---------------|---|
| Pre-tendering | <ul style="list-style-type: none"> <li>• Needs evaluation reports;</li> <li>• Unused preliminary studies; and</li> <li>• Local council deliberations.</li> </ul>  |
| Tendering     | <ul style="list-style-type: none"> <li>• Call for tenders;</li> <li>• Requirements and justification of changes to technical requirements;</li> <li>• All administrative and technical documents supplied to bidders;</li> <li>• Bid analysis reports;</li> <li>• Decisions of the awards commission and all the elements on which the decision was based; and</li> </ul> |

- Selection criteria that have been modified or added during the review of bids.
- Post-award
- Decisions and observations during contract performance (visit reports, for example);
  - Changes in needs;
  - Decisions and reports on any disputes;
  - Changes to performance deadlines;
  - Price changes in the course of performance; and
  - Supplementary works or deliveries.

***Where should the records be kept?***

- In the offices of the contract authority, until the contract is completed.
- On the premises of a specialised government archives unit, where they will remain permanently available to the depositing authority.
- In a digital information database, for electronic documentation used in the e-procurement system.

***Who should keep the records?***

- The contract authority, until the contract is completed.
- The specialised archives unit, from contract completion to the end of the warranty period.
- The contract authority may however keep a copy.

***How long should the records be kept?***

136. Administrative documents have a retention life determined by law or by the archives service.

- Documentation kept on the contract authority's premises should be conserved at least until expiry of the warranty covering the works, services or supplies procured under the contract. (For example, in France construction firms are required to take out insurance for 10 years against defects in their work.)
- In the archives unit, the duration will depend on regulations and on the historical interest of the documents. In principle, simple contracts may be destroyed when they are no longer of administrative usefulness. On the other hand, contracts of historical interest (e.g. involving a particular and innovative technique or related to historic buildings) should be kept indefinitely.

***How to take changes into account?***

137. In a report justifying the changes, to which will be added all technical or other documents (meteorological data, for example, when deadlines are extended because of bad weather).

***Where should this information be kept?***

138. In principle, it should be attached to the files on the contract. This means that it should be kept in the archives (either electronic or paper based) of the office responsible for contract execution until the contract is completed, and then in specific offices.

## 22. INDICATORS OF PROCUREMENT RISK

Procurement cycle phase			OECD integrity pillars			
Pre-tendering	Tendering	Post-award	Transparency	Good management	Prevention of misconduct	Accountability & control
●	●	●		●	●	
● = Applicable						

### Purpose

- To provide procurement agencies with a guide to detect corruption risks at every stage of the cycle
- To equip procurement practitioners with an understanding of the type of risks they may face throughout the procurement cycle

### Description

127. Risk or red flag indicators raise awareness among procurement practitioners of key points to be verified throughout the procurement process. Preventing the risks of fraud and corruption requires an understanding of those risks. With that understanding, the necessary steps can be taken to limit the possibilities for fraud and corruption, to detect possible irregularities in advance, to exclude corrupt suppliers/bidders, and to take action against dishonest procurement practitioners.

128. Each procuring authority will have to develop its own risk indicators as detecting corruption and fraud may vary depending on the procurement stage and nature and complexity of the purchase.

129. Processing information on perceived risks and reporting the evidence is equally crucial. An investigation is easily launched if a complaint is filed. Establishing procedures to encourage whistleblowers or additional mechanisms to allow stakeholders to alert authorities about potential wrong-doing is the most effective means to detect corruption and fraud.

130. Enabling procurement practitioners and other public officials to understand their duties to report irregularities is also a crucial tool to combat bias, fraud and corruption. Equally, enabling procurement practitioners through training opportunities will enhance their capacity to prevent and detect wrong-doing throughout the procurement cycle.

131. Another effective means to detect and report fraud and corruption is through the establishment of appeal mechanisms whereby suppliers can issue a formal complaint to the competent procuring authority to report irregularities.

**Box IID.5. Generic list of procurement risk indicators**

<b>Pre-tendering</b>	Needs assessment	<ul style="list-style-type: none"> <li>• Commission of studies below the national regulatory threshold: Use of “friendly consultancies”, contracting an entity that belongs to the decision-maker;</li> <li>• Studies that are never delivered; and</li> <li>• Altering the outcome of the selection process by: asking a commission from successful tender or successful tender was forewarned about commission and builds amount in the tender</li> </ul>
	Planning & budgeting	<ul style="list-style-type: none"> <li>• Lack of an annual procurement plan tied to long-term strategic objectives or overall investment decision-making process;</li> <li>• Cost estimates are inconsistent with market rates; and</li> <li>• Government does have the capacity to monitor decentralised units responsible for conducting procurement.</li> </ul>
	Definition of requirements	<ul style="list-style-type: none"> <li>• Technical requirements not based on clear requirements or with an unnecessary number of restrictions aiming at reducing competition;</li> <li>• Unjustified constraints hindering foreign participation;</li> <li>• Selection and award criteria not clearly defined or disclosed in advance;</li> <li>• Tender requirements prepared by a service-provider who belongs to a wider group including numerous subsidiaries or affiliated entities;</li> <li>• Anonymity of suppliers/bidders and confidential information on suppliers/bidders records is not properly guarded; and</li> <li>• Licensing of unqualified companies through the provision of fraudulent quality assurance certificates.</li> </ul>
	Choice of procedure	<ul style="list-style-type: none"> <li>• Lack of procurement strategy and criteria for the use of non-competitive tenders;</li> <li>• Misuse of exception procedures on the basis of legal exceptions: contract splitting; extreme urgency or protection of national security interests; unjustified continuation of existing contracts; and</li> <li>• Timeframe not consistently applied to all suppliers/bidders.</li> </ul>

<b>Tendering</b>	Invitation to tender	<ul style="list-style-type: none"> <li>• Absence of public notice or insufficient time to receive invitations to bid;</li> <li>• Invitation to bid is advertised on a restricted basis (e.g. advertisement only available in province or in limited media outlets);</li> <li>• Sensitive, non-public or confidential information is disclosed;</li> <li>• Public notice contains insufficient information and instructions to help suppliers/bidders prepare their bids, including pricing instructions; and</li> <li>• Bids envelopes are unsealed or opened before opening session.</li> </ul>
	Evaluation & analysis of bids	<ul style="list-style-type: none"> <li>• Limited number of bid received;</li> <li>• Strong similarities between bids;</li> <li>• Unreasonable delays in evaluating bids and selecting winner; and</li> <li>• Vested interests are identified amongst members of the evaluation committee.</li> </ul>
	Award	<ul style="list-style-type: none"> <li>• Failure to verify the lists of firms excluded from procurement;</li> <li>• Weighting factors altered during examination of proposals;</li> <li>• Criteria used to select suppliers/bidders is different from public notice;</li> <li>• Failure to verify certificates submitted; and</li> <li>• Lack of access to records and minutes on procedure.</li> </ul>
<b>Post-award</b>	Contract management	<ul style="list-style-type: none"> <li>• Change in contract conditions to allow more time and/or higher prices for the supplier/bidder;</li> <li>• Product substitution or sub-standard work or service not meeting contract requirements;</li> <li>• Penalty clauses missing from contract; and</li> <li>• Lack of proper reporting and recordkeeping of changes in contract.</li> </ul>
	Order payment &	<ul style="list-style-type: none"> <li>• Lack of adequate controls of works, supplies and services provided by either internal or external audit;</li> <li>• False accounting and cost misallocation between contracts;</li> <li>• Late payments and invoices; and</li> <li>• False or duplicate invoicing for goods and services not supplied.</li> </ul>

### **Further Resources**

OECD (2009), Guidelines for Fighting Bid Rigging, [www.oecd.org/competition/bidrigging](http://www.oecd.org/competition/bidrigging) (available in 15 languages).

OECD (n.d.), Cartels and Bid Rigging, [www.oecd.org/competition/cartels](http://www.oecd.org/competition/cartels).

U.S. Department of Defence, Office of Inspector General Fraud Indicators [www.dodig.mil/Inspections/APO/fraud/scenariosIndicators.html](http://www.dodig.mil/Inspections/APO/fraud/scenariosIndicators.html).

The European Anti-Fraud Office (OLAF).

### PART III. GLOSSARY

**Audit:** May be carried out to satisfy the requirements of management (internal audit); or by the *supreme audit institution*, or any other independent auditor, to meet statutory obligations (external audit). A particular task of internal audit is to monitor management control systems and report to the senior management of public organisations on weaknesses and recommend improvements. The scope of audits varies widely. Compliance or regularity audits examine legal and administrative compliance, the probity and propriety of administration, financial systems and systems of management control.

**Accelerated procurement procedures:** Accelerated procurement procedures establish alternative procedures to operate during times that demand enhanced flexibility, responsiveness and accountability by public organisations. Within this category there are two types of accelerated procurement: emergency procurement and non-emergency accelerated procurement. Emergency procurement is used in contexts where life, property or equipment is immediately at risk or standards of public health, welfare or safety need to be re-established without delay. Examples include government's responses to natural disasters (e.g. earthquakes, floods and typhoons) and epidemic risks. Non-emergency accelerated procurement procedures are used in contexts where unforeseen circumstances arise and require an urgent response by public organisations. In comparison to emergency procedures, non-emergency accelerated procurement should be used only as an exception and not the norm.

**Award criteria:** The criteria upon which the decision for the award of the contract is based. They can be either the "most economically advantageous tender".

**Bidder:** A person, commercial company or other organisation, that offers to provide goods, services or works in response to a request from a public organisation. The emphasis on offering the goods, services or works in response to a request from a public organisation is necessary to differentiate a bidder from a *supplier*.

**Bid rigging:** Bid rigging occurs when suppliers/bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. Suppliers/bidders can eliminate competition in public procurement in many simple ways, for example: (i) a competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer; (ii) a competitor agrees not to bid or to withdraw a bid from consideration; and (iii) a competitor agrees to submit bids only in certain geographic areas or only to certain public organisations.

**Collusive tendering:** *See Bid Rigging.*

**Contract:** Any written instrument or electronic document containing the elements of offer, acceptance, and consideration to which an agency is a party.

**Contract authority:** A contract authority is responsible for contract management. Thus, it relates to the post-award phase of the procurement cycle. The procuring authority may be the same as the *contract authority* in a number of cases for example, under a system of centralised purchasing.

**Contractor:** A person, commercial company or other organisation who through a *contract* agrees to provide goods, services or works for a certain price.

**Escrow agreement:** An agreement to lodge source code with a contractor, which can become available to the purchaser in certain circumstances.

**Framework agreement:** A number of suppliers can be part of a framework under which a buyer can call upon for goods or services during a set period of time.

**Green public procurement:** Contracting authorities and entities take environmental issues into account when tendering for goods or services. The goal is to reduce the impact of the procurement on human health and the environment.

**Integrity:** Integrity can be defined as the use of funds, resources, assets and authority according to the intended official purposes, to be used in line with public interest. In the context of public procurement it implies that (i) procurement procedures are transparent and promote fair and equal treatment of suppliers/bidders; (ii) procurement practitioners' behaviour is in line with the public purpose of their organisation; and (iii) systems are in place to challenge procurement decisions, ensure accountability and promote public scrutiny. A "negative" approach to define integrity is also useful to determine an effective strategy for preventing integrity violations in the field of public procurement. Integrity violations include corruption, fraud and theft of resources, conflict of interest in the public service and post-public employment, collusion, abuse and manipulation of information, discriminatory treatment in the public procurement process and the waste and abuse of organisational resources.

**Life cycle costing:** Assessment of the costs of a good or service over its entire life cycle.

**Procurement cycle:** The procurement cycle describes the entirety of the process through which *public organisations* identify, prepare and execute the acquisition of goods, services and works. The procurement cycle comprises of three main phases: pre-tendering (including needs assessment, planning and budgeting, definition of requirements and choice of procedures); tendering (including the invitation to tender, evaluation and award); and post-award or post-tendering (including contract management, order and payment).

**Procurement practitioner:** A procurement practitioner is a person involved in the different stages of the procurement cycle regardless of whether they hold a public official role or not. In this sense, the term captures a broader spectrum of professionals than the term public procurement official may refer.

**Procuring authority:** The procuring authority is responsible for organising and conducting the tender. Thus, it relates to the pre-tender and tender phases of the procurement cycle. The procuring authority may be the same as the contract authority in a number of cases, for example under a system of centralised purchasing. This definition focuses solely on the procurements process and does not pay attention to other aspects of the public procurement functions, namely: the policy and legislation; internal coordination; monitoring and control; professionalisation and capacity building; etc. (A discussion of these functions can be found in OECD, 2007, "Central Public Procurement Structures and Capacity in Member states of the European Union", *SIGMA Paper*, No. 40, GOV/SIGMA(2007)4, OECD, Paris.)

**Public official:** A public official includes people who hold a legislative, administrative or judicial office (either appointed or elected); any person exercising a public function, including for a public agency or a public enterprises (e.g. a state owned enterprise); any official or agent of a public international organisation.

**Public procurement:** Public procurement is the purchase of goods and services by governments and state-owned enterprises. It encompasses a sequence of related activities starting with the assessment of needs through awards to contract management and final payment.

**Public service organisation:** includes any unit that is part of the government, including ministries and agencies. It may include units in the national and sub-national government.

**Specification:** A concise statement of a set of requirements to be satisfied by a product, material or process that indicates whenever appropriate the procedures to determine whether the requirements are satisfied. As far as practicable, it is desirable that the requirements are expressed numerically in terms of appropriate units, together with their limits. A specification may be a standard, a part of a standard, or independent of a standard.

**Supplier:** A person, commercial company or other organisation, that provides goods, services or works in the market. A supplier need not have responded to a request from a public organisation (see *bidder*).

**Supreme audit institution:** A supreme audit institution refers to any organisation which sets standards for audit work. The organisation itself will depend on the particular scope of the audit. A number of different types of supreme audit institutions can be observed within OECD countries. They may be constitute an independent body at the disposal of the legislature (*e.g.* in Austria, United Kingdom and the United States); a parliamentary auditor served by an external audit body (*e.g.* in Norway and Sweden); an independent “court”, without juridical functions, partly serving the executive (*e.g.* Greece and the Netherlands); independent courts, with juridical functions, partly serving the executive (*e.g.* France, Italy); and an independent body under the executive (*e.g.* in Japan and Korea).

**Sustainable public procurement:** Contracting authorities take into account all three pillars of sustainable development (economy, society and environment) when procuring goods, services or works.

**Warranty:** The representation, either expressed or implied, that a certain fact regarding the subject matter of a contract is presently true or will be true. Not to be confused with "guarantee", which means a contract or promise by one person to answer for the performance of another person.

**Whistleblowing:** Whistleblowing can be defined as a means to promote accountability by encouraging the disclosure of information about misconduct and possibly corruption while protecting the whistleblower against retaliation.