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## **Global Forum on Public Governance**

### **Integrity in Public Procurement: Tools for implementation**

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*This document provides background material to support discussion in workshop 4.*

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## INTRODUCTION

1. Public procurement is a process that goes right to the core of good governance. Governance combines efficiency and fairness. Accordingly, the objective is to establish a system that can satisfy the needs of the government purchaser, the supplier and the general public, including the final beneficiary, the user, and the person who actually pays taxes, duties and charges to the central government, local government, and public enterprises.

2. To achieve this objective, certain requirements must be met:

- Technical and financial responsibility: the responsibilities of the various people involved in the procurement procedure must be clearly defined.
- Professionalism: the agents responsible for implementing procedures must be trained in order to do their job properly.
- Transparency: all interested parties must know and understand the rules, procedures and decisions.
- Competition: suppliers and products should not be subject to needless eligibility restrictions.

3. Procurement should be organised in ways that take these requirements into account. It should allow users (or beneficiaries) to obtain what they need, at the appointed place and within the established time limits. At the same time, buyers should be able to procure supplies, works and services at the best price, to ensure "value for money".

4. That organisation will also have to cope with certain constraints:

- Inadequate transparency, because of undue commercial influence or political interference.
- Budgetary constraints that require coordination.
- Technical expertise is essential, because of the infinite variety of procurement.
- Fragmented demand, which requires choosing, in light of the goods or services to be procured, between a centralised, a decentralised or a mixed public purchasing organisation.

5. Instituting a coherent, clear and efficient public procurement system is a complex operation, then, as it must respond to the demands of transparency and integrity to which all international organisations subscribe.

### Work at the OECD

6. In 2004, with the holding in Paris of the Global Forum on Governance, the OECD launched a long-term programme to promote integrity in public procurement. The work of the forum demonstrated the

need for a multidisciplinary approach to promote good governance and to safeguard integrity at all stages of the procurement process.

7. In November 2006, the OECD hosted a symposium to compile an inventory of good practices for ensuring integrity and resisting corruption in procurement. That symposium was followed by the global Forum on Governance, in the course of which dialogue on a wide range of good practices was established with non-member countries.

### **The checklist**

8. On the basis of these elements of good practice, which were drawn from OECD members and non-member countries and evaluated with the help of a network of procurement experts, the OECD went on to prepare a checklist,<sup>1</sup> designed to guide policymakers at the central government level in instilling a culture of integrity in the entire procurement cycle.

9. The checklist comprises two parts:

- The first part provides guidance for developing a policy framework.
- The second part deals essentially with how to implement this framework, from needs assessment to contract management and final payment.

10. The checklist contains 10 recommendations (see Annex 1) for reinforcing integrity and public trust in the management of the public purse. That framework highlights the importance of methods for enhancing integrity in public procurement: transparency, professionalism, corruption prevention, and accountability.

### **The "Toolkit"**

11. The idea of a public procurement toolkit emerged naturally from this work, as a way to give the players involved in this complex process some practical tools that would help them apply the 10 recommendations. Those tools are based on models that have proven themselves in actual practice in different countries, and on the suggestions of the member experts of the Public Governance Committee (PGC).

12. In its work the Committee described good practices, cited errors to be avoided at all cost, and compiled advice both for governments and for businesses. An expert was appointed to sift through the information received and select the most important items for purposes of public procurement. The "tools" that were selected were then validated by the Public Governance Directorate and by the Committee. They constitute this toolkit

### **Contents of the toolkit**

13. This publication does not pretend to offer an exhaustive checklist for ensuring:

- Transparency in procurement.

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<sup>1</sup> See "Integrity in Public Procurement: Good Practice from A to Z" (2007) and "Checklist for Enhancing Integrity in Public Procurement" (2008), among OECD publications on procurement. For more detail on OECD activities visit [www.oecd.org/gov/ethics](http://www.oecd.org/gov/ethics).

- Proper management of the public purse.
- Prevention of corruption, fraud, illicit enrichment and abuse of power, or
- Clearly established responsibilities for participants and oversight bodies

14. Rather, it describes some "good practices", presented in the form of tools, for avoiding errors or facilitating the work of suppliers, contracting entities, and controllers or auditors. Not all recognised good practices have been included, as this would have required a much larger publication. On the other hand, all those selected can be considered necessary or indeed indispensable.

15. The main interest of this publication is that it is "a living document". The Governance Committee has taken the tools selected by the expert and added others, and users should add still more tools, reflecting more specifically the status of their legislation, the respective powers and needs of the different players involved in public procurement, and the expectations of the general public.

16. Users are therefore invited to supplement this kit with other "good practices" and other "tools" adapted to specific local circumstances.

#### **Intended users**

17. This booklet has been designed essentially to help contracting entities conduct their procurement under optimal conditions of legal security, while ensuring maximum transparency and integrity throughout the process. It is addressed primarily to central or local government procurement officials.

18. It is also addressed to businesses, which are often interested in obtaining information on the practices of the central and local government with which they may be dealing.

19. It is addressed as well to the people responsible for preparing procurement regulations, especially legislators, to remind them that regulations must include clear and simple instructions, not only to guarantee transparency in the process but also to avoid the risks of fraud and corruption.

20. Finally, it is addressed to oversight, inspection and audit organisations, so that they can intervene more promptly and more effectively when there are doubts about the transparency of the process or the integrity of the public buyers or suppliers, or questions as to whether public funds are being used exclusively in the public interest.

#### **How to use this toolkit**

21. This toolkit is intended to be practical, and is addressed in particular to the players involved in the public procurement process. For that reason, priority has been given to selecting technical tools of varying degrees of sophistication.

22. The toolkit is organised around the 10 principles selected by the OECD to guarantee integrity in public procurement, and is structured in four chapters:

- Chapter 1: Factors for transparency.
- Chapter 2: Factors for management.

- Chapter 3: Factors for combating corruption.
- Chapter 4: Factors for responsibility and oversight

**What kinds of tools are included?**

23. Each chapter contains tools of two types: general tools and specific tools.

- The general tools relate essentially to the key regulatory provisions that are absolutely essential for inclusion in local procurement regulations.
- The specific tools are designed to facilitate the work of the procurement agent or the company employee at an important step in the procurement process.

24. Their common feature is that they are, in principle, independent of existing laws and regulations in different countries.

25. Various agencies in different countries have on occasion developed similar practices for dealing with an identical situation. Rather than citing each of these practices as an example, they are sometimes merged to make a single, more complete and more effective tool.

26. Finally, all the tools are preceded by an explanation of why they were selected and whom they are addressed to in particular.

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## CHAPTER 1. FACTORS FOR TRANSPARENCY

27. Transparency in procurement procedures, selection criteria and decision-making processes is an essential element in combating favouritism, fraud and corruption. This principle is to be found in all rules and regulations governing procurement (in particular, the UN convention, European Union directives, procurement procedures instituted by the World Bank and other financial institutions), and they are included in the checklist prepared by the OECD, where two of the 10 recommendations have to do with transparency:

- 1. Provide sufficient transparency to ensure equality of treatment at all stages of the procurement process.**
- 1. Clarify the "grey zones" so as to reinforce integrity when procurement regulations do not require a competitive procedure.**

28. Most existing procurement regulations seek to guarantee transparency during the tendering process. But they are often limited to that phase alone. The full procurement cycle begins with a needs assessment and runs through to complete performance of the contract, and the settlement of any disputes that may arise in connection with performance or with acceptance of the final product. The tendering phase is obviously essential, and requires supplementary precautions, but the decisions taken before tendering, during execution, and upon final settlement of accounts must also be transparent, and must guarantee the integrity of the process.

29. There are several tools available for implementing these two recommendations. They are simple and easy to apply:

- The most important aspect for suppliers is access to information (tool 1.1), which entails publishing not only the invitations to tender but also the prior information notice and the results of the consultation. By making suppliers aware of the buyers' needs as soon as possible, they will be better positioned to submit bids, to perform the works, or to produce the supplies requested, as well as provide the expected services. Publication allows the buyer to make its needs known as soon as possible in order to elicit the greatest number of tenders. This also demonstrates to suppliers that the buyer has a thorough understanding of its needs.
- When calls for tenders are published, the buyer must have a clear idea not only of its needs but also of the constraints facing it, and consequently of the demands it will be placing on potential suppliers. There should be suitable criteria (tool 1.2) for selecting bidders and judging bids, and all competitors should be aware of them in advance, in order to ensure transparency in the process and to promote competition.
- Ensuring transparency for the decisions taken throughout the procurement process is also a guarantee to all participants: this will avoid any fundamental changes in the terms of the contract and will deter decisions favourable to the supplier selected. It will also avoid engaging the personal liability of any participant when decisions have been taken without his consent. To this end, recordkeeping (tool 1.3), i.e. keeping an archive of all important documents concerning the procurement and storing them in a safe place, is a significant guarantee.

- The choice of the procurement procedure is an important responsibility for public buyers, especially since some procedures would seem, a priori, to be riskier than others. For example, direct purchasing is always more suspect than calling for tenders. Some regulations seek to reduce such risks, and may in fact prohibit certain practices, even if they are officially recognised and could be financially advantageous to the buyer. Thus, it might be advisable not to prohibit negotiated procurement (tool 2.1), which if properly conducted is always advantageous both to the supplier and to the buyer.
- In any case, the decision should not be taken by one person alone, however honest and competent. It is always best to have decisions taken in a collegial manner (tool 2.2). A decision taken by several persons will generally be a better one. Moreover, collective decision-making avoids engaging the personal liability of the decision-maker, recognising that challenges are not only possible but increasingly frequent.

### **Tool 1.1. Information**

30. Only with adequate publicity can all interested parties be made aware of a call for tenders. It is a way, then, of opening procurement to competition and thereby obtaining the most competitive price. It also prevents certain suppliers from bidding without competition, which always drives up prices.

31. It is important, then, to have clear publication rules to ensure maximum publicity of information concerning buyers' immediate needs as well as the longer-term needs (one year ahead, for example, in the context of prior information notices), as well as the decisions taken following the competition (contract award). It is also well to ensure that this information is correctly conveyed and that no artificial barriers are created that would reduce competition.

32. Information transparency is an essential condition for combating corruption in public procurement. If a call for tenders is not published, or if the conditions for informing external competitors are not met, the contract will not be "at arm's length", and the risk of corruption is real.

### **Objectives**

1. To facilitate access for suppliers to government purchase orders.
2. To allow suppliers to organise themselves so as to respond more readily to calls for tenders.
3. To increase competition among suppliers so as to obtain better goods at better prices. Such competition as a requirement not only of international donors (International Monetary Fund, World Bank and other development banks) but also of the United Nations (Convention against Corruption) and the European Union (procurement directives) and the governments that subscribe to those conventions.
4. To avoid any restriction on publicity that would lead to "local accords" or "favouritism" that cannot be economically justified<sup>2</sup> over the medium term.
5. To ensure that the buyer has a thorough understanding of its own needs, and can advise suppliers through prior information notices.

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<sup>2</sup> In economic terms, the "local preferences" that are sometimes granted to maintain local employment are not viable over the medium term, for the firm so favoured, being guaranteed a market, will not bother with innovations or productivity improvements. Thus when a few years later a new public procurement manager issues a call for tenders, that firm will find that its competitors have overtaken it both technically and financially, and it will disappear. The local employment that was supposed to be saved will then be lost, and the social and economic consequences of the firm's disappearance will have to be addressed.

### **Intended users**

33. This tool is addressed to all those who want to see competition that is as open as possible, in particular:

- Contracting entities.
- International organisations and donors.
- Agencies responsible for enforcing international or national regulations (procurement commissions, justice officials etc.)
- Auditors and investigators who will use this tool to detect risks of corruption or favouritism.
- Members of the opposition at the central and local government levels.
- Enterprises that will use this information to schedule their order books in light of the needs of public buyers, and will use this information to improve their products, knowing the characteristics of the winning products.

34. The tool may therefore be of interest to entities of very different size and nature. It must be adapted to the entities concerned.

### **Expected benefits**

- The principal benefit will be enhanced competition and, consequently, lower prices for the works, supplies or services purchased. Buyers will therefore be able to obtain “value for money”.
- The other benefit will be to eliminate, wholly or in part, the collusion that can exist between a public buyer and a supplier, and thereby to reduce the possibilities of favouritism or political influence. Situations such as the following example should not arise:
- **Example:** A local government has published a high-value call for tenders in a newspaper of limited circulation. One firm was tipped off to this unusual publication, and has bought up all the copies of the newspaper. It is now the only supplier in a position to enter a bid, as none of its competitors has any knowledge of the tender notice.

### ***Description***

#### *When to publish notices, and what to publish*

35. The European Commission and the international financial agencies that subscribe to World Bank recommendations require governments to publish information at the following stages:

- At the beginning of the year, a notice citing procurement needs for the current year ("prior information notice").
- When each particular project is put to tender ("call for tenders").

- After each contract is awarded ("contract award notice").

*What information should be published?*

36. The list of information to be published is quite similar, regardless of the international organisation involved (European Commission or development banks coordinated by the World Bank). The only difference may arise in the document in which the information must be published (calls for tenders, or documentation given to bidders, for example, about the criteria that will be used for judging the bids).

37. The list of information to be published will depend on the current stage of the procedure. It will be different for prior information notices, calls for tender, and contract award notices.

***Example: principal information contained in EU forms***

*Prior information notice.*

38. Identification of the contracting authority. Place of performance. Nature of goods or services. Provisional date for launching the procedure. Financing conditions. Other information

*Call for tenders.*

39. Identification of the contracting authority. Method of procurement selected. Place of performance. Nature and scope of goods or services. Possibility of bidding for one or more lots. Performance deadline. Location where the specifications can be obtained. Methods of payment. Deadline for receipt of bids and persons authorised to attend the opening of bids. Minimum economic and technical conditions to be met by the bidder. Duration of validity of the bid. Award criteria. Date of delivery.

*Contract award notice.*

40. Identification of the contracting authority. Procurement procedure selected. Date of award. Award criteria. Number of bids received. Name and address of winning bidder. Nature and scope of goods or services. Price. Portion to be subcontracted, if any.

41. All of this information must be available to potential suppliers: they can easily determine if they can bid for a contract by verifying that the necessary notice has been published and that it contains complete information about the procedures for selecting and choosing firms.

***Example. United Kingdom Ministry of Defence***

42. Information for enterprises must allow them to answer the following questions before they submit a bid.

*Prior information notice (yes or no)*

43. The contracting authority must be asked questions such as:

- Have needs been specifically defined?
- Have the conditions for performing the contract being defined?
- Are the constraints imposed on bidding enterprises necessary?

44. For enterprises, the questions are of another kind:

- Has the contracting authority informed enterprises in advance?
- Is the nature of the acquisition clearly described?
- Are the conditions that suppliers must meet clear and detailed?
- Does the information provided allow potential suppliers to bid knowledgeably?

*Transparency of information provided to enterprises*

Needs and specifications.

- Publication of a call for tenders.
- Publication in accordance with regulations.
- Publication of needs.
- Publication of specifications

Criteria for selecting and choosing the supplier.

- Selection criteria published in the prior information notice.
- Selection criteria published in the call for tenders.
- Selection criteria included in the specifications.
- Information for suppliers on the need to have the capacities required for bidding.
- After award of the contract, the results of applying the criteria (evaluation report) are made available to the enterprises that submitted bids.

Results of the consultation.

- Unsuccessful bidders can find out why they were excluded.
- This information is public.
- This information is given in writing.
- This information is given orally.

Contract management and payment.

- The contract management rules are disseminated to all potential bidders.
- The methods of payment are clearly defined.

- The methods of payment are known to all potential suppliers.

Means of information used by the contracting authority.

- Means used for all enterprises are reported at the same time.

Possible derogations from the tendering procedure.

- List of cases in which calls for tender are not used.

### ***Conditions required for success***

45. The success of this method requires that there be precise and clearly defined rules concerning the publication of notices and their content.

46. It also requires the systematic application of these rules.

47. Having an Internet site where these rules can be disseminated is an advantage.

48. Note. The criteria for selecting firms and choosing a supplier will depend on each contract, but they must always be publicised as early as possible and preferably (to avoid any complaint of favouritism) at the outset of the procedure (in the call for tenders or the call for bids).

### ***Conditions to be respected***

- Standard forms must be used (cf. the standard forms prepared by the European Union and the World Bank) to ensure that important information is not omitted from the documents published.
- There is a legal obligation to publish all notices beyond a certain threshold in a national journal and/or at the appropriate national website, and in an international journal or at an international website when they exceed a certain amount.
- Appropriate monitoring (surveillance) will ensure that all notices beyond the thresholds are indeed published.

**References:**

European Commission: standard forms in the annexes to Commission Regulation 1564/2005.

Global Advice Network – Paths to Sustainability in Supply Chain Management - SSCM self diagnostic tool (August 2004) – <http://business-anti-corruption.com>

Canada – Guide for managers – Best practices for using Advance Contract Award Notices (ACANS) - revised January 2004

### **Tool 1.2. Appropriate criteria**

49. Businesses often worry about what happens at meetings of the commissions for selecting bidders and awarding contracts. They imagine, sometimes with good reason, that not all bidders will be treated in the same way, that more may be demanded of some and less of others, and that the final decision will not be fair or will tend to favour one bidder over the others.

50. Criteria are essential, then, for comparing bids received following a call for tenders or a consultation. This provision exists in all consultation rules, and criteria are used for:

- Selecting firms/suppliers that have the required (technical) capacity to submit a bid.
- Selecting, from among the proposals received, the one that will be accepted as being economically the most advantageous (best quality/price ratio).

51. Two measures can be taken to avoid suspicion:

- The criteria to be used for selecting bidders and judging their bids can be published at the time of the call for tenders.
- Effective and objective criteria can be chosen.

#### ***Objectives***

1. Choose "good" criteria, which means eschewing criteria that have no real relevance to the contract in question and that would set inappropriate constraints and reduce competition, or would simply be not measurable or quantifiable.
2. Publish these criteria in advance. The international procurement conventions (United Nations conventions and European Union procurement directives, in particular) recommend or require that all contracting entities observe this rule, which is easy to apply.

52. Such publication is important for the contracting entity to demonstrate its transparency. It is useful for potential suppliers, who can verify that they have the qualifications needed to bid and will know the criteria against which their bids will be judged.

53. If necessary, it allows suppliers to challenge criteria that are not objective or are inappropriate to the scope or purpose of the contract, even before those criteria are used to select bidders or judge bids.

#### ***Intended users***

54. The proposed tools are addressed to contracting entities at the central and local government levels and to public enterprises or firms under contract.

55. Choosing efficient criteria for selecting bidders and judging bids guarantees transparency in the selection process.

***Expected benefits***

- The first benefit is that suppliers will have greater confidence in government. This benefit is very important, because the quality of the relationship between suppliers and national or local governments will determine the success of the government procurement policy.
- The second benefit is the reduced risk of favouritism or fraud. The choice of impartial, quantifiable and measurable criteria reduces room for discretion in interpreting the results and choosing members of the commissions for selecting bidders or awarding contracts.
- The third benefit is indirect but still important: advance publication of criteria allows suppliers to obtain explanations of the choices made by the authority, and to challenge those choices.

***Conditions to be respected***

- The impartial choice of criteria is an essential element of qualification and selection procedures.
- Once decided, the criteria must be applied in a transparent, systematic and impartial manner (even if they lead to disqualification of a local firm, for example).
- Finally, if the system is to function properly, the criteria must be appropriate to the object of the contract. Criteria that are too constraining may discourage competent firms from competing or may favour some firms over others.

***Examples:***

56. A specific or onerous equipment requirement can discourage bidding by a firm that does not have this kind of equipment but could readily rent or lease it.

57. The requirement that a consulting firm have several years of experience with studies similar to the object of the contract may unreasonably preclude a new firm that has hired experts long specialised in the specific field.

***Description******Criteria***

Bidder qualification criteria:

58. These are elimination criteria, which means that candidates must satisfy each of the criteria selected from the following list:

- Situation vis-à-vis local regulations (taxes, duties, social contributions etc.).
- General business experience (for example, average sales over the last X years or sales worth more than twice the estimated value of the contract).
- Specific technical experience (experience with two or three similar contracts over the last two years).

- Performance or production capacity (annual or monthly average exceeding 80% of the estimated value of the contract).
- Financial capacity (balance sheets and statements of earnings for the last three years, cash on hand, sufficient working capital until first payment, bank guarantees for the contract).
- Qualifications and experience of key personnel (project leader, expert, consultant with a minimum of experience in the sector).
- Availability of the equipment and materials needed to perform the contract.
- Contractual commitments (list of contracts in execution, value, and completion date).
- Contractual track record (list of contracts completed or underway and especially those for which lawsuits or arbitration are pending).
- References, with the address of contacts (these references are often more useful than the certificates provided by the firm).

**Bidder selection criteria:**

59. The criteria used to judge bids and award the contract to the supplier offering the best quality/price ratio may be chosen from the list below:

- Compliance of the bid with the specifications.
- Schedule for completing the works or delivering the supplies proposed by the firm (the bid price will be increased by a pre-fixed amount payable as damages to the contracting authority for late delivery or completion).
- Allowance for a discount when one or more lots are awarded to the same supplier.
- Conversion of bids into the currency of evaluation.

60. Remember that it is the client which establishes these criteria, in light of its priorities and its constraints, and the characteristics of the contract in question.

*When should the criteria be made known?*

61. If suppliers are aware of these criteria, they will understand what is of particular importance to the client and they will do their best to respond to those needs. As a result, the quality of bids received will be greater.

62. If suppliers are not aware of the bid selection criteria, they may not strive to meet the conditions deemed most important by the contracting authority.

63. The documents adopted by major international organisations (such as the United Nations conventions against corruption and the European procurement directives) recommend publication of the bid selection criteria.

*Choice of criteria*

64. To the extent possible, subjective criteria (for example, the architectural quality of the project or works) should not be used.

65. If subjective criteria are used, the differences in competitors' scores should be quantified (in terms of price) in order to facilitate the final decision (which will then be based solely on the lowest price), consistent with World Bank recommendations.

66. Note however that this "quantification" is not always possible and that the score (between 1 and 4), however weighted, is still the most widely used rule.

67. While bids that are not responsive to all clauses in the specifications may be accepted during the tendering phase, bidders cannot be accepted unless they meet all the established qualification criteria.

68. This shows the importance of the choice of criteria and the key role of the contracting authority both in selecting bidders and in choosing the winner.

**References**

United Nations Convention against Corruption.

European procurement directives.

World Bank.

FIDIC (International Federation of Consulting Engineers): Government Procurement Integrity Management System (September 2006).

### **Tool 1.3. Recordkeeping**

69. The ability to verify the conditions under which contracts are awarded, performed and supervised is essential to guarantee the transparency of the process and the integrity of the parties to the process.

70. Retaining the most important documents, then, is not only useful but indispensable, particularly if a judicial investigation should be needed to verify the legality of the process and the decisions taken.

#### ***Examples:***

71. In some recent inquiries, investigators have been unable to retrieve the reports of the commissions that selected the bidders and evaluated the bids. The only documents retained were those dealing with performance of the contract, and the contracting authority kept them for purposes of supervising contract performance and calling guarantees if necessary. None of those documents revealed which firms were selected to bid, and how, or how the winner was chosen. Naturally, the selection and award criteria were contained in the documents, but the grounds for excluding some candidates or for deciding the best offer were nowhere to be found. It was difficult even to identify the membership of the commissions.

72. In none of these cases were the investigators able to find any proof of allegations by bidders challenging the validity of the process. It is important, then, for the contracting authority to formalise its records management.

#### ***Objectives***

1. To permit access to all essential information on the contract, even if it was completed several years ago.
2. To facilitate investigators' access to essential documents on the contract.
3. To be able to detect any instances of fraud or corruption.

#### ***Intended users***

73. This tool is intended for all government agencies that procure works, supplies or services.

#### ***Description***

74. Basic principle: Government agencies are responsible for their files. In general, they retain them until the warranty period expires, and then store them in their in-house archiving system.

75. Application to public procurement: all documentation needed for control should be conserved. This implies: knowing what to conserve, where and for how long, and who should conserve it.

**Example:**

*What should be conserved?*

76. Everything that could affect the course of proceedings. There is no single list, but the following items may be cited as examples:

- Needs evaluation reports.
- Local council deliberations.
- Call for tenders.
- Specifications.
- All administrative and technical documents supplied to bidders.
- Bid analysis reports.
- Decisions of the awards commission and all the elements on which the decision was based.
- Decisions and observations during contract performance (visit reports, for example).
- Decisions and reports on any disputes.

*Where should it be kept?*

- In the offices of the contracting 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 specialised library, for electronic documentation used in the e-procurement system.

*Who should keep the records?*

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

*How long should the records be kept?*

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

78. Documentation kept on the contracting 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.)

79. 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 (for example because they involve a particular and innovative technique or relate to historic buildings) should be kept indefinitely.

*How should a file be sent to archives?*

- Send only those documents of sufficient interest that they should be conserved indefinitely.
- Files should be packed in standard archives boxes.
- These boxes should be marked only with a serial number.
- The contents of the boxes should be recorded only on a filing slip, in order to protect their confidentiality.
- The archives unit should verify the conditions of delivery of the documents before archiving them.
- The documents should be delivered only by appointment.

*Conditions required for success*

80. All evidentiary documents must be archived, and this implies control over the classification of documents and the need to compile a standard list of documents to be conserved.

81. The document retention period must be at least as long as the warrantee and the recourse or reservations periods, and must allow for investigations by the specialised services even after those periods have expired.

82. It is well to have a service specialised in archiving and document conservation within the contracting authority, and another within the central government.

83. These two archiving entities must be headed by real professionals and they must have the means for proper conservation of the documents deposited with them.

**Reference:**

France: *Versement des dossiers administratifs aux services des archives départementales*

**Tool 2.1. Using the negotiated tendering method**

84. Procurement procedures that do not involve calls for tender, such as direct purchase, issuance of purchase orders, or negotiated procurement are always more or less suspect. Such practices are in fact frequently prohibited, and are often strictly limited. These procedures can be economically sound, however, as they can be completed more quickly, the contract can be let to a known and competent firm, and a compromise can be reached that is acceptable to both parties. The challenge facing the contracting authority is to put in place the means to use these procedures without risk.

***Objectives***

1. Legal security for the decision.
2. Transparency.
3. Fair competition among suppliers
4. Responsible use of public funds.
5. Effective control over the whole system.

85. These are some of the constraints that the decision-maker must face.

***Intended users***

86. This tool is intended for contracting entities. The choice of procedure for selecting bidders and awarding contracts is their responsibility alone. Their freedom of action is constrained only by prevailing legislation.

87. The tool can also be used by persons responsible for drafting procurement regulations.

***Expected benefits***

88. The main advantages, other than the possibility of using all existing procedures for awarding contracts, are to ensure that the contract will always be awarded to the best-qualified firm, supplier or provider, and at the best price. In addition, having a relatively broad range of procedures can produce savings in implementing the procedure, and thereby reduce the cost to the taxpayer. These savings can be reflected in lower costs associated with awarding contracts, faster decision-making, and swifter performance. Finally, it can also help reduce corrupt practices that may arise when prices have not been negotiated.

***Conditions to be respected***

89. The use of the full range of contracting procedures requires more highly qualified personnel (negotiators rather than buyers, for example), more effective controls, and greater empowerment for procurement officers.

90. Constraints relating to the training and skills of available personnel may require adopting the contracting procedure that is easiest to implement or that is the most clear-cut, so as to reduce the risks of fraud and corruption as far as possible.

91. Training for agents (in negotiation skills, particularly), monitoring of their skills, and empowerment of buyers are examples of measures that can allow all existing procedures to be used, while ensuring security and transparency in their use. The problem of controls is covered by another tool.

**Examples:**

*Empowering buyers*

92. This is what has been done in France, following revisions to the Public Procurement Code. Instead of requiring contracting authorities to use predetermined models and to publish standard notices, regardless of the nature of the contract, the law now gives them the possibility of using any procedure they like, including direct purchase.

93. This freedom is however bound by some constraints:

- It applies only to contracts where the value is below a certain threshold, set today at €90,000.
- Contact notices must be published.
- The competition rules fixed by the Treaty of Rome (guaranteeing the freedom to provide services and access to public purchase orders) must be respected.
- The authority to oversee the enforcement of these constraints and the absence of fraud or corruption lies with the courts (the Criminal Code contains an article penalising inequality of access and treatment for suppliers in public procurement).

94. Despite the risk of judicial intervention in their procurement procedures, local officials and governments are resorting increasingly to these new procedures, which are formally less constraining but are demanding in terms of principles.

*Training for procurement agents*

95. Public procurement agents have to be trained. To this end, some principles must be implemented to determine whether existing procedures can satisfy the following questions:

- Establish skills and knowledge profiles for all specialised procurement employees (supplies, services and works).
- These skills are systematically adjusted against competitive recruitment needs.
- A level of knowledge sufficient to perform their tasks is required of all agents involved even occasionally in procurement.
- Skills shortages are inventoried in order to design initial and ongoing training adapted to needs.
- Officials may pursue professional development or training courses of reasonable duration (3 to 6 months, at most)
- Internal and external auditors are sufficiently informed (through a specialised training programme) of the provisions governing procurement and the control systems in place, so that they can conduct high-quality audits that respect the standards.

96. As well, there should be:

- A process for evaluating personnel performance, based on results and professional behaviour, in order to adapt training contents to identified needs and gaps.

**References:**

World Bank public procurement procedures.

World Bank/OECD, Methodology for Assessing National Procurement Systems.

European directives on the procurement of supplies, works, services and contracts for network activities (art 6 of Directive 93/36, article 7 of Directive 93/37 and article 11 of Directive 92/50) and for procurement in the water, energy, transportation and telecommunications sectors (article 20 of Directive 93/38) amended by Directive 2004.

## **Tool 2.2. Collegial decision-making**

97. The risk of corruption, favouritism or abuse of power is heightened when the selection of firms permitted to tender or the choice of supplier is made by only one person. Confiding these tasks to commissions can reduce these risks considerably and can at the same time enhance the transparency of the process, as the meetings of these commissions are frequently held in public. Moreover, throughout the procurement process, the risk of fraud and abuse of power can be reduced by having a commission decide whether to accept or reject appeals.

### ***Objectives***

1. To enhance the transparency of the decision-making process by confiding decisions to commissions. Transparency will be even greater if the public has access to the meetings where these commissions announce their decisions.
2. To reduce the risks of fraud, corruption, abuse of power and conflict of interest. It is always harder to bribe several people, and the cost of doing so will likely outweigh the return.

### ***Intended users***

98. It is up to legislators (national, regional or local) to ensure that essential choices in the procedure are confided to a commission.

99. For governments, the regulatory authority (a "central procurement commission" or parliament, for example) should impose this condition.

100. At the local government level, a general regulatory decision (if this is possible) and in public enterprises a decision of the Board of Directors should envision this type of provision

101. Public attendance at commission meetings will depend on the same regulatory authorities.

### ***Expected benefits***

102. Opening procedures to the public will considerably enhance transparency and, consequently, the public's trust in its representatives.

103. Sharing decision-making power between several persons helps not only to reduce the risks of fraud, favouritism, corruption and abuse of power, but also the risks related to the legal security of the decisions taken.

104. Allowing the public to attend plenary meetings of the commissions will also demonstrate that public funds are being used in the general interest.

### ***Description***

#### ***The role of the commissions***

105. Most existing regulations provide for:

- A commission that will select firms to participate in the competition for the contract.

- A commission that will select the winner from the competition.
- A commission that will handle any disputes.

106. There may be a single commission ("procurement commission") or several commissions responsible for opening the envelopes, selecting the winner, and settling disputes.

*Powers of the commission*

107. It is important in all cases that the commission should have decision-making powers, and not merely advisory powers (where the decision is left to the purchasing entity).

108. The commission must have real decision-making power within its respective field, and the competent authority must automatically follow its decisions. Power to advise the competent authority is not enough, since the authority may choose not to follow the commission's advice.

109. On the other hand, the members of the commission must be held accountable to the courts for the way they exercise their powers. This condition is essential for removing the possibility of abuse in decisions taken by a single person.

*Appointment of commission members*

110. If all the commission members are appointed by the contracting authority or by the competent procurement authority, there will be no way to challenge the power of that authority and doubts will remain about the integrity of the decision. To resolve this problem, provision is often made (in Morocco, for example) to select at least some of the members by lot, or to require the decision-maker to include members of the opposition in the commission (as is done at the French local government level, for example).

**Examples**

*Government commissions in Morocco*

111. Members are selected as follows:

- A representative of the contracting agency serves as chair.
- Two representatives of the contracting agency are appointed at the beginning of the session, by lot, from a list of at least four qualified persons.
- A representative of the Treasury of the Kingdom (or the expenditure authorising official, the *ordonnateur*).
- A representative of the Ministry of Finance for large contracts.

112. Appointment of two members of the commission by lot from among a list of qualified persons enhances transparency and limits the risk of collusion or complicity among commission members.

*Local government commissions in France*

113. The commission must include:

- Members of the majority party in the municipal council.
- An equal number of members from minority parties in the council.
- The chair is selected from among members of the municipal majority.

114. The mayor is then the person responsible for implementing the decision taken by the commission, and he cannot circumvent that decision. In case of conflict with the commission, the mayor must turn to the ad hoc settlement body.

*Commission meetings*

115. Plenary meetings are public.

116. Working sessions are closed.

117. A report is prepared at the end of the working meetings. That report is read out by the chair at the next public session.

118. There is a process in place for the public to participate in the discussions.

*Conditions required for success*

119. The main problem with any collective decision is that no one person is responsible if a problem arises.

120. To resolve this problem, one of the following options can be selected:

- Make the commission collectively responsible for its decisions.
- Make the chair personally responsible.
- Insist on a recorded vote by each member of the commission, and make that vote public in order to identify those responsible. In this case, to avoid any challenge, the vote must be yea or nay.
- Make the senior local official (the mayor, for example) responsible.

121. Other solutions can also be envisioned.

**References:**

Morocco: Decree 2-06-388 of 5 February 2007 on Procurement. See <http://www.marchespublics.gov.ma/wps/portal/pmmp>

## CHAPTER 2. FACTORS FOR MANAGEMENT

122. Proper management of public funds is indispensable if the citizens are to have confidence in their elected representatives and in their public officials. Procurement is a particularly good test of the management of public funds. Managing procurement means, first, verifying that public funds are used in accordance with the general interest and the objective for which they are appropriated. But it also means entrusting the management of these funds to competent, well-trained professionals. This is what the OECD proposes in the two recommendations concerning good management:

- 3. Ensure that public funds are used in public procurement according to the purposes intended.**
- 4. Conduct procurement on a professional basis with a common body of knowledge, skills and ethical rules.**

123. To implement these recommendations, there are a number of relatively simple but effective measures available:

- The first concerns the planning of public expenditures (tool 3.1). It is not enough to determine that an outlay is useful: there must be assurance that there is budgetary provision for it. Next, priorities must be established among useful expenditures. A control list can be used to ensure that such planning is a reality. At the end of the fiscal year, it should be verified that priorities have been respected. This task is important because it allows the planning process to be validated. It is often the case that, for a variety of reasons, the order of priority established at the programming stage is not followed when it comes to implementation.
- The procurement process depends heavily on the quality and the skills of the buyers (tool 4.1). This rule is systematically observed in the private sector, which for many years now has been training its buyers. In the public sector, buyer training is much more random, and training courses should be provided for all staff who handle public funds.
- Finally, while codes of conduct for public officials and agents are becoming more common, it is important to ensure that public procurement officers respect the ethical rules pertaining to their profession (tool 4.2).

### **Tool 3.1. Control list for planning public expenditures**

124. This control list is relatively thorough, since it takes into account not only needs and their programming but also the control and verification of the budget, the appropriateness and legality of expenditures, and monitoring of execution. It thus covers the OECD recommendations completely.

#### ***Objectives***

1. To ensure that there is real programming of expenditures in the entity concerned.
2. To ensure that earmarked funds are consistent with the general interest and with the use foreseen for them in the expenditure programming phase.

3. To ensure that there have not been too many subsequent changes in the allocation of the funds without consultation, or for reasons that may or may not be valid (e.g. the file was not ready) – such changes can in fact constitute an abuse of power by the decision-maker.

***Intended users***

125. This list is simple and relatively comprehensive, and can be a particularly useful tool for auditors and controllers, as well as for citizens and the associations representing them.

***Description***

126. The tool consists of a series of questions relating to needs definition (Who? What? When? How? For what purpose?), the existence of an expenditure programme setting priorities, the budget control system, verification of the regularity of the expenditure, its appropriateness, and the monitoring of investments.

127. The answers to these questions can be used to verify that the planned investments correspond to publicly expressed needs, that they are part of a general programme to improve living conditions, that the commitments undertaken by the entity concerned will not be diverted from their objective for invalid reasons, and that the corresponding appropriations will not be allocated to serve personal interests.

***Example: List of questions proposed by the UK Department of Business, Enterprise and Regulatory Reform (BERR).***

*Needs definition:*

- Who defines needs?
- Can the public make its needs known? Yes/no.
- How: directly, during “neighbourhood” meetings, through elected representatives, associations, NGOs etc.?
- Are the demands of the public taken into account? Yes/no.
- Is there any verification of needs estimates? Yes/no

*Programming: (responses: always, often, rarely, never).*

- Is there an annual investment programme?
- Does that programme establish priorities?
- Are the demands of the public taken into account in those priorities? Is the list of priority investments made public?
- Is the amount of the capital budget fixed each year?
- Can the public influence that amount?
- Does the government publish its investment programme?

- Can the public bring changes to that programme?
- Can the public challenge that programme?

*Budgetary control: (responses: always, often, rarely, never).*

- Are all the necessary funds allocated to priority investments?
- Can funds be transferred to other operations?
- Are these changes explained to the public?
- Can the public challenge government choices?
- Is the public informed of any change in the project estimate?
- Can the public challenge cost overruns?
- Can the public challenge the project itself?

***Control over expenditure legality:***

128. Legality of the expenditure: accounting controls only, designed to verify that appropriations have been used in accordance with prevailing accounting standards: expenditures authorized, invoices paid, invoices verified, payments made from budgeted funds, payments made without erroneous allocation of the expenditure (chapter and article), etc.

- Is this type of control exercised? Yes/no.
- Is this control performed by an independent external body (Auditor General or an independent private entity)? Yes/no.
- Are the results made public? Yes/no

***Control over the appropriateness of expenditure:***

129. Appropriateness of the expenditure: in-depth examination to verify that public funds are being used properly.

- Was the expenditure authorized? Yes/no.
- Is the expenditure justified: always, often, rarely, never?
- Is the investment useful and does it serve the general interest: always, often, rarely, never?
- Will the planned facilities be used by the majority of citizens: always, often, rarely, never?

***Monitoring of investments:***

- Is the investment profitable: always, often, rarely, never?

- Has the expenditure being correctly estimated: always, often, rarely, never?
- Is an operations report prepared and made public: always, often, rarely, never?
- Is an overall accounting made public: always, often, rarely, never?

***Conditions required for success:***

130. To make full use of this tool, it is advisable to:

- Use this model as a basis for preparing a list of mandatory questions, adapted to the department or agency concerned and the procedure to be used.
- Use the list systematically for each capital expenditure.
- Ensure that the report presenting the investment programme provides a clear explanation for all negative answers to questions.
- Publish the report justifying the authority's or the commission's choice, not only at the time the annual investment programme is prepared but also after each amendment to that programme. This will ensure transparency in the procedure.

**References:**

United Kingdom – Department for Business, Enterprise & Regulatory Reform ((BERR)  
<http://www.berr.gov.uk>

France –Audits and controls conducted by the Court of Accounts and the Regional Chambers of Accounts;  
site: <http://www.comptes.fr/fr/CC/accueil.html>

#### **Tool 4.1. Training of government purchasing officers**

131. Professional purchasing officers are a guarantee that public funds will be used properly. If the buyer is qualified, he will use the best formula for each purchase (and will not always use the same system), and this will help ensure value for money.

132. To achieve such professionalism requires training not only in the procedures to be used but also in the more sophisticated purchasing techniques, such as negotiation. This training should be conducted at the outset and throughout the course of the purchasing officer's career, so that he will be constantly abreast of practices and regulations.

#### ***Objectives***

133. Having properly qualified public purchasing officers will help to:

- Avoid errors through inadequate knowledge of administrative procedures.
- Use all the possibilities offered by the regulations for making purchases.
- Reduce the cost of public purchases while increasing the quality of products, services and works.
- Place public buyers on the same footing as their private sector counterparts, who are well-versed in purchasing and negotiation techniques.

#### ***Intended users***

134. This tool is addressed in particular to human resource managers in government.

135. More broadly, it is intended for all persons involved in the procurement process (buyers as well as those who make the rules and decisions).

#### ***Description***

136. The tool described below should be considered as a standard set of questions to be answered by human resource managers in the various government entities when they are considering the qualifications and skills of purchasing agents in their entity.

#### ***The content of training***

137. Procurement training should not be confined to a knowledge of regulations: it should also include basic phases such as the submission of bids, calculation of prices, and negotiation.

#### ***Example***

138. In France, the *Institut européen de l'achat public* (European Institute for Public Procurement) organises training for public buyers around the following topics:

- Contract preparation.
- Regulations.

- Presentation of different procedures.
- Disputes and challenges.

139. These topics involve the following disciplines:

- Community procurement law.
- Procurement regulations.
- Competition.
- Purchasing techniques.
- Negotiation.
- Fraud and corruption.
- Delegation of responsibilities.

140. The training will be conducted over three months and will include numerous practical exercises and visits. It will be confirmed by a university diploma, and can lead to a Master's degree.

#### ***The timing of training***

141. Training should be offered throughout the working life of the procurement official or manager, and in particular:

1. Upon taking up a position as public buyer
2. Regularly, as a means of verifying skills and knowledge
3. After each regulatory amendment
4. After each change of position
5. In preparation for reassignment (when an employee wants to become a buyer, for example).

#### ***Accreditation of training***

- Official accreditation: a university degree or diploma delivered by an officially recognised private institute.
- Recognition on the part of the employer, often in the form of an increase in salary or in responsibilities.

#### ***Example***

142. The Chartered Institute of Purchasing and Supply in Australia offers training to students who want to become professional public buyers, and also for professionals who want to develop their

knowledge and acquire official recognition of their skills in the form of a university degree. While the Institute is more specifically devoted to training private-sector suppliers and managers, its courses are also open to public servants.

***Conditions required for success***

143. There are at least three conditions for ensuring the success of training:

- Personal commitment: officers should be encouraged to apply for training or refresher courses whenever they feel the need.
- The needs of the office: at each amendment to regulations, training sessions should be organised so that officers can understand and apply the new rules. As far as possible, encourage the sharing of experience and keep "ex cathedra" training to a minimum (i.e. the kind of training where students are supposed to absorb wisdom from a professional teacher who does not generally practice the trade).
- Offer recognition for successful outcomes, in the form of pay (the most frequent type of recognition), especially for people who have acquired the highest levels of knowledge.

**Reference**

Training details can be found at the site of the Chartered Institute of Purchasing and Supply, based in London: <http://www.dips.org>

#### **Tool 4.2. Ethical rules specific to public buyers**

144. Many countries have codes of conduct that set general rules by which all civil servants are to govern themselves. These general rules are sometimes supplemented by more specific regulations related to a particular trade or profession: for example, the ethical rules that apply to physicians, journalists and lawyers.

145. These ethical rules are essential when legislation is not sufficient to govern the conduct or behaviour of the persons concerned. For example, because they affect people's health, physicians have established their own rules of conduct and they themselves see to their enforcement.

146. Rules of this kind are necessary for public buyers. Because they handle public funds, they are supposed to act exclusively in the general interest, but there are many temptations. They need guidelines so that they will know how to act at all times, whatever the circumstances. The code of ethics will indicate the way they should comport themselves in their relations with suppliers before calling for tenders, during the process, and afterwards. It will also indicate how to respond to the offer of gifts.

#### ***Objective to be achieved***

1. To equip public buyers with clear and pre-established rules of behaviour so that they can respond appropriately in all circumstances.
2. To help combat fraud and corruption.
3. To ensure greater transparency.

#### ***Intended users***

147. The "code of conduct" tool is intended to be applied to all public officials, but specific provisions can tailor the tool more particularly to those involved in procurement (in particular, buyers and specifications writers, who in effect constitute an at-risk group).

#### ***Expected benefits***

1. Fewer cases of fraud, corruption and favouritism.
2. Fewer cases of illicit enrichment.
3. Enhanced public confidence in civil servants.
4. Empowerment of buyers.
5. Fewer possibilities for discretionary interpretation of regulations.

#### ***Description***

148. The code gives buyers (public officials in general, and those responsible for purchasing in particular) with clear rules of conduct.

- It defines what is prohibited or mandatory in internal dealings between officials or in contacts with clients, users or suppliers. Clear and known rules of behaviour applicable to all will foster mutual respect and increase public confidence in civil servants.
- It encourages staff to take responsibility by giving them guidance for making knowledgeable decisions. A public official must not be a simple machine capable only of applying the letter of preset instructions, but must also know how to take decisions (for example, to choose the purchasing procedure that seems best in light of the circumstances).
- It includes provisions governing post-employment activities, to avoid any risk of corruption or conflict of interest.

### *Observation*

149. Be careful not to confuse:

- **Personal ethics** (morals): the set of moral principles guiding a personal quest for wisdom of action, i.e. a personal stance and an autonomous act of will (according to Max Weber, there is an ethic of conviction and an ethic of responsibility).
- **Professional ethics**: the set of principles applicable to the professional practice of a given trade. Those principles are not compulsory, but disregard of them is punishable.
- **Code of conduct**: a tool that allows each official or employee to understand his duties vis-à-vis his employer, superiors, subordinates, clients and suppliers.

### *Description*

150. Public buyers are public agents and are subject to all the rules applicable to public agents. However, certain provisions are mandatory for them, in particular those concerning the behaviour of the public buyer vis-à-vis businesses and vis-à-vis gifts, as well as potential conflicts of interest. A standard set of indispensable provisions in codes applicable to public buyers is outlined below.

### *Contents of a general code of conduct*

151. The standard code of conduct prepared by the Council of Europe stipulates the points that must be part of any code for public officials. The various articles of that document deal with the following points, in particular:

152. The code applies to all public officials, and every official must take the steps necessary to comply with the code.

153. The objective is to set rules of integrity and conduct that all officials must observe, and to make these rules known to the public.

154. The general principles to be observed are: respect for the law and for ethical rules, political neutrality, loyalty to the constituted authorities, honesty and impartiality, courtesy in relations with other officials and the public.

155. Other provisions have to do with avoiding conflicts of interest (real, potential or apparent), accountability, the need to declare personal and private interests that might affect official functions as well as interests incompatible with the public function, and to respect the restrictions on political activities.

156. In return, officials are entitled to respect for their privacy, and accordingly the declarations required by law must be kept confidential.

157. An article is devoted to gifts, and another to reaction to improper offers. Another article deals with misuse of official position and the prohibition on disclosing information obtained in the exercise of official functions.

### ***Contents of a code of conduct specific to public buyers***

158. To supplement this general document, some governments have developed specific codes for their procurement agents. Such documents deal with relations between supplier and client, before and during the formal procurement process. They also describe the behaviour expected of the buyer in relation to gifts. The following example was prepared by the French Ministry of Defence for current purchases.

#### *Example: Clauses specific to persons involved in procurement processes*

159. This model establishes the framework governing relations between economic operators and procurement officials: it applies not only to officers in the procurement entities but also to specifications writers and executives.

### ***General rules***

1. Generally speaking, buyers must ensure that they are never beholden to an economic operator.
2. Throughout the procurement process they must exhibit responsible behaviour and strive for transparency and collegiality of decisions.
3. Information on the procurement process must not be disclosed to persons who have no need to know (relatives, friends).

### ***Information and conduct prior to the procurement process***

4. Procurement officers, and in particular buyers, may need to establish contacts with the private sector. The government needs to know economic operators before the process begins in order to choose the procedure, before any publication or negotiation. The public official must know the status of the offer through technical familiarity with the purchasing group or segments within his competence.
5. Buyers must then 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. On the other hand, economic operators also need 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:
  - All information on completed procedures, when a contract has been awarded, subject to the protection of industrial and commercial secrets.
  - 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 bidders, information on the estimated value of a project or the scheduled date of the consultation, etc., must not be disclosed.
9. In general, 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 contracting authority, in order to avoid gearing the specifications to a specific offer.

***Information and conduct during the tendering procedure***

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 contract performance***

13. All decisions of any kind taken by a public official must be based exclusively on the provisions in the contract previously notified, particularly as concerns 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 and certification of performance.
15. Relations established with economic operators under public contracts may not serve as a pretext for any private contracting.
16. Private purchases (of computers, for example) may not have as their support or their framework a professional or contractual reference, real or future.

***Information and conduct at all stages of the procedure***

17. Public officials must not solicit or accept gifts, favours or other advantages for themselves, their family or their friends, or for persons with whom they have business or political dealings.
18. Regardless of the position occupied, and under all circumstances, public officials 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.
19. 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, pens of low value, advertising materials, minor office furnishings.

### *Gifts*

20. Every buyer is advised to consider all the following points before accepting any gift, which must be minor, of low value, not repeated, and neutral.
21. Regardless of the nature of the gift received, public officials must:
  - report them immediately to their hierarchical superior in order to avoid any suspicion;
  - 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;
  - as far as possible, use them for the benefit of the entire office (for example, passing a box of chocolates, sharing calendars or distributing pens);
  - request their supervisor's advice in case of doubt, as to what is acceptable or not and on the steps to take.
22. 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.
23. Invitations to receptions or promotional, cultural, sporting or charitable events are subject to the same rules as those for minor gifts. Being on holiday is no defence against the rules defined more broadly in this code. Public officials must in no case solicit such invitations from a supplier.
24. 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.
25. 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.

### *Conditions required for success*

160. In all cases, the code must be an integral part of the contract between employer and employee and must be signed by the person it is addressed to (in order to have proof that it has been read).
161. Specific rules must be established for the different players involved in public procurement.
162. The specific rules, which are in addition to those applicable to all public officials, must be systematically applied, and their observance must be verified by internal control or audit bodies.
163. Officers in breach of these rules must be punished, but the immediate supervisor will also be held liable when breaches are confirmed.

**References:**

France: Ministry of Defence, Code pour les acteurs de l'achat public

Canada: Values and Ethics Code for the Public Service prepared by Treasury Board of Canada Secretariat:  
<http://www.tbs-sct.gc.ca>

The World Bank – East Asia and Pacific Region – “The Anti-Corruption Handbook”

OGC – the UK Office of Government Commerce – Government Procurement Code of Good Practice

Council of Europe– GRECO – Recommendation n° R(2000)10 of the Committee of Ministers to Member States on codes of conduct for public officials (adopted by the Committee of Ministers on 11 May 2000).  
([http://www.coe.int/t/dghl/monitoring/greco/default\\_fr.asp](http://www.coe.int/t/dghl/monitoring/greco/default_fr.asp) )

### CHAPTER 3. FACTORS FOR COMBATING CORRUPTION

164. Public procurement is one of the activities most vulnerable to corruption. This fact can be readily appreciated when we recall that corruption is defined as “requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof as accepting or soliciting an advantage to act or refrain from acting in the exercise of one’s functions (definition given in the Council of Europe Civil Law Convention on Corruption”.

165. Procurement holds many enticements for dishonest officials: the amounts involved are often significant (and diverting a modest percentage is relatively easy), controls are relatively ineffective (they often focus solely on the tendering phase and ignore the upstream and downstream phases largely or entirely), the public rarely has any chance to review public expenditures, even through elected representatives, and the bond between the firm and the official is a secret pact that neither party has any interest in revealing.

166. It is essential to punish those who abuse their functions for personal advantage. This is universally recognised, and most national criminal codes provide penalties for those who commit fraud and those who bribe or accept bribes. Yet those penalties still have to be enforced, and this can be difficult when the malefactors occupy very senior positions in their country's government.

167. To contain the phenomenon, punishment is not enough. The means of prevention must also be developed, and the public must be educated (Council of Europe).

168. In its checklist, the OECD makes three recommendations:

- Reinforce corruption prevention in public procurement
- Work closely with the private sector, particularly contractors, to ensure strict observance of integrity and quality standards.
- Institute adequate mechanisms for monitoring public procurement and detecting, investigating and prosecuting cases of corruption.

169. To bolster resistance to corruption, the risks must be reduced. They must therefore be identified and dealt with. The following tools can be used:

- Anticipate and manage all risks (tool 5.1).
- Use a checklist to verify the integrity of procurement contracts (total 5.2).
- Detect potential conflicts of interest (total 5.3).

170. Cooperation between the government and the private sector is essential for preparing regulations and for measuring the real impact of those regulations. It is indispensable, then, to institutionalise such cooperation:

- Work jointly to formalise regulations (total 6.1).

171. Finally, in addition to a clear and precise provision in the criminal code making bribery a crime, cases of corruption can be detected and pursued through:

- The use of risk indicators (tool 7.1).
- Compilation and use of statistics (tool 7.2).
- Performance evaluations of suppliers (tool 7.3).

172. These various tools are described below

### **Tool 5.1. Global risk management**

173. In procurement the risks are many, and they may have technical and human origins linked to project management or the entity's overall organisation. But there are also external risks due to unexpected events or to political or financial constraints. All these risks exist, and they are not always specific to procurement. We know most of them. The important thing is to anticipate them, for we can neither eliminate nor ignore them.

#### ***Objectives***

1. Identify the risks
2. Anticipate the consequences
3. Identify solutions to limit those consequences.
4. Take steps to reduce the probability that the risks will materialise.

#### ***Intended users***

174. This tool is useful primarily to purchasing officials and to contract managers. With it, they can prevent certain risks and, more importantly, can forestall their consequences for the procurement process. It involves giving priority to the most important and most likely risks by taking steps in advance that will contribute to successful management of the situation.

#### ***Description***

175. The proposed tool is designed mainly to manage risks so that when they materialise appropriate decisions can be taken promptly. The objective is not to eliminate the risks but to recognise those that can arise, so as to limit their adverse consequences.

176. The UK Department of Business, Enterprise and Regulatory Reform (BERR) was the first to propose a simple and effective method. Its recommendations are based in part on work done in France within the *Conseil Général des Ponts et Chaussées* on the management of large-scale road projects. The following theoretical description summarises these two approaches, which are mutually compatible although they have been adopted in different countries and at different times.

177. The process must include the following stages

### *Risk identification*

178. There are various methods for identifying risk, but in all cases the risks must be inventoried in discussion with all the persons involved in the project.

179. The inventory will of course include risks common to all contracts and not only those specific to the contract at hand. It will take account of risks related to the human factor, to the procedures used, and to the organisation in place.

### *Risk analysis*

180. At this stage, the management team must verify that all the risks identified are real. If this is the case, they must be taken into account in light of their probability and their impact on the project. They will be classified according to a scale of categories: strong, moderate or weak.

### *Risk classification*

181. Once established, the risk classification can be used to give priority to addressing the highest risks, i.e. those with the greatest probability and the most serious consequences. All the risks identified, and their consequences, can be plotted on a “risk map” with probabilities along the horizontal axis and severity along the vertical axis.

### ***Management***

182. To manage risks, the following questions must be asked:

- What measures have to be taken to prevent them from materialising?
- What should be done when they materialise?
- What are their foreseeable consequences?
- Has the contracting authority (the client or buyer) been informed of these risks and their possible consequences?

### *Resolving problems*

183. Once all the possible solutions for reducing risks have been inventoried, they must be integrated into the project as it proceeds.

### *Monitoring*

184. Throughout the life of the contract there should be regular checks so that appropriate decisions can be taken if one of the risks materialises or if new risks appear.

### ***Conditions required for success***

185. There are several indispensable conditions for making this method work:

- Specific training for managers. If managers have not received specific training in risk management (and this is frequently the case with public-sector officials), they may be unaware of what could happen, and unprepared to face the problems. They may hesitate or delay their response, entailing additional costs.
- Close monitoring of the contract (project schedule): the organisation established to carry out a project will often face external constraints (fixed budget, tight deadlines). That organisation must then be in a position to ensure that any expenditure overrun is offset and that any delay is made up, at all costs. The logics are different, and the managers will need different qualifications.
- The manager must have all the powers needed to resolve any problems: only a single decision-maker who has full power to manage the contract can decide easily and promptly to forego a comfort facility that is too expensive, or to double the work shifts at a site in order to make up for lost time due to unforeseen circumstances. This is an essential condition.
- Effective internal and external controls and audits: the ongoing monitoring of a big project or a hefty machinery order is necessary to avoid needlessly tying up public funds that could be used elsewhere. This monitoring should also provide information for the responsible entity and help it to take timely decisions. It is an effective decision-making tool.

186. The tool will be effective if these four conditions are met. If any of the first three is not satisfied, success cannot be assured.

## References

UK: Department for Business, Enterprise and Regulatory Reform, BERR. <http://www.berr.gov.uk>

France: Report on *L'ordonnancement des grands projets routiers* – Ministère de l'Équipement – Inspection générale de l'Équipement – 1989 – J. P. Bueb

### **Tool 5.2. Integrity checklist**

187. Verifying the clauses of a contract before signing it is an obligation, yet verification is rarely done in such a way as to ensure that nothing in the contract could affect integrity. This relatively simple and quick formality can avoid many disappointments during contract execution or in dealing with disputes.

#### ***Objectives***

188. The proposed method has several objectives:

- To avoid the insertion of clauses that could compromise the integrity of the contract's drafters and its signatories.
- To avoid errors or omissions in individual clauses of the contract and in the specifications.
- To avoid signing a contract with a dishonest firm or one that does not respect integrity clauses.

The system is effective and, above all, it is easy to implement. It has been supplemented, where necessary, by some additional information.

#### ***Intended users***

189. This system, based on audits, is aimed at all those responsible for verifying the clauses of the contract before its signature. It is intended:

- In the first place, for decision-makers who engage their own liability when they sign contracts.
- For financial control offices and others that commit public funds.
- For internal controllers responsible for checking contractual clauses before submitting them to the decision-maker for signature.
- For the writers of specifications who want to ensure that their project will not be challenged during a subsequent inspection or audit.

#### ***Description***

190. The system is based on audit methods and comprises the following analyses:

##### ***Organisational audit***

- Responsibilities chart.
- Integrity rating of the institution calling for tenders.
- Verification of resources and personnel.
- Senior Public Officer's responsibility.
- Procurement Integrity Management System.

- Procurement Integrity Records

*Audit of the process used*

- Existing legislation.
- Control over application of legislation.
- Blacklists and exclusions.
- Accounting information.
- Document control.
- Systems of recourse.
- Monitoring

*Personnel Audit*

- Integrity of the procurement office's managers.
- Internal verification of the integrity of procurement officers.
- Responsibilities of officers in difficult situations.
- Control over statements of assets and income.

Example:

Checklist developed by the Trade Council from Ministry of Foreign Affairs of Denmark

The following checklist contains the most typical questions you have to address to assess the risks related to public procurements

Legislation	<i>Does the country you are operating in have a law on public procurement?</i>
	<i>If yes, is this law enforced?</i>
	<i>If yes, is this legislation supervised by an international body (EU)?</i>
	<i>If yes, does the national law operate with a distinction of responsibilities? Note: tendering institution ought to be separated from legislative bodies and recourse institutions</i>
Operative-ITB (invitation to bid)	<i>Are tenders published with a fair possibility of foreign participation?</i>
	<i>Are winning bids published ex post? Note: this means that you will have a possibility of benchmarking your bid with the winning one</i>
	<i>Is the contract paid by a foreign institution?</i>
	<i>If yes, is there a possibility of filing complaints to this institution?</i>

	<i>Will there be a double envelope system (one with technical specifications, another with fiscal bid)? (In this system the envelope with technical proposal are the first opened, meaning that the appraisal is based on technical qualifications) Note: in some countries it might be necessary to be present at the opening of bids to make sure that bids are accepted.</i>
	<i>Are debriefings to bidders customary?</i>
Integrity in tendering institutions	<i>How is the reputation of the tendering institution?</i>
	<i>Does the institution in question operate with explicit integrity programmes, such as mandatory declaration of assets by procurement officers?</i>
	<i>Will other institutions be involved in the evaluation of the bid? Note: often decisions in local tender committees are overruled by government bodies.</i>
	<i>Who is responsible for the appraisal and how will the bids be evaluated?</i>
	<i>Is the tendering entity known for its usage of “deposits” for future reviews? Note: These are typically payments for an agent connected with the procurement institution.</i>
	<i>Does the procurement entity demand a pre-bid bond? Note: in some countries corrupt procurement agencies will insist on a pre-bid bond which will make extortion possible in relation to the end of the contract. Please note that in some countries pre-bid bonds are legal and will be changed to performance bonds if you win the tender.</i>
Recourse	<i>Is there a well functioning recourse system separated from the procurement institution?</i>
	<i>If not, are there other institution, or do you have to go to court?</i>
	<i>Has the recourse system (institution) previously nullified tenders?</i>
	<i>Does the recourse system operate with a stand still clause? Note: a stand still clause means that the procedure is temporarily suspended.</i>
Blacklisting and exclusion	<i>Does the procurement agency operate with a public blacklisting, and what are the criteria for such blacklisting</i>

### **Conditions required for success**

191. Audits must be effective and thus controlled. Depending on the case, sanctions or preventive measures will have to be taken if the audit results show "deliberate errors" or involuntary errors or anomalies.

### **References:**

FIDIC – “Government Procurement Integrity Management System,” September 2006 – prepared by FIDIC Integrity Management Committee - <http://www.fidic.org/>

Ministry of Foreign Affairs of Denmark – The Trade Council - “Anti-corruption Policy and Guidelines – Public Procurement Anti-Bribery Tool” - <http://www.um.dk/en/menu/TradeAndInvestment/>

#### **Tool 5.4. Detecting conflicts of interest**

192. Apart from corruption, the phenomenon most frequently encountered in procurement is conflict of interest. This situation may be either poorly identified or entirely overlooked (for example in Romania), or it may seem perfectly natural. Yet it contributes greatly to undermining citizens' trust in their elected representatives and civil servants, whenever there is suspicion that they have derived undue advantage from their position.

##### ***Objectives***

193. The primary objective is to increase people's confidence in the integrity of their elected representatives and public officials. At the same time, it will serve to make the process more transparent. It will thereby help improve the management of public funds and reduce or eliminate challenges against decisions taken during tendering or during contract management. This in turn will reduce the number of cases in which an individual (decision-maker or committee member) can be pursued for liability.

194. This indispensable tool has been prepared on the basis of practical examples given by the OECD in a 2006 publication.

##### ***Intended users***

195. This tool is intended for government procurement decision-makers and managers, who must ensure throughout the procurement process that agents involved in any phase of the contract (preparation, award, management) are not, and are not seen to be, in a position of conflict of interest.

##### ***Description***

###### *Definition of conflict of interest.*

196. "A conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official's private-capacity interests could improperly influence the performance of their official duties and responsibilities" (OECD 2006, page 13)

197. It must be remembered that this conflict may be actual, potential or merely apparent:

- Actual conflict: the official has a private interest.
- Potential conflict: the official might have a private interest.
- Apparent conflict: people may assume that the official has a private interest.

In all these cases it is essential to settle the problem a priori so that no one will have any doubts about the integrity of public officials.

###### *Approaches to resolving the problem*

- Establish appropriate standards to foster integrity in public agencies.
- Enforce those standards.
- Prepare effective procedures for identifying risks and managing conflicts of interest in day-to-day work.

- Provide for sanctions if these standards are not respected.
- Apply those sanctions.

*Recommendations*

- Identify relevant conflict-of-interest situations.
- Establish procedures for identifying, managing and resolving conflict-of-interest situations.
- Demonstrate leadership commitment.
- Create a partnership with employees.
- Enforce the conflict-of-interest policy.
- Initiate a new partnership with the business sector.

*The statement of interests*

198. Submission of a "statement of interests" by at-risk persons, which may be optional or mandatory:

- It may be made public (this makes for greater transparency but may pose problems of individual freedoms).
- It may be disclosed only to members of the different commissions (possible conflicts are judged by peers).
- It may be submitted to an independent authority (which will use this information if there is a problem).
- It may be required only if the person's circumstances so require.

Obviously, the level of transparency will depend on the solution adopted

*Consequences in terms of personal liability*

199. It should be noted that instituting such a practice will contribute, indirectly but very effectively, to reducing the risks of personal liability for people involved in writing the specifications, tendering the job, and managing the contract.

200. Examples of actual or potential conflicts of interest are given by the OECD in a study written by Howard Whitton and the OECD Public Governance and Territorial Development Directorate, published in 2006 and entitled "Managing Conflict of Interest in the Public Sector: A Toolkit". While that work is not strictly confined to government procurement, nearly all the tools it proposes can be applied to the public procurement procedure. It includes, in particular, standard forms for the "statement of interests" mentioned above.

*Examples of conflicts of interests for government buyers and specifications writers*

201. A buyer is faced with several offers, one of them from his brother who owns a qualified firm. Rather than eliminate his brother's offer from the competition (which would be discriminatory), it is better for the buyer to remove himself from the affair and let someone else take the decision.

202. A specifications expert has worked in a private firm before entering the public service. His wife still works in that firm. When he writes the specifications for his contract, he tends to specify products with which he is familiar but which are made only by his old firm. To avoid favouritism and conflict of interest, he should ask another expert to prepare the specifications in question.

203. An elected official is a member of the tendering commission and votes in favour of a firm of which he is a shareholder, or which belongs to a member of his family (as is frequently the case in small communities). He has a potential conflict of interest. If he does not take part in the deliberations and does not delegate his powers to someone else, the conflict of interest does not arise.

***Conditions required for success***

1. Define the notion of conflict of interest clearly and make elected representatives and public officials aware of how easy it is to find oneself in a situation of conflict of interest.
2. Define the situation in the criminal code and establish sanctions in the case of actual conflicts of interest (the basic, mandatory option), or situations of potential or apparent conflicts of interest (the broadest option).
3. To avoid any problems, ask public officials to submit a statement of interests. This rule can be extensive and can cover all elected representatives and public officials, or only a certain number of senior officials and managers of public enterprises (the most common case). In all cases, the choice will have to be made as to whether the statement should be published or not. Remember that giving too much publicity to the interests of elected representatives and public officials may conflict with human rights legislation and rules.
4. Finally, if this provision is to be enforced, the sanctions stipulated by law will have to be applied in case of non-observance, regardless of the seniority of the person in question.

*Example*

204. Statements of interest are required for persons engaged in lobbying parliamentarians or senators in the United Kingdom or the United States.

205. This has recently been recommended for persons lobbying the European Commission or members of the European Parliament. Registration of lobbyists is optional in the latter two cases. The response (positive or negative) is given within a few weeks. The information requested includes the following:

- Identity of the candidate.
- A certificate of good character.
- A specific definition of the activities exercised.

- The focus of interest (with reference to an official list of activities of the Parliament or the Commission).
- Persons contacted and the frequency of visits.
- Name of persons who can serve as references.
- A commitment to respect the specific code of conduct.

**References:**

OECD: "Managing Conflict of Interest in the Public Sector: A Toolkit", OECD publications 2006. OECD website: [www.oecd.org](http://www.oecd.org)

Lobbying at the European Parliament: accreditation file <http://www.europarl.europa.eu/parliament/expert/staticDisplay.do>

Lobbying at the European Commission: registration in the official registry <https://webgate.ec.europa.eu/transparency/regin/infos/contact.do>

### **Tool 6.1. Instituting joint preparation of laws and regulations**

206. To guarantee high standards of integrity in contracts, these standards must be prepared jointly by civil society and government. It is also well for the public and private sectors to agree on how to measure the impact of these standards and to verify that both parties are applying them.

#### ***Objectives***

1. To promote the establishment of advisory bodies, permanent or not, to create standards of integrity and to verify that they are applied by government and the private sector alike.
2. To reduce or abolish the need to bribe to obtain public contracts.
3. To put an end to bribery and the abuse of power in public tendering.
4. To make better use of public funds (to the benefit of the citizenry and the general interest).

#### ***Intended users***

207. The main user of this formula will be the government, which can prepare regulations that will be acceptable to the social partners. However, the social partners too will benefit from this formula, for it will give them the possibility to make their viewpoints known in a non-confrontational manner.

208. What makes this formula interesting is the possibility of avoiding social conflicts.

#### ***Description***

209. All regulations are prepared at the initiative of the government or of parliament, and will rely on the capacities and powers of the ministry concerned. Joint preparation implies that, at the request of government or parliament, the ministry will not rely solely on its own staff but will consult experts in organisations representing civil society.

210. That consultation can take place at different stages of preparing the draft law or regulation:

- Before work begins, in order to define the problem.
- After the first draft is prepared, to validate the options selected.
- After the draft is ready, to validate the draft.
- Throughout the process of preparing the regulation, with interim validations by government.

211. This last option is naturally the most consensual, but it is also more difficult to implement and can often drag out the process.

212. Following is a theoretical description of the process, and two practical examples.

*Example*

213. The method (as described by Transparency International Serbia) involves several stages:

- Industry-specific or general studies to determine the nature and extent of corruption in public procurement (joint or separate studies by NGOs, professional associations and government).
- Information campaigns to sensitise the public and political officials (such campaigns are generally launched by NGOs and sometimes backed by government).
- Adoption of regulations in accordance with international standards, to resolve the problems cited in the studies (government).
- Monitoring of application of those regulations (most often by NGOs and professional organisations).
- Detection of weak points in the text adopted (based on comments from professional organisations and NGOs).
- Proposal of appropriate solutions, based on the sharing of information with other countries and with international organisations, in the course of meetings among all the social partners.
- Training for the people concerned (by NGOs, professional associations or government itself: the best solution is to have each partner provide such training in its own field of activity).

214. Note that each of the stages cited above can in itself constitute a specific tool or instrument that can be used independently of the particular tool, which is the joint preparation of regulations.

*Practical examples*

**Armenia**

215. A "committee of experts" is preparing a draft "strategic government programme against corruption" for the next five years. Those experts are drawn from government and from civil society: NGOs representing citizens, NGOs engaged in combating corruption, international investors (USAID, IMF and World Bank, in particular), who are represented in the commission by experts from the OSCE office.

216. While the government representatives do most of the work, their proposals must be validated by the group of experts before they are submitted to government.

217. The government has so far approved proposals that have led to establishment of the Strategic Programme against Corruption, and is expected to approve a plan of action for coming years within a few months.

**France:**

218. The government has created a procurement monitoring committee or "observatory" (*Observatoire Economique des Marchés publics*) to monitor application of procurement regulations. Members of the committee represent all stakeholders in public procurement:

- Minister of Finance, Chair.

- One member of the Senate.
- One member of the National Assembly.
- 20 representatives of the main purchasing departments.
- 22 representatives of businesses, at least three of which are SMEs.
- Representatives of associations of local elected officials.
- Two representatives of public enterprises.
- Representatives of buyers in the mixed economy, the hospitality sector, and the chambers of commerce and industry.
- 12 persons selected for their personal qualifications.

219. The observatory has access to all the statistics available to the government, and can propose measures to:

- Improve application of the texts already agreed.
- Propose amendments for measures deemed inapplicable or poorly drafted.
- The dates of the committee's meetings are established in advance. Its minutes are published at the website of the Ministry of Finance.

***Conditions required for success:***

1. Real political will to combat corruption and promote high standards of integrity, both within government and in the broader public sector, and in the country as a whole.
2. The government must be willing to have civil society participate in its efforts to combat corruption.
3. The authorities must create mixed commissions involving government and civil society to facilitate information sharing and coordination.
4. The government must be strong enough to adopt and have parliament ratify the recommendations of the mixed commissions.
5. There must be well-organised and active NGOs and professional associations with sufficient membership to be representative.
6. Civil society representatives must be in a position to adopt, and have their supporters adopt, positive measures for reducing corruption, even if they did not themselves propose them.
7. Civil society representatives and NGOs must have recognised expertise so that their observations and remarks will not be challenged.

220. The great number of conditions required for success may explain why this practice is not more widespread. It also explains why there have been some failures.

*Example:*

221. Albania had an effective corruption prevention unit, based on the French model, the *Service Central de Prévention de la Corruption*. One of the first decisions taken by the new President of the Republic was to abolish that unit.

**References:**

Transparency Serbia, "Efficient Public Procurement", published in July 2005.

France - Ministère de l'Industrie et de l'Emploi – Observatoire Economique de l'Achat Public - [http://www.minefe.gouv.fr/directions\\_services/daj/oeap/index.htm](http://www.minefe.gouv.fr/directions_services/daj/oeap/index.htm)

**Tool 7.1. Risk indicators**

222. Having in place a criminal code that punishes all offences severely is not in itself enough to deter corruption. The code must be enforced, and it must be applied to all citizens regardless of their position or rank in society. In applying the code, it is well to have the tools and the personnel for detecting irregularities.

223. To avoid resort to sanctions and lawsuits, it is best to take adequate steps to prevent the risks of corruption. But to do that, we must first know the risks.

***Objectives***

224. 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, and to take action against dishonest public officials.

225. The tool of choice is an exhaustive list of verifications that must be made. It is this comprehensiveness that makes the tool so valuable, for it is clear that we cannot avoid what we do not know.

***Intended users***

226. The tool is addressed, above all, to the tendering authorities, so that they can eliminate as many potential sources of fraud or corruption as possible.

227. It is also addressed to investigators, so that they will have the broadest possible picture of the opportunities for fraud and corruption that may surface in procurement procedures, and can broaden the scope of their investigations.

***Description***

228. To limit the risks of fraud or corruption, there are some key points to be verified throughout the procurement process. The list of points to be verified is a summary of various studies cited in the references below.

**1. Needs definition**

- Needs modified or falsified.
- Evaluation of needs falsified.
- Useless studies or studies with falsified results.

**2. Notice of call for tenders**

- Notice not published.
- Notice published in inappropriate media.

- Published notices incomplete.

### **3. Specifications**

- Technical specifications skewed to favour a firm.
- Technical specifications that are deliberately wrong.
- Technical specifications that do not meet normal standards.

### **4. Choice of procedure**

- Tendering made fruitless in order to use a direct procedure.
- Inappropriate choice of procedure.
- Splitting of the original contract.
- Misuse of exemption procedures (e.g. emergencies).

### **5. Receipt of bids**

- Abnormally short deadlines for submission of bids.
- Major change in the specs before bids are submitted.
- Very complete bids despite a very short deadline.
- Envelopes opened before the official bid opening session.
- Envelopes containing are submitted unsealed.
- Majority of commission members absent when envelopes are opened.
- Falsification of the minutes of the bid-opening session.
- Minutes not signed.
- Signatures illegible or forged.
- Bids stored in an insecure place.

### **6. Analysis of bids**

- Excessive discrepancies between bidders' proposals.
- Proposed prices are much higher than the authorised maximum.
- Very small number of bids received.
- Tenders submitted by firms that lack sufficient technical competence.

- Strong similarities among several bids.

#### **7. Selection of the best offer**

- Lack of selection criteria.
- Selection criteria not notified in advance to suppliers.
- Criteria used differ from those published.
- Criteria differ among suppliers.
- Weighting factors altered during examination of proposals.
- Failure to verify certificates submitted.
- Original documents missing.
- Failure to verify the list of firms excluded from procurement (e.g. blacklisted firms).

#### **8. Preparation of contract**

- Unjustified changes to standard contracts.
- Penalty clauses missing.
- Unusual payment methods.

#### **9. Contract performance**

- Controls are non-existent or too infrequent.
- Numerous disputes.
- Multiple changes to contract.
- Changes to the original specifications.

#### ***Conditions required for success***

229. The success of this relatively onerous verification depends on having specific indicators available for each type of risk, and on systematic verification of all contracts.

230. This requires, on one hand, thorough training for public officials responsible for verifications and controls and, on the other hand, effective elimination of all corrupt suppliers or those that accept bribery.

#### **References:**

OECD: Note on “red flags” i.e. indicators that may help prevent, detect and investigate malpractices in public procurements, by Nicola Ehlermann-Cache senior policy analyst;

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SCPC Annual Report 2008 Robert D. Anderson and William Kovacic, “contract prices”. FATF money-laundering indicators

JP BUEB "Corruption and Fraud in Public Procurement" (Corruption et fraudes dans les marchés publics) in Revue du Marché Unique Européen.

ICAC and local government – Contracts – <http://www.icac.nsw.gov.au/index.cfm?objectID=E29C5465-C7D4-32C4-4C209894957AADAC&NavID=24276998-D0B7-4CD6-F9D478C6A21599CF>

Office of Government Commerce (OCG), Independent office of HM Treasury - Risk Potential Assessment - <http://www.ogc.gov.uk/>

## **Tool 7.2. Statistics**

231. Inquiries into fraud and corruption in public procurement are difficult and time-consuming. Investigating every suspect contract is impossible, for reasons of cost, resources and time. Before undertaking a thorough-going audit to look for potential fraud or evidence of corruption, there should be serious indications in hand.

### ***Objectives***

- To highlight the real risks, using simple data that are easy to collect.
- To justify a thorough investigation to detect cases of corruption or fraud. Note that fraud is not necessarily linked to corruption, but that corruption always lurks behind one or more fraudulent acts.
- To detect cases of favouritism, in particular.
- To substantiate or dismiss complaints, by collecting objective evidence

### ***Intended users***

232. This tool is intended essentially for investigators, who will use this statistical information in advance in order to determine whether a full-blown investigation is warranted when there is very little evidence.

233. It can also be useful to procurement decision-makers and managers in gathering evidence to support suspicions that would justify handing the case over to the justice system.

### ***Description***

#### ***Example of data to be collected before launching an investigation***

234. In the same locale or district and for the same type of contract:

- List of firms contacted (restricted bidding)
- List of firms requesting the tender documents (open bidding).
- List of firms submitting a bid.
- List of firms awarded a contract.
- Percentage of contracts obtained by each firm (number and value).
- Name of subcontracting firms for each contract.
- Name of winning firm and the responsible manager.

235. These data can be used to detect:

- Favouritism or corruption, if one firm is awarded most of the contracts.
- Collusion if the same small group of firms is frequently contracted or subcontracted.
- Collusion if only some firms (often the same ones) submit a bid after requesting the bid documents.
- Bribery or favouritism if the same firm is frequently declared the winner by the same person.

236. Information on the timing of bid submissions can also be useful for certain confirmations:

- Bids submitted right after the call for tenders: this suggests the firm was tipped off in advance (favouritism).
- Participation in the negotiation without having submitted a bid: favouritism or corruption.
- Late notice of award: corruption (the time elapsed has been used to revise the project and create technical possibilities for paying bribes).

237. These elements can be used quickly to determine the type of offence involved and thus to guide the investigation.

238. **When these data are not conclusive**, the authorities may:

- Refrain from launching an investigation.
- Recognise that the investigation will be long and complicated.
- Request additional information from the plaintiff or whistleblower.

239. Such information will in any case allow the chief investigator to make better use of the available human resources and to undertake effective investigations.

#### ***Conditions required for success***

240. If the collection of these data is to be useful and efficient, it is essential to examine a number of contracts of the same type or awarded by the same official.

241. This will require ready access to the archives.

#### **Reference:**

France: SCPC studies. See *rapports annuels* at <http://www.justice.gouv.fr/index.php?>

### **Tool 7.3. Evaluation of suppliers**

242. It is always risky to contract with firms whose goods or services are of uncertain quality. As well, in the absence of an objective and reliable way of eliminating mediocre or poorly performing suppliers, there will be a higher risk that the performance will be unsatisfactory and that lawsuits will be needed to obtain satisfaction.

243. The best solution is to institute objective mechanisms for measuring the quality of the goods or services offered by firms and to use the results of those evaluations to eliminate suppliers whose offers may be financially attractive (lowest bid) but will not be satisfactory in terms of quality.

244. Having such a system in place also allows the supplier to be aware of its shortcomings and to correct them so it can continue to compete for public procurement.

#### *Objectives*

- To eliminate nonperforming suppliers, using a simple and transparent tool.
- To guarantee the quality of the goods or services provided to the buyer.
- To improve the quality of goods or services provided by suppliers.
- To make better use of public funds.

#### *Intended users*

- All government buyers will find it useful to have a method for improving the quality of goods or services offered by suppliers.
- It will be even more useful if several buyers are using the same rating system.
- Because the system is transparent, suppliers can improve their performance in areas where they have shortcomings, and this will increase competition.

#### *Description*

245. The supplier performance evaluation is an essential tool for buyers, because they can use it to influence the supplier's behaviour and improve the quality of the goods or services supplied.

##### **1. The system**

- Produces results quickly.
- Must be known to suppliers.
- The results obtained for each supplier must be regularly notified.
- The functions to be examined are: quality, service, reputation and cost.

- Each function is rated, and the final outcome gives the classification.

## **2. Choice of supplier**

- The method is not to be used for all suppliers but only for those who:
- Have a significant sales volume.
- Produce or supply strategically sensitive goods.

## **3. Items to be evaluated:**

- Respect for delivery dates.
- Follow-up action.
- Disputes over delivery.
- Disputes over invoicing.
- Technical availability
- Overall performance

### ***Presentation***

246. The results obtained are presented in three simple tables concerning follow-up action, delivery disputes, and invoice disputes.

247. The first three tables follow the same model

Table 1: Follow-up action. This records all complaints notified before the entire order is delivered. All follow-up actions and the number of articles for which they were necessary will be noted.

Table 2: Delivery disputes. This records all disputes arising over delivery and in particular: goods damaged because they were poorly packed, goods missing, goods damaged in transport.

Table 3: Invoicing disputes. These disputes concern errors or inaccuracies detected in the invoices, in particular: number of articles invoiced, price of articles, articles omitted.

<p align="center"><b>Example of a supplier evaluation form</b></p> <p align="center"><u>1 - Follow-up action (to be completed by the buyers)</u></p> <p align="center"><u>2 - Delivery disputes (to be completed by the stock controller)</u></p> <p align="center"><u>3 - Invoice disputes (to be completed by the buyers)</u></p>		
Name of supplier:		
Date	Order number	1 - number of follow-up actions 2 - nature of the dispute 3 - number of references in dispute

248. Another important element for the buyer is the vendor's technical availability, measured in terms of attitude, ethics, information or monitoring of users. A summary form is completed by the persons concerned, using the following model:

Table 4. Technical availability

Technical availability			
Name of supplier	Good	Very good	Excellent
	14 to 16	16 to 18	19 to 20
Supplier's attitude, respect for ethics, loyalty, independence			
Availability to the buyer (disputes, scheduling changes, etc.)			
Information to the buyer on any changes or problems (delivery, invoicing, change of product, etc.)			
Availability to users (technical follow-up, product identification, etc.)			

249. Table 4 gives an image of the supplier, which is summarized in table 5. In addition to the information in the four preceding tables, this table mentions the number of articles ordered, in order to calculate the relative prevalence of the incidents cited. This produces the following table.

Table 5. Evaluation summary

SUPPLIER EVALUATION FORM										
		Scoring								
		A	B	C	D	E				
Supplier references	Criteria Corporate name	Orders placed	Follow-up actions	Delivery disputes	Invoice disputes	Technical availability	(1)	(2)	(3)	(4)
000	ABCD	100	7	3	10	15	0.2	0.05	0.25	7

The example shown in table 5 is interpreted as follows:

We have ordered 100 articles from supplier ABCD.

We have had to undertake seven follow-up actions, we have had three delivery disputes and seven invoice disputes.

The technical availability score is 15.

The results from columns 1, 2, 3 and 4 are used in the following calculations:

$$(1) = B+C+D/A ; (2) = 20 - E/100 ; (3) = \text{TOTAL de 1+2}$$

The summary score assigned the supplier is deducted from the indications given in table 6 below

Table 6. Summary score

<b>SUPPLIER EVALUATION</b>	
Results	Summary score
0	10
From to	
From to	
From 0.24 to 0.27	7
From to	
From to	
From to	
From to	
From 2.2 to >2.2	1

***Conditions required for success***

250. Success will depend on the information given to suppliers about their performance (transparency), on objective evaluations (based exclusively on tangible results), and on use of the results obtained for choosing suppliers.

**Reference**

France: Report presented at a 2007 conference hosted by the *Association Pour l'Achat des Services Publics* (APASP). These forms are used by a city, but other buyers can use quite similar documents.

## CHAPTER 4. FACTORS FOR RESPONSIBILITY AND CONTROL

251. If the general public and the participants in procurement processes are to be able to follow closely all the stages of tendering and performing the contract, there needs to be a tool for monitoring these different stages without having to wait for the competent authority to respond to a request.

252. This monitoring also applies to the handling of disputes that nearly always arise between supplier and buyer. It should be possible to settle these disputes within a reasonable time limit and to reach solutions that are fair and acceptable to both parties.

253. But if an amicable settlement cannot be reached, it should be a simple matter to hand it over to the courts, and they must issue a ruling within a relatively short time. To prepare for this intervention by the courts, it is well to remember that when an investigation is undertaken the investigators' first questions will have to do with the chain of responsibility (list of signing powers and delegated authority) and with the nature of the control mechanisms in place, and the way they are used. In this way the investigators can quickly appreciate the responsibilities of all those involved, and this will make their inquiry faster and more effective. That said, we cannot investigate all contracts, and controls must be appropriate to the stakes involved.

254. These various points are covered by three of the principles in the OECD list of recommendations:

1. Establish clear responsibilities and effective control mechanisms.
2. Allow complaints from potential suppliers to be handled in a fair and timely manner.
3. Allow stakeholders and the general public to scrutinise public procurement.

255. In any procedure, it is essential to know who is responsible for what. This condition is not specific to public procurement, but it is particularly important here because misuse of power is easy and suppliers are always vying to be "favoured" over their competitors, and are thus often ready to respond to solicitations. Understanding the responsibilities of the people they must deal with is therefore particularly important both for suppliers and for buyers. Making it clear who is responsible for what within the purchasing entity is a guarantee of transparency as well as a tool for managing the risks facing public officials. Tracking the delegation of authority (tool 8.1) to this or that person is the easiest way of knowing whom we are dealing with.

256. The control mechanisms in place in most countries are effective when they are used. The problem is often that these mechanisms demand much in the way of material and human resources and they are time-consuming. We cannot control everything. What we must do is establish rules so that we can focus only on the contracts that pose the greatest risks. There are some "red flags" for identifying these at-risk contracts, but even in these cases controls have to be appropriate and proportional to the real stakes (tool 8.2).

257. Disputes can often be handled more readily if they have not yet gone to court. They can then be settled by amicable agreement, escalation to a higher level of authority, or arbitration. However, if the dispute has gone to court, the court must issue a ruling as promptly as possible. A system for pre-contractual judicial review (tool 9.1) can reduce times considerably and thereby limit the consequences of disputes for the buyer and the vendor alike.

258. The purpose of controls is not only to seek out fraud or corruption. They can also be a means of simply monitoring the use of public funds. This monitoring is useful for suppliers, for they can come to know their competitors better. It is also useful for the contracting entities that must justify the use of their budget in the general interest. In this case, civil society oversight (10.1) is particularly welcomed by the public.

### **Tool 8.1. Monitoring delegations of authority**

259. Transparency in the decision-making process and in the performance of the contract is highly dependent on the officials responsible for the different phases. If they are honest and competent, there should be little risk of deviation. If they exceed their responsibilities and take advantage of the situation to enrich themselves or to provide favours to their family or friends, they run relatively little risk because, officially, they are not responsible for anything.

260. If the number of cases of abuse of power or corruption and the number of disputes over responsibilities for contract management are to be limited, then we must know exactly what are the responsibilities of the persons we are dealing with. The easiest way to avoid errors is to refer to the powers delegated to public officials and to personnel of the firm.

#### ***Objectives***

1. To guarantee greater transparency by indicating clearly who is responsible for what, within the firm and within the government.
2. To combat corruption and abuses of power.
3. To guarantee legal security for decisions taken.
4. To improve the selection of suppliers by knowing the name of the responsible person rather than relying on the references supplied by the company.

#### ***Intended users***

1. Members of the supplier selection commission and those of the contract awards commission (knowing who is really responsible is essential in the case of provision of services).
2. The contract manager in the buying entity or in the firm, who must ensure the validity of decisions taken during contract performance.
3. Investigators attempting to identify the responsible persons when crimes have been committed.

#### ***Description***

261. There are two types of delegation: delegation of signing authority and delegation of powers. These two categories do not have the same consequences in terms of responsibility.

##### ***Delegation of signing authority:***

262. This entails entrusting to a subordinate the authority to act on behalf of the responsible public official (for example, the mayor of the city or the director of a government department) in signing the documents listed in the delegation order. This delegation does not relieve the delegating officer (“delegant”) of any portion of his responsibility, but merely lightens his workload.

263. Delegation of signing authority is a current practice in government and in business, and is justified in particular when activities are decentralised

*Example*

In France, the prefect represents the State within a geographic territory, and may delegate his signing authority to the heads of the decentralised government agencies (agriculture, transportation, public works, environment etc.) in that territory. But in all cases, the prefect remains responsible for the decisions taken.

*Delegation of powers*

264. A delegation of powers involves the transfer of all or a portion of one person's powers to another person as agent or “delegate”. That transfer is much more common in the private sector than in the public sector, and it amounts to conveying to the delegate the full powers of the delegant, over which the latter no longer exercises any control because the delegate is solely responsible for the decisions taken.

265. Naturally, this delegation, which may be total under some circumstances (to the vice president in case of the death of the president, for example) is often limited:

- in light of circumstances (the above example);
- in time (for a determined period) or
- in the scope of the powers (delegation limited strictly to certain functions or decisions).

*Risks*

266. The absence of formalised delegation can lead to the abuse of powers. It is important, whenever decisions concerning the contract must be taken, to ensure that the person making the decision has the power to do so. Failure to verify this can result in a situation where a person engages the responsibility of the government or the firm without having the capacity to do so, and this strips the agreement of all legal security. Lack of this verification also exposes the agent concerned to personal liability.

267. That is why investigators begin their inquiry by verifying the existence and nature of delegations by the different persons involved in order to determine as quickly as possible the hierarchical level of the person truly responsible.

*Means of prevention*

268. In central governments and local governments, there should be a list of delegations spelling out very clearly the nature, scope and duration of each delegation.

269. In businesses, the same steps should be taken.

270. These measures, if made public, can limit the risk of abuse.

*Conditions required for success*

271. The monitoring of delegations must be conceived merely as a description of tasks and responsibilities for each agent (public or private) who is or will be involved in a public procurement procedure.

272. That description of responsibilities must be formalised.

273. During the tendering process, it should be supplemented by a written commitment from the firm to entrust a given activity to a specified agent.

274. Any amendment of delegations must be notified to all the persons involved, and must be accorded a measure of publicity.

### **References**

Delegations of signature and responsibility: French law, see Légifrance:  
<http://www.legifrance.gouv.fr>

## **Tool 8.2. Proportionality of controls**

275. Controls are essential for detecting cases of fraud and corruption. In public procurement, the outside controls conducted by the police, the justice system or auditors to detect cases of corruption can be burdensome and time-consuming. It is impossible to control everything.

276. In order to make best use of available resources, it is advisable to confine controls to contracts presenting the greatest risks. Indicators exist for identifying high-risk situations, but it is not possible to launch an investigation in every case, either because the cost would exceed the value of the contract, or because the means available are not sufficient. For this reason, rather than attempting to control all contracts systematically, the approach to control should be proportional.

### ***Objectives***

1. To adapt controls to the available resources.
2. To adapt controls to the foreseeable risks.

### ***Intended users***

277. The users will include police officers and judges who must investigate potential cases of fraud or corruption by public procurement managers, as well as internal controllers and auditors who must verify that public funds are being used properly.

### ***Description***

278. Different types of verification can be conducted in light of the nature and objective of the control or audit. Following are the principal kinds of verification.

#### ***Internal control and audit***

- Control by sampling at all stages of tendering and contract management.
- Systematic control of the conditions of tendering and contract performance for the largest contracts (above a fixed threshold).
- Regular audit of tendering procedures.
- Regular audit of payment procedures

#### ***External audit***

- Systematic audit of tendering procedures and control for all contracts beyond a certain amount.
- Audit of management procedures for the largest contracts.
- Audit of tendering and management procedures of other contracts, on a sampling basis.

*Investigations (police or judicial)*

- Investigate only if specific information is available.
- Investigate after verifying and validating the information received.
- Never try to prove everything: the investigation should be limited to the most serious offences or those easiest to prove.
- Be ready to call off fruitless investigations.

*Conditions required for success*

279. One of the conditions required for the success of these investigations is to be able to share information with all units of the agency or department itself when it is undertaking such verifications (control and internal and external audit) and with other departments or agencies (when the investigations are being conducted by the police or the judicial authorities).

280. The other condition is to have a permanent tool for evaluating the real cost of controls and for comparing it against the cost of the fraud that may be detected. That evaluation is of course not morally very satisfying, as we want all the guilty parties – big or small – to be punished, but it is essential when resources are limited.

**References**

Australia – Gateway Review - <http://www.gatewayreview.dtf.vic.gov.au/>

**World Bank: Recommendations for public procurement management and control**

### **Tool 9.1. Pre-contract judicial review**

281. Dealing swiftly and effectively with complaints from suppliers is an essential condition for transparency in the procurement tendering process. This can be assured through an escalation procedure that allows appeal to a higher authority within the client organisation, or through an arbitration procedure, or through appeal to an administrative or judicial tribunal.

282. Escalation is rarely satisfactory for the firm, as the client organisation is both judge and party, and even a short delay will hold up recourse to the courts or to arbitration. In many countries, however, this procedure is mandatory before any other recourse is pursued.

283. For this reason, some countries (including France) have established a precontract recourse that can take place at the same time as the escalation procedure, or even in the absence of such procedure.

#### ***Objectives***

- To reduce the time needed for firms to obtain recourse.
- To take decisions before the contract is awarded.
- To avoid time-consuming appeals that will be decided only after the contract has been performed (generally by another firm).

#### ***Description***

##### *Definition.*

284. The pre-contract review applies when procurement contracts are awarded in breach of the requirements of publicity and competition.

285. It may be triggered, in particular, by an illegal contract notice, by discriminatory specifications or tender documents, or by an unlawful qualification and pre-selection decision.

286. This recourse is available only before the contract is signed. The pre-contract review procedure precludes the administrative judge from exercising this power after the contract is concluded.

##### *Persons authorised to seek a review*

287. All persons who have an interest in concluding the contract and can claim injury for non-observance of one or more of the obligations mentioned above are entitled to seek a review, as is the representative of the State in the territory where the case or the contract is or should be concluded by a local government or a local public agency.

288. The irregularity must have caused or must threaten to cause injury to the firm, even if indirectly, by favouring a competing firm.

##### *Procedure*

289. The plaintiff may apply to the president of the administrative tribunal before the conclusion of the contract.

290. The president of the administrative tribunal may:

- Order the offending authority to fulfil its obligations.
- Suspend award of the contract or execution of any decision relating to it.
- Set aside these decisions and remove those clauses or specifications intended for inclusion in the contract that do not respect these obligations.
- Issue an immediate injunction to defer signature of the contract during the standstill period and for a maximum of 20 days.

*Cases not covered by this remedy*

291. This type of recourse is no longer available after the contract has been concluded.

292. In this case, the administrative tribunal or the entity conducting the review may annul the contract. If annulment is not possible, the only way to repair damages is to award "damages and interest" to the plaintiff. But while tendering costs are generally reimbursed, it is difficult to determine the plaintiff's lost profits, and these are generally not taken into account.

293. In the case where a criminal act is suspected, a specialised investigation agency may be asked to conduct an urgent inquiry, and the results will be transmitted to the competent criminal jurisdiction.

*Conditions required for success*

- There must be a specialised (administrative) jurisdiction.
- There must be agencies authorised to verify the regularity of public procurement.
- It must be possible to request supplementary investigations by a specialised agency (e.g. the Anticorruption Bureau (KNAB) in Latvia).
- The procedure must be closely overseen to avoid abuse.

**References:**

France: procedure of *référé précontractuel* through the administrative tribunals <http://www.gymnopedie-juridique.net/refere/precontractuel.html>

SIGMA – OECD forum of November 2006 – presentation of a report, “Public Procurement Review and Remedies Systems in the European Union”; see also [http://ec.europa.eu/enterprise/regulation/better\\_regulation/sigma\\_fr.htm](http://ec.europa.eu/enterprise/regulation/better_regulation/sigma_fr.htm)

### **Tool 10.1. Procurement oversight by civil society**

294. Having civil society oversee procurement will keep the contracting authorities on their toes, for they will have to justify their choices and their expenditures. It thus contributes to the transparency of the policy pursued by these entities.

#### ***Objectives***

295. The first objective is to reinforce civil society's control over its elected representatives and administrations (through associations, NGOs, labour unions etc.).

296. This control can clarify relationships between the private sector and government.

297. It also allows the introduction of ethical rules applicable to both the private sector and the public sector as a means of combating corruption.

#### ***Intended users***

298. It is essentially the representatives of civil society who demand this type of practice. Sometimes, however, government departments and agencies themselves will ask for such oversight as a way of adapting their purchase orders to public needs and demonstrating the integrity of public officials.

#### ***Description***

##### ***Possible situations***

299. This oversight sometimes functions without any formal contact between civil society representatives and government. In this case, it will generally involve systematic criticism of decisions from one side, countered by charges of lack of professionalism from the other. But the government still has to provide useful data.

300. Sometimes there is close collaboration, and civil society representatives will receive all the information they need to exercise oversight. In general, joint meetings can serve to clarify situations and remove ambiguities. This calls for formalised relations between the two partners.

301. Between these two extremes there can be a range of intermediary situations. Below is one example of what can be done with a bit of goodwill on both sides.

##### ***Example: Transparency International's "Integrity Pact" (IP)***

302. Developed by Transparency International (TI) in the 1990s, the Integrity Pact (IP) is a tool for helping governments, businesses and civil society to prevent corruption in public contracting. It consists of a process that includes an agreement between a government or a local government entity and all bidders for a public contract.

303. It contains rights and obligations to the effect that neither side will pay, offer, demand or accept bribes or collude with competitors to obtain the contract. Bidders also undertake to disclose all commissions and similar expenses they have paid in obtaining the contract.

304. Sanctions will apply if the IP is violated. These sanctions range from loss of contract and liability for damages, to blacklisting for future contracts, as well as criminal or disciplinary action against government employees.

*The role of civil society*

- To prepare a document adapted to the local situation.
- To promote that document and gains its acceptance by government and business.
- To monitor observance of the recommendations in that document, and ensure that government calls upon civil society representatives (experts and consultants) for monitoring purposes.
- To help government institute a fully transparent system for consulting suppliers, selecting bids, and awarding the contract, by making all significant documentation on the process available to any interested person.

*Conditions required for success*

305. Success will depend on the willingness of government and of private sector enterprises to combat corruption and fraud.

306. Success also depends on the existence of a well structured civil society with strong and representative associations, NGOs and unions.

307. And of course it depends on the quality of the document prepared jointly by all the representatives of civil society.

**Reference:**

Transparency International: Integrity Pact  
[www.transparency.org/content/download](http://www.transparency.org/content/download)

## GENERAL REFERENCE DOCUMENTS

Readers are invited to consult the following documents on the procurement measures adopted by different international organisations.

1. World Trade Organization (WTO) – general site: [www.wto.org](http://www.wto.org)

a. Plurilateral Agreement on Government Procurement (GPA):  
[www.wto.org/french/tratop\\_f/gproc\\_f/gp\\_gpa\\_f.htm](http://www.wto.org/french/tratop_f/gproc_f/gp_gpa_f.htm)

2. World Bank – [www.worldbank.org](http://www.worldbank.org)

a. Guidelines: Procurement under IBRD Loans and IDA Credits:  
<http://web.worldbank.org/WEBSITE/EXTERNAL/PROJECTS/PROCUREMENTS/0>

b. Guidelines: Use of Consultants by world Bank Borrowers:  
<http://siteresources.worldbank.org/INTPROCUREMENT/Resources/ConGuid-10-06-fv1.doc>

3. United Nations Commission on International Trade Law (UNCITRAL) [www.uncitral.org](http://www.uncitral.org)

a. Model Law on Procurement of Goods, Construction and Services -1994:  
[http://www.uncitral.org/fr/uncitral\\_texts/procurement\\_infrastructure/1994Model.html](http://www.uncitral.org/fr/uncitral_texts/procurement_infrastructure/1994Model.html)

4. European Commission, general site: [http://ec.europa.eu/index\\_fr.htm](http://ec.europa.eu/index_fr.htm)

a. For Directives concerning procurement currently in force, see:  
[http://ec.europa.eu/internal\\_market/publicprocurement/legislation](http://ec.europa.eu/internal_market/publicprocurement/legislation)