

# Preventing Corruption in Public Procurement



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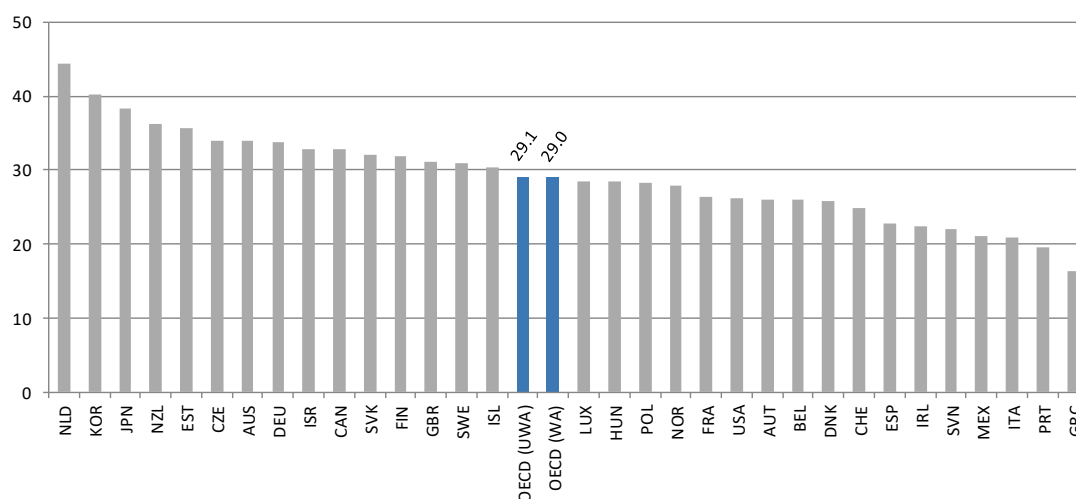


# PUBLIC PROCUREMENT: A HIGH-RISK AREA FOR CORRUPTION

## Public procurement: A EUR 4.2 trillion business

Public institutions as well as state-owned enterprises need to procure goods, services and works to carry out their responsibilities and duties. The total volume of public procurement, which is the government activity of purchasing goods, services and works, accounted for 12% of GDP and 29% of general government expenditure in OECD countries amounting to EUR 4.2 trillion in 2013 (Figure 1). The share of public procurement at the subnational level represents 63% of the general government procurement in OECD countries (Figure 2).

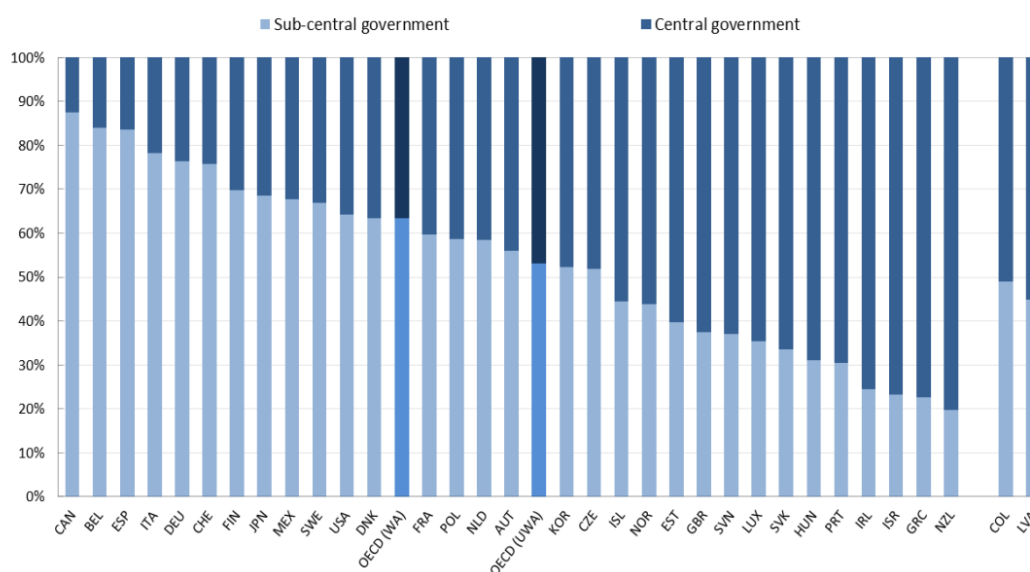
Figure 1. General government procurement as percentage of general government expenditure



Source: OECD National Accounts Statistics (database)

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Figure 2. Share of general government procurement



Source: OECD National Accounts Statistics (database).

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

## Corruption, the bane of public procurement

Public procurement is one of the **government activities most vulnerable to corruption**. In addition to the volume of transactions and the financial interests at stake, corruption risks are exacerbated by the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders.

**Various types of corrupt acts** may exploit these vulnerabilities, such as embezzlement,

undue influence in the needs assessment, bribery of public officials involved in the award process, or fraud in bid evaluations, invoices or contract obligations. In many OECD countries, significant corruption risks arise from conflict of interest in decision-making, which may distort the allocation of resources through public procurement (European Commission, 2014a). Moreover, bid-rigging and cartelism may further undermine the procurement process.

The OECD Foreign Bribery Report (2014) provides additional evidence that public procurement is vulnerable to corruption. Figure 3 shows that **more than half of foreign bribery cases** occurred to obtain a **public procurement contract** (OECD, 2014). Almost two-thirds of foreign bribery cases studied occurred in sectors closely associated with contracts or licencing through public procurement: **the extractive, construction, transportation and storage, and information and communication sectors** (Figure 4).

Figure 3. Purpose of the Bribes

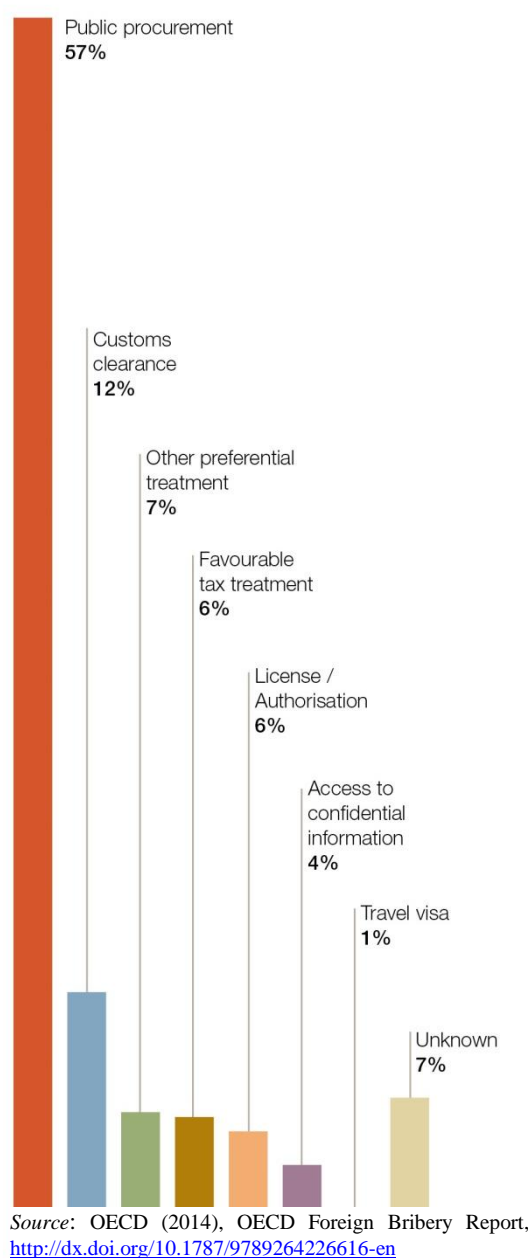
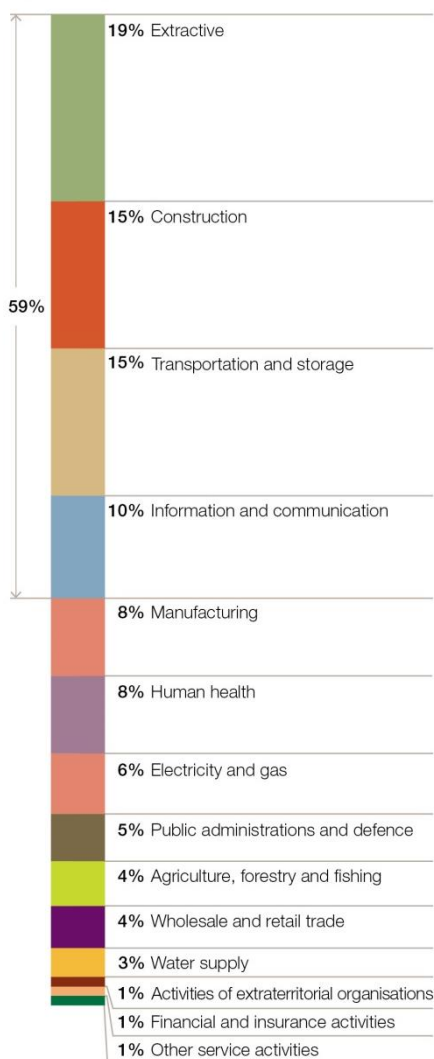


Figure 4. **Almost two-thirds of foreign bribery cases occurred in four sectors**



Sectors are identified with reference to the United Nations International Standard Industrial Classification of All Economic Activities (UN ISIC), Rev.4 (<http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=27&Lg=1>).

Source: OECD (2014), OECD Foreign Bribery Report, <http://dx.doi.org/10.1787/9789264226616-en>

corruption are widespread (Wells, 2014; Stansbury, 2005). The Construction Sector Transparency Initiative (CoST) also estimates that “annual losses in global construction through mismanagement, inefficiency and corruption could reach USD 2.5 trillion by 2020” (COST, 2012). Within the European Union, corruption more generally is estimated to cost €120 billion per year (European Commission, 2014a), which represents approximately 1 % of the EU GDP and represented slightly less than the annual budget of the EU in 2014, which amounted to €143 billion (European Commission, 2014b).

In terms of **indirect costs**, corruption in public procurement leads to distortion of competition, limited market access and reduced business appetite for foreign investors. Not surprisingly, companies increasingly demand for improved fairness of public procurement procedures. The 2014 Business and Industry Advisory Committee to the OECD (BIAC) Economic Survey indicates that enhancing efficiency and transparency in public procurement is the top priority for public sector reforms (Figure 5).

Corruption in public procurement can both occur at the **national and subnational levels**. On the one hand, decentralisation may narrow the scope for corruption, in line with the assumption that politicians and public officials at subnational levels are more accountable to the citizens they serve. Voters may be better able to discern the quality of their leadership and the results they deliver. Likewise, local politicians and civil servants can be more in touch with specific needs and contexts of their constituencies. On the other hand, however, greater opportunities and fewer obstacles to corruption may play at the subnational level, due to, in some instances, weaker governance capacity (through for example less developed auditing functions, limited legal expertise or low IT capacity) or closer community contacts between public officials and business representatives.

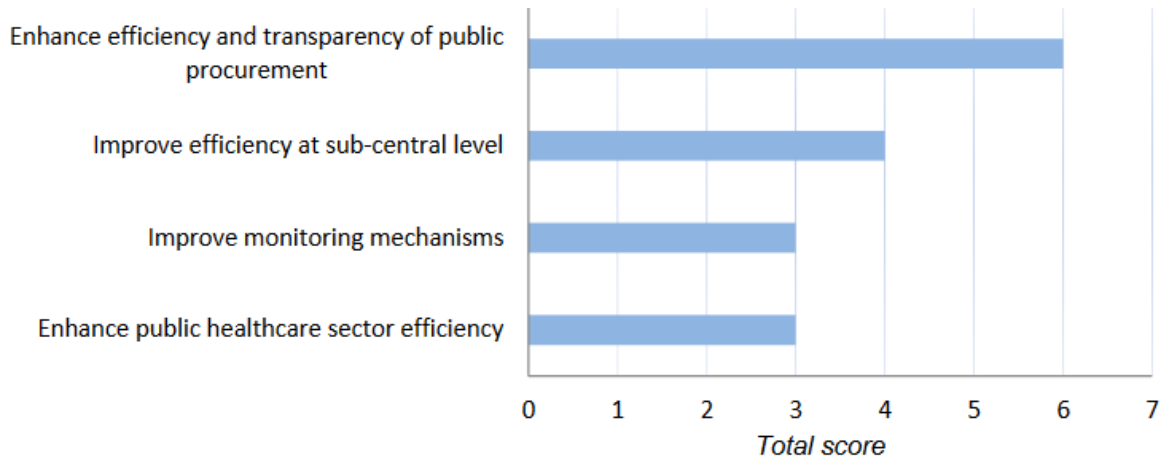
### The high cost of corruption in public procurement

The **direct costs of corruption** include loss of public funds through misallocations or higher expenses and lower quality of goods, services and works (OECD, 2015a). Those paying the bribes seek to recover their money by inflating prices, billing for work not performed, failing to meet contract standards, reducing quality of work or using inferior materials, in case of public procurement of works. This results in exaggerated costs and a decrease in quality. A study by the OECD and the World Bank shows that corruption in the infrastructure and extractives sectors lead to misallocation of public funds and substandard and insufficient services (OECD, 2015a).

Although it is difficult to measure the exact cost of corruption due to its hidden nature, it has been estimated that between **10-30% of the investment** in publicly funded construction projects may be lost through mismanagement and corruption (COST, 2012), and estimates of 20-30% of project value lost through



Figure 5. **Business priorities for reform in the area of public sector efficiency**

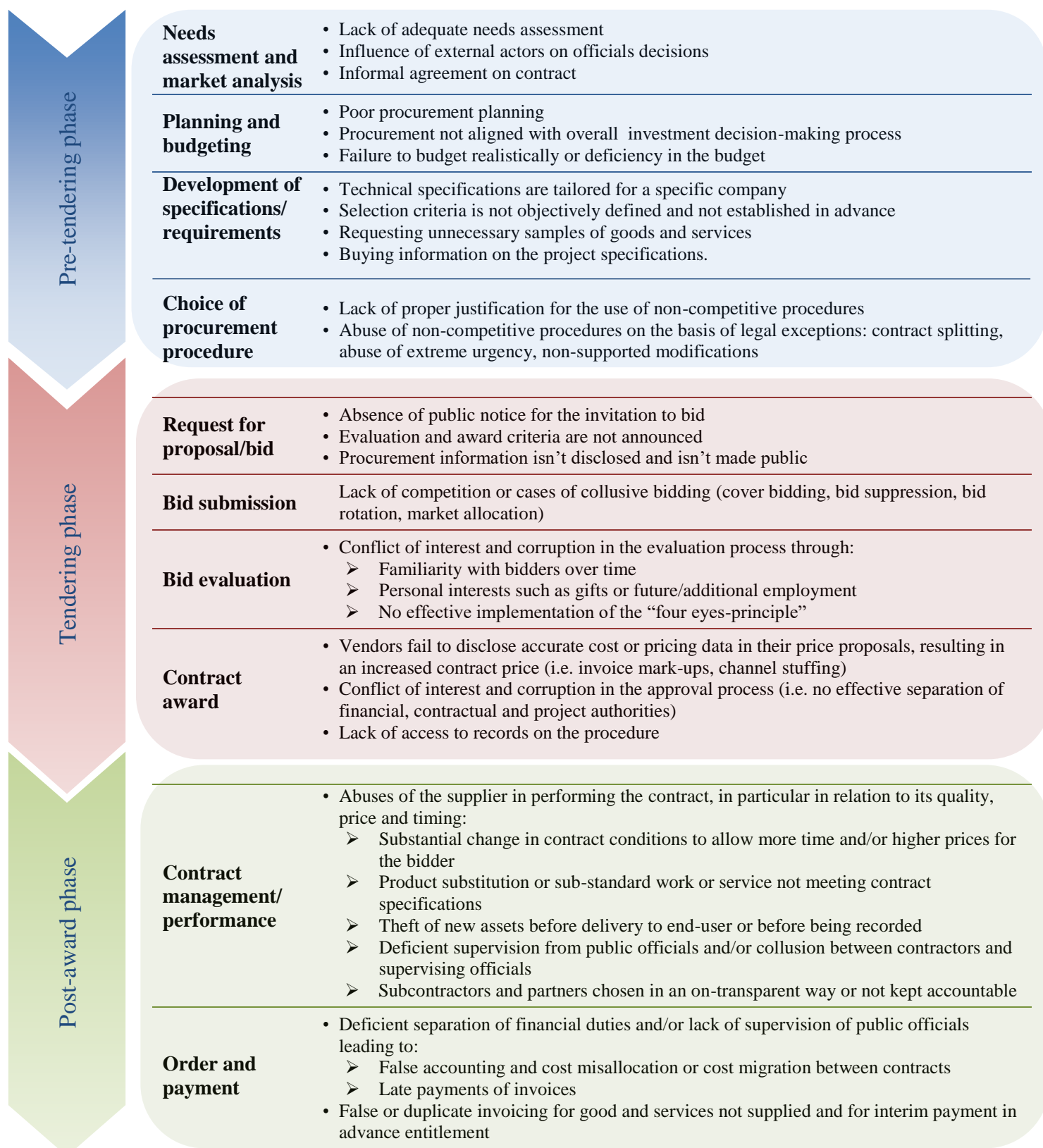


Source: BIAC (2014), [http://biac.org/wp-content/uploads/2014/07/14\\_05\\_BIAC\\_EPC\\_Survey\\_2014\\_Synthesis\\_Report1.pdf](http://biac.org/wp-content/uploads/2014/07/14_05_BIAC_EPC_Survey_2014_Synthesis_Report1.pdf)

## A myriad of integrity risks along the public procurement cycle

Integrity risks occur in every stage of the procurement process, from the needs assessment over the bidding phase to the contract execution and payment. The nature of the integrity risk may differ for each step, and red flags include undue influence, conflict of interest, and various kinds of fraud risks (Figure 6).

Figure 6. **Integrity risks in the procurement process**



## HOW TO ENHANCE INTEGRITY AND CURB CORRUPTION IN PUBLIC PROCUREMENT

As integrity risks exist throughout the public procurement process, a holistic approach for risk mitigation and corruption prevention is needed. Focusing integrity measures solely on one step in the process may increase risks in other stages. Similarly, addressing only one type of risks may give leeway to integrity violations through other mechanisms. For example, administrative compliance measures in the bidding phase do not root out the risk for political interference in the identification of needs. Likewise, asset declarations for procurement officials may not sufficiently protect against bid-rigging or petty fraud.

Embodying this holistic approach, the *OECD Recommendation on Public Procurement* highlights several mutually supportive principles which may, directly or indirectly, prevent corruption and stimulate good governance and accountability in public procurement. These principles include:

- **Integrity**
- **Transparency**
- **Stakeholder participation**
- **Accessibility**
- **E-procurement**
- **Oversight and control**



**Integrity** of actors in the procurement process may significantly reduce corruption risks. Integrity refers to upholding ethical standards and moral values of honesty, professionalism and righteousness, and it is a cornerstone for ensuring fairness, non-discrimination and compliance in the public procurement process. Therefore, safeguarding integrity is at the basis of any effort to curb corruption in public procurement.

Recognising the importance of integrity for good governance and trust in public institutions, countries apply **national integrity standards for all public officials**, for example through civil service regulation or a generic code of conduct outlining the standards and expectations for good conduct of civil servants. Often, a dedicated government department is responsible for developing, updating and diffusing the code of conduct, and may provide tailored advice, guidance and practical examples supporting the implementation of the code.

In addition to the standards applicable in the whole public service, **specific standards for procurement officials** may mitigate the specific risks related to the complexity and characteristics of the public procurement process. The standards for procurement officials - in particular specific restrictions and prohibitions - aim to ensure that officials' private interests do not improperly influence the performance of their public duties and responsibilities. Most common conflict of interest situations are related to personal, family or business interests and activities, gifts and hospitality, disclosure of confidential information, and future employment. Consequently, the additional standards can include provisions on asset declaration requirements, whistleblowing procedures, and protection measures for whistleblowers. For example, Canada has a specific Code of Conduct for Procurement (box 1).

Many OECD countries have introduced **specific codes of conduct** for procurement officials, often together with specific guides and training, to help procurement officials apply these standards in their daily practice. Ethics or integrity training for public officials, and procurement officials in particular, can raise awareness, develop knowledge and commitment, and foster a culture of integrity in public organisations. The Anti-Corruption Strategy of the Austrian Federal Procurement Agency exemplifies this approach (box 2), and also in France specialised training is offered for public procurement officials (box 3).

In addition to procurement-related standards, some countries have developed standards to fight particular forms of fraud, as part of a broader corruption prevention framework in the public sector.

#### **Box 1. Code of Conduct for Procurement in Canada**

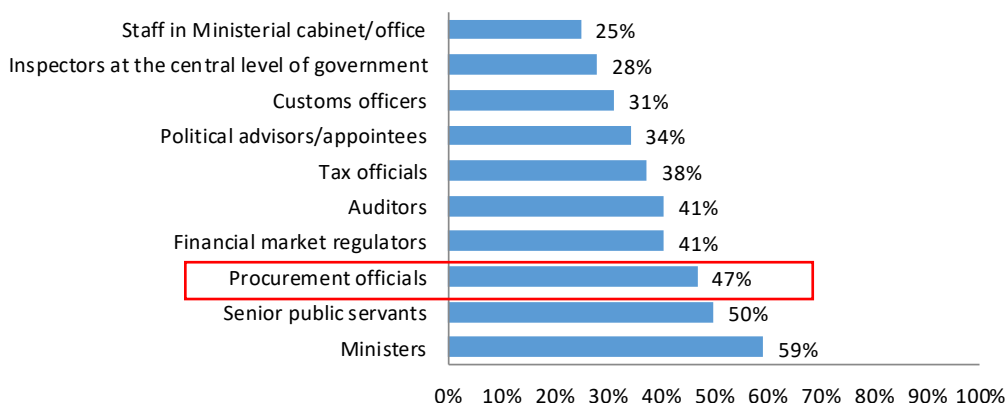
The Code of Conduct for Procurement in Canada provides all those involved in the procurement process – public servants and vendors alike – with a clear statement of mutual expectations to ensure a common basic understanding among all participants in procurement.

The Code reflects the policy of the Government of Canada and is framed by the principles set out in the Financial Administration Act and the Federal Accountability Act. It consolidates the federal government's measures on conflict of interest and anti-corruption as well as other legislative and policy requirements relating specifically to procurement. This Code is intended to summarize existing law by providing a single point of reference to key responsibilities and obligations for both public servants and vendors. In addition, the Code describes Vendor Complaints and Procedural Safeguards.

Source: Public Works and Government Services Canada (2016), [www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html](http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html)

With regard to **conflict of interest management**, all OECD countries surveyed in the 2014 *OECD Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection* reported having policies, rules and procedures to manage conflicts of interest of public officials. Almost half of them developed specific policies or rules on managing conflicts of interest for procurement officials (Figure 7).

Figure 7. **Specific conflict of interest policy for particular categories of public officials in OECD 32**



Source: 2014 OECD Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection.

### Box 2. The Anti-Corruption Strategy of the Austrian Federal Procurement Agency

Integrity is at the heart of the Anti-Corruption Strategy developed by the Austrian Federal Procurement Agency (BBG), and embodied by the following actions :

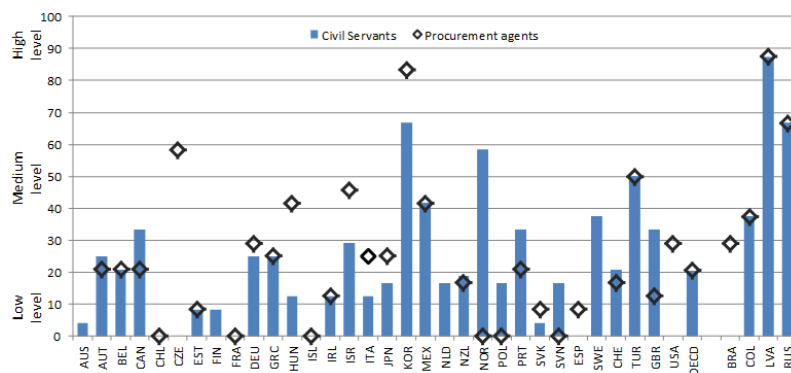
- Set precise organisational procedures (clear definition of roles and structures)
- Integrate anti-corruption measures in the workday life
- Constantly reassess and improve the strategy
- Constantly raise awareness of staff
- Sharpen the focus on the consequences of corruption

The Strategy contains an explicit regulation of the main values and strategies regarding prevention of corruption, clear definition of grey areas (e.g. the difference between customer care and corruption), clear rules on accepting gifts, as well as rules on additional employment. The Strategy also offers the employees a clear view on emergency management.

Source: The Anti-Corruption Strategy of the Austrian Federal Procurement Agency (BBG)

**Disclosure of assets**, previous employment and paid positions outside the public service may be effective at detecting potential conflict of interests and possible illicit enrichment. The conflict of interest rules need to leave flexibility to relevant authorities to attract competent and experienced employees while ensuring impartiality of the procurement process. Some OECD countries have higher disclosure requirements procurement officials than for civil servants in general (figure 8).

Figure 8. **Level of disclosure and public availability of private interests**



Source: 2014 OECD Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

### **Box 3. Specialised training for public procurement in France**

The Central Service of Corruption Prevention, an inter-ministerial body attached to the French Ministry of Justice, has developed training material for public procurement to help officials identify irregularities and corruption in procurement. Below is a case study example from this training material which illustrates the challenges faced by various actors at different steps of the procedure. The example also highlights the difficulty of gathering evidence on irregularities and corruption.

#### ***Issue at stake***

Following an open invitation to bid, an unsuccessful bidder complains to the mayor of a commune accusing the bidding panel of irregularities because his bid was lower than that submitted by the winning bidder. How should the mayor deal with the problem?

#### ***Stage one: Checking compliance with public procurement procedures***

The firm making the complaint is well known and is not considered « litigious ». The mayor therefore gives its claim his attention and requests the internal audit service to check the conditions of award of contract, particularly whether the procedure was in compliance with the regulations (the lowest bidder is not necessarily the best bidder) and with the notices published in the official journal. The mayor learns from the report prepared by the bidding committee that although the procedure was in accordance with the regulations, the bid by the firm in question had been revised upwards by the technical service responsible for comparing the offers. Apparently the firm had omitted certain cost headings which were added on to its initial bid.

#### ***Stage two: Replying to the losing bidder***

The mayor lets the losing bidder know exactly why its bid was unsuccessful. However, by return post, he receives a letter pointing out that no one had informed the company of the change made to its bid, which was in fact unjustified since the expenditure which had purportedly been omitted had in fact been included in the bid under another heading.

#### ***Stage three: Suspicions***

The internal audit service confirms the unsuccessful bidder's claim and points out that nothing in the report helps to establish any grounds for the change made by the technical service. It also points out that it would be difficult for an official with any experience, however little, not to see that the expenses had been accounted for under another heading. The mayor now requests the audit service to find out whether the technical service is in the habit of making such changes, whether it has already processed bids from the winning bidder and if contracts were frequently awarded to the latter. He also requests that it check out the background of the officials concerned by the audit. Do they have experience? Have they been trained? Do they have links with the successful contractor?

Could they have had links with them in their previous posts? What do their wives and children do? Examination of the personnel files of the officials and the shares of the company which won the contract fail to find anything conclusive: the only links between the officials or their families and the successful bidder are indirect.

#### ***Stage four: Handing the case over to authorities of the Ministry of Justice***

Having suspicions, but no proof, the mayor hands over information so that investigations can begin. The investigators now have to find proof that a criminal offence (favouritism, corruption, undue advantage, etc.) has been committed and will exercise their powers to examine bank accounts, conduct hearings, surveillance, etc. The case has now moved out of the domain of public procurement regulations and into the domain of criminal proceedings.

#### ***Conclusion***

Unable to gather any evidence and with no authority to conduct an in-depth investigation or question the parties concerned, the mayor takes the only decision that is within his power, which is to reorganise internally and change the duties of the two members of staff concerned. However, he must proceed cautiously when giving the reasons for his decision so as to avoid exposing innocent people to public condemnation or himself to accusations of defamation while the criminal investigation is in progress.

The mayor also decides that from then on the report by the technical services to the bidding committee should give a fuller explanation of its calculations and any changes it makes to the bids, as well as inform systematically bidders of any changes.

Source: OECD (2007), *Integrity in Public Procurement, Good Practice from A to Z*, <http://dx.doi.org/10.1787/9789264027510-en>

The public procurement cycle involves multiple actors and therefore integrity is not a requirement for public officials alone. Private companies often have their own integrity system in place, and many countries engage with private sector actors to instil integrity in public procurement. For example, integrity standards applicable to public sector employees may be expanded to private sector stakeholders through integrity pacts (Table 1). Integrity Pacts are essentially an agreement between the government agency offering a contract and the companies bidding for it that they will abstain from bribery, collusion and other corrupt practices for the extent of the contract. To ensure accountability, Integrity Pacts also include a monitoring system typically led by civil society groups.

**Table 1. Examples of the use of integrity pacts in various countries:**

<b>Germany</b>	An Integrity pact has been implemented for the construction of the Schönefeld International Airport in Berlin, a project worth €2.4 billion.
<b>India</b>	Integrity Pacts are an essential part of the Draft National Anti-Corruption Strategy. The Central Vigilance Commission (CVC) issued the Directive 008/CRD/013, which refers to the implementation of integrity pacts as ‘standard operating procedure’ in procurement contracts of any major government department.
<b>Indonesia</b>	Integrity pacts have been adopted and applied to local government contracts in up to 20 districts.
<b>Italy</b>	Integrity pacts have been introduced mainly at municipal level in the Milan City Council.
<b>Korea</b>	The Korean pact model emphasises the protection of whistleblowers and the creation of an ombudsman system to carry out independent external monitoring.
<b>Mexico</b>	Transparencia Mexicana has implemented integrity pacts in over 100 contracts, worth approximately USD \$30 billion in total.
<b>United Kingdom</b>	Integrity pacts have been adopted and implemented with particular focus on the defence sector.





**Transparency** in public procurement not only promotes accountability and ensures access to information, it also serves an important role in levelling the playing field for businesses and allowing small and medium enterprises to participate on a more equal footing.

Hence, transparency is central to OECD instruments promoting good governance in the public sector. The OECD Recommendation on

Public Procurement (OECD, 2015b) recommends that adhering countries ensure an adequate degree of transparency of the public procurement system in all stages of the procurement cycle. Moreover, the OECD Recommendation on Public Integrity recommends adherents to safeguard integrity and the public interest at all stages of the policy process, in particular through promoting transparency and open government, including actively ensuring full access to information and open data, along with active and timely responses to request for information.

Although transparency in the public service is strongly related with integrity and anti-corruption, the relationship is not automatic. Several conditional factors need to be in place for effective accountability. In order for citizens and civil society organizations to fulfil an oversight role, as so-called watchdog, data availability needs to be paired with timeliness, data quality, processing capacity, effective reporting and whistleblower channels.

As a minimum, **adequate and timely information** may be provided about upcoming contracts as well as contract notices and information about the status of ongoing procurement processes. Additional information such as the average procurement duration, justification of exceptions and specific overview records by type of bidding procedure may further enable external parties to scrutinize public procurement practice. To provide an appropriate degree of information, governments need to strike a balance between ensuring accountability and competition on the one hand, and on the other hand protecting trade secrets and respecting the confidentiality of information that can be used by interested suppliers to distort competition, in current or future procurement processes. Mexico and Australia both run a comprehensive procurement information system (box 4 and box 6). Mexico also provides for a separate tendering process with respect to hydrocarbons exploration and extraction (box 5).

#### **Box 4. Disclosure of information through the central procurement system, Compranet in Mexico**

In Mexico, the Law of Acquisitions, Leasing and Services of the Public Sector (Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, LAASSP) makes publication of procurement information on Compranet mandatory for federal institutions.

Compranet ([www.compranet.gob.mx](http://www.compranet.gob.mx)) is the procurement information system for federal government procurement procedures for goods, services, leasing and public works funded with federal resources. Since the reform of Mexican procurement law in 2009, it is compulsory for the federal public administration to use Compranet. It features information such as annual procurement programmes, tender procedures (solicitation documents, minutes of the clarification meetings and of the opening of tenders), contract awards history and formal complaints. Mexico also allows the electronic submission of bids through a national e-procurement system at central government level.

Sources: OECD (2013), <http://dx.doi.org/10.1787/9789264197305-en>



### **Box 5. Mexico's Good Practices on Public Procurement related to the exploration and extraction of hydrocarbons**

The role of Mexico's National Commission on Hydrocarbons is to ensure that the tendering processes for the adjudication of public contracts for hydrocarbon exploration and extraction are conducted in compliance with transparency, equality, free competition and efficiency principles as provided by the Law on Hydrocarbons (*Ley de Hidrocarburos*).

The tendering process reinforces transparency and accountability by ensuring that the following information is published on the [www.rondal.gob.mx](http://www.rondal.gob.mx) webpage:

- areas where public contracting will take place;
- the criteria for adjudication of public contracts;
- contract templates;
- the monitoring processes;
- the applicable timelines;
- the tendering documents;
- the list of prequalified contractors (including information from interested parties);
- requests for clarification; and
- possible amendments to the tendering procedure.

To limit interactions between public officials and private firms, all documents arising from the tendering process are exchanged electronically. Moreover, all sessions from the governing body of the National Commission on Hydrocarbons are made available on the Commission's website ([www.cnh.gob.mx](http://www.cnh.gob.mx)), including specific decisions on the awarding of public contracts. Finally, once the public contracts are signed, they are posted on the Commission's webpage the same day, and a public notary certifies that the official version of the contract that has been signed is the same than the one that was posted online.

In order to minimize undue influence, important efforts are undertaken to prevent conflicts of interest in the awarding of public contracts, and any appearance of conflict of interest can lead to the rejection of the bidding proposal. The Commission's supervisory body monitors compliance with applicable rules at every step of the procurement process. Contracting firms must acknowledge in public contracts that they will not engage in a number of unethical behaviour, either by themselves, or through their affiliates or any other person. The contracting firm must also ensure that it complies, as well as its affiliates, with applicable rules at all times during the execution of the contract, and that it creates and maintain appropriate internal controls to ensure it fulfils its compliance obligations.

Mexico's new public contracting practices ensure that all bidders are treated equally by having access to the same information and limiting direct contacts with the authorities who select successful bids. Indeed, an increased number of oil companies now participate in call for public tenders as a result of increased guarantees that the tendering process will be impartial.

The new public contracting practices also increase public scrutiny over the awarding of public contracts. All public tenders remain indefinitely available on the Commission's webpage to allow the public to compare different public tender processes.

The Commission's processes are also subject to periodic internal, as well as external audits from the Secretary of Energy. So far, these audits have not detected ant breach of applicable laws and procedures.

*Source:* Secretaria de la Función Pública (2016), Cuestionario para documentar buenas prácticas en materia de contrataciones pública

### **Box 6. The procurement information system of the Australian Government**

The Australian Government's procurement information system, AusTender, provides a platform for centralised publication of Australian Government business opportunities, as well as annual procurement plans, multi-use lists and contracts awarded. Government agencies are required by the Commonwealth Procurement Rules to publish on AusTender standing offer arrangements and contracts with a value of AUD 10,000 or more. Since 2005, Commonwealth Authorities and Companies Act bodies are also required to publish details of certain contracts and standing offers.

On the AusTender website, it is possible to access reports on contract notices, standard offer notices and procurement plans (<https://www.tenders.gov.au/?event=public.reports.list>). Online contract notices include information on the procuring entity, the procurement method, the contract value and period, a description of the contract, and supplier details. It is also possible to download summary records that include information on the total count and value.

*Source:* Department of Finance, Australia.

Transparency can be further enhanced by ensuring **visibility of the flow of public funds** throughout the public financial management cycle. It allows stakeholders to understand government priorities and spending and policy makers to organise procurement strategically. The Transparency Portal of the Federal Public Administration in Brazil attracts up to 230 000 users per month (box 7).

### **Box 7. The Transparency Portal of the Federal Public Administration in Brazil**

[www.portaldatransparencia.gov.br](http://www.portaldatransparencia.gov.br) was created in November 2004 in Brazil to provide free real-time access to information on budget execution, as a basis to support direct monitoring of federal government programmes, including procurement spending by citizens. Access to the Transparency Portal is available without registration or password. Data are automatically extracted and published on the portal from existing information systems of the federal public administration, removing the need for any specific actions by federal public organisations to publish information.

Since May 2010, revenue and expenditure data available through the Transparency Portal are updated daily. Citizen use of the portal has grown since its launch from approximately 700 000 hits per month to approximately 2.3 million hits per month, with the number of users growing from approximately *10 000 per month to 230 000 per month*.

*Source:* OECD (2012), <http://dx.doi.org/10.1787/9789264119321-en>



## Stakeholder Participation

In order to promote government accountability and foster trust in public institutions, several OECD countries have longstanding practices whereby a large range of stakeholders are involved in the procurement process, including anti-corruption offices, private sector organisations, end-users, civil society, the media and the general public. More recently, some countries have introduced direct social control by involving citizens at critical stages of the procurement process. **Open and regular dialogue** with suppliers and business associations can reinforce mutual understanding of factors shaping public markets. For example, the Chief Acquisition Officers Council in the United States has institutionalised the dialogue with external stakeholders (box8).

Stakeholders involvement in policy processes is also an important foundation of OECD instruments promoting integrity. The *OECD Recommendation of the Council on Public Procurement* (OECD, 2015b) recommends that adherents foster transparent and effective stakeholder participation. Moreover, the *OECD Draft Recommendation of the Council on Public Integrity* encourages adherents to safeguard integrity and the public interest at all stages of the political and policy process, in particular through (1) granting all stakeholders – civil society organisations, businesses, the media and citizens equitable voice in the development and implementation of public policies; and (2) enabling a civil society that includes ‘watchdog’ organisations, citizens groups and independent media in order to ensure effective accountability.

### Box 8. ‘Welcome to the Open Dialogue’ in the United States

In 2014, the Chief Acquisition Officers Council (CAOC), in coordination with the Federal Acquisition Regulatory Council, the Chief Information Officers Council, and the Office of Management and Budget’s (OMB) Office of Federal Procurement Policy (OFPP), created an online platform to allow stakeholders to discuss problems, barriers and possible solutions associated with the federal acquisition process. The objective of the platform and the discussions is to identify improvements to the public procurement cycle and the management of public contracts.

This dialogue is part of an effort to improve the efficiency of the federal acquisition system by identifying impactful steps to make it easier for government agencies to do business with companies and enter into contracts that allow suitable companies to provide high value solutions for the taxpayer.

The dialogue focuses on three areas:

- Reporting and compliance requirements – e.g. opportunities where collection processes and systems can be reengineered or automated, duplicative reporting can be eliminated, the frequency of reporting can be reduced, and outdated compliance thresholds can be changed.
- Procurement practices – e.g. opportunities where acquisition strategies can be modernized (to support more efficient and effective acquisition of IT, in particular), where best commercial practices can be utilized, as well as efforts to promote greater consideration of innovative solutions and contracting practices.
- Participation by small and minority businesses, new entrants, and non-traditional government contractors – e.g. opportunities for improving existing technical or strategic assistance programmes, making buying platforms for finding business opportunities and bidding more user friendly, and lowering the cost of doing business.

Using the online platform, interested parties submit ideas, respond to questions posed by moderators, and comment on other suggestions.

Source: Chief Acquisition Officers Council (2014), <http://cxo.dialogue.cao.gov/>

Providing opportunities for **direct involvement** of relevant external stakeholders in the procurement system can increase transparency and integrity while assuring an adequate level of scrutiny, provided that confidentiality, equal treatment and other legal obligations in the procurement process are maintained. Mexico, for example, has established a system of social witnesses for certain tender procedures (box 9).

#### **Box 9. Social witnesses in Mexico**

Since 2009, social witnesses are required to participate in all stages of public tendering procedures above certain thresholds, as a way to promote public scrutiny. In 2014, these thresholds are MXN 336 million ( $\approx$  USD 25 million) for goods and services and MXN 672 million ( $\approx$ USD 50 million) for public works.

Social witnesses are non-government organisations and individuals selected by the Ministry of Public Administration (SFP) through public tendering. SFP keeps a registry of the approved social witnesses and evaluates their performance; unsatisfactory performance potentially results in their removal from the registry.

When a federal entity requires the involvement of a social witness, it informs SFP who designates one from the registry.

As of January 2014, SFP had registered 39 social witnesses for public procurement projects: 5 Civil Society Organisations and 34 individuals.

Source: OECD (2013b), <http://dx.doi.org/10.1787/9789264197480-en>



## Access to public procurement contracts

by potential companies of all sizes is important in order to get the best value for money through fair competition. Participation in public procurement by small and medium enterprises (SMEs) may be facilitated through streamlining tendering procedures and reducing bureaucracy, which can level the playing field among businesses and at

the same time cut out opportunities for corruption. In order to ensure fair competition and to sanction corrupt practices, companies with a proven track record of integrity breaches can be excluded from access to public procurement contracts.

Generally speaking, SMEs, accounting for more than 90% of all established businesses worldwide, differ from large companies on public procurement integrity. When faced with excessively complex bureaucracies, SMEs are more likely to make illegal payments in order to secure an advantage as they often lack the time and resources necessary to get informed about complex regulations and requirements, making illegal payments to cover up mistakes or avoid overly bureaucratic procedures more likely. Indeed, as highlighted by the report *Corruption Prevention to Foster Small and Medium Sized Enterprises Development* (UNIDO & UNODC, 2007), SMEs are more susceptible to bureaucratic corruption than larger companies. According to this study, this is due to a number of factors, including the following: (1) their structure (e.g. a greater degree of informality and fewer accountability mechanisms); (2) a vision and perspective that focus on short term implications of entering into corrupt transactions (as opposed to larger companies, SMEs may be less concerned about reputation and other long-term negative impacts of corruption); (3) limited financial resources; and (4) their inability to wield influence over officials and institutions as they lack bargaining power to oppose requests for illegal payments from public officials.

The *OECD Recommendation of the Council on Public Procurement* (OECD, 2015b) encourages adherents to facilitate access to procurement opportunities for potential competitors of all sizes.

Many countries have adopted tools to reduce corruption while reinforcing competition and efficiency in procurement procedures. For example in Spain a self-declaration system facilitates participation of SMEs in public procurement (box 10). Italy runs a train the trainers programme to empower SMEs in the area of public procurement (box 11) and Ireland has consultation and review mechanisms in place to tailor the procedures to SME needs (box 12).

### **Box 10. Simplification of Public Procurement Procedure In Spain: Self-Declaration**

Spain has introduced measures to support and facilitate participation of SMEs in public procurement.

Act 14/2013 allows contracting entities to receive a self-declaration from potential suppliers, which replaces several documents certifying legal, social and fiscal situation of the SME willing to participate in public procurement procedures. This self-declaration is sufficient for contracts of works under EUR 1.000.000 and in provision and services contracts under EUR 90.000.

The tenderer who is awarded the contract is required to provide the relevant evidence, and contracting authorities should not conclude contracts with tenderers unable to do so. Contracting authorities should also be entitled to request all or part of the supporting documents at any moment when they consider this to be necessary for the proper conduct of the procedure.

*Source:* Ministry of Finance and Public Administrations, Spain

The European Commission is taking action to minimise administrative burden in public procurement, harmonizing practices across the EU and facilitating the participation of SMEs in public tenders. Measures include one-stop shops, data-sharing and standardisation, common commencement dates for new rules, tailored guidance and trainings for SMEs, and dialogue with SME representatives to ensure that they are fully involved in the public procurement reform process.

#### **Box 11. Supplier Training Desks (STDs) in Italy**

Italy has strengthened its co-operation with suppliers by setting up Supplier Training Desks (STDs) (“Sportelli in Rete” in Italian) within the offices of suppliers’ associations. STDs provide training and assistance to local enterprises and in particular micro, small and medium enterprises (MSMEs) on the use of electronic procurement tools.

The project consists of a network of dedicated training desks over the country. The central purchasing agency (Consip) experts train trainers from the business associations, who will subsequently guide and coach local MSMEs on the use of electronic procurement tools.

Today, more than 200 training desks are active in the country, providing continuous free training and assistance. Since the beginning of the project, more than 2250 MSMEs were supported by the Supplier Training Desks, and obtained the qualification to the public e-market place implemented by Consip for low value purchases through ecatalogues (MePA). The MePA has helped thousands of SMEs during the last five years making it a suitable procurement tool for SMEs, which are top users of the tool.

Consip’s active role in setting up an efficient e-procurement platform and commitment in establishing a collaborative partnership with the Enterprises Associations has changed the perception of Consip: it is no longer seen as a threat, but as a business opportunity in a transparent and competitive environment.

*Source:* CONSIP, Italy.

#### **Box 12. Engagement with SMEs to reduce Red Tape in Ireland**

According to the Office of Government Procurement (OGP) in Ireland, 75% of contracts awarded in 2013 to Irish companies were to Irish SMEs. The Government is keen to ensure that SMEs are fully engaged in the public procurement reform process through:

- direct engagement with SME representative bodies to ensure their views are considered in the future development of public procurement policy; and
- review of public procurement guidelines and procedures to reduce red tape and address any obstacles to SMEs participating as fully as possible in the public procurement process.

*Source:* Office of Government Procurement, Ireland

Integrity violations of companies may lead to permanent or temporary exclusion from public procurement. In line with the EU legislation, there are mandatory debarment/exclusion rules in place in EU Member States according to which bidders against whom final court convictions for corruption have been handed down are excluded from future tenders (European Commission, 2014a). In many EU Member States, laws contain debarment provisions and contracting authorities have also cross-access to their internal debarment databases.

With the leadership of the World Bank, Multilateral Development Banks have developed an Agreement for Mutual Enforcement of Debarment Decisions and make public the list of companies and individuals ineligible to participate in their tendering process (World Bank, no date). The 2009 OECD Anti-Bribery Recommendation calls on Parties to the OECD Convention of Bribery of Foreign Public Officials in International Business Transactions to: “suspend, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials and, to the extent a Party applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, ensure that such sanctions should be applied equally in case of bribery of foreign public officials”.





**E-procurement**, which is the use of information and communication technologies in public procurement, can increase transparency, facilitate access to public tenders, reduce direct interaction between procurement officials and companies, increasing outreach and competition, and allow for easier detection of irregularities and corruption, such as bid rigging schemes. The digitalisation of procurement processes

strengthens internal anti-corruption controls and detection of integrity breaches, and it provides audit services trails that may facilitate investigation activities. The e-procurement system KONEPS in Korea is an example of an integrated online platform for procurement (box 13).

Accordingly, the *OECD Recommendation of the Council on Public Procurement* (OECD, 2015b) encourages adherents to use digital technologies to support appropriate **e-procurement** innovation throughout the procurement cycle.

### **Box 13. Integrated e-procurement system KONEPS in Korea**

In Korea, the implementation of a national e-procurement system has brought about a notable improvement in the transparency and integrity of public procurement administration.

In 2002, Public Procurement Service (PPS), the central procurement agency of Korea, introduced a fully integrated, end-to-end e-procurement system called KONEPS. This system covers the entire procurement cycle electronically (including a one-time registration, tendering, contracts, inspection and payment) and related documents are exchanged online. KONEPS links about 140 external systems to share and retrieve any necessary information, and provide a one-stop service, including automatic collection of bidder's qualification data, delivery report, e-invoicing and e-payment. It provides information on a real-time basis.

All public organisations are mandated to publish tenders through KONEPS. In 2012, over 62.7% of Korea's total public procurement (USD 106 billion) was conducted through KONEPS. In KONEPS 45 000 public entities interact with 244 000 registered suppliers. According to PPS, the system has boosted efficiency, and significantly reduced transaction costs. In addition, the system has increased participation in public tenders and has considerably improved transparency, eliminating instances of corruption by preventing illegal practices and collusive acts. For example, the Korea Fair Trade Commission runs BRIAS (a KONEPS system) which is the automated system for detecting suspicious bid strategies. According to the integrity assessment conducted by Korea Anti-Corruption and Civil Rights Commission, Integrity perception index of PPS has improved from 6.8 to 8.52 out of 10 since the launch of KONEPS.

A key concern for illegal practices was borrowed e-certificates. To mitigate this risk, the Public Procurement Service introduced "Fingerprint Recognition e-Bidding" in 2010. In the Fingerprint Recognition e-Bidding system, each user can tender for only one company by using a biometric security token. Fingerprint information is stored only in the concerned supplier's file, thus avoiding any controversy over the government's storage of personal biometric information. By July 2010, it was applied in all tenders carried out via the KONEPS by local governments and other public organisations procuring goods, services and construction projects. In 2011, PPS launched a new bidding service allowing the bidding process to take place via smartphones through newly developed security tokens and applications.

*Source:* Public Procurement Service (PPS), Korea

#### **Box 14. Vendor Performance Information in the United States**

In working to build the right supplier relationships, the United States focuses on doing business with contractors who place a premium on integrity, performance and quality. To this end, government agencies have been directed to improve the quantity, quality, and utilization of vendor performance information through the use of two systems.

Vendor past performance information including an identification and description of the relevant contract, ratings across six dimensions (quality, schedule, cost, utilization of small business, etc.), and a narrative for each rating is contained within the Past Performance Information Retrieval System (PPIRS). Additional information regarding certain business integrity issues, including contracts terminated for default or cause, information about criminal, civil, or administrative procedures related to a federal contract; and prior findings that a contractor is not responsible, is captured in the Federal Awardee Performance and Integrity Information System (FAPIIS). Agencies are taking steps to improve the value of both systems by providing information that is both more complete and more useful.

Government agencies are required to report past performance information, which will then be available to other contracting officers within PPIRS, on all contracts and orders above USD 150,000 (with various exceptions). However, an initial analysis showed that compliance varied widely among agencies. As a result, in March of 2013, the United States established a tiered-model of annual performance targets to bring all agencies to 100% compliance by 2015. To improve reporting compliance in FAPIIS, the United States utilizes information contained in the Federal Procurement Data System – Next Generation (FPDS-NG) to identify contracts that should have entries within FAPIIS (e.g. those where the contract was terminated for default or terminated for cause on the part of the vendor). By cross-checking with existing data sources, agencies are provided with a cost-effective mechanism to improve compliance.

Finally, recognizing that both systems are only as useful as the quality of the data that is entered, agencies were directed to ensure that their acquisition professionals are knowledgeable regarding the past performance regulations and procedures, and trained to use the reporting tools appropriately. These are all important steps as the United States continues to explore ways to ensure that the most relevant and recent past performance information is accessible, useful, readily available, and transparent to acquisition officials before award decisions are made.

*Source:* United States Office of Federal Procurement Policy (2013), [www.whitehouse.gov/sites/default/files/omb/procurement/memo/improving-the-collection-and-use-of-information-about-contractor-performance-and-integrity.pdf](http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/improving-the-collection-and-use-of-information-about-contractor-performance-and-integrity.pdf)





**Oversight and control** of the procurement cycle are not only essential in supporting accountability and promoting integrity in the public procurement process, these processes also generate valuable evidence on the performance and efficiency of the procurement cycle. The basis for an adequate oversight and control system is a risk analysis of the government process and its environment in

question. In turn, the observations from oversight and control activities may yield insights on new and emerging risks or red flags, allowing updating and refining the oversight and controlling system. Moreover, proportional sanctions following the detection of illicit behaviour through oversight and control activities may act as an effective deterrent to engage into corrupt behaviour.

Oversight and control constitute one of the foundations of OECD instruments promoting the implementation of effective integrity systems in the public sector as a whole and in public procurement in particular. The *OECD Recommendation of the Council on Public Procurement* (OECD, 2015b) encourages adherents to apply oversight and control mechanisms to support accountability throughout the public procurement cycle, including appropriate processes for complaint handling and sanctions. In addition, the *OECD Recommendation of the Council on Public Integrity* ask adherents to apply a control and risk management framework to safeguard integrity in public sector organisations, in particular through:

- ensuring a control environment with clear and fair objectives that demonstrate managers' commitment to integrity and public service values, and that provides a reasonable level of assurance of an organisation's efficiency, performance and compliance;
- ensuring a strategic approach to risk management;
- ensuring that control mechanisms are coherent and include effective and clear procedures for responding to credible suspicions of violations of laws and regulations, and facilitate reporting to the competent authorities without fear of reprisals.

Effective internal controls are designed to ensure the efficient fulfilment of a public procurement process while safeguarding integrity-related goals and objectives. Internal controls in procurement verify whether legal, administrative and financial procedures are followed and include financial controls, internal audit and management controls. Moreover, harmonised internal control practices ensure consistency in the application of procurement rules and standards across the public sector. The Federal Procurement Agency in the Ministry of the Interior in Germany for examples monitors workflows electronically, enabling more efficient controls (box 15). In Brazil the Public Spending Observatory works with a system of red flags indicating specific risks (box 16).

**Box 15. Electronic workflow: Processing and tracking information on public procurement in Germany**

The Federal Procurement Agency in the Ministry of the Interior in Germany has set up an electronic workflow that helps centralise all information related to the procurement activities of the Agency and provide a record of the different stages of the ongoing procurement procedures. All files are stored in a document management system. The Federal Procurement Agency keeps records to maintain transparency and provide an audit trail of procurement decisions. In case of suspicious observations, the contact person for the prevention of corruption may also have access to documents for inspection. This access is not visible for the official concerned. The department for quality management examines documents in the system, randomly as well as systematically, while the internal audits review transactions of the previous year that have been identified with a higher corruption risk such as negotiated contracts. These inspections are not exclusively used to prevent corruption, but also to ensure lawful and economically advantageous public procurement.

Source: Federal Procurement Agency, Germany

### Box 16. Public Spending Observatory in Brazil

The Office of the Comptroller General of the Union launched the Public Spending Observatory (Observatório da Despesa Pública) in 2008 as the basis for continuous detection and sanctioning of misconduct and corruption. Through the Public Spending Observatory, procurement expenditure data are cross-checked with other government databases as a means of identifying atypical situations that, while not a priori evidence of irregularities, warrant further examination.

Based on the experience over the past several years, a number of daily actions are taken to cross procurement and other government data. This exercise generates “orange” or “red” flags that can be followed up and investigated by officials within the Office of the Comptroller General of the Union. In many cases, follow-up activities are conducted together with special Advisors on Internal Control and internal audit units within public organisations.

Examples of these tracks related to procurement and administrative contracts include possible conflicts of interest, inappropriate use of exemptions and waivers and substantial contract amendments. A number of tracks also relate to suspicious patterns of bid-rotation and market division among competitors by sector, geographic area or time, which might indicate that bidders are acting in a collusive scheme.

Finally, tracks also exist regarding the use of federal government payment cards and administrative agreements (convenios). In 2013, there were 60,000 instances of warnings originated from the computer-assisted audit tracks used by the Office of the Comptroller General of the Union to identify possible procurement irregularities, like:

1. Business relations between suppliers participating in the same procurement procedure.
2. Personal relations between suppliers and public officials in procurement procedures
3. Fractioning of contracts in order to use exemptions to the competitive procurement modality.
4. Use of bid waiver when more than one “exclusive” supplier exists
5. Non-compliance by suppliers with tender submission deadlines.
6. Bid submission received prior to publication of a procurement notice.
7. Registration of bid submissions on non-working days
8. Possibility of competition in exemptions.
9. Supplier’s bid submissions or company records with the same registered address.
10. Participation of newly established suppliers in procurement procedures.
11. Contract amounts above the legally prescribed ceiling for the procurement modality used.
12. Contract amendments above an established limit, in violation of the specific tender modality
13. Contract amendments within a month of contract award, in violation of the specific tender modality.
14. Commitments issued prior to the original proposal date in the commitment registration system.
15. Evidence of bidder rotation in procurement procedures
16. Bidding procedures involving suppliers registered in the Information Registry of Unpaid Federal Public Sector Credits (Cadastro Informativo de Créditos Não Quitados do Setor Público Federal).\*
17. Use of reverse auctions for engineering services.
18. Micro- and small enterprises linked to other enterprises
19. Micro- and small enterprises with shareholders in other micro- and small enterprises.
20. Micro- and small enterprises with earnings greater than BRL 0.24 million or BRL 2.40 million, respectively.

Source: OECD (2012), <http://dx.doi.org/10.1787/9789264119321-en>

Internal controls are designed according to a comprehensive assessment of integrity risks. Conducting a proper risk assessment exercise will require defining the integrity risks associated with public procurement procedures, identifying the controls that are already in place to mitigate these risks, and prioritizing the implementation of additional controls that are necessary to address any existing gaps. In addition, risk assessment can be carried out on a rolling basis, to adapt to the constantly evolving factors that may influence or affect public procurement processes. For instance, Argentina, Brazil, France, and Korea have been taking a “looking forward approach” by mapping out regularly risk factors and integrity vulnerabilities related to public procurement. As another example, South Africa recently appointed a Chief Procurement Officer to review and modernize the legal framework, public procurement information systems and improve governance, compliance and accountability of public procurement (box 17).

### **Box 17. Public Procurement Reform in South Africa**

In 2013, the National Treasury appointed a Chief Procurement Officer with the overarching regulatory responsibility to monitor and evaluate public procurement performance in government and to modernize public procurement systems for greater efficiency and transparency.

The Chief Procurement Officer's strategic objective is to:

- i. Develop an overarching regulatory framework for public procurement oversight;
- ii. Modernize public procurement information systems to optimize on public procurement planning and execution, spending and cost savings;
- iii. Improve public procurement achievements on sustainable economic, social and environmental development;
- iv. Improve public procurement governance, compliance and accountability;
- v. Improve the capacity and performance of procurement officials.

The National Treasury Office of the Chief Procurement Officer is currently:

- i. Reviewing legislation to modernize and simplify the legal framework for public procurement;
- ii. Reviewing preferential procurement legislation to enhance economic opportunities for industrial supplier development through public procurement;
- iii. Reviewing public procurement practices, the awarding of public procurement contracts, and the administration of contracts; to assess fairness, openness and compliancy to policy; make appropriate recommendations of practice improvements and advise on developmental training intervention strategies;
- iv. Administering a Register for Tender Defaulters and Restricted Suppliers that is open to the public and for government to consult for contractors prohibited from doing business with government, found to be involved in corrupt activities and for supplier non-performance, before the awarding of public procurement contracts. The Register is available on National Treasury's website (<http://www.treasury.gov.za>).

*Source:* National Treasury, South Africa

In order to build bidders' confidence in the integrity and fairness of the procurement system, efficient appeal and complaints procedures are important. Accessibility, user-friendliness, timely processing, independent review, and effective follow-up are key features of sound appeal and complaints procedures. Appeal options can be made available before the signature of the contract, to ensure that the bidders who may challenge the decision of relevant authorities maintain a chance of being awarded the contract. Several countries have introduced a mandatory standstill period to secure a reasonable opportunity for other bidders to be reinstated in the procurement procedure if circumstances warrant. In EU countries, reforms of public procurement laws have been carried out in compliance with the 2007/66/EC Directive on remedies (box 18). In Japan, the Office for Government Procurement Challenge System operates a complaints handling system (box 19) and Canada has established a ombuds-office specifically for public procurement complaints (box 20).

### Box 18. Remedies Directives of the European Union

Remedies are legal actions available to economic operators who participate in contract award procedures, which allow them to request the enforcement of the public procurement rules and the protection of their rights under them in cases where contracting authorities, intentionally or unintentionally, fail to comply with the law.

The legal framework on remedies is found in the following Remedies Directives:

- Directive 89/665/EEC regulates remedies available to economic operators during public sector contract award procedures.
- Directive 92/13/EEC regulates remedies available to economic operators during utilities contract award procedures.

The aim of the Directives is to allow irregularities occurring in contract award procedures to be challenged and corrected as soon as they occur, therefore to increase the lawfulness and transparency of such procedures, build confidence among businesses and facilitate the opening of local public contracts markets to competition from all over Europe.

Remedies Directives **coordinate national review systems** by imposing some **common standards** intended to ensure that rapid and effective means of redress is available in all EU countries in cases where bidders consider that contracts have been awarded unfairly. Both Directives were amended by Directive 2007/66/EC which introduced two main features:

- a "**standstill period**" – contracting authorities need to wait for at least 10 days after deciding and communicating who has won the public contract before the contract can actually be signed. This period gives bidders time to examine the decision and decide whether to initiate a review procedure. If they do so within the standstill period, this results in the "automatic suspension" of the procurement process until the review body takes its decision. If these rules are not respected, under certain conditions national review bodies must render a signed contract ineffective.
- **more stringent rules against illegal direct awards of public contracts** – national courts are able to render these contracts ineffective if they have been illegally awarded without transparency and prior competitive tendering unless that is specifically permitted under the directives.

Source: European Commission (2014a), [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf)

### Box 19. The Office for Government Procurement Challenge System in Japan

The Japanese system of complaints concerning government procurement of goods and services (including construction services) aims to ensure greater transparency, fairness, and competitiveness in the government procurement system, under the principle of non-discrimination of foreign and domestic sources.

The Government Procurement Review Board (the Board) composed of 7 committee members and 16 special members receives and reviews complaints. The Office of Government Procurement Review (OGPR) headed by the Chief Cabinet Secretary and with administrative vice-ministers or directors from all ministries and agencies as its members is also notified of review procedures. Persons or bodies wishing to file a complaint may do so with the Board within ten days after the basis of the complaint is known. The Board will examine complaints received within seven working days of filing and determine whether they will be accepted for review.

If a complaint is accepted for review, the Board will immediately notify the complainant, OGPR, and the procuring entity of this in writing and publicly announce its decision through the Official Gazette, the Internet (<http://www5.cao.go.jp/access/english/kouji-e.html>), and other means, soliciting the attendance of participants interested in the complaint. The procuring entity is required to present a report to the Board. If the complainant or the participants disagree with this report, they may present statements to the Board or request a review by the Board, which the Board will subsequently undertake. Finally, a report on findings will be drawn up within ninety (90) days by the Board in cases of standard review. This period can be shortened if the complainant or the procuring entity so desire. This time limit may also vary according to the type of procurement of the complaint. If the Board finds that procurement has been carried out in a manner inconsistent with any provision of the Agreement on Government Procurement or other applicable measures, it will draw up recommendations with the report. The procuring entity is required, as a rule, to follow the recommendations of the Board.

Since the establishment of the Board in 1995, twelve complaints have been filed, while other inquiries have been resolved through consultation.

Source: Minister of Foreign Affairs, Japan

### **Box 20. Procurement Ombudsman in Canada**

A Procurement Ombudsman was set up in 2008 to increase the effectiveness and transparency of business practices in relation to procurement. This was part of a series of reforms to implement the Federal Accountability Action Plan in order to help strengthen accountability and increase transparency and oversight in federal government operations.

#### **Objectives**

The overall objective of the Office of the Procurement Ombudsman is to promote fairness, openness and transparency in federal government procurement. Its mandate and role are as follows:

1. Review departments' practices for acquiring materials and services to assess their fairness, openness and transparency and make any appropriate recommendations to the relevant department.
2. Review any complaint respecting the award of a contract for the acquisition of goods below the value of CAN 25 000 and services below the value of CAN 100 000, where the criteria of Canada's domestic Agreement on Internal Trade would apply but for the dollar thresholds.
3. Review any complaint respecting the administration of a contract for the acquisition of materials or services by a department or agency, regardless of dollar value.
4. Ensure an alternative dispute resolution process is provided, if all parties to the contract agree to participate.

#### **Implementation process**

The Procurement Ombudsman was created through an amendment to the Department of Public Works and Government Services Act, which established the Procurement Ombudsman's authority and activities. The associated Procurement Ombudsman Regulations, which provide specifics on how the Procurement Ombudsman's authority is to be exercised, were developed through a consultative process and pre-published in the Canada Gazette, Part I in December 2007. Comments from industry associations, government departments and the Procurement Ombudsman Designate were received and taken into consideration before being passed and the office became fully operational in May 2008. The Ombudsman reports directly to the Minister of Public Works and Government Services Canada (PWGSC), who is required to submit an annual report to Parliament. While the Office of the Procurement Ombudsman is a federally constituted independent organisation under the portfolio of the Minister of PWGSC, it has a government-wide mandate and operates horizontally in departments and agencies, including PWGSC.

#### **Impact and monitoring**

Between May 2008 and March 2011, the Office of the Procurement Ombudsman handled more than 1200 inquiries and complaints and conducted 6 investigations into contract award issues. The Office dealt with 21 requests for an alternative dispute resolution process for contractual disputes and conducted 12 procurement practice reviews which involved 26 different federal government departments and agencies.

A formative evaluation of the Office (<http://opo-boa.gc.ca/autresrapports-otherreports/evalform-formeval-eng.html>) was carried out which highlighted the following results:

- 1) The Office plays a crucial role in maintaining the credibility and fairness of the procurement process in the federal government.
- 2) The provision of alternative dispute resolution services by the Office has been able to facilitate settlement of a contractual dispute in almost all instances; the Office is seen by suppliers as an independent party to ensure fairness and avoid abuses in federal procurement as well as to help small businesses by acting as an impartial referee.
- 3) Not only does the Office help in providing independent investigation and restitution in matters arising from procurement and resolving issues so that the supplier does not have to engage a lawyer, it also enables suppliers to provide feedback on the procurement practices of federal departments for future improvements to the procurement process.

Source: OECD (2013a), <http://dx.doi.org/10.1787/9789264201385-en>.



## BIBLIOGRAPHY

- BIAC (2014), *BIAC Economic Policy Survey 2014: Structural Reforms and Implementation*, accessed online on 8 June 2016 at [http://biac.org/wp-content/uploads/2014/07/14\\_05\\_BIAC\\_EPC\\_Survey\\_2014\\_Synthesis\\_Report1.pdf](http://biac.org/wp-content/uploads/2014/07/14_05_BIAC_EPC_Survey_2014_Synthesis_Report1.pdf)
- CoST (2012), *Press Release*, accessed online on 8 June 2016 at <http://www.constructiontransparency.org/documentdownload.axd?documentresourceid=8>
- European Commission (2014a), *Report from the Commission to the Council and the European Parliament - EU Anti-Corruption Report*, accessed online on 8 June 2016 at [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf)
- European Commission (2014b), *EU Budget 2014 Financial Report*, accessed online on 8<sup>th</sup> June at [http://ec.europa.eu/budget/financialreport/2014/foreword/index\\_en.html](http://ec.europa.eu/budget/financialreport/2014/foreword/index_en.html)
- OECD (forthcoming), *OECD Draft Recommendation on Public Integrity*.
- OECD (2015a), *Consequences of Corruption at the Sector Level and Implications for Economic Growth and Development*. OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264230781-en>.
- OECD (2015b), *OECD Recommendation of the Council on Public Procurement*, accessed online on June 8<sup>th</sup> at <http://www.oecd.org/gov/public-procurement/recommendation/OECD-Recommendation-on-Public-Procurement.pdf>
- OECD (2014), *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264226616-en>.
- OECD (2013a), *Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008*, OECD Public Governance Reviews, OECD Publishing, <http://dx.doi.org/10.1787/9789264201385-en>.
- OECD (2013b), *Public Procurement Review of the Mexican Institute of Social Security: Enhancing Efficiency and Integrity for Better Health Care*, OECD Public Governance Reviews, OECD Publishing, <http://dx.doi.org/10.1787/9789264197480-en>
- OECD (2012), *OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service*, OECD Public Governance Reviews, OECD Publishing, <http://dx.doi.org/10.1787/9789264119321-en>.
- OECD (2007), *Integrity in Public Procurement: Good Practice from A to Z*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264027510-en>
- Stansbury, N. (2005), *Exposing the Foundations of Corruption in Construction*. In Transparency International (Ed.) *Global Corruption Report 2005*, accessed on 3 April 2016 at: [http://archive.transparency.org/misc/migrate/publications/gcr/gcr\\_2005](http://archive.transparency.org/misc/migrate/publications/gcr/gcr_2005).
- United States Office of Federal Procurement Policy (2013), *Improving the Collection and Use of Information about Contractor Performance and Integrity*, accessed online on 8 June at: [www.whitehouse.gov/sites/default/files/omb/procurement/memo/improving-the-collection-and-use-of-information-about-contractor-performance-and-integrity.pdf](http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/improving-the-collection-and-use-of-information-about-contractor-performance-and-integrity.pdf)

Wells, J. (2014). Corruption and Collusion in Construction: A view from the industry. In T. Søreide and A. Williams (Eds.) *Corruption, Grabbing and Development: Real World Challenges*. Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing.

World Bank (no date), World Bank Listing of Ineligible Firms and Individuals, accessed online on 8 June 2016 at <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>



More information on the **OECD Recommendation of the Council on Public Procurement** and the other language versions (Arabic, English, French, Japanese, Portuguese, Spanish and Russian) can be found at [www.oecd.org/gov/public-procurement/recommendation/](http://www.oecd.org/gov/public-procurement/recommendation/).

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***Further Reading:***

OECD work on integrity: [www.oecd.org/gov/ethics](http://www.oecd.org/gov/ethics)

OECD work on public procurement: <http://www.oecd.org/gov/public-procurement/>

Public Procurement toolbox: [www.oecd.org/governance/procurement/toolbox/](http://www.oecd.org/governance/procurement/toolbox/)

# Preventing Corruption in Public Procurement



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