

**ADB/OECD Anti-Corruption Initiative
for Asia and the Pacific**

Fighting Bribery in Public Procurement in Asia and the Pacific



FIGHTING BRIBERY IN PUBLIC PROCUREMENT IN ASIA AND THE PACIFIC

**Proceedings of the 7th Regional Seminar on
making international anti-corruption standards operational**

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- Combating Corruption in Asia and the Pacific: Proceedings of the Manila workshop held in 1999. Manila: ADB/OECD, 2000.

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Foreword

Since its inception in 1999, the ADB/OECD Anti-Corruption Initiative for Asia-Pacific has supported its members in strengthening their policies, frameworks and practices to fight corruption. Driven by the demand and priorities of its members, the Initiative fosters regional policy dialogue and analysis and assists in building capacity through regional technical seminars.

The fight against bribery and corruption in public procurement is a particular reform priority of the Initiative's members, and they have achieved much progress in this area in the past years. A regional seminar in 2004 and a thematic review on curbing corruption in public procurement in Asia and the Pacific, conducted in 2005/2006, facilitated the analysis of countries' frameworks and an exchange on risk areas and approaches to counter these risks.

International anti-corruption instruments such as the UN Convention against Corruption (UNCAC) and the OECD anti-bribery instruments set standards for anti-corruption policies in a growing number of countries in Asia-Pacific. Reform initiatives that flow from these developments increase demand for support and capacity building. The Initiative's members have naturally called on the Initiative to provide this assistance. In response to this demand, in 2007 the Initiative conducted three regional technical seminars on implementing international anti-corruption standards as set out in UNCAC and the OECD anti-bribery instruments.

One of these seminars was dedicated to the fight against bribery in public procurement. Hosted and co-organized by the Corruption Eradication Commission of Indonesia, this regional technical seminar gathered more than 140 experts from the Initiative's member countries, observer countries and experts from OECD member countries in Bali on 5-7 November 2007. This publication compiles the presentations, analyses and discussions among experts during this event. The publication is addressed to policy makers and experts who wish to learn from other countries' experiences in strengthening frameworks to protect public procurement from bribery and corruption risks.

Acknowledgments and editorial remarks

The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific thanks the Indonesian Corruption Eradication Commission (KPK), host of its 7th Regional Technical Seminar, for providing its expertise and cooperation in the preparation of the event and for its gracious hospitality. Special thanks are also due to the participants in the Seminar – particularly the expert speakers and the authors of the papers compiled in this volume, whose insights and experience enriched the discussions and outcome of the event.

The seminar was led and coordinated by Frédéric Wehrlé, then Coordinator Asia-Pacific, OECD Anti-Corruption Division; and Joachim Pohl, Project Co-ordinator, Anti-Corruption Initiative for Asia-Pacific, OECD Anti-Corruption Division; Kathleen Moktan, Director, Capacity Development and Governance Division, ADB; Marilyn Pizarro, Consultant with ADB and staff of KPK including Sofie Schuette, then CIM Integrated Expert at KPK, who managed the seminar. Joachim Pohl and So-yeong Yoon, Deputy Director, International Cooperation Division of the Korean Civil Rights Commission, on secondment to the OECD, managed the preparation of this publication.

The Initiative is also very grateful to its partners and supporters, notably the Australian Agency for International Development (AusAID), the German Federal Ministry for Economic Cooperation and Development, the German Technical Cooperation (gtz), the Swedish International Development Cooperation Agency (SIDA), the Asia-Pacific Group on Money Laundering (APG), the American Bar Association/Rule of Law Initiative, the Pacific Basin Economic Council (PBEC), Transparency International (TI), the United Nations Development Programme (UNDP), and the World Bank. Financial support from the Australia Indonesia Partnership is also gratefully acknowledged.

The term "country" as used in this publication also refers to territories or areas; the designations employed and the presentation of the material do not imply the expression of any opinion whatsoever concerning the legal status of any country or territory on the part of ADB's Board and members or the OECD and its member countries. Every effort has been made to verify the information in this publication. However, ADB, OECD and the authors disclaim any responsibility

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Abbreviations and acronyms

ADB	Asian Development Bank
AUD	Australian dollar
AusAID	Australian Agency for International Development
CNY	Chinese yuan/renminbi
CPI	Corruption Perceptions Index
CPTU	Central Procurement Technical Unit (Bangladesh)
CSO	civil society organization
CVC	Central Vigilance Commission (India)
DAC	Development Assistance Committee, OECD
DIP	Daftar Isian Proyek (annual government project list) (Indonesia)
DKI Jakarta	Daerah Khusus Ibukota Jakarta (special capital city district) Jakarta (Indonesia)
DMC	developing member country
DOJ	Department of Justice (USA)
e-GP	electronic government procurement system
ERRA	Earthquake Reconstruction and Rehabilitation Authority (Pakistan)
EUR	euro
FCA	False Claims Act
FCPA	Foreign Corrupt Practices Act
GPPB	Government Procurement Policy Board (Philippines)
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit GmbH (German Technical Cooperation)
ICCP	Indonesia Control of Corruption Project
IDR	Indonesian rupiah
ILO	International Labor Organization

IMED	Implementation Monitoring and Evaluation Division (Bangladesh)
INR	Indian rupee
ITC	International Trade Centre
JV	joint venture
Keppres	Keputusan Presiden (presidential decree) (Indonesia)
KPK	Komisi Pemberantasan Korupsi (Corruption Eradication Commission) (Indonesia)
KPPU	Komisi Pengawas Persaingan Usaha (Business Competition Supervisory Commission) (Indonesia)
LPKPP	Lembaga Pengembangan Kebijakan Pengadaan Pemerintah (National Public Procurement Office) (Indonesia)
MCC	Millennium Challenge Corporation
NEPS	National Electronic Procurement System (Indonesia)
NGO	nongovernment organization
OECD	Organisation for Economic Co-operation and Development
OGC	Office of Government Commerce (UK)
PGC	Public Governance Committee, OECD
PKR	Pakistan rupee
PPB	Public Procurement Board (Ghana)
PPDPA	Public Procurement and Disposal of Public Assets Authority (Uganda)
PPRA	Public Procurement Regulatory Authority (Pakistan)
PSU	public sector unit
PTF	Partnership for Transparency Fund
Rp	Indonesian rupiah
RPA	risk potential assessment
SEC	Securities and Exchange Commission
SME	Small and Medium Enterprises
SOE	state-owned enterprise
STD	standard tender document
TA	technical assistance
TI	Transparency International
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law

UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
USD	United States dollar
WTO	World Trade Organization

Executive summary

Public procurement accounts for about 20% of government expenditure worldwide. In many countries, one-quarter or more of this amount is estimated to be lost to corruption. Complex procedures, broad discretion, weak oversight and limited implementation capacity are among the main reasons for this enormous loss of public resources to corruption.

Asian-Pacific countries have made significant efforts to address weaknesses in their procurement frameworks and practices. To support these efforts and to assist the ADB/OECD Anti-Corruption Initiative's 28 member countries in strengthening their public procurement mechanisms, the Initiative conducted a Regional Seminar on Fighting Bribery in Public Procurement in November 2007. This seminar follows the Initiative's earlier work in this area, notably a thematic review of public procurement frameworks and practices in Asia and the Pacific, conducted in 2005/2006, and a regional seminar held in 2004. This publication compiles the experience that experts from Asian and Pacific countries—as well as beyond the region—shared during the seminar.

International instruments as drivers of anti-bribery reform in public procurement

In recent years, public procurement has become one of the most dynamic areas of public sector reform in Asia-Pacific. Today, anti-bribery measures constitute an integral part of procurement reforms. Despite significant efforts, corruption and bribery in procurement remain widespread in practice, indicating that further reform of procurement policies is needed.

Corruption risks inherent to public procurement are well understood. They stem from the high value and number of contracts, and the broad discretion inevitably linked to assessment of needs and priorities, and the quality of products and services. The OECD typology exercise on bribery in public procurement highlights corruption risks in the procurement process at each stage from needs assessment, project specification, bidding, and contract award to contract management and execution. The typology also presents ways to prevent, detect, and punish bribery in public procurement.

International instruments such as the UN Convention against Corruption (UNCAC) and the OECD anti-bribery instruments set standards for anti-corruption policies in procurement frameworks. These standards have become binding for

an increasing number of countries in Asia and the Pacific that have ratified these instruments, and are widely considered good practice beyond their direct reach.

Translating these instruments' standards into legislation and policies to curb corruption in public procurement constitutes considerable challenges.

The OECD Checklist for Enhancing Integrity in Public Procurement guides policy makers in reforming public procurement systems to prevent corruption in the whole cycle, from needs assessment, to the award stage, up until the contract management and payment. The Checklist underscores the necessity for a systemic approach that promotes good governance in public procurement through policies that enhance transparency, good management, prevention of misconduct as well as accountability and control.

Examples from Indonesia and the People's Republic of China show approaches that countries in the Asia-Pacific region have adopted to reform their government procurement systems and to cope with the resulting challenges.

Institutional, technical and legal means to prevent corruption in public procurement

Several approaches have been developed to counter the corruption risks inherent to public procurement. Central procurement oversight authorities can play a pivotal role in corruption prevention. In a number of Asian and Pacific countries, such authorities have been set up to develop and coordinate procurement policies, supervise decentralized procuring entities, disseminate good practice and train or organize training of officers who carry out public procurement. Examples from Bangladesh and the Philippines illustrate the roles such authorities can play and which powers they need to carry out their mandate successfully.

E-procurement—conduct of procurement involving electronic media—is another preventive mechanism in an increasing number of Asian and Pacific countries, as electronic media is becoming widely available across the region. While its essential advantages are greater efficiency and competition, using electronic media in the preparation or conduct of procurement decisions also significantly increases transparency, promotes standardization and reduces corruption-prone face-to-face contacts between suppliers and procurement entities. Research and country studies from India and Indonesia show that the use of electronic media in public procurement proceedings can contribute to curbing corruption risks when embedded in a regulatory reform effort. However,

the electronic transmission of sensitive information also creates additional risks that need to be managed.

Criminal law and appropriate sanctions for bribery in public procurement can dissuade suppliers and procurement agency staff from engaging in bribery. The OECD anti-bribery instruments and the UN Convention against Corruption have set international standards for comprehensive sets of criminal provisions. These instruments require or suggest that criminal sanctions be applied to legal entities. Australia and Indonesia are among the countries that have introduced criminal liability of legal persons.

Involving stakeholders in the fight against bribery in public procurement

These institutional, technical and legal measures engage governments and public administrations in the fight against bribery. To be successful, an anti-bribery strategy needs to involve the supply-side of bribery as well.

Companies that sell goods, works and services to governments increasingly understand their interest and role in contributing to the fight against bribery in public procurement: they protect themselves against bribe solicitation and the increasing economic, reputational and legal risks that bribery entails. This risk awareness can be seen as an indicator of the success of procurement reform; it shows that strengthened anti-bribery mechanisms have an impact on the behavior of businesses.

Civil society also plays an important role in efforts to prevent bribery in public procurement. Non-governmental actors drive procurement reform by developing anti-bribery mechanisms, advocating their application and assisting in their implementation. Civil society is playing a growing part in the scrutiny of public procurement proceedings as shown by the increasing use of Integrity Pacts, a tool developed by Transparency International. Programs such as the Partnership for Transparency Fund enable civil society actors to carry out their role in safeguarding integrity in public procurement.

Technical assistance to strengthen procurement policies and capacity

In their efforts to strengthen procurement policies and capacity, governments can count on technical assistance from international organizations, multilateral development banks, and bilateral partners. Technical assistance

projects conducted by the OECD, the World Bank and ADB are examples of such support.

International and regional partners can particularly assist countries in bringing their domestic legislation in line with international good practice and international anti-corruption standards as set out in the UN Convention against Corruption and the OECD anti-bribery instruments. Asian and Pacific countries may consider building on OECD member countries' experience when passing legislation on liability of legal entities for giving bribes, for instance.

The Joint Venture for Procurement, an international forum for procurement specialists representing multilateral institutions, bilateral development agencies and developing countries engaged in procurement reform, is currently developing a methodology to assess both procurement frameworks and their implementation with respect to international good practice.

At country level, partners such as the Asian Development Bank provide assistance to procurement reform. The ADB, for instance, supported the Indonesian Government in its efforts to strengthen legislation, develop standard procurement documents and establish a specialized authority that coordinates procurement policies. It has also provided assistance to the Government of Mongolia in establishing procurement legislation and guidelines.

Keynote addresses

Welcome remarks

Lawrence Greenwood Jr.*
Vice President, Asian Development Bank

On behalf of the Asian Development Bank (ADB) and our partners at the Organisation for Economic Co-operation and Development (OECD), please accept our warm welcome to you all at this regional seminar. I take this opportunity to thank the Government of Indonesia and Indonesia's Corruption Eradication Commission for hosting this event, as well as our development partners at the Australian Agency for International Development (AusAID), World Bank, Canadian International Development Agency, Swedish International Development Cooperation Agency, and GTZ for supporting this seminar.

It is now a well-recognized fact that poverty reduction and development effectiveness cannot be achieved without addressing corruption. Studies show that corruption can cost up to 17% of a country's gross domestic product, depriving the country of resources needed to reduce poverty and promote sustainable development. The World Bank Institute (WBI) in its 2006 study concluded that improvements in even one measure of good governance—such as public accountability or control of corruption—could lead to a tripling in per capita income in the long term.

Corruption also increases the cost of doing business, undermines competitiveness, and keeps countries from achieving their economic growth and employment potential. The World Bank's investment climate survey shows that firms with interests in East Asia and the Pacific view corruption as a major or severe obstacle to the operation and growth of their business.

Finally, corruption is an important factor underlying growing income inequalities in the Asian region. Economies are growing, but all too often the benefits of that growth are limited to elites, who use access to political power to

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Mr. Greenwood, a career diplomat for nearly 30 years, has extensive experience in Asia, as well as in international finance, development, trade, and investment. Before joining ADB, he was principal deputy assistant secretary of the Bureau of Economic and Business Affairs at the US Department of State.

extract economic rents. Greater transparency in government and tough action against corruption can lead to wider sharing of the fruits of economic growth and strengthen public support for pro-market policies needed to support that growth.

We are pleased to note that there is a growing consensus on the importance of anti-corruption programs in the national development process. Citizens are demanding action. Surveys such as the World Values Survey show that there is broad support for reforms that improve government accountability and transparency. Expectations are clearly rising among citizens around the world for better governance.

Governments and the international community are responding to that demand and have started setting clear standards and devising implementation mechanisms. Since the adoption and ratification of the United Nations Convention against Corruption (UNCAC) in 2003, the international community has intensified its role in assisting countries in fighting corruption and improving public accountability systems. The UNCAC requires its member states to institute measures and checks against various facets of corruption including those related to procurement processes.

Corruption in public procurement is a particularly important issue in Asia and the Pacific, where it is estimated that governments pay from 20% to 100% more for goods and services because of corrupt procurement practices. That shift of income from the public purse to private firms means governments will have far less money to fund the infrastructure, education, health, and other public investments needed to reduce poverty and deliver much-needed public services.

Clear and comprehensive regulations for the conduct of public procurement are the fundamental prerequisite for curbing corruption in public contracting. Such regulations entail principles such as transparency and fairness, and adequate review and control mechanisms. This is a crucial area for reform in many countries, since procurement amounts to up to 20% of public expenditure.

To address this critical issue of procurement, in 2005/2006, 25 members participated in a wide-ranging thematic review of relevant public procurement policies and practices. The objective of this review was to assist participating governments in better understanding the corruption risks inherent in their countries' institutional settings and procurement practices. This week's seminar builds on that review and a recent publication of the OECD, *Bribery in Public Procurement: Methods, Actors and Counter-Measures* (Paris: OECD, 2007).

Let me end with a few words about the ADB/OECD Initiative and ADB's role in supporting our member countries in the fight against corruption.

The ADB/OECD Anti-Corruption Initiative assists our member countries in developing and implementing the legislation and institutions needed to fight effectively against corruption. Through the promotion of international and regional cooperation, the Initiative has been successful in bringing stakeholders together, sharing best practice, and thus encouraging more countries to implement effective approaches to fighting corruption.

We take pride in the fact that this group has now grown to 28 jurisdictions from 17 members in 2001. We welcome the new members that have agreed to work with the regional partners in instituting anti-corruption reforms. As reflected in Indonesia's cohosting this week's roundtable, the main impetus behind the Initiative is the strong commitment by the participating countries to tackle the scourge of corruption. The ADB and OECD are honored to be allowed to play the role of facilitator and financier to support you in achieving your anti-corruption objectives.

We at ADB have been actively supporting the governance agenda through our assistance to 44 developing member countries (DMCs). We were the first multilateral development bank to adopt a policy on governance in August 1995. This was followed by the approval of a comprehensive anti-corruption strategy in 1998.

ADB's recently approved second governance and anti-corruption action plan (GACAP II) identifies three priority areas: public financial management, procurement, and the fight against corruption.

ADB supports explicit efforts in its DMCs to improve transparency and anti-corruption programs, and procurement and financial management controls through loan projects and a broad range of technical assistance projects related to improving transparency, developing anti-corruption programs, and establishing financial and management control systems in borrowing countries.

We are also strengthening our own internal governance. In 2006, ADB approved new procurement guidelines. All ADB-financed procurement is now covered by these guidelines. A number of features have improved transparency. There are added appendixes that give guidance to bidders and consultants, including procedures for debriefing. The publication of contract award information and procurement notices has been made mandatory, and the use of Web sites for advertising is emphasized. Each project must now have a procurement plan, to be updated annually and published on ADB's Web site.

I want to emphasize that ADB's focused efforts on procurement and corruption prevention can be successful only when informed by actual experience, knowledge sharing on procurement risks, and the specific efforts made to minimize the incidence of corruption. We can succeed only as a close partner to our member countries.

For example, here in Indonesia, ADB has been assisting the Government in procurement reform since 2001 and you will be hearing more about this on Wednesday. But of particular interest is the introduction of a national public procurement office (LPKPP). The Government and aid agencies believe that the proposed LPKPP will be instrumental in addressing weaknesses in the procurement system. It will establish, maintain, monitor, and enforce national policies and standards on a broad range of procurement issues, to include green procurement, electronic procurement, etc. LPKPP will be an independent institution in the form of a nondepartmental government institution under the coordination of the State Minister for National Development Planning.

It is also heartening to note that a majority of countries in the region have passed comprehensive and widely applicable public procurement laws or regulations. Furthermore, several have put in place new procurement regulations that now govern executive decision-making.

We are pleased to note that the Philippines has launched major initiatives to improve procurement processes, thereby bolstering efforts to combat corruption. Civil society initiatives such as Procurement Watch have played a crucial role in achieving that.

Countries such as Thailand, Indonesia, and Pakistan are working to operationalize regulations regarding transparent procurement procedures and to raise awareness about the dangers of procurement in public decision-making. India is increasing transparency in the procurement process by leveraging technology (in particular the use of e-tendering, e-procurement, and e-payment). We also appreciate Vietnam's efforts to enhance the capacity of its inspectorate system and its recent investments in personnel training, equipment, and computerization of its regulatory and administrative management.

However, several challenges can slow down the progress achieved so far. Sustained political commitment, capacity development of individuals and organizations, and adequate external checks are required to implement the new laws, regulations, and rules to improve procurement results and combat the incidence of bribery.

In the next two-and-a-half days, we will learn from our country and cultural experiences, and we will find ways of improving procurement and curbing bribery in public and private transactions.

We also look forward to hearing from our colleagues in several countries who are working to reform institutions and advance legislation to eliminate the weaknesses of procurement systems.

I would like to thank you again for making a commitment to fight corruption in your respective countries. Your presence today reaffirms our common goal to work in partnership to combat corruption and ultimately to reduce poverty. We look forward to the deliberations and continued collaboration under the ADB/OECD Anti-Corruption Initiative.

Once again, on behalf of the ADB and OECD and our partner countries, we thank the Government of Indonesia for its support and for hosting this conference.

Welcome remarks

Paskah Suzetta

State Minister of National Development Planning (BAPPENAS)
Indonesia

On behalf of the Government of Indonesia and the State Ministry of National Development Planning, I am delighted to extend a warm welcome to all of you to the regional seminar Making International Anti-Bribery Standards Operational: Fighting Bribery in Public Procurement.

I am truly pleased to be surrounded by government officials, scholars, and practitioners from Asia and the Pacific who have extensive knowledge of anti-corruption strategies, procurement policy and implementation, and legal and institutional reforms. By bringing us together to share ideas, I believe that the seminar will help us to achieve our goals by developing policy to prevent corruption in public procurement. Moreover, I hope that this seminar will motivate all of us to cooperate more effectively in this area, despite our differences.

Combating corruption in public procurement is one of the most important issues facing our countries, and numerous strategies and programs in this regard have been put in place over the last few years.

As you may already know, Indonesia has seen significant reform over the last five years in a great deal of different areas, including government procurement. Our wish to improve the procurement process is the main rationale behind the reform of government procurement.

Hence, at the start of 2003, the Government established three main stages of procurement reform, which consisted of: (i) reforming the legal framework including developing an electronic government procurement system, (ii) building the professional capacity of procurement officials, and (iii) establishing the National Public Procurement Office (LPKPP).

These reforms have gradually progressed and we are now seeing good results. Our latest procurement policies and regulations are in place to support a robust procurement process and national business. The most recent procurement regulation, Presidential Decree 80 of 2003, adheres to the basic principles of transparency, value for money, open and effective competition, accountability, and equality in the procurement process.

One part of the Government's effort to reduce corruption in procurement is to make all government agencies declare their procurement plans and announce invitations to tender before the procurement process. The Government believes that the use of public procurement notices will increase the number of participating bidders, enhance the quality of the procurement process, and achieve more accountability and reliability, and at the same time save on government expenditure.

The development of the electronic government procurement system, or e-GP, also helps to promote greater efficiency, transparency, competition, and accountability in procurement practices. The Government is convinced that e-GP will not only contribute to the growth of the Indonesian socio-economy in the near future but will also eliminate possibilities of corruption in the area of procurement.

The strengthening of capacity building for procurement specialists and practitioners through a well-planned and systematic training program is achieved in stages. Finally, the National Public Procurement Office, which will be responsible for improving procurement policy, laws, and regulations, supervising and monitoring the procurement process, and providing recommendations in procurement disputes, will soon be established.

Our study shows that, although government institutions are implementing procurement regulations effectively, financial savings are only slowly being achieved. At this point, I would like to convey my thanks and appreciation to the Corruption Eradication Commission, the Attorney General's Office, and other legal institutions for their support in enforcing procurement regulations.

Furthermore, Indonesia is enthusiastic about volunteering as one of the pilot countries in Asia for assessing the quality of the country's procurement system. The country was selected by the Organisation for Economic Co-operation and Development (OECD) to be compared and harmonized with international standards and best practice. I am glad to let all of you know that, from our latest assessment, Indonesia's procurement system and procedures in 2007 achieved 61.57% compliance with international standards and best practice.

I do believe that those efforts that have been made so far in Indonesia have also been performed in many ways in many countries in Asia and the Pacific and worldwide. We have made these efforts to reduce corruption in public procurement but should realize that inefficiency and mismanagement of corrupt practices associated with the procurement system can still happen, sometimes in unexpected areas and forms.

Therefore, sharing experiences and challenges and learning from others, the primary goals of this seminar, will lead to a more comprehensive approach and better problem solving in the fight against corruption in public procurement. It is important that we support one another and develop greater cooperation among us.

Although our governments are responsible for strengthening our anti-corruption laws and regulations, the international community and partner organizations will also play important roles. With their support, we can better achieve harmonization with international standards and reform our procurement frameworks more effectively.

To conclude, allow me to wish every one of you great success in your deliberation at this seminar. It is my fervent hope that all of you will have a pleasant stay and receive warm hospitality.

Concluding remarks

Taufiequrachman Ruki

Chairman, Corruption Eradication Commission (KPK), Indonesia

This seminar is the third and last in our seminar series before the second session of the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC) in January 2008. It has focused on fighting bribery in procurement. Indonesia is committed to implementing the UNCAC, which we consider a very useful guideline in our efforts to eradicate corruption. Currently, Indonesian legislation is being brought into compliance with the provisions of the UNCAC. Some of these provisions are already well applied; others still need to be introduced.

At the start of this seminar, our colleagues from the ADB/OECD Anti-Corruption Initiative stressed that the seminar builds on previous seminars and on the Initiative's thematic review. We are no longer standing at the starting line. This also applies to Indonesia.

Our State Minister of National Development Planning, Paskah Suzetta, explained that there has been major progress in procurement reform in Indonesia since 2003. That year a presidential decree introduced a procurement scheme in line with good international practice. Among other things, it lifted the barriers to the participation of companies in tenders in other provinces and districts and it provided for competitive bidding.

However, this seminar has highlighted once more the urgent need for a procurement oversight body in Indonesia, a lead agency to establish and maintain a clear regulatory framework. This oversight body would be responsible for improving procurement policy, laws, and regulations, supervising and monitoring the procurement process, and resolving disputes in individual procurement cases. A procurement law establishing this oversight body and its authorities needs to be passed.

Moreover—and this may apply to countries outside Indonesia as well—professional capacity building is key to procurement reform. Training is now being done on a large scale. But further capacity building is required as the functioning of systems—including their electronic support—very much depends on those who implement them. As was said during the session yesterday afternoon,

"e-procurement is not a software, but reform." I would like to add that procurement reform is not a short-term project but will take time.

Civil society can play an important role, and sometimes already does, when it comes to public control. To enable this public control, there must be access to information and protection of whistle-blowers.

Tackling the bribery aspect in particular, the Indonesian law has an elaborate catalog of corruption offenses, and I would like to encourage the full application of the law by all law enforcement agencies. Bribery itself is a crime in Indonesia, and it should not inflict losses on the state.

Having shared experiences and learning from others in this seminar, I hope we can further develop and deepen our cooperation within the region and beyond.

Finally, I would like to thank all our partners who helped to make this seminar such a success:

The ADB/OECD Anti-Corruption Initiative, represented by Kathleen Moktan of ADB, and Frédéric Wehrlé and Joachim Pohl of OECD;

All donors who kindly contributed and made this event possible, with special thanks to all eminent speakers—no one mentioned, no one forgotten—who made these two-and-a-half days extremely interesting and rewarding; and

All participants who by their active participation contributed to the success of the seminar.

Before I finish, I would also like to thank our own staff who were dedicated to the preparation of this seminar: Dian Widiarti, Luthfi Sukardi, Dedie A. Rachim, Emmie Wahsundari, and Sofie Schuette.

Thank you all very much. I look forward to seeing some of you at the IAACA meeting here in two weeks and at the second session of the Conference of States Parties to the UNCAC at the end of January 2008.

I hope you have enjoyed your stay in Bali and wish you all *Selamat Jalan*. Have a safe journey home!

Chapter 1

Bribery risks in public procurement and challenges for reform

The fight against bribery and corruption ranks high on the reform agenda of Asian and Pacific countries. Public procurement is particularly exposed to corruption risks, given the high value and number of contracts and the broad discretion that is inherent to assessment of needs and priorities, and the quality of products and services.

Despite this vulnerability to corruption, systematic efforts to analyze corruption risks and to design frameworks and practices to counter these risks are recent. In fact, the member countries of the ADB/OECD Anti-Corruption Initiative were frontrunners when they inspected strengths and weaknesses of their procurement frameworks and practices in a thematic review in 2005/2006.

Public procurement is now among the most dynamic areas of anti-corruption reform in Asia-Pacific. In the past years, many member countries of the Initiative have implemented significant reforms in order to counter corruption risks in their procurement frameworks. Despite these efforts, corruption and bribery remain widespread in practice, indicating that further reform of procurement policies is needed.

Procurement policies in a number of countries allow non-competitive procurement under conditions ranging from emergencies to procurement of security-sensitive goods and services. Other areas that require specific reform efforts are oversight mechanisms related to needs analysis, project specifications, and the execution of contracts—phases subject to less public scrutiny than the bidding and selection processes.

International instruments such as the UN Convention against Corruption (UNCAC) and the OECD anti-bribery instruments set standards for such policies. These standards have become binding for an increasing number of countries in Asia-Pacific that have ratified these instruments, and are widely considered good

practice beyond their direct reach. The Anti-Corruption Action Plan for Asia-Pacific, which supports the principles of both the OECD anti-bribery instruments and the UNCAC, also underscores the importance of mechanisms to prevent, detect and sanction bribery in public procurement.

Translating these instruments' standards into legislation and policies to curb corruption in public procurement constitutes considerable challenges. Countries have found that protecting procurement against bribery risks is a particularly difficult exercise. Identification of risk areas and priorities for further reform helps lay a sound analytical basis for the development of appropriate anti-bribery mechanisms in procurement.

The OECD typology exercise on bribery in public procurement highlights corruption risks at each stage of the procurement process: from needs assessment, project specification, bidding and contract award to contract management and execution. The typology further presents ways to prevent, detect, and sanction bribery in public procurement. These include formulation and implementation of clear rules and regulations; establishment of control and oversight mechanisms; and preventive measures. The typology also stresses the importance of training procurement personnel, establishing codes of ethics, and disseminating good practice.

The OECD Checklist for Enhancing Integrity in Public Procurement guides policy makers in reforming public procurement systems to prevent corruption in the whole cycle, from needs assessment to contract management and payment. The Checklist underscores the necessity for a systemic approach that promotes transparency, good management, prevention of misconduct as well as accountability and control in public procurement. Mechanisms to prevent corruption within organizations include frameworks and organizational resources for protecting officials from undue influence, maps of positions or projects that are potentially vulnerable to corruption, separation of duties, asset declarations, as well as integrity training.

Examples from Indonesia and P.R. China show how these countries have tackled corruption risks in public procurement and pushed reforms forward.

Progress and challenges in Asia and the Pacific in addressing bribery risks in public procurement

Joachim Pohl*

Project coordinator, ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, OECD

In mid-2006, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific published the outcome of its first thematic review, addressing measures to curb corruption in public procurement. The review took stock of the mechanisms of the then 25 members of the Initiative to curb corruption in public procurement. It also identified risk areas that merited particular attention, and developed recommendations for reform.

Public procurement figures among the most dynamic areas of anti-corruption reform in the Asia-Pacific region. In 2006, about a third of the 25 countries that had participated in the review were engaged in substantial reform of their procurement frameworks. Since 2006, at least four more countries have undertaken major efforts in this area. The strong participation of experts in this seminar also testifies of the priority that the region attaches to the fight against corruption in public procurement: While the first seminar of the Initiative on the topic in 2004 gathered roughly 40 individuals, this seminar brings together 130 procurement experts. Given this progress—does work in this area need to continue?

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Before joining the OECD, Dr. Pohl taught public and administrative law at Humboldt University Berlin and MGLU Moscow.

Public procurement frameworks can be conceived of as a bucket that holds government funds dedicated to meeting a society's needs—infrastructure, education, and health care. Many countries' "buckets" are old and have holes, and government funds run through these holes and flow into the pockets of the corrupt. Over the past years, many countries have fixed the worst leaks in the buckets, some by replacing the frameworks altogether, and others by patching the holes. However, funds continue to run through remaining holes that may not even have been visible beforehand.

As in the metaphor, the reforms already made in the procurement frameworks of many countries were very important, and offer better protection against corruption risks. However, the work of safeguarding procurement frameworks against corruption risks is not done.

Many countries' procurement regulations now embrace international standards, notably those recommended by the UNCITRAL model law on public procurement. So far, not all countries benefit fully from their reform efforts, as the scope of application of these laws remains limited and large proportions of government purchases are not conducted under the reformed frameworks. In other countries, secondary regulations that are needed to implement the procurement frameworks have not yet been promulgated.

Further work is also needed to contain corruption risks in the needs assessment and the delivery phase that are both particularly vulnerable to corruption. In many countries, procurement reform has focused on the selection process, where corruption risks were perceived to be paramount. Countries that have succeeded in established sound bidding and selection procedures experience that corruption risks move into less well-regulated areas upstream and downstream in the procurement process. Corrupt practices are now more frequent in needs assessment, project design, and the setting up of tender specifications. Also, in the implementation phase, corruption induces procurement staff to accept substandard performance or even non-delivery of the goods or services purchased. Here, procedures are less closely regulated and are often subject to outdated and unspecific legislation, and to very little scrutiny by civil society.

Thorough implementation of these reformed frameworks is a third area that merits the highest attention. Since 2000, about one in two countries in Asia-Pacific have overhauled their procurement frameworks, which are now regulated by complex, 30-page-long laws and often a number of bylaws, implementing regulations, and other procedural rules. Local authorities that may have limited capacity and experience to implement such complex frameworks carry out the actual procurement. To put into effect the safeguards instituted by the new

regulatory frameworks, procurement staff must undergo training. Manuals can give excellent support in this respect. Also important is the training of third-party supervisors, such as civil society, to enable them to fulfill their role.

Many governments in the Asia-Pacific region, as well as procurement experts, civil society and donors who have encouraged and supported reform efforts can be congratulated on their achievements in curbing corruption risks in public procurement. However, procurement reform must continue in many countries in the region to seal the leaks in the buckets of procurement frameworks so that the public money does not end up in the pockets of the corrupt but benefit the public.

Challenges and risk areas for corruption in public procurement

Joel Turkewitz*

Head, Procurement Hub Coordinator South Asia, World Bank

Overall, this workshop shows the development of issues around both procurement and corruption. Procurement issues came up in many of the different sectoral discussions. We no longer talk about starting procurement reform since all the countries represented in this workshop are already deeply engaged in procurement reform. I believe the World Bank is deeply engaged with most countries on that topic. It was in 1996 that we at the World Bank started to use the word "corruption" and link it to development. Now that more than 10 years have passed, I think we are past that stage quite a bit. We know that the issues of procurement and corruption are critical.

Then what things must be done to deal with these issues? What works and what does not? I think this is very much about the sphere of this workshop and about where this region is. This region is unique in that it is experiencing very dynamic economic growth. The private sector is rapidly developing and maturing and the public sector has much larger revenues available to spend. Both create opportunities. They enhance competition but also in some ways risks because they are spending just as high volumes of money as centralized authorities have to spend. It is in this context that I would like to talk about public procurement and corruption.

Procurement and corruption

There is an inherent risk in public procurement because public procurement is inherently discretionary regardless of what you do. It is one of

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Before joining the World Bank, Mr. Turkewitz taught graduate courses at the University of Texas School of Law and the Central European University.

those opportunities where the public sector has the hardest time because it acts as a commercial entity—it decides what to buy, how, and from whom, and what to sell—often without having enough commercial experience. The other thing is the large sums of money involved, which dwarf the average salaries of most of the people dealing with public procurement. Overall, the situation is fraught with risks. The challenge then is how to create a set of rules, practices, and oversight and control mechanisms that support the effective use of discretion.

There is inherent tension between the notion that procurement rules should be simple and transparent, and the view that procurement rules should make sure we think about all the opportunities for discretion and limit discretion. That's why we have 30-page procurement laws and why we have been implementing regulations that run 200 pages. In fact, procurement is really complicated. If we try to work through all the dimensions of procurement that should be regulated, we end up having an enormous sum of regulations. The question is how to balance the desire for transparency with the desire for regulating the efficient use of discretion.

Private sector response

How does the private sector respond to the issues of discretion? First, it invests in control processes such as internal audit and inventory management. A whole range of things is done to provide oversight and some rules for procurement.

Second, the private sector invests in trust. It builds trust relationships so suppliers ensure they have long-term commitments to mutual development, mutual goals, and profitability. Third, it keeps its eye on outcomes and profitability. Fourth, underneath all of these is a whole set of criminal laws so that society as a whole and the police can see the private sector working in a fair manner, in a manner that is consistent with commercial rules and practices.

Now we can also begin to think about how those same things can be adopted in the public sector, especially internal controls, monitoring, and effective oversight. I think it is important to understand that some of these issues such as building trust relationships are difficult to do. The controls that are built in the public sector are different. It is also important to think how private sector firms deal with them and mitigate the risks.

Strategies for identifying and addressing corruption risks

I would like to talk about the strategies for identifying and addressing corruption risks in terms of three different dimensions: corruption in transactions, governance and the functioning of procurement systems, and procurement competition and private sector growth.

To reduce corruption in transactions, we must first look specifically at each stage of procurement and see where tendencies for corruption exist. This can be done by mapping out the steps in the procurement process and looking at each step to identify corruption risks.

In terms of preparation, there can be one agency with sole responsibility for contract packages. With no oversight of this agency, it may end up splitting contracts to benefit particular types of firms. The second issue with respect to preparation is that the members of the evaluation committee are designated solely by the head of an agency—a situation that can create a whole set of risks relating to unfairness in the evaluation process.

We could go through every single stage in the process and identify the nature of corruption risks. I think both the OECD and the World Bank have been doing this. I am not trying here to elaborate each one of these different levels.

Challenges in reducing corruption

At a national level, the issue is which types of corruption risks are particularly important in a given country. At the same time, there are limitations to this approach. In a procurement system, the number of contracts at the national level is enormous.

Another thing is, every time we try to increase controls in procurement, we run the risk of creating inefficiencies. A core inefficiency is, the more concerned people are, the more their decisions will be challenged, and the less willing people are in a bureaucracy to make decisions. We see this across the region. Then the only people willing to make decisions will ultimately be the very political people we are trying to prevent from being involved in the procurement in the first place. So there is a perverse consequence of focusing exclusively on control processes.

One more thing: when we focus only on transactions, sometimes we are dealing with the symptoms, not the cause.

Procurement systems and corruption

Another dimension of thinking about what causes risks in procurement is to look at procurement as a component of systems for managing public financial resources. The corruption risks overall are reduced and mitigated in systems that focus on outcomes and hold management accountable for them. Systems that create incentives for good procurement to happen are those that have reduced corruption risks. Corruption risks are generated by the way public financial resources are managed overall.

Regarding corruption as a public financial management issue, what are the sets of questions we might ask? One is the extent to which agencies benefit by achieving better procurement outcomes. In many countries, if an agency saves money on procurement, it does not actually get to keep that money. It is given back to the Ministry of Finance. Improving outcomes does not actually benefit the organization itself, and therefore the incentives to focus on procurement may be somewhat limited.

A second question might be, to what extent has procurement planning been integrated into the budgeting process? In the budgeting process, we plan how much money we are going to need each year and the timing of that.

Third, we might ask, is there a robust internal audit process? Fourth, are there risk-based audit mechanisms? Finally, what are the incentives in terms of performance and career growth? So, to what extent does procurement exist within the system?

The last thing I want to talk about is procurement, in the context not of public administration but of the commercial environment in a country. Public procurement can be seen as part of the national commercial practices and the environment of commercial practices in a country. Reforming and improving procurement outcomes is also a dimension of establishing commercial practices that are fair and transparent. The core dimension of that is developing a competitive private sector for competition to happen in a fair and transparent manner.

Implications of approaches to responses

Now what are the implications of approaches to these responses? A comprehensive approach to reducing corruption in procurement is to operate at all three of these levels: transactions, public sector systems, and commercial development. We need to establish different strategies for different corruption

risks and time frames. That is why procurement and the fight against corruption in procurement cannot be a stand-alone exercise.

What are the types of interventions that might be needed? One is changing budgeting rules and overall public financial management. Second is changing the types of contracts. There are also things like output-based contracts in public-private partnerships or framework contracts, which should be looked into because they have all significantly changed the dynamics of contracting in a way that can be used to reduce corruption risks. Third is changing the procurement methods, for example, by introducing e-procurement. Fourth is changing procedures for oversight—both internal auditing and specific procurement monitoring indicators. The last thing is enhancing the participation of third-party monitoring.

We can create indicators that allow us to assess corruption in different portions of the transaction approach. The examples in my presentation concern roads in particular and provide models for a monitoring system that allows us to determine whether we are making progress.

As I mentioned at the start, I think we have passed the point of saying we are doing things to reform procurement. Now the question is whether we are doing things that have impact. How do we go about determining whether the things we are doing are actually reducing bribery and corruption in procurement? To get there, things like monitoring indicators are core issues in managing our public procurement systems.

Fighting bribery in public procurement: The work of the OECD Working Group on Bribery

Nicola Ehlermann-Cache*

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Public procurement is an area that warrants special attention. It typically accounts for about 15% of gross domestic product in OECD countries. Corruption cases attest to the significant share of public procurement in the corrupt practices targeted by the OECD anti-bribery instruments, i.e., bribery of foreign public officials.

Over the last 10 years, the OECD has become the leading source of anti-corruption tools and expertise. With the adoption and implementation of the legally binding Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and two related OECD recommendations, the 30 OECD member countries¹ and seven nonmember countries² have paved the way for curbing bribery in international business transactions.

The OECD has undertaken to promote better understanding and catalyze further action to prevent, detect, and punish corruption in public procurement in recent years. The OECD Working Group on Bribery in International Business Transactions, the body responsible for enforcing the OECD anti-bribery instruments, recently studied the types of bribery in public procurement. The study showed how bribery is committed through the various stages of government purchasing, how bribery in public procurement is related to other crimes, and how such crimes can be prevented and punished.

This paper gives a short overview of the OECD anti-bribery instruments and the provisions pertaining to public procurement. It then briefly describes the OECD study on bribery in public procurement and the main findings of that study.

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Ms. Ehlermann-Cache joined the OECD in 1991 to work on the liberalization of capital movements and national investment treatment. Since 1997, she has been involved in OECD efforts to fight against bribery in international business transactions.

OECD instruments in the fight against bribery in international transactions

Overview of anti-bribery instruments

The 37 parties to the OECD Anti-Bribery Convention are committed to implementing the legally binding Convention as well as the related 1997 Recommendation on Combating Bribery of Foreign Public Officials, which together provide a comprehensive set of legal, regulatory, and policy measures for preventing, detecting, investigating, prosecuting, and punishing the bribery of foreign public officials. As part of their commitment, the parties must apply tough sanctions, including fines and imprisonment, on both individuals and companies for bribery of foreign public officials. The parties' courts must confiscate bribes and any profits obtained through the bribery of foreign officials. The parties are also committed to working together for the effective application of the Convention—for example, in the gathering and exchange of evidence or through extradition.

Representatives of each of the 37 parties make up the OECD Working Group on Bribery in International Business Transactions (OECD Working Group). The Working Group systematically monitors the countries so that each one lives up to the commitments laid out in the Convention and the related recommendation. This international review process and the peer pressure generated within the Working Group have stimulated and guided governments in taking concrete action.

Since the Convention's entry into force in 1999, the parties have made important changes in their national anti-corruption legislation, to promote integrity in the corporate sector, and investigate and prosecute cases of foreign bribery. At the end of 2007, more than 150 foreign bribery investigations were ongoing and at least 30 individuals and companies had been penalized for foreign bribery, in some cases with hefty multimillion-dollar fines. In November 2007, on the 10th anniversary of the adoption of the Convention, ministers from the 37 countries that were party to the Convention pledged to do even more to fight the bribery of foreign public officials and overcome obstacles.³

Public procurement provisions of the OECD anti-bribery instruments

Most of the practices targeted by the OECD Anti-Bribery Convention and the 1997 Recommendation concern public procurement,⁴ and both instruments specifically address measures indispensable to effectively fighting bribery in

public procurement. The provisions of the 1997 Recommendation relate to good public management and governance through improved transparency, enhanced prevention, and punishment (see Annex). A commentary to the Convention reinforces the penalty provisions of the Revised Recommendation.

Transparency and enhanced prevention of bribery

The 1997 Recommendation encourages the pursuit of an agreement on transparency. This provision is an allusion to the possibility that was being considered at the time, of reducing the demand for bribes through World Trade Organization (WTO) negotiations. Although the WTO eventually decided against the move,⁵ this provision should now be read more broadly as referring to the work of international organizations and multilateral development banks, in view of developments worldwide.⁶

To prevent corruption in development cooperation the Recommendation also calls for the safeguarding of foreign aid through the adoption of clear anti-corruption clauses in bilateral aid-funded procurement.

Penalties for bribery of foreign public officials

According to the Recommendation, enterprises that have bribed foreign public officials should be suspended from competition. Indeed, companies that are found to have bribed domestic public officials should be punished in the same way as enterprises that are found to have bribed foreign officials. These measures are to be part of a wider arsenal of criminal as well as civil and administrative sanctions. The general obligation in relation to criminal sanctions for foreign bribery offenses is contained in the Convention.⁷

OECD analysis of bribery in public procurement

In the aftermath of the 2004 OECD Forum, Fighting Corruption and Promoting Integrity in Public Procurement, which sought to involve the OECD more closely in the international effort to promote integrity and combat corruption in public procurement, the Working Group decided to do an analysis of bribery in public procurement.

The Working Group's decision was based on several factors, among them, the economic significance of public procurement for all countries, the enormous potential for corruption and foreign bribery presented by the conversion of public funds into private funds in public procurement, and the

significant amount of allegations of bribery and corruption in public procurement reported in the press.

The Working Group's ultimate goal was to effectively prevent and deter bribery. To that end, it had to understand how public procurement is carried out and how the procedures can be abused or circumvented. It also had to determine the different aspects of the criminal bribery activity to identify effective methods of reducing corruption risks.

Experts from many countries, observers from international organizations, delegates to the Working Group on Bribery, and the OECD Anti-Corruption Division collaborated on the study, which mostly built on discussions of actual but unnamed cases among law enforcement officials, procurement specialists, and related professionals.⁸

Key findings on corruption risks in public procurement

Corruption has consequences that go far beyond the specific misbehavior of the actors involved, and sweep across entire economies and their populations. Bribery in public procurement can derail development plans and lead to unnecessary, unsuitable, uneconomic, or incoherent investment decisions and sometimes even dangerous projects that cost the lives of many. Unfinished roads, crumbling schools, and crippled health systems are but a few serious examples that illustrate the impact of bribery and corruption.

Risks linked to the tendering process

The examination of concrete corruption and bribery cases revealed that malpractices can appear in various ways at all stages of procurement, from project identification and specification to the publicity and tender process, and to project execution and completion. While operations generally provide an image of legitimacy, irregularities may actually be taking place.

Sector, project size, and country risks

The potential for corruption in public procurement exists in all economies. No sector is free from risks of corruption.

But some countries are more at risk than others. The World Bank, for instance, is of the view that certain practices are likely to develop wherever there is (i) not enough rule of law; (ii) too much power in the hands of a few government officials; (iii) no fiduciary checks and balances; and (iv) an isolated environment.

Risks are also linked to countries that offer guarantees of obscurity, confidentiality, and banking secrecy, combined with a lack of available customer information regarding deposit and transfer funds.

Some sectors (or projects) are also more at risk than others. Those potentially more exposed to corruption entail complex works for which evaluation and cost comparisons are difficult (i.e., there is information asymmetry), and contracts and subcontractors abound. Higher risks are also associated with sectors to which national security provisions apply. These are sectors with generally vast, highly centralized, capital-intensive new projects requiring high technologies or sophisticated materials. Services are not free from corruption; they are in fact predisposed to subjective judgments and discretionary procedures, leading to single-source contracting (i.e., noncompetitive procurement—see also above).

Cases of corruption often occur in large procurement projects. However, to avoid publicizing tenders, procurement authorities commonly subdivide projects into smaller contracts, which, when added together, may involve large diversion of funds.

International public procurement can be an especially lucrative target for would-be wrongdoers. Opportunities for corruption also exist in the delivery of development assistance and challenge the integrity of aid-funded public procurement projects.

Links to other offenses

Bribery and corruption in public procurement generally occur in association with other crimes. In particular, money laundering may be involved to generate funds for bribery, and accounting offenses and tax evasion may be committed to hide the proceeds of the crime. The public procurement process can also be abused through collusion and corruption for political party financing. Conflicts of interest have been observed in massive privatization processes.

Box 1: Bribery and corruption risks in the procurement process

Project needs. Mechanisms of masking corruption may include falsifying, underestimating, or overestimating requirements to justify unnecessary work or purchases. Preliminary studies to assess and define what is required for a project may themselves be unnecessary, unused, or unusable. Studies can also falsely conclude that particular services or goods are needed. In the absence of annual purchase plans, needs are generally incorrectly assessed. As a result, purchases may have to be made urgently, under serious time constraints.

Project specifications. A project can be grossly underestimated so that the proposal is readily accepted. Necessary modifications are proposed at a later stage, when it is too late to proceed without them. When a product or service is essential and it is highly likely that the contract will be awarded, specifications can also be overestimated. At the end of the project, there is a balance, which may be diverted or reported publicly, creating the impression that the decision maker is a particularly skilful project manager. Tailored specifications can limit participation and favor a particular manufacturer or contractor. In addition, rating criteria can prioritize one aspect over another to allow contracting authorities to steer the contract toward the preferred bidder while maintaining a facade of compliance with proper procedure.

Bidding processes. Some procedures lend themselves better to corrupt acts. The risks associated with *noncompetitive procurement* are rather high, in particular when such procurement is the norm. Although this kind of contract is not in itself proof of corruption, opportunities and inducements for corruption may increase. The use of *emergency procurement* allows for derogations from normal procurement procedures and offers flexibility to agency staff. However, it also reduces the level of controls, and bribes and other illegitimate costs that inflate prices can easily be masked during the purchase of emergency supplies. Experts also suggest that *framework contracts* (standing agreements used as a basis for the purchase of goods and services as needs arise), which can save time and money by eliminating numerous bidding processes, are non-transparent and unaccountable regarding competition. *Competitive bidding or restrictive competitive bidding* involves prequalification of vendors and is considered to offer less chances to favor a company that seeks to influence the right people. Normally, competitive processes include various levels of oversight, with expert bodies evaluating bids for quality, specificity, and value for money. Moreover, companies that are not awarded a contract theoretically have the opportunity to call public and judicial attention to their concerns about potential irregularities. But competitive bidding does not prevent companies from engaging in anti-competitive behavior (i.e., collusive agreements). Collusion and associated corruption can still take place between bidders and public officials.

Contract award and execution. During the contract award phase the winner of a contract is determined. Ineffective controls in the process allow frequent manipulation, in particular if the decision is left to the discretion of an official. Techniques for hiding bribes during the contract execution are manifold; indeed, this phase is least susceptible to regulation. Rendering fictitious work, inflating the work volume, changing orders, using lower-quality materials than specified in the contract, supplying lower-value and lower-quality goods, and rendering contracted services in an improper way are some of the usual ways of defrauding the public budget.

Box 2: Some signs of possible bribery

- Unjustified and unexplained favorable treatment of a particular supplier by a particular contracting employee over a period of time, including a high number or value of contracts awarded to the supplier
- Unjustified high prices and important price increases
- Low-quality and late-delivery acceptance by a procurement official
- Unusually high volume of purchases from a single source
- Unusually high volume of purchases approved by a single procurement official
- Unnecessary or inappropriate purchases
- Firms that have been repeatedly and systematically rejected ultimately acting as subcontractors
- Procurement official accepting inappropriate gifts or entertainment
- Close relationship (including social) between the procurement official and the vendor
- Unexplained sudden increase in wealth of the procurement official
- Supplier with a reputation for paying bribes
- Commercial contracts different from the supplier's core business
- Intermediary charging a high commission, claiming special influence on buyer
- Unnecessary middleman involved in contacts or purchases
- High-risk sectors or countries
- Procurement official with undisclosed outside business
- Procurement official declining promotion to a non-procurement position
- Procurement official acting beyond or below normal scope of duties in awarding or administering contracts
- Long and unexplained delays between announcement of the winning bidder and the signing of the contract (this may indicate the negotiation of a bribe)
- Frequent open or restrictive calls for tender that are inconclusive, ending in negotiated procedures

Steps in preventing, detecting, and punishing bribery in public procurement

Public authorities can probably do little to directly counter the greed or other personal aspirations of the bribe taker; they can, however, put in place mechanisms to make corruption difficult and prevent it from flourishing.

There is no single way of reducing corruption and bribery risks; the multitude of risks calls for an arsenal of measures.⁹ Overall, it is essential to implement and enforce clear procurement and anti-corruption rules, introduce adequate checks, use open and transparent procurement procedures as much as possible, and prevent officials from being endowed with discretionary powers.

Enforce clear rules

Ultimately, the most effective way to reduce the risk of corrupt behavior is to increase the cost of engaging in dishonest procurement practices for both the public official and the supplier. Punishment will include administrative sanctions at the agency level and prosecution by national courts.

Adequate procurement and anti-corruption rules and regulations providing for substantial penalties, which are to be established, applied, and enforced by procurement entities as well as national courts, will limit the opportunities to transgress. Public procurement regulations or changes in those regulations are recent. A number of countries still lack procurement rules or have unclear regulations and procedures. The frequent changes in regulations or excessive complexity of rules may lead procuring entities to ignore the tendering rules and procedures—either because of a lack of knowledge or understanding or deliberately to turn decisions to their own advantage.

Existing regulations are generally targeted first and foremost at increasing competition, obtaining the best price, and ensuring the quality and timely delivery of products and services to public organizations. As the OECD study showed, there are benefits in making *corruption prevention, detection, and punishment* a primary objective of public procurement regulations.

Experts stress the need to consider international developments when developing national legislation. International anti-bribery and procurement standards must be further *harmonized*. Common anti-bribery standards and multidisciplinary networks that cooperate internationally would significantly strengthen the ability of governments worldwide to fend off bribery and corruption in public procurement.

Establish controls and increase the risks of detection

To prevent and detect bribery and corruption, different types of controls must be established. In addition to oversight, procedures should be assessed (red-flagged) and reporting mechanisms established.

Contracting authorities need to implement *internal controls*. Procurement authorities and agencies need to check the legality of the performance of the administration. Officers in the public administration should take charge of control functions and use them effectively. Internal controls should relate to the decision-making process and structure, as well as to the procurement process itself, to detect manipulation. Control of the administrative organization involves risk analysis by the top management as well as by the procurement administration.

A *template tracking purchases and contract changes* can improve controls. Recorded templates with the supplier's name, type of good or service, price, and lead times, as well as all contract changes, including small ones, should be kept. Small or minor modifications and amendments can amount to large-scale additional costs, which sometimes hide corruption.

External controls and audits by private companies can provide effective inspections that can uncover significant deviations in government expenditure, even at a late stage. Forensic auditing can strengthen oversight.¹⁰ The deviations uncovered can be referred first to internal investigators, who can decide whether to transmit the information to the judiciary.

Monitoring and evaluation of the technical procurement decision and its outcome (e.g., delivery of the contracted quality at the contracted reasonable price) may involve nongovernment organizations (NGOs), end users, and the wider public. NGOs can challenge government procurement decisions, as they may be less constrained than procurement officials and other potential whistle-blowers. Their involvement may also improve the overall efficiency of public procurement.

Red flagging chronologically all the risks that may arise at the different stages of the procurement procedure makes it possible to identify and be particularly alert to malpractices of the procurement agent and the supplier, and therefore provides a useful tool for investigators.

Reporting through whistle-blowing procedures and other mechanisms must be facilitated and encouraged to allow people to come forward and alert authorities to possible suspicious acts. Such procedures may also apply to public officials, who need to be made aware of their obligation to report irregularities that they uncover while administering the procurement process. Public procurement complaint or appeal mechanisms, where competitors can file protests in case of violations of all sorts (e.g., bid protests), are also critical even if these mechanisms can be abused through malicious stalling of procurement procedures by competitors.

Teamwork and multidisciplinary investigations increase the chances that the facts will be uncovered and relevant evidence obtained. Contacts and communication between officials from different public agencies may be a means of enhancing mutual understanding and preventing bribery, and may also improve detection and enforcement of anti-corruption laws. It is likewise advisable to build investigations on solid, well-staffed teams that cooperate with nonjudicial experts with a wide range of skills and experience—prosecutors, police investigators, tax authorities, auditors. Some countries already rely on nonjudicial specialists in a particular technical or commercial field that is related to procurement to assist in assessing relevant information.

Establish preventive measures at the agency level

Public notice and transparency are crucial for sound and open procurement practices and act as deterrents to corruption. Publicized and transparent procedures allow a wide variety of stakeholders to participate in the procurement process and scrutinize public officials' and contractors' performance and decisions. This scrutiny, in addition to other mechanisms, helps keep officials and contractors accountable. A lack of public notice and transparency may create a haven for corruption.

Training of procurement personnel is also indispensable. The professionalization of the procurement function is important. It involves certification and training in procurement rules and controls, and gives officials a better understanding of the harmful effects of bribery and corruption. Procurement personnel may be familiarized with indicators of corruption (some examples are listed in box 2 above). Indeed, officials in the public administration are in the best a position to observe misdeeds.

Additionally, officials may be made to sign *ethical codes*. Although they do not always prevent corruption, such codes allow investigators to impute knowledge and build their case.

Experts also highlight the need to make procurement authorities and procurement officials familiar with *best practices*, including, for instance, personal asset declaration, standards of conduct, and the "four eyes" principle of bid selection and attribution, as well as the rotation of staff in key positions.¹¹

Conclusions

Maintaining and improving the most relevant and widely respected international anti-bribery standards are OECD priorities.

The costs of corruption and its associated risks to reputation have undeniably increased since the OECD Anti-Bribery Convention entered into force in 1999. Several parties in recent years have prosecuted and convicted persons for the corruption of foreign public officials, and ongoing investigations will lead to further convictions. But more needs to be done. All parties will have to fully and effectively implement the OECD anti-bribery standards and put in place systems to detect and punish bribery.

To that effect, OECD will continue to identify and develop ways of strengthening law enforcement capacity and know-how to deal with cases of bribery of foreign public officials. Its analytical study on bribery in public

procurement added invaluable knowledge of the risks involved and the means of preventing, detecting, and ultimately punishing such wrongdoings.

More countries, especially emerging economies like P.R. China, Russia, and India, should join the Convention. Countries that in the past were mostly buyers of products and services offered by companies based abroad are increasingly home to companies that sell in the international markets. Their action on bribery of foreign officials has thus become an important and urgent task in promoting sustainable development and a level playing field, as spelled out in the Convention.

The Convention complements other regional and international anti-bribery instruments. Foreign bribery offenses in countries that are party to the Convention must therefore trigger investigations and prosecutions leading eventually to convictions for domestic bribery offenses even in countries that are not yet party to the Convention.

Annex: Article VI of the Revised Recommendation on Combating Bribery in International Business Transactions

The Council recommends that:

- (i) Member countries should support the efforts in the World Trade Organisation to pursue an agreement on transparency in government procurement;
- (ii) Member countries' laws and regulations should permit authorities to suspend from competition for public contracts enterprises determined to have bribed foreign public officials in contravention of that Member's national laws and, to the extent a Member applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, such sanctions should be applied equally in case of bribery of foreign public officials;¹
- (iii) In accordance with the Recommendation of the Development Assistance Committee, Member countries should require anti-corruption provisions in bilateral aid-funded procurement, promote the proper implementation of anti-corruption provisions in international development institutions, and work closely with development partners to combat corruption in all development co-operation efforts.²
 1. Member countries' systems for applying sanctions for bribery of domestic officials differ as to whether the determination of bribery is based on criminal conviction, indictment or administrative procedure, but in all cases it is based on substantial evidence.
 2. This paragraph summarises the DAC recommendation, which is addressed to DAC members only, and addresses it to all OECD Members and eventually non-Member countries which adhere to the Recommendation.

NOTES

- ¹ Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.
- ² Argentina, Brazil, Bulgaria, Chile, Estonia, Slovenia, South Africa.
- ³ "Shared Commitment to Fight against Foreign Bribery," adopted by the parties at the high-level conference on the 10th anniversary of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- ⁴ Public procurement is a major point of intersection between the public and private sectors. It presents a multitude of opportunities for corruption, i.e., government decisions based on interests that are not recognized as "legitimate" interests or objectives of the procurement process.
- ⁵ The WTO General Transparency Agreement is in force for adhering countries.
- ⁶ Pieth, Mark. 2005. Fighting Corruption in International Business Transactions: Major Considerations regarding Public Procurement. In *Fighting Corruption and Promoting Integrity in Public Procurement*. Paris: OECD.
- ⁷ The provisions of both the Convention and the 1997 Recommendation are aimed at penalizing companies. Unlike other debarment provisions, they do not concern natural persons.
- ⁸ The discussion took place during the expert meeting in March 2006. The Working Group on Bribery endorsed the final report on the study in January 2007 and published it as a book, *Bribery in Public Procurement: Methods, Actors and Countermeasures*.
- ⁹ See OECD. 2007. *Bribery in Public Procurement: Methods, Actors and Countermeasures*, Paris.
- ¹⁰ Forensic auditing can be defined as the application of auditing skills to situations that have legal consequences. It can be used by management or by auditors in general reviews of activities to highlight risks. It can also be used in investigations of fraud or corruption to gather evidence to be presented in court.
- ¹¹ The OECD reviewed countries' good practices for promoting integrity in public procurement at the different stages of the procurement process. Interested readers may consult the book OECD. 2007. *Integrity in Public Procurement: Good Practices from A to Z*. Paris.

The OECD Checklist: A systemic approach for enhancing integrity in public procurement

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Public procurement: A major risk area

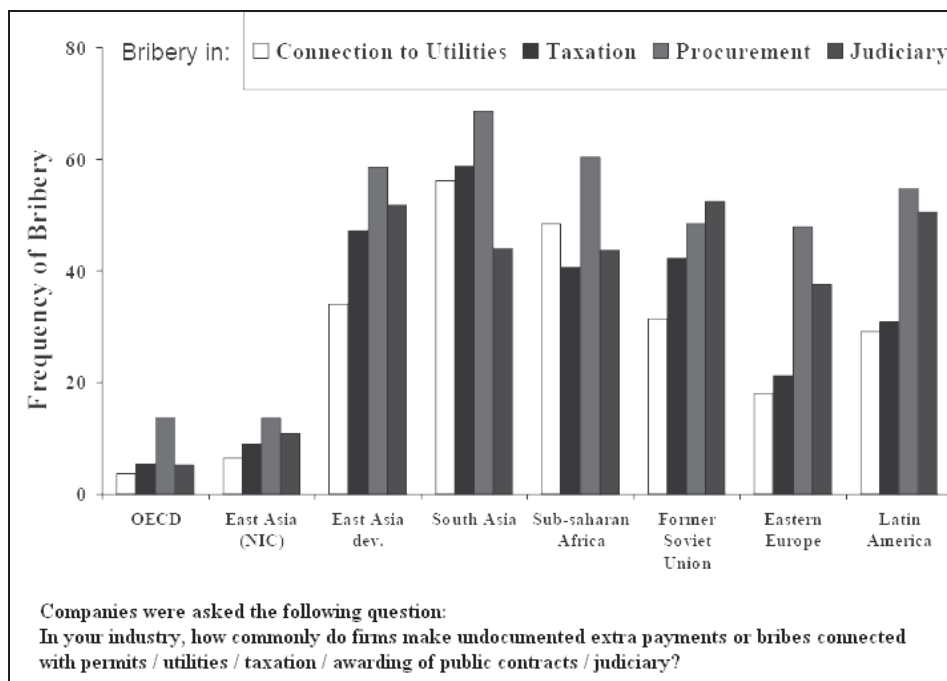
Public procurement is a key economic activity of governments that has a major impact on how taxpayers' money is spent. Statistics suggest that public procurement accounts, on average, for 15% of gross domestic product worldwide, and even higher in OECD countries.¹ It plays a strategic role for governments in avoiding mismanagement and waste of public funds.

Of all government activities, public procurement is one of the most vulnerable to corruption. Bribery by international firms in OECD countries is more frequent in public procurement than in utilities, taxation, and the judiciary, according to the 2005 Executive Opinion Survey of the World Economic Forum (see graph below). The financial interests at stake, and the close interaction between the public and private actors, make public procurement a major risk area.

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Frequency of bribery in procurement



Source: Kaufmann, Daniel (2006). Based on Executive Opinion Survey 2005 of the World Economic Forum covering 117 countries. World Bank.

Objectives of this paper

Enhancing integrity in public procurement requires a systemic approach supported by effective procedures to enhance transparency, good management, corruption resistance, accountability, and control. This paper is aimed at:

- Mapping out the elements that constitute an adequate policy framework for enhancing integrity in public procurement;
- Highlighting the role of public procurement organizations in implementing this policy framework; and
- Focusing on the internal procedures that can help build resistance to corruption in public procurement organizations.

Beyond the tip of the iceberg: Addressing the whole procurement cycle

Although it is widely agreed that public procurement reforms should follow good governance principles, international reform efforts—for instance, those made by the World Trade Organization (WTO), the United Nations Commission on International Trade Law (UNCITRAL), and the European Union—have focused largely on the bidding phase, when bids from suppliers are solicited and evaluated.

The bidding is the most regulated and transparent phase of the procurement cycle, the “tip of the iceberg.” However, an OECD survey² highlighted the need for governments to take additional measures to address risks to integrity in the entire procurement cycle, in particular:

- During needs assessment, a phase that is particularly vulnerable to political interference, and in contract management and payment. These stages are less subject to transparency as they are usually not covered by procurement regulations.
- When using exceptions to competitive procedures, for instance, in contracts below the threshold, defense procurement, and emergency procurement.

The Checklist for Enhancing Integrity in Public Procurement

The OECD has developed the Checklist for Enhancing Integrity in Public Procurement to guide policy makers at the central government level in instilling a culture of integrity throughout the whole public procurement cycle, from needs assessment to contract management and payment. It also offers general guidance for subnational government.

The Checklist guides governments in developing and implementing an adequate policy framework:

- The first part of the Checklist guides policy makers—through 10 recommendations—in developing an adequate policy framework to enhance integrity in public procurement.
- The second part provides guidance in implementing the policy framework at each stage of the public procurement cycle.

The multidisciplinary approach of OECD

The Checklist was developed as a follow-up to the Global Forum on Governance in 2004, which marked the start of the OECD's greater involvement in the fight against corruption in public procurement (see box 1 below). The Checklist builds on the rich multidisciplinary approach of the OECD, which analyzes public procurement from different angles—good governance, anti-bribery, development assistance, competition, and international trade.

Box 1: The Multidisciplinary Approach of the OECD to Preventing Corruption in Public Procurement

The Global Forum on Governance in November 2004 marked the start of greater involvement by the OECD in international efforts to promote integrity and combat corruption in public procurement. Those present at the forum—representatives of the public and private sectors, nongovernment organizations, trade unions, academics institutions, donor agencies, and international organizations—agreed that public procurement is a major potential source of corruption.

As a follow-up to this forum, the Public Governance Committee mapped out good practices to enhance integrity, from the definition of needs to the contract management, through effective transparency and accountability mechanisms.

In parallel, the Working Group on Bribery in International Business Transactions, the body responsible for monitoring the implementation of the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions, has developed a better understanding of the methods and techniques used in cases of bribery in public procurement.

The Aid Effectiveness and Donor Practices Working Party of the Development Assistance Committee, for its part, has been developing a methodology and benchmarks for strengthening public procurement systems in developing countries.

The Checklist for Enhancing Integrity in Public Procurement builds on these efforts to guide policy makers in reforming public procurement systems and reinforcing integrity and public trust in how public funds are managed.

The Checklist is an integral part of the efforts of the Public Governance Committee (PGC) to promote good governance and integrity in the public service. As decided by the PGC in October 2007, a consultation process on the Checklist was carried out with stakeholders to ensure that the views of the public

and private sectors, civil society, trade unions, academics, donors, and international organizations are adequately reflected.

Integrity defined

Integrity can be defined as “the use of funds, resources, assets, and authority, for the official purposes for which they are intended to be used.” A “negative” approach to defining integrity is also useful in determining an effective strategy for preventing “integrity violations”³ in public procurement, such as:

- corruption, including bribery, “kickbacks,” nepotism, cronyism, and patronage;
- fraud and theft of resources;
- conflict of interest;
- collusion;
- abuse and manipulation of information;
- discriminatory treatment; and
- waste and abuse of organizational resources.

Developing a policy framework: Approach and structure

The Checklist provides a policy framework with 10 key recommendations to reinforce integrity and public trust in how public funds are managed. This policy framework stresses the importance of procedures in enhancing transparency, good management, prevention of misconduct, as well as accountability and control in public procurement.

Elements of transparency

Providing an adequate degree of transparency throughout the whole public procurement cycle in order to promote fair and equitable treatment for potential suppliers

Governments should provide potential suppliers and contractors with clear and consistent information so that the public procurement process is well understood and applied as equitably as possible. Governments should promote transparency for potential suppliers and other relevant stakeholders, such as oversight institutions, not only regarding the formation of contracts but throughout the whole public procurement cycle. Governments should adapt the degree of transparency according to the recipient of information and the stage of the cycle. In particular, governments should protect confidential information

to ensure a level playing field for potential suppliers and avoid collusion. They should also ensure that public procurement rules require a degree of transparency that enhances corruption control while not creating 'red tape' to ensure the effectiveness of the system.

Maximizing transparency in competitive tendering and taking precautionary measures to enhance integrity, in particular for exceptions to competitive tendering

To ensure sound competitive processes, governments should provide clear rules, and possibly guidance, on the choice of the procurement method and on exceptions to competitive tendering. Although the procurement method could be adapted to the type of procurement concerned, governments should, in all cases, maximize transparency in competitive tendering. Governments should consider setting up procedures to mitigate possible risks to integrity through enhanced transparency, guidance and control, in particular for exceptions to competitive tendering such as extreme urgency or national security.

Elements of good management

Ensuring that public funds in procurement are used for the purposes intended

Procurement planning and related expenditures are key to reflecting a long-term and strategic view of government needs. Governments should link public procurement with public financial management systems to foster transparency and accountability as well as improve value for money. Oversight institutions such as internal control and internal audit institutions, Supreme Audit Institutions or parliamentary committees should monitor the management of public funds to verify that the needs are adequately estimated and public funds are used according to the purposes intended.

Developing a set of professional standards to enhance the knowledge, skills and integrity of public procurement officials

Recognizing public procurement as a profession is critical to enhancing resistance to mismanagement, waste and corruption. Governments should invest in public procurement accordingly and provide adequate incentives to attract highly qualified officials. They should also update officials' knowledge and skills on a regular basis to reflect regulatory, management and technological evolutions. Public officials should be aware of integrity standards and able to identify potential conflict between their private interests and public duties that could influence public decision-making.

Elements of prevention of misconduct

Putting mechanisms in place to prevent risks to integrity in public procurement

Governments should provide institutional and procedural frameworks as well as organizational resources that help protect public procurement officials against undue influence from politicians or higher-level officials. Governments should ensure that the selection and appointment of officials involved in public procurement are based on values and principles, in particular integrity and merit. In addition, they should identify risks to integrity for positions, activities, or projects that are potentially vulnerable. Governments should prevent these risks through preventative mechanisms that foster a culture of integrity in the public service such as integrity training, asset declarations, as well as the disclosure and management of conflict of interest.

Encouraging close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management

Governments should set clear integrity standards and ensure compliance throughout the whole procurement cycle, particularly in contract management. Governments should record feedback on experience with individual suppliers to help public officials in making decisions in the future. Potential suppliers should also be encouraged to take voluntary steps to reinforce integrity in their relationship with the government. Governments should maintain a dialogue with suppliers' organizations to keep up-to-date with market evolutions, reduce information asymmetry and improve value for money, in particular for high-value procurements.

Providing specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct

Governments should set up mechanisms to track decisions and enable the identification of irregularities and potential corruption in public procurement. To facilitate the detection of misconduct governments should also consider establishing procedures for reporting misconduct and for protecting officials who report from reprisal. Governments should not only define sanctions by law but also provide the means for them to be applied in case of breach in an effective, proportional and timely manner.

Elements of accountability and control

Establishing a clear chain of responsibility together with effective control mechanisms

Governments should establish a clear chain of responsibility by defining the authority for approval, based on an appropriate segregation of duties, as well as the obligations for internal reporting. In addition, the regularity and thoroughness of controls should be proportionate to the risks involved. Internal and external controls should complement each other and be carefully co-ordinated to avoid gaps or loopholes and ensure that the information produced by controls is as complete and useful as possible.

Handling complaints from potential suppliers in a fair and timely manner

Governments should ensure that potential suppliers have effective and timely access to review systems of procurement decisions and that these complaints are promptly resolved. To ensure an impartial review, a body with enforcement capacity that is independent of the respective procuring entities should rule on procurement decisions and provide adequate remedies. Governments should also consider establishing alternative dispute settlement mechanisms to reduce the time for solving complaints. Governments should analyze the use of review systems to identify patterns where individual firms could be using reviews to unduly interrupt or influence tenders as well as opportunities for management improvement in key areas of public procurement.

Empowering civil society organizations, media and the wider public to scrutinize public procurement

Governments should disclose public information on the headlines of major contracts to civil society organizations, media and the wider public. The reports of oversight institutions should also be made widely available to enhance public scrutiny. To complement these traditional accountability mechanisms, governments should consider involving representatives from civil society organizations and the wider public in monitoring high-value or complex procurements that entail significant risks of mismanagement and corruption.

Implementing the policy framework

Public procurement organizations play a central role in implementing this policy framework for integrity in public procurement. According to the SIGMA program,⁴ the possible functions to be performed by these institutions in member states of the European Union can be separated into tasks relating to:

- policy and primary legislation;
- international coordination;
- administrative and monitoring tasks;
- development and business coordination;
- publication and information; and
- advisory and operations support, training, and knowledge development.

Monitoring and control of public procurement: The experience of member states of the European Union

A key task in the fight against corruption is the monitoring and control of public procurement. Control in this context does not cover the responsibilities of internal and external audit institutions or of complaints review bodies, but refers only to tasks exercised by public procurement institutions. In member states of the European Union, such functions can take the form of various tasks⁵ including:

- Preparing an annual report to the government on the functioning of the national public procurement system;
- Collecting statistical and other information on, among other things, public procurement planning, market penetration, awarded contracts, and performance and efficiency of the public procurement system (including data on the public procurement market, as stipulated in European Community directives);
- Exercising an authorizing function by granting prior approval to contracting entities on certain decisions in the procurement process, such as the use of less competitive or accelerated procedures;
- Managing an official list of certified economic operators or certified procurement officers;
- (Although not recommended by the European Union) Managing official blacklists of economic operators who have violated public procurement rules, failed to fulfill their contracts, or misrepresented information.

An innovative example of monitoring and control procedures for public procurement can be found at the Office of Government Commerce (OGC) of the United Kingdom (see box 2).

Box 2: The Gateway Review Process at the Office of Government Commerce in the United Kingdom

The Office of Government Commerce (OGC) is an independent office of the Treasury in the United Kingdom. Created in April 2000, it helps government departments achieve efficiency and promote value for money in their procurement activities. The OGC supports initiatives that encourage better supplier relations, sustainable procurement, the benefits of using smaller suppliers, and the potential of e-procurement, and also promotes capacity building and professionalism. It develops and publishes recommendations, guidance, and best practices that cover a wide range of management practices, including program and project management, procurement, and service management. Best practices are available both online (<http://www.ogc.gov.uk>) and in published form.*

In addition to these initiatives taken to reinforce professionalism in government departments, the OGC has developed the Gateway review process. This is an examination of an acquisition project carried out at key decision points by a team of experienced people who are independent of the acquisition team, to support the person who takes personal responsibility for the successful outcome of the project. The OGC has designed five types of Gateway reviews for the various stages in the life of a project:

- Up to and including contract award: Gateway reviews 1–3 (business justification, procurement strategy, and investment decision);
- Post-contract award: Gateway reviews 4–5 (readiness for service, and benefits evaluation).

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

Acquisition programs and procurement projects in central civil government may be subject to the OGC Gateway process without any minimum financial limits. However, financial value is one factor to consider when deciding on the level of

risk faced by a project, and it is recognized within the risk potential assessment (RPA), which must be completed for each procurement project. The composition of the review team reflects the assessed potential risk of the project, namely, in case of:

- High-risk projects (RPA score of 41 or more): The Gateway review is undertaken by a review team leader who is independent of the department that carried out the project, and an independent operations team;
- Medium-risk projects (RPA score of 31–40): The review team leader is still independent of the department but the team members are provided by the department (independent of the project);
- Low-risk programs (RPA score of less than 31): All the team members and the team leader come from the sponsoring department but are independent of the project.

Each review takes about three or four days. At the end of their investigations, the review team produces a report summarizing their findings and recommendations, together with an assessment of the project's status as Red, Amber, or Green. "Red" status means that the project needs immediate remedial action but does not necessarily have to be stopped. "Amber" status indicates that the project should go forward but that the recommended actions should be carried out as well. "Green" status shows that the project is on target to succeed but may benefit from the recommendations.

The Gateway review process provides assurance and support for senior responsible owners in discharging their responsibilities to achieve their business aims by ensuring that the best available skills and experience are deployed on the projects, all stakeholders are covered by the project, and the project can progress to the next stage of development or implementation.

Source: *Integrity in public procurement: Good practice from A to Z*, OECD, 2007.

Building resistance to corruption in public procurement organizations

Other measures can also be taken to prevent corruption in public procurement organizations. Protecting officials against undue influence by building adequate institutional capacity helps develop resistance to corruption. In addition, effective procedures for identifying and mitigating risks to integrity, such as potential conflicts of interest, are core elements of a preventive strategy against corruption in procurement.

To protect officials from undue influence, in particular political interference, the procurement organization should have an adequate institutional framework, be provided with enough resources to effectively carry out its responsibilities, and be supported by adequate human resource policies. For instance, merit-based selection and integrity screening for senior officials involved in procurement enhance corruption-resistance. This is particularly important, as senior officials serve as role models of integrity in their professional relationships with political leaders, other public officials, and citizens.

A "risk map" of the organization can likewise be developed to identify the positions of officials who are vulnerable, the procurement activities where risks arise, and the particular projects at risk because of the value and complexity of the procurement. On that basis, training sessions can be developed to inform procurement officials about the risks of corruption and possible measures that can be taken to prevent corruption. Suppliers can also undergo integrity training to raise awareness of the importance of integrity considerations in procurement. In addition, specific procedures may be introduced for officials in positions that are especially vulnerable to corruption, including regular performance appraisals, and mandatory disclosure of interests, assets, hospitality, and gifts. If the information disclosed is not properly assessed, risks to integrity, including potential conflicts of interest, will not be properly identified, resolved, and managed. Recording information on key decisions and keeping it up-to-date is also essential.

Avoiding the concentration of key decision areas in the hands of a single individual is fundamental to the prevention of corruption. The application of the "four-eyes principle" ensures the independent responsibility of at least two persons in decision making and control. This may take the form of double signatures, cross-checking, dual control of assets and separation of duties, and authorization. To the extent possible, separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling related assets helps prevent corruption. A key challenge in the separation of duties and authorization is ensuring the flow of information between management and budget and procurement officials, and avoiding the fragmentation of responsibilities and a lack of overall coordination. The separation of duties and authorization should be organized in a realistic manner to prevent the concentration of decisions in one individual without creating overly burdensome procedures that may give rise to opportunities for corruption.

Depending on the level of risk, instituting a system of multilevel review and approval for certain matters, rather than having a single individual with sole authority over decision making, may be necessary to introduce an independent element to the decision-making process. These reviews may focus, for instance,

on the choice of competitive and noncompetitive strategies before the bidding or on significant contract amendments. They may be carried out by senior officials independent of the procurement and project officials or by a specific contract review committee.

Prolonged contact over time between government officials and bidders should also be avoided. The rotation of officials—involving, when possible, new responsibilities—is a safeguard for positions that are sensitive or involve long-term commercial connections. E-procurement also provides a promising instrument for standardizing processes, avoiding direct contact between officials and bidders, and fostering transparency and accountability in the process. The use of new technologies may require security control measures for the handling of information, such as the use of unique user identity codes to verify the authenticity of each authorized user, well-defined levels of computer access rights and procurement authority, and the encryption of confidential data.⁶

In conclusion, it is important to stress that corruption is a multifaceted phenomenon. Therefore, a systemic approach combining a series of policy measures is needed to effectively combat it in public procurement. Furthermore, corruption is an evolving phenomenon, which calls for a constant rethinking and update of anti-corruption measures.

NOTES

- ¹ Public procurement is estimated at 20% of gross domestic product in OECD countries. For further information, see OECD. 2001. *The Size of Government Procurement Markets*.
- ² The Public Governance Committee collected information on good practices for enhancing integrity throughout the procurement cycle in 2006. For further information, see the publication *Integrity in public procurement: Good practice from A to Z*, OECD, 2007.
- ³ Huberts, L., and J. H. J. van den Heuvel. 1999. *Integrity at the Public-Private Interface*. Maastricht.
- ⁴ The Support for Improvement in Governance and Management (SIGMA) program is a joint initiative of the OECD and the European Union, and principally financed by the EU. For further details on the results of the survey, refer to OECD and European Union. 2007. *Central Public Procurement Structures and Capacity in Member States of the European Union*. SIGMA paper no. 40.
- ⁵ See OECD and European Union. 2007. *Central Public Procurement Structures and Capacity in Member States of the European Union*. SIGMA paper no. 40.
- ⁶ This is an extract from the Checklist for Enhancing Integrity in Public Procurement, on which stakeholders were consulted.

Progress and challenges in procurement reform in Indonesia

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First, I would like to tell you about the past and present conditions surrounding the government procurement system in Indonesia. When the Government began procurement reform in 2003, when we issued Presidential Decree 80/2003 (PD 80), I can say fair competition did not yet exist. The previous regulation provided for the advertisement of tendering opportunities, but we could not find advertisements in the newspaper. In addition, there were many restrictions on suppliers and contractors from other provincial governments. Indonesia consists of 33 provincial governments and about 400 district governments. Markets are too small to sustain new companies and the costs of participating in the tender process are high. After all, the Government always bought goods or services at a price much higher than the market price. These were the conditions that confronted us at that time.

That was why we tried to learn what other countries had done to reform public procurement. We also tried to learn about institutions responsible for developing policies for public procurement. Up to now we do not have an such an institution in Indonesia. Also, many people with no knowledge of public procurement have become members of the tendering committee.

The reform agenda

Since 2005, we have had three agendas for public procurement reform in Indonesia: establishment of the regulatory framework, institutional development, and development of capacity and human resources. Since the time PD 80 took effect, many changes have taken place. The support from the Corruption Eradication Commission (KPK) is very important for us because law enforcement was also poor in the past.

Several regulations will be issued in the future. We are aware that the current regulation has several weaknesses, so we try to improve it. Also, we are preparing a presidential decree for electronic procurement. With support from

the United States Government and the Millennium Challenge Corporation (MCC), we will introduce an electronic procurement system in five provincial governments in 2008. We are also preparing to draft a public procurement law. The current regulation is only a presidential decree.

Many good principles like those we learned from the APEC Government Procurement Experts Group form part of PD 80. So we are trying to have a value-for-money system. Procurement should be efficient and effective. We are also trying to introduce open and effective competition. PD 80 is about fair dealing and nondiscrimination in our system. In addition, we are trying to have a system that is accountable to the public.

PD 80 stipulates that procurement should be implemented through open bidding or tendering. Also, there are no longer any barriers that keep out contractors and suppliers from other provincial governments. But we still have a barrier for international enterprises. We have a certain procurement threshold for international construction companies to come to Indonesia, and the threshold is more than IDR 50 billion (USD 5 billion). Below that threshold, international companies are not allowed to engage in construction in Indonesia. We have tried to simplify market and business segmentation. Going from one region to another was restricted in the past. Also, our businesses can be segmented into seven or eight classifications; going from one type of business to another and getting a new license costs very high for businessmen.

PD 80 also stipulates the independence of the project leader and the tendering committee. Procurement and the USD 5 billion budget are the responsibility of the project leader and the tendering committee. Ministers and governors cannot ask for any financial consideration from them. This is what is stipulated in the regulation, but sometimes the practice is different. This is another issue.

Under the previous regulation, if a bidder offered only 80% of the owner-estimated cost, the offer would be rejected. In PD 80, this does not happen. An offer can be only 60% or 70% of the owner-estimated cost.

We have also introduced a post-qualification system. In the past, even for a small or simple procurement, bidders had to prequalify.

My colleagues from business associations and chambers of commerce complain about our current regulation. We still protect small enterprises and projects of a certain value. If a small enterprise can do the job, then bidding is open only to small enterprises. We still encourage the domestic industry, but implementation is very difficult because we do not have a database of local industries.

In order to have a competent tendering committee and project leader, we have introduced a certification system. Information regarding the tendering process must be open to the public. Our Decree No. 6 is a regulation on rewards for whistle-blowers.

Achievements and progress

Much efficiency has already been achieved by this system. We were able to save the Government a large amount of money in 2005–2007.

In the past when we had tenders, there were only three to five participants. This was all right at the time because the regulation required a minimum of three participants. But after we opened up the bidding to more competition, sometimes we have more than 100 participants in one tendering opportunity.

Regrettably, however, only a few institutions are practicing good procurement. According to my monitoring system, only 30%–40% are conducting procurement as required under the regulation. For my colleagues from the supervising body, it is very easy to see when this tendering process is violated. This is because we are the first to learn how many participants are involved in the process and where they are coming from.

We are happy that the current system has a deterrent effect because of law enforcement—KPK, the Attorney-General, and the police. This is making many people scared to be the project leader or join the tendering committee if they do not understand and know government procurement. We are also happy that we have strong, growing support from national leaders trying to have a public procurement law, and one institution dedicated to public procurement policy. I think this is a good sign for our reform. I thank colleagues from ADB, OECD, MCC, and the World Bank present here for the support for our public procurement reform. The current regulation has achieved 60% of the OECD baseline indicator. When we have a public procurement law and the National Public Procurement Office (LPKPP), I expect the score to be much higher.

Further agenda for regulatory framework

We will introduce an electronic procurement system in 2008 and then at the end of this year or beginning of next year, the Government will issue a presidential decree for electronic procurement. In 2008, we will submit a draft of the public procurement law to the parliament.

At the same time, we will try to set criteria for the tendering committee and the project leader by issuing standard documents. We already have an Indonesian version, but we will produce its English version in 2008. We will also introduce a bidding process manual for the tendering committee.

We are still waiting for the establishment of the LPKPP. All four economic ministers—the coordinating minister of economy, the minister of finance, the state minister of planning, and the minister of apparatus—have already agreed and signed a letter to the President. The LPKPP is expected to be established by the end of this year.

We will go further with capacity building. We already have a certification system, but we will try to mainstream training in the higher education system. At the same time, we will try to have a mutual recognition agreement with other countries for the same competency.

The reform of P.R. China's government procurement system

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In the People's Republic of China, government procurement is referred to as a "sunshine transaction" because it can not only cut down the Government's expenses but also effectively prevent corrupt dealings in public procurement. It represents one of the vital moves that the Chinese Government has taken to prevent corruption at its root.

The reform of the government procurement management system in P.R. China and its outcome

The Chinese government has attached great importance to the reform of government procurement frameworks. It has relied on foreign experience to develop and implement a government procurement system based on the principle of competition in line with P.R. China's socialist market economy and public expenditure management. The experimental work of government procurement began in 1996. In 1999, the implementation of government procurement was listed as an important measure to prevent and eradicate corruption. The Government Procurement Law was enacted in 2002, and entered into force in 2003. This step indicates that the reform of the government procurement system has been incorporated into the Chinese legal system.

For more than four years since the Government Procurement Law's entry into force, the Chinese Government has achieved great progress in the reform of the government procurement system. In these past years, the reform of the government procurement system has moved from the experimental stage to nationwide implementation. The primary framework of a government procurement system has now been established. The scope of government procurement is expanding and the scale of government procurement is growing.

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In 2003, the first year of the Government Procurement Law's implementation, the value of national government procurement totaled CNY 165.9 billion (about USD 20.7 billion). By 2006, the value of national government procurement had more than doubled over the three years, exceeding CNY 360 billion (about USD 46 billion). As the reform goes further, the advantages of government procurement system are gradually emerging. The achievements of the Chinese Government in the reform of the government procurement system are acknowledged both at home and abroad.

The effects of the reform of the government procurement system

First is saving government procurement funds and improving the efficiency of their use. The government procurement system saves 10% in procurement funds every year. The nationwide procurement savings reached CNY 38 billion (USD 4.8 billion) in 2005, and more than CNY 100 billion (USD 12.7 billion) from 2001 to 2005.

Second is standardizing government procurement practices and promoting honest and clean government. Greater transparency in government procurement will greatly facilitate the supervision of the whole society and considerably cut down commercial bribery. The government procurement parties take more initiative to participate in supervision, thus creating a favorable condition for the relevant government department to uncover corruption problems and investigate corruption cases.

The third effect of the reform is supporting government policies by regulating the use of funds, and, thus, protecting national and public interests. The financial authorities have introduced a series of government procurement policies in favor of energy conservation and environment-friendly products, and have publicized lists of relevant products. These policies require that such products be prioritized in government procurement. The results have been positive.

The fourth is solving problems of general concern and making the benefits available to the public. Some local governments have incorporated public-interest projects into government procurement. For example, distance education engineering equipment for countryside primary schools and middle schools in the western regions and the renovation of dilapidated primary schools and middle schools shall be integrated into the government procurement, thus bringing the substantial benefits of the government procurement system to the public.

Key measures taken against bribery in government procurement

As a commercial transaction, government procurement provides great business opportunities, but it is also susceptible to corrupt practices such as bribery. In P.R. China, though improper practices have decreased dramatically over nearly a decade of reform, they still exist in government procurement. This leaves much to be desired for the government procurement system when compared with those of western countries with more than 200 years of history in regulating government procurement. A few suppliers adopt improper means such as bribery to corrupt procurement authorities, agencies, and assessment experts for the purpose of obtaining government procurement contracts. This severely damages the environment of fair competition and public interest, and weakens our cadres. Thus, the Chinese Government has placed great emphasis on implementing measures to deal with bribery in government procurement.

The first measure is improving the organization that deals with bribery in government procurement. As the supervising and managing authority for government procurement, provincial authorities of finance have set up dedicated groups to deal with bribery. They work to identify key issues and coordinate efforts related to public procurement, in addition to supervising government procurement procedures that are vulnerable to corruption. With their long-term programs, these groups provide important leadership in the fight against corruption in public procurement.

The second measure is actively raising awareness and educating the people about anti-bribery issues—on the one hand, enhancing the units' and individuals' awareness of the importance of dealing with bribery, and, on the other hand, improving all units' understanding of relevant policies for dealing with bribery. The Ministry of Finance has strengthened its instruction of procurement agents and agencies on the fight against bribery, providing them with ideological, political, and legal education and raising their consciousness of the need to resist bribery and to work with honesty. This measure makes government procurement agents better aware of bribery and other job-related crimes and drives them to deal with those crimes. Meanwhile, news media and bulletins are used to push the fight against bribery.

The third measure is establishing a report-and-inform system for bribery. The Ministry of Finance has set up a mailbox, telephone line, and fax line for reporting acts of bribery. Disciplinary measures are disclosed to the public. Provincial authorities of finance are also required to set up corresponding report-and-inform systems.

The fourth measure is investigating cases of bribery and punishing those involved according to the law. Financial authorities at all levels are required to investigate and deal with bribery according to applicable laws and policies and the principle of self-correction first, leniency for those who confess, and severity for those who resist. Key positions should be investigated more thoroughly. This firm stand in cracking down on bribery is a strong deterrent to crooked deals.

The fifth measure is strengthening the system and establishing checks and balances. The Ministry of Finance has formulated a series of regulations, including administrative regulations on government procurement assessment experts, on the supervision and examination of centralized procurement agencies, on bidding for the public procurement of commodities and services, and on information disclosure regarding government procurement; measures for handling suppliers' complaints, for qualifying government procurement agencies, and for managing centralized government procurement; and notices on the acceptance and inspection of suppliers' complaints, and on the examination and management of commodity and service prices. The implementation of these regulations and administrative measures has strengthened procurement administration and governance according to the rules. With regulation, acts that interfere with government procurement have been reduced. This standardization curbs violations to a certain extent and plays an important role in preventing bribery.

The sixth measure against bribery is continuing the reform of the financial system and attaining comprehensive control. Financial authorities of all levels shall combine measures against bribery with reforms such as financial restructuring, so as to fight bribery from two sides: drafting a budget for and managing government procurement.

Chapter 2

Specialized procurement authorities' role in defining procurement policies and overseeing implementation

Over the past decade, many countries in Asia-Pacific have significantly modernized their regulatory frameworks. They now employ sophisticated frameworks that prescribe complex procedures involving several actors. Procurement reforms have most often decentralized public procurement to local levels. Implementation of the intricate regulations by procuring entities raises significant challenges. Procurement personnel therefore require training, guidance and oversight to carry out their tasks and to resist temptations to accept or solicit bribes.

Experience in many countries shows that a specialized authority can help ensure the thorough implementation of complex procurement procedures by a multitude of independent executing agencies. Such authorities define policies in response to recurrent problems and risks; collect and disseminate information on good practice; prepare standard documents; supervise the implementation of the regulatory framework; and organize and conduct training.

Bangladesh and the Philippines are among the Asian and Pacific countries that have established such specialized institutions. Their examples show the potential that specialized procurement agencies have in curbing corruption risks, and the structures and powers that such agencies require to carry out their role successfully.

When Bangladesh overhauled its procurement framework between 2002 and 2005, it created a Central Procurement Technical Unit (CPTU) that fulfills many of these tasks: while the actual execution of procurement is decentralized, the CPTU evaluates and oversees the implementation of procurement rules and issues guidance, policies and standard documents. The CPTU also sets the rules

for capacity building in procurement entities that the Bangladesh Institute of Management, a separate institution, carries out.

The Philippines made a similar move when the Government Procurement Policy Board (GPPB) was established in 2003. This centralized procurement oversight agency also defines procurement policies, develops capacity, and monitors the implementation of the regulatory framework for public procurement by the individual procuring entities.

Assessments conducted under the OECD Methodology for Assessment of National Procurement Systems confirm significant improvements to legal and institutional frameworks and the positive contribution of procurement oversight bodies. However, these assessments suggest that compliance and capacity of procuring entities need further reinforcement, that oversight bodies and reporting mechanisms need strengthening, and that capacities to conduct system assessments at national level need to be increased.

The role of the Central Procurement Technical Unit of Bangladesh

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Establishment of the Central Procurement Technical Unit

The Central Procurement Technical Unit (CPTU) was established in 2002. It is a central body that frames documents on public procurement policies and rules in Bangladesh. Before 2002, Bangladesh had 45 ministries and other government divisions, among which six ministries, including the Ministry of Finance, the Ministry of Planning, and the Ministry of Commerce, used to frame and modify procurement rules. As a result, more than 200 government agencies used their own procedures and manuals. There was no uniformity in the basic framework, in basic policies and rules, and in the processes. Even the basic rules were formulated between the 1930s and 1940s with very few changes. Therefore, there was not enough transparency and accountability. Delays occurred in the finalization of the tendering. Projects could not be completed on time since tenders, even for very small works, used to be processed through the donors. Donors had to be consulted for the tenders, resulting in delays in finalization.

After surveying the procurement system in Bangladesh, the World Bank released the results of its Country Procurement Assessment Report in 2002. According to this report, procurement deficiencies were considered to be the single most important impediment preventing the country from achieving its full economic potentials. The Government of Bangladesh, which felt the need for procurement reforms, decided to establish a single agency dedicated to these reforms. The CPTU was created within the Implementation Monitoring and Evaluation Division (IMED) under the Ministry of Planning.

The period of the reform project with the World Bank was from 2002 to 2005 and was extended for another two years. The design or road map of the project, which ended in June 2007, was gradual and phased according to priorities. For example, we decided to put in place procurement regulations in 2003, have training in year 1 to year 3, and have advertisement issues cleared by 2002. These

were the basic priorities of the project. This way, we have been able to go about our business while carrying out the reform.

Accomplishments in public procurement reform

The Public Procurement Regulations of 2003 was an administrative order rather than a legal document passed to the parliament. We specified the rules and procedures for tenders, some of them in separate notifications. As virtually no standard documents existed before these reforms, each department at the time used its own standard documents. This resulted in various, different, and sometimes conflicting tender documents within the country. During the period around 2004 and 2005, we finalized and published nine standard tender documents (STDs) dealing with works and goods. These proved to be very helpful because people could use and fill out simple documents in registering tenders. Similar to the STDs, we had standard documents for services: standard requests for proposals. We developed a Web site where we published the tenders above some thresholds. The advertisement of the tenders was mandatory so that we could have fair advertisement and publicity of the tenders. We introduced online pilot monitoring of the projects involving procurement by some big government agencies.

We could do all these things through capacity building and training. We developed 20 trainers and 5 master trainers throughout government, and trained 2,000 individuals. The agencies responsible for the training were the International Trade Centre (ITC), the International Labor Organization (ILO), and the Bangladesh Institute of Management (BIM).

We based the procurement regulations, STDs, and requests for proposals on documents of the United Nations Commission on International Trade Law (UNCITRAL) and the World Bank. This was made possible by ITC and ILO. With their help, we were able to complete all this documentation. The benefit of their presence was such that the World Bank and other donors were confident that we had done a very good job, and these documents have been described by the World Bank and other donors as model documents and as a success.

As for capacity building, since the CPTU was responsible for framing the basic rules, we gave the responsibility for training to BIM. This was how we off-loaded our obligations and burdens.

Political commitment helped us bring about all these changes. So did support from the World Bank in respect of finance, technical advice, and sometimes intervention and interference.

Features of the Public Procurement Regulations

All the features related to public procurement are described in the Public Procurement Regulations of 2003.

The regulations provide for the inclusion of a tender evaluation committee. Out of the five members of the committee, two must be from outside the procuring entity. There is even a provision for the inclusion of outside experts from universities and civil society. Generally, we involve them in the technical evaluation committee under the tender evaluation committee.

The evaluation process—how to deal with evaluation and what steps to follow—is clear. No more than two committees can evaluate the tender. One is the technical evaluation committee and the other is the tender evaluation committee. One committee, the tender evaluation committee, is specified and mandated in the regulations. In very few cases, there are two committees.

The public procurement process is very clearly specified to reduce delay. We have specified the number of steps, and any more steps than those are regarded as a deviation. In this way, we have been able to reduce the time we previously took to register a tender.

The time required for the awarding process depends on whether it can be decided at the agency level or must be decided at a higher level. More time is needed if it must go to the secretary, and even more time if approval by the Prime Minister is needed.

We have delegated some different functions to lower-level agencies, including the agency of health and even local level agencies, so that they have more power and can finalize the tender process easily, quickly, and conveniently.

In the past, we had a legal system for arbitration but no complaint mechanism. We have instituted a complaint mechanism in the system by which the agency head can take complaints from the tenderers during the process of review. If the agency head cannot help the tenderers, they can go to the secretary. If they still cannot get help, they can go to an independent panel. We have formed three or five review committees, consisting of three parties: retired government servants, retired or active judges, and private persons from the Chamber of Commerce. The committees take turns in reviewing cases. This is how our complaint mechanism works.

Monitoring of compliance

We have a system for monitoring compliance, which the CPTU conducts to see how different agencies do their procurement. So the impact of uniformity is obvious in the framework. We have ensured competition, efficiency, and value for money. We have also reduced the processes. All these have resulted in a better investment climate in the country for both private and foreign investment.

Transparency and accountability has by and large been established, and fairness and competition in the processing of cases has improved. Previously, discretion and loopholes used to lead to corruption. Now we have less discretion in law enforcement and less corruption as well.

We have been able to disseminate information like the blacklist through the Web site. In addition to contractors' names, the procurement plans are published on the Web site.

As for compliance monitoring, we can assess our standing on the basis of the compliance or performance indicators of the OECD. Previously, the only authority was the Attorney-General's Office. Now, the CPTU is the authority that monitors physical performance activities of the Government. So public faith in the system has increased. The CPTU is the focal point for questions and complaints from the ministries. It coordinates government decisions regarding procurement design.

Future tasks

We drafted the Public Procurement Act in 2006. Previously, the government could change a law in a day because it was not an administrative order. Now the Public Procurement Act 2006 has passed the parliament. So we cannot change it without the consent of the parliament. But, as it is mandatory in the law to make rules to give effect to the law, the Public Procurement Regulations 2003 must be revised.

We sent the draft documents to ADB, the World Bank, the OECD Development Assistance Committee, and the UK Department for International Development (DFID) and they gave us feedback. We also met with the Bangladesh chapter of Transparency International, civil society representatives, chambers of commerce, and professors to discuss the draft rules. We finalized the draft rules and sent them to the Ministry of Law for final review two months ago. The rules are expected to be issued as early as this December.

In accordance with these procurement rules, we previously had nine documents, STDs. We have revised those nine and framed 12 new ones. Once

we issue the rules, we can also issue standard documents. We have formulated four guidelines to be used by the tender committees.

We have completed the first phase of the project and are now in the second phase, which started in September with World Bank support. The second phase has four components, including promoting policy reform and institutionalizing capacity development. We will also develop capacity at the sectoral or agency level. We will have an e-government procurement system in place in the next two years.

The role of the Philippine Government Procurement Policy Board in the fight against corruption

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As in other countries, government procurement has been a major source of corruption in the Philippines. Annual surveys of the Social Weather Station indicate that four out of the five top agencies perceived to be the most corrupt in the Philippines are those with large procurement budgets.¹

Riding on the platform of anti-corruption and good governance, Republic Act (RA) 9184, or the Government Procurement Reform Act, was passed in January 2003. RA 9184 introduced several reform measures, such as the institutionalization of civil society participation in government procurement and the introduction of transparency measures, such as the mandatory publication of invitations and the posting of awards in the electronic procurement system of the Philippine Government. With RA 9184, a multifarious approach to curbing corruption in public procurement was launched.

One reform measure introduced by RA 9184 was the creation of a central procurement authority, the Government Procurement Policy Board (GPPB). The GPPB acts as an oversight body with quasi-legislative, capacity development, and monitoring responsibilities. It does not procure on behalf of the national

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Government or any of its many offices, but provides the necessary leadership and policy direction for procurement reform.

This paper will introduce the GPPB by describing its powers and functions as prescribed by RA 9184 and its implementing rules and regulations. It will then explain how these functions contribute to the fight against corruption and the sustainability of procurement reform in the Philippines. It will end with a discussion of some challenges that currently face the GPPB in its anti-corruption initiatives.

The Philippine Government Procurement Policy Board

Functions of the GPPB

Policy making

RA 9184 grants the GPPB the power to jointly formulate with the Congressional Oversight Committee the implementing rules and regulations for RA 9184.² Once issued, these implementing rules and regulations may be amended, whenever necessary, by the GPPB within the parameters set by the law.³

The GPPB is also tasked with preparing a procurement operations manual for all offices and agencies of government. Such a manual provides a more understandable and step-by-step procedural guide to procuring entities in government. This tool is critical in ensuring that procurement rules remain standard across the bureaucracy and are easily applied during the day-to-day operations of the procuring entity.

Corruption thrives in a legal and regulatory framework that is convoluted and confusing. The GPPB, as the highest policy-making body in public procurement, ensures that rules and regulations remain consistent with each other. It also renders final and definitive opinions to address any confusion that may arise in the implementation of the law.

Capacity development

RA 9184 directs the GPPB to ensure that procuring entities regularly conduct procurement training programs.⁴ Section 63.1 (e) of the implementing rules and regulations explains this role more emphatically:

To establish a sustainable training program to develop the capacity of Government procurement officers and employees, and to ensure the conduct of regular procurement training programs by and for procuring entities.

A well-functioning public procurement system depends largely on the capability and professionalization of the procurement officials running the system. As with any other reform, the need to build and develop the capacity of the bureaucracy is critical in ensuring a more corruption-free public procurement environment.

Monitoring

Perhaps the most challenging role given to the GPPB is monitoring the implementation of RA 9184. Section 63.1 of the implementing rules and regulations states that the GPPB shall “ensure the proper implementation by procuring entities of the Act, this IRR-A [the Implementing Rules and Regulations], and all other relevant rules and regulations pertaining to public procurement.” The GPPB shall also “conduct an annual review of the effectiveness of the Act and recommend any amendments thereto, as may be necessary.”⁵

RA 9184 has been described as one of the best procurement laws in the world. It fosters a public procurement system that promotes transparency, competitiveness, public monitoring, and accountability. Thus, full enforcement of its provisions would assuredly curb corruption in public procurement.

Filipinos often chide themselves for passing great laws that cannot be implemented. The GPPB’s monitoring function is envisioned to deal with this drawback.

Composition and structure of the GPPB

GPPB as an interagency body

The GPPB is composed of high-level public officials from 12 government agencies—the National Economic and Development Authority (the central planning agency) and the Departments of Budget and Management, Public Works and Highways, Finance, Trade and Industry, Health, National Defense, Education, Interior and Local Government, Science and Technology, Transportation and Communications, and Energy.

The members of the GPPB, thus, fall into two categories: government agencies with large procurement budgets (the Departments of Public Works and Highways, Health, National Defense, Education, and Transportation and Communications); and oversight agencies (the National Economic and Development Authority and the Departments of Budget and Management, Finance, Interior and Local Government, Trade and Industry, Science and Technology, and Energy).

These agencies are joined by a private sector representative appointed by the President of the Philippines at the GPPB's recommendation, under Section 64 of RA 9184.

In addition, the GPPB may invite representatives from the Commission on Audit and other anti-corruption agencies as resource persons. A representative from the Presidential Anti-Graft Commission currently sits in on all GPPB meetings.

As an interagency body, the GPPB benefits from the insights of the big procuring entities, the oversight agencies, the private sector, and anti-corruption agencies. Its structure ensures that different opinions from different sectors and practitioners are considered before a policy, resolution, or opinion is formulated. More importantly, it is believed that the GPPB, acting in a collegial manner, is less prone to political pressure since its members are able to draw support from one another.

Technical support office

One disadvantage of an interagency body, however, is that it relies on the little extra time its members may dedicate to it. Since the GPPB's core members are 12 high-level public officials whose primary work takes up more than their regular office hours, it is difficult to expect these members to pay attention to the operational concerns of the office. To address this problem, RA 9184 and its implementing rules and regulations created a technical office to provide research, technical, and administrative support to the GPPB,⁶ including:

- Research-based procurement policy recommendations and rule drafting;
- Development and updating of the generic procurement manuals and standard bidding forms;
- Management and conduct of training in procurement systems and procedures;
- Evaluation of the effectiveness of the government procurement system and recommendation of improvements in systems and procedures;
- Monitoring of compliance with RA 9184 and assistance to procuring entities in improving their compliance;
- Monitoring of the implementation and effectiveness of the Philippine Government electronic procurement system; and
- Secretariat support.

Nevertheless, the most critical role of the technical support office is managing the daily operations of the GPPB. Since the GPPB meets only once a month, most of its day-to-day concerns are addressed by its technical support

office. Procuring entities can approach the technical support office staff for consultations and requests for guidance. The GPPB, through its technical support office, is able to maintain a help-desk facility, which addresses the many issues that face procuring entities in the implementation of the law. Most importantly, the technical support office is able to record and present to the GPPB the concerns of and feedback from government agencies related to their procurement activities.

Contribution to anti-corruption efforts

Uniform but dynamic procurement policies

Before the passage of RA 9184, the legal infrastructure for public procurement was fragmented and outdated. It was therefore easier for corruption to seep in and pervade the system.

RA 9184, as a reform measure, provides a single set of rules on public procurement. As an omnibus law, however, it cannot embody rules that address specific situations nor immediately respond and adjust to the ever-changing commercial and technological landscape. If there is one lesson learned from the past, it is that corruption thrives in confusion caused by outdated laws and inconsistent policies. The GPPB must thus ensure that procurement rules implementing RA 9184 remain simple, consistent, dynamic, and responsive to change.

The GPPB is empowered to amend the implementing rules and regulations of RA 9184 and issue policy resolutions within the parameters set by law. Thus, in the exercise of its quasi-legislative power, the GPPB is able to address unique procurement cases or allow the law to adapt to the changing times. In the past year, for instance, the GPPB had to confront issues such as the barter of military equipment and the consignment of medicines. It also had to develop a procurement manual for local governments to reconcile conflicting provisions of RA 9184 and the governing law on local governments, which have caused confusion in the implementation of procurement reforms at the subnational level.

The GPPB also issues policy resolutions that address gaps or loopholes in RA 9184. It provides safeguards that minimize the risk of violations and, hence, corruption, in public procurement. For example, the GPPB had to tighten the rules governing procurement by one government agency from another. It had to ensure that undue preference is not given to a specific sector of government to circumvent the rule on competitive bidding.

More importantly, the GPPB is able to link procurement reform with other reforms in government. It establishes the missing connection between procurement reforms and budgetary or financial management reforms. It ensures that of procurement is professionalized in line with ongoing reforms in the civil service. In sum, the GPPB charts the direction procurement reform has to take to ensure its sustainability.

Operational network of reform champions

Another lesson learned from the passage of RA 9184 is that a reform measure can succeed only with the full support of its stakeholders. In the implementation of RA 9184, the GPPB is the focal point where these stakeholders—government, civil society, private sector, and development partners—meet.

The GPPB is composed of 12 members belonging to different departments of the executive branch. Some of the reform champions who participated in the preparation of the draft legislative bill, which eventually became RA 9184, continue to be active members of the GPPB. Former Congressman Rolando G. Andaya, Jr., the principal sponsor of RA 9184, for example, is now the Secretary of Budget and Management and therefore chairs the GPPB. He recounts the legislative debates on RA 9184 whenever the GPPB needs to go back and revisit the rationale behind some of its provisions. Further, most of the members are public officials actively engaged in the procurement activities of their respective agencies. It is not unusual for the members to discuss their problems, whether in formal session or not, and seek the advice of other members toward their advocacy for procurement reform.

The GPPB also maintains very close ties with civil society organizations and the private sector. One reform measure under RA 9184 is the mandatory requirement for procuring entities to invite at least two observers—one from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a nongovernment organization—to sit in on its proceedings.⁷ The GPPB ensures that the private sector and nongovernment organizations that are interested in fielding observers are able to get the appropriate training and help that they need. In return, the civil society and private professional organizations help the GPPB in pinpointing agencies that are encountering problems in their procurement activities.

The GPPB is also the lead agency that dialogues with development partners toward its advocacy for the use of country systems in the implementation of foreign-funded projects. It jointly undertakes an objective assessment of the status of procurement reform in the Philippines through the

World Bank-led country procurement assessment review. Most importantly, through its partnership with multilateral and bilateral donor agencies, the GPPB is able to get feedback on the progress of its reforms and secure funding assistance to implement much-needed projects.

Developing a cadre of reform champions ensures a more corruption-free procurement system. If more stakeholders are engaged in the fight against corruption, the reformers in government can better withstand political pressure and continue the struggle against vested interests. Toward this objective, the GPPB functions as a focal point where procurement champions can meet and discuss strategies to further the reform. More importantly, in the exercise of its functions to develop the capacity and professionalize government procurement, it is in the best position to recruit more reform champions.

Current challenges

One of the challenges facing the GPPB is its role in investigating corrupt cases reported to it.

As the GPPB continues to advocate procurement reforms in the bureaucracy, it receives a growing number of complaints and reports on violations of RA 9184 and its implementing rules and regulations. Losing bidders air their grievances before the GPPB rather than anti-corruption agencies. It is also not uncommon for a government employee or a member of the private sector to confidentially report to the GPPB instances of favoritism or payoffs in the award of government contracts.

RA 9184 requires the GPPB, through its technical office, to monitor compliance with the law and assist procuring entities in improving their compliance, but does not grant it investigatory or prosecutorial powers. On the other hand, a reform measure under RA 9184 is the enforcement of accountability. RA 9184 clearly defines infractions or corrupt acts with the corresponding penal and administrative sanctions. It is therefore to the interest of the GPPB that complaints reported to it are investigated and, if found meritorious, properly prosecuted before anti-graft courts.

Another challenge facing the GPPB is the urgent need to develop the necessary tools to detect or identify the different types of corrupt acts that may take place in public procurement. Five years after the passage of RA 9184, the electronic procurement system of the Philippine Government, the primary source of information on government procurement, is already generating data that can be used to identify problematic procurement activities. The challenge is to

develop this capacity to analyze and use the data and report problems to the GPPB for immediate policy resolution.

The last, and perhaps most challenging, task is the need to continually enlist public support for procurement reform. As RA 9184 begins to make life harder for corrupt politicians and businessmen, moves to amend the law and relax the rules are getting stronger. Since the GPPB is at the center of procurement reform, it must learn to properly communicate to the public and encourage them to protect the achievements of the reform and help in moving the reform forward.

NOTES

- ¹ These are the Departments of Public Works and Highways, Education, Health, and National Defense. (Campos, Edgardo J., and Jose Luis Syquia. 2006. *Managing the Politics of Reform: Overhauling the Legal Infrastructure of Public Procurement in the Philippines*. World Bank Working Paper No. 70. page 3, citing the annual survey of the Social Weather Station in 2002)
- ² Sections 74 and 75, RA 9184.
- ³ Section 63 (b), RA 9184.
- ⁴ Section 63 (c), RA 9184.
- ⁵ Section 63 (d), RA 9184, and Section 63.1 (f) of its implementing rules and regulations.
- ⁶ Section 63, RA 9184.
- ⁷ Section 13, RA 9184.

What makes a good procurement oversight body?—Lessons from recent experience

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Procurement oversight bodies have been around for a long time, operating under a variety of labels. Traditionally, they have performed a number of administrative functions related to the operation of a country's procurement system, more often than not under the overall guidance of the local ministry of finance. The conclusions reached by the international development community, however, when it developed a set of new good practice approaches in 2000–2005 aimed at strengthening public procurement, financial management, governance and other country systems, was that these bodies were generally ineffectual and, at least partially as a result, previous reform efforts did not produce sustainable improvements. Consequently, the thinking about what role central procurement agencies should be playing is now strikingly different.

We need to understand more about this new approach to procurement systems and oversight bodies before we attempt to define the best way they can support the fight against corruption. After that we will look at the experience of countries in other regions that have set up their own oversight bodies at least partly on the basis of this new good-practice thinking, and only then finally come back to the purpose of the conference, to see how their experiences might be

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From 2002 to 2005, he helped set up the Joint OECD/World Bank Roundtable Initiative, which was aimed at strengthening procurement capacities in developing countries. Since then, he has worked independently for a variety of clients, including the OECD, the United Nations Development Programme, the World Bank, ADB, and the Inter-American Development Bank, helping their client countries with procurement reforms.

applied to improve anti-corruption programs. This topic is serious enough to deserve rigorous analysis, but unfortunately it may take five or ten more years before enough reliable data about procurement systems have been collected and are made available using this new assessment methodology to make this possible. Therefore, the results and recommendations presented today are exclusively those of the author and are based on his more than 35 years of experience in public procurement and reform. They are intended to provoke deeper thought and serious debate about these issues so that together we can quickly find more effective solutions. The clock is ticking.

Some background

The best and most comprehensive source to tap for this new thinking is in volume 3 of the OECD/Development Assistance Committee (DAC) Guidelines and Reference Series on Harmonising Donor Practices for Effective Aid Delivery published in 2005. Titled *Strengthening Procurement Capacities in Developing Countries*, volume 3 includes three procurement good-practice papers: one on how to mainstream procurement better in the country development context, the second on how to design better country-owned and country-led capacity development programs, and the third on how to benchmark procurement systems against agreed international standards and monitor their performance.

All three papers are driven by a different concept of procurement. Procurement systems are now thought to be dynamic and fluid: real ways of overcoming weaknesses can be developed only when issues are addressed in a systemic, holistic fashion, and the performance not only of procurement agencies but also of other public and private sector stakeholders is examined. Assessments should focus on procurement institutions and those in the enabling environment around them and their sustainable capacity, and not so much on the performance of individual procurement staff as in the past. Routine updating, reporting, and monitoring (best done by a capable oversight body) is essential so governments can detect and fix problems before they cause serious long-term damage.

Is there a standard definition for “good”?

Since it was published in 2005, the benchmarking tool in the last OECD/DAC good practice paper has been updated and converted into the Methodology for Assessment of National Procurement Systems Version 4, dated 17 July 2006, which is now in widespread use. The four-pillar structure for a procurement system shown in the chart below provides the basic structure for this

methodology. The individual indicators that “support” each pillar are shown in the table. Indicator 4 addresses the question of procurement oversight bodies, and therefore it is worth spending some time on it. This is the good-practice definition that answers the question above.

Procurement oversight bodies are addressed in pillar 2 and anti-corruption issues in pillar 4, although, as shown in this diagram, everything is interrelated. Imperfections in pillar 1 or problems in pillar 4 have a serious impact on the quality of procurement operations and the way the market responds to public sector bidding opportunities, i.e., on pillar 3.

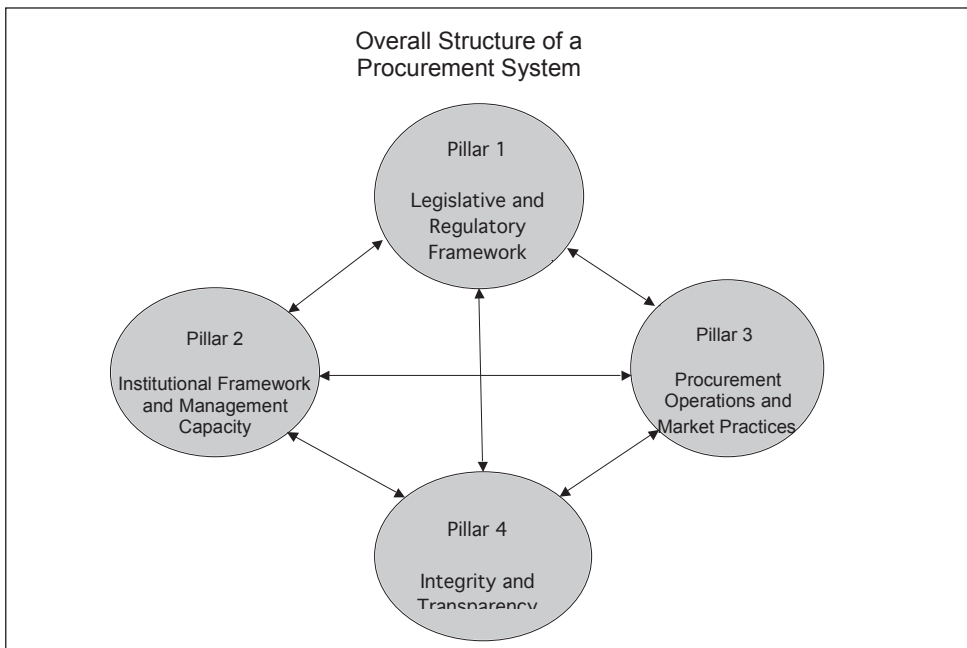


Table 1: Procurement Indicators

Pillar 1	Pillar 2	Pillar 3	Pillar 4
<i>Indicator 1</i> Scope of application	<i>Indicator 3</i> Integration of PR/PFM	<i>Indicator 6</i> Quality of procurement operations	<i>Indicator 9</i> Control and audit systems
<i>Indicator 2</i> Supporting documents and implementing regulations	<i>Indicator 4</i> Oversight body	<i>Indicator 7</i> Market performance	<i>Indicator 10</i> Appeals mechanisms
	<i>Indicator 5</i> Development capacity	<i>Indicator 8</i> Contract management and dispute resolution provisions	<i>Indicator 11</i> Transparency
			<i>Indicator 12</i> Ethics and anti-corruption measures

Viewing procurement systems from the more detailed indicator level permits more precise analysis. The Version 4 Assessment Methodology breaks down the issues addressed in the four pillars according to the 12 indicators in the table, with indicator 4 showing what current international good-practice thinking would rate as a “good” procurement oversight body and indicator 12 what a sound anti-corruption framework looks like.

So let us look more closely at indicator 4. This indicator is made up of the four sub-indicators paraphrased below:

- 4(a) Oversight functions are established in the legal framework and assigned to an agency or agencies with authority
- 4(b) Responsibilities include at least those in the scoring criteria for 4 (b)
- 4(c) The oversight agency has sufficient staff, funding, independence, and authority to exercise its duties
- 4(d) It does not carry out any function where there is a real or perceived conflict of interest

According to the Version 4 Assessment Methodology, the responsibilities mentioned in 4 (b) that are thought to be representative of a “good” oversight body (or bodies) are as follows:

- Provide advice to procuring agencies
- Draft changes in key documents in the legal framework
- Monitor the performance of public procurement
- Disseminate procurement information
- Manage statistical databases on public procurement
- Report to government on procurement activities and issues
- Develop and manage procurement reforms
- Provide tools and materials to support the capacity development of procuring entity staff

This is a very long list containing a number of different activities, which cannot be carried out successfully without the proper level of authority mentioned in sub-indicator 4 (a) and the staff and other resources described in sub-indicator 4 (c). And it is possible that in the next version of the methodology this list may be even longer. Important functions of some oversight bodies are not mentioned. What about the interface between government and the business community and civil society? Keeping these two groups informed about current procurement issues and sustaining a viable ongoing relationship with them and other stakeholders is necessary in any healthy procurement system, and it requires a different, more strategic, approach and skills than those described above. And what about another function: the handling of appeals of initial decisions on procurement complaints taken by the procuring entities themselves? For example, the Public Procurement and Disposal of Public Assets Authority in Uganda is handling these today, and it is an activity where sub-indicator 4 (d), the absence of any conflict of interest, is crucial.

Lessons from recent experience

The good-practice ideas incorporated in the Version 4 Assessment Methodology are still relatively new and the methodology is currently undergoing extensive pilot-testing in Asia and elsewhere. As a result, most of the assessments done since 2005 consist of simply an initial baseline (a "snapshot") of current system quality supported by some (but probably not enough) information about compliance at the procurement entity level and performance outcomes. Therefore, it is still too early to detect trends in compliance and system performance, or to measure the impact on quality of different reform components. This will be possible only when the updating process starts, and ultimately when the information resulting from the baseline assessments and updates is consolidated globally and analyzed—something the OECD is planning to do. That said, the author believes, on the basis of the 30 to 40+ assessments he has seen since 2005, that some interesting (and some discouraging) lessons about the nature and dynamics of procurement reform and how to improve the

impact that oversight bodies have on overall system quality are already beginning to emerge.

Lesson 1: Reforms require a system-wide approach and usually take a very long time

Virtually all of the procurement oversight bodies that the author has worked with over the past 10 years have gone through a similar two- or three-stage process. To launch even stage 1 of a reform requires high-level political and general public support. This results in good, high-profile attention being paid to the reform process, so it usually starts with a flourish. But stage 1 usually focuses primarily on pillar 1 issues (i.e., how to design a good legal framework supported by sound implementing regulations and documents), and often the designers of reforms pay insufficient attention to important pillar 2, 3, and 4 issues. This creates the serious risk that false expectations will be raised about how quickly significant improvements will emerge in terms of increased efficiency, greater savings, and reduced corruption.

And if these hopes are raised too high, and reform components are inevitably stalled or other difficulties arise, opposition to the next stage of reform can then emerge, serious enough to jeopardize the entire reform process. Successful reforms require that:

- proper attention be paid to areas of weakness in all parts of the procurement system,
- enough time be allowed for each component in the overall reform program,
- implementation be divided into more realistic phases,
- progress be carefully monitored and openly reported,
- when problems arise, changes be introduced flexibly and creatively, and
- public expectations about expected results be carefully managed.

When the procurement good practices were being developed by the OECD/DAC group in 2002–2004, the participants debated whether to include an estimate of the length of time even a well-designed reform process might take. But in the end the capacity-development paper simply said that “a flexible, medium to long term outlook is considered essential for success.” The author’s experience seems to indicate, however, that “long term” may take as much as 10, 15, or even 20 years, and that most systems with active reform programs are only nearing the end of stage 1. Their legal frameworks may have been improved, and they may have established an oversight body, but compliance

and capacity at the procuring entities remain weak. The experience of Ghana and Uganda with their procurement reforms is enlightening in this regard.

The reform process in Ghana, which most consider well managed since its Public Procurement Board (PPB) was finally established less than two years ago, has been going on for more than a decade, but overall quality is still rated at less than 50%. The PPB is an excellent example of a good procurement oversight body in terms of its membership and the functions that it carries out, but because of delays in funding and the appointment process, it took more than two years to establish. Ghana is the only country to try to develop a new assessment tool aimed at the procuring entity level, but after five years the tool is still undergoing testing, so it has not yet produced any significant performance improvements at the entity level, which would eventually raise its scores for pillar 3, indicator 6. Although this tool was also supposed to automatically generate comprehensive data about ongoing procurement performance for central analysis by the PPB, it is not yet able to do so.

The Uganda reform was launched in 1999 when a task force was set up to improve transparency, fight waste and corruption, improve financial accountability, integrate better the budgetary and procurement processes, create a more attractive investment climate by lowering risk, increase competition, and streamline procurement through greater use of e-commerce. A new law passed in 2003 established these core principles of procurement: transparency, accountability, fairness, maximum competition, and value for money. Accountability was decentralized and an oversight body, the Public Procurement and Disposal of Public Assets Authority (PPDPA), was set up. The PPDPA, like the board in Ghana, is considered another good example of an effective oversight body. Three years later, pillars 1 and 2 of the system were considered generally adequate, but the PPDPA believes there is no evidence that the reforms have reduced the incidence of corruption. It is still a major problem in large infrastructure projects and the local government tender boards, which handle 34% of all public procurement. The PPDPA fears that high-level political support for anti-corruption programs is eroding.

Lesson 2: Issues can delay reform

A number of other specific issues seem to be diluting the impact of otherwise well-intended reforms. We have reviewed the ideal structure of a good oversight body, and given two examples of good organizations in Africa. Oversight bodies also exist in Latin America, but many were created in response to high-profile domestic corruption scandals that occurred before the OECD/DAC good practices were published and the dominant players in the

region, e.g., middle-income countries (MICs) like Brazil, Mexico, Chile, and Argentina, were not active participants in that process. As a result, the approach taken in the reforms in this region and the oversight bodies that were created there place what the good practices would call excessive emphasis on legalistic approaches to improving control and compliance. They often ignore other important practical issues, such as extending the reach of the legal framework to capture more of public sector procurement and figuring out how to improve process efficiency and competition. The examples of Mexico and Peru highlight in different ways the consequences of this approach to reform.

The latest procurement assessment carried out in Mexico is being finalized. It was initiated at the request of the new President Calderon after he announced in early 2007 a very ambitious development program. He wanted the independent opinion of the World Bank and the Inter-American Development Bank of whether the existing Mexican procurement framework and institutions could deliver this program reliably and generate the savings required to help finance it—a question with obvious political consequences. Their preliminary conclusion is a strong “no.” The level of competition for public contracts is limited. Some international competition is permitted when required under the North American Free Trade Agreement (NAFTA), but the national law is highly protectionist and discourages open competition even at the national level. The system provides a rigorous audit mechanism, but corruption is still prevalent. The procurement law is basically sound, but it is excessively detailed and does not extend to state-owned enterprises, some individual ministries, or state governments, all of which are free to develop their own procedures and documents. No regulations govern the selection of consultants who will be needed to support the Government's new program. And no oversight body is charged with the responsibility of managing procurement operations government-wide. The Supreme Federal Audit Office is supposed to be carrying out this function, but it places too much emphasis on control. Little attention is being paid to efficiency, delivery of services, and generation of savings.

A similar situation arose last spring when a political furor erupted in the local press over the procurement of a number of police vehicles and ambulances at high prices that were allegedly corrupt. However, under the surface a more serious problem existed. Earlier, parliament had passed an emergency law to speed up procurement so that surplus budget funds could be used for social programs. But it had the opposite effect. None of the overly complicated procedures in the law, or the time-consuming prior review requirements in place, had been simplified or streamlined. The entire burden of awarding contracts quicker was placed on the bidder community, which was given less time to ask for clarifications, prepare and submit their bids, etc. The

result was widespread paralysis in government procurement, with most agencies refusing to do any procurement at all out of fear they would be criticized in future audits. CONSUCODE is, at least in name, supposed to carry out procurement oversight in Peru, but it is burdened with an excessively high amount of prior reviews (creating a conflict of interest) and it lacks the authority and capacity to resolve system-wide problems.

Lesson 3: Past efforts to develop better procurement capacity have not worked

In virtually all the recent assessments the author has participated in or seen, the results for quality of procurement capacity at the entity level remain uniformly low, even in countries where serious training programs have been carried out. The approach taken in the design of most capacity development programs today still seems to be focused on individual procurement staff capabilities and not on the institutions across the system in which these staff work. And they generally do not incorporate any of the good ideas that were recommended in the OECD/DAC good-practice papers.

An admirable exception to this statement might be right here in Indonesia. The Center for Public Procurement Reform, an agency in the Ministry of Planning, has carried out nationwide testing to judge the qualifications of procurement staff, and it is using the results to develop a comprehensive strategy for overcoming areas of weakness, which includes, the author understands, the very good idea of setting up a system to certify procurement “professionals.” Up until recently, the center has been carrying out the oversight function. An oversight body (the National Public Procurement Office, or LPKPP) was supposed to have been created by 1 January 2005 but was not. The press reported in August that the LPKPP would finally be established last September.

However, while the kind of program described above will ultimately help address the problem of procurement quality at the transaction level, it will not correct the institutional weaknesses that exist in procuring entities across government, much less the weaknesses in the oversight body and the other agencies that are carrying out important procurement-related activities, such as audits. Experience has shown that the cumulative impact of poor performance by these agencies can have as negative an impact on overall system performance as poor performance by the procuring entities themselves. The author is convinced that, even though the importance of addressing institutional aspects was stressed in the good-practice papers, it has not yet been mainstreamed and used to improve the design of capacity development programs.

Conclusions

For procurement systems to better support anti-corruption efforts worldwide, a new approach to procurement capacity development and reform is needed—one that listens more closely to the advice contained in the OECD/DAC good practices. A more systems-wide, institution-focused view must consistently be taken when assessments of procurement quality are carried out and when reforms are designed. The author believes governments should strongly consider the following recommendations, which his experience tells him will be more effective than the more traditional approaches being used in the vast majority of current reform programs. Because improvements in public procurement performance are urgently needed, simply sitting back and waiting for the assessment methodology to be perfected would be irresponsible. The clock is ticking, savings are being lost, and populations are being denied better services. Governments should seriously consider launching a few pilot programs addressing the issues described below to jump-start the elusive system-strengthening process all countries have been struggling to promote for years.

Recommendation 1: Strengthen oversight bodies

Carrying out a targeted sustainable reform effort is always difficult, but without a strong oversight body it can be virtually impossible. The good-practice ideas in indicator 4 about the ideal structure, function, authority, etc., of an oversight body are sound, and there are some good examples where this has been done well, e.g., in the Philippines and Ghana. But that alone is not enough. No matter how perfectly they have been constituted vis-à-vis the good-practice standards, these bodies cannot operate effectively if other features in the system do not operate correctly. We will mention only three.

Expand the reach of the legal framework

The legal frameworks in many systems in Latin America, e.g., Mexico and Argentina, do not govern the procurement of works, which is typically left to the ministry of public works. In Panama a different law governs social sector procurement of health and education sector goods and works. Most legal frameworks, including those in Mexico, Peru, Argentina, Russia, Vietnam, and Indonesia, do not capture the substantial amount of procurement carried out by state-owned enterprises (SOEs). To perform their various oversight functions efficiently, the legal framework the body oversees should ideally govern all of public procurement. It is always hard to change existing laws, but the effort is worthwhile. A long-term campaign should be carried out to expand the reach of the legal framework.

Establish better reporting mechanisms

Oversight bodies cannot carry out their core functions if they do not receive good and timely information about ongoing performance (see sub-indicator 5 [b] in the Assessment Methodology.) This is a universal weakness that showed up in all the assessments the author has seen and is cited even as a problem in developed-country systems (e.g., in the UK). Regardless of what priorities are guiding the current reform program agenda, better reporting systems need to be introduced. Without them, oversight bodies will be forced to continue operating in the dark and will remain unable to detect negative trends and remedy them before they cause serious damage.

Create national capacity to conduct system assessments

And in parallel, because the kind of careful monitoring recommended can be done only when a reliable baseline assessment of quality exists and periodic updates are conducted, all governments should work to establish a national capacity to carry out regular assessments, rather than rely on more expensive donor-financed assessments, which do not reinforce government ownership over their own reforms. Donors can be used to validate the results—a useful feature that increases the credibility of the results and can promote greater market interest in public contracts.

Recommendation 2: Use new good-practice concepts when designing capacity development components

“Capacity” is the ability of people, organisations/institutions and society as a whole to successfully manage their affairs. “Capacity development” is the process of unleashing, conserving, creating, strengthening and maintaining capacity over time.

Source: OECD/DAC Task Force on Capacity Development, 2004

At this point, most of the good-practice ideas that emerged from the original roundtable procurement initiative are well known: for example, the importance of (i) maintaining country ownership, (ii) actively involving key stakeholders, (iii) adopting a bottom-up rather than top-down approach, (iv) always starting with good needs assessments, (v) focusing on procurement institutions and how they interact with other agencies in the enabling environment around them, (vi) avoiding an overreliance on negative incentives and trying to balance them with positive ones, (vii) closely monitoring reforms and flexibly managing them using an “entrepreneurial” approach, (viii) being quick to seize even narrow windows of opportunity to plant seeds for future improvements, (ix) supporting reforms with a robust communications strategy to

help overcome the natural resistance to change, and others. Most oversight bodies have not learned how to use most of these approaches very well. They should improve their ability to incorporate these into future reforms as these hold the key to successfully completing stage one and moving on to achieving further improvements.

Other specific actions recommended in this regard are as follows.

Adopt a more system-wide institutional focus

In this paper, the feature in the above list the author believes has been particularly overlooked in recent procurement reforms and therefore has damaged their long-term impact is (v): the need for a better institutional focus. Good procurement requires two things: competent staff, and viable institutions in which they can work, i.e., those that:

- recognize the benefits of having an efficient procurement operation;
- know their procurement workload and the procurement skills they specifically need;
- follow appropriate hiring and promotion practices giving due weight to professional qualifications and performance;
- assign accountabilities properly; and
- have an appropriate code of ethics, and a system of internal checks, balances, and controls.

What can oversight bodies do to address this problem? Most oversight bodies are in a position to work directly to introduce improvements in the legal framework, but they have little direct control or influence that would enable them to persuade the procuring entities to change the way they are structured, or, better yet, force them to improve their approach to governance.

Forge a coalition of government agencies to design an institutional strengthening pilot for procuring entities

Some approaches that can and should be considered are possible, however. The best, but obviously difficult, long-term solution would be for the procurement oversight body to forge a coalition involving a range of government ministries and agencies with large procurement requirements, the central audit authority, and the government agency responsible for the civil service to brainstorm ways of strengthening the internal structure of the agencies in which procuring entities operate, in terms of both procurement performance and (back to the purpose of this seminar) their overall governance arrangements and ability to resist corruption.

Revise the national procurement handbook to incorporate institutional issues

Another, quicker, approach that is more directly within the power of oversight bodies would be to change in parallel the approach being taken to one of the procurement documents thought to be useful in making sure procuring entities comply better with the regulatory framework—procurement user manuals or handbooks (see sub-indicator 2 [e]). As currently described in the OECD Assessment Methodology, these manuals are supposed to focus on the specific procurement procedures and processes imposed by the legal framework. Most that the author has seen, however, are written in academic, theoretical language and lack the kind of practical advice that working-level staff need to carry out their day-to-day operations better. Therefore, an effort to improve the quality and user-friendliness of these manuals would be well justified. But the impact of these manuals would be significantly improved if a section were added at the start explaining the hiring, promoting, filing, reporting, and other practices that good entities should follow, and also describing the system of accountabilities, internal controls, ethical codes, conflict-of-interest policies, and other checks and balances they should have in place. Procuring entity staff and management would thus be introduced to the governance improvements they should be considering to improve day-to-day procurement quality. To be sustainable, however, this step would have to be followed by the introduction of formal government regulations enforcing these requirements once the process outlined in the recommendation above is completed.

Recommendation 3: Include reform components addressing areas of weakness with good anti-corruption impact

Start using the OECD/DAC Assessment Methodology

The new assessment methodology is too new for it to have been used in very many of the reforms the author has seen, but it is a very useful tool that will improve the design, reliability, and impact of future reform programs. Since a leadership role has been given to oversight bodies over procurement reforms, however, they should develop the skill to use this tool competently and be able to explain the good-practice standards that back it up. Ultimately they should strive to become the best national source for reliable information about the good practices and participate in international forums like the ongoing OECD/World Bank procurement joint venture, which has been charged with continuing development of the draft procurement system assessment methodology being used today. Providing feedback about the effectiveness of this tool will make it possible to introduce good improvements over time.

Target areas where the most important weaknesses exist

Because the new methodology is becoming a recognized, unbiased way to pinpoint areas of weakness compared with international good practice, it is a powerful new addition to the arsenal of tools available. This kind of useful information was generally not available at this level of detail when previous procurement reforms were designed. The result is that most reforms ended up addressing pillar 1 issues and a few others of interest primarily to key donors, but left untouched perhaps more serious weaknesses in pillars 2, 3, and 4.

In the recent round of baseline system assessments that the author has participated in, the scores in most countries have ended up highest for pillar 1 (despite the weakness relating to coverage mentioned above). And the scores for these other areas at the sub-indicator level, particularly those relating to issues of governance at the procuring entity level, have been very low, even 0 in countries that have only recently started a serious reform effort. The actual situation in each country varies, but this would seem to justify shifting the major reform focus now toward procuring entities and the governance issues they face. At least 10 sub-indicators all relate to issues concerning the internal structure, practices, and operations of procuring entities and should be seriously considered as components in a possible reform program (see below).

Pay special attention to areas of vulnerability to corruption

The sub-indicators mentioned above address the following issues:

- 5(d) Use of quality assurance standards for procurement performance and in staff performance appraisals
- 6(a) Competence levels of procurement staff and the use of competitive recruitment practices
- 6(c) Suitability of record-keeping practices for procurement-related documents
- 6(d) Correct delegation of authority and responsibility
- 8(a) Proper administration of contracts during implementation
- 8(b) Existence of internal controls and audit procedures, and provisions for checks and balances for procurement processing
- 9(a) Follow-up of audit recommendations, in an environment that fosters compliance
- 9(c) Internal controls providing management with information on compliance and permitting timely action
- 9(d) Sufficiently well-defined internal control systems to support performance audits

11 (a) Routine publication of information about procurement, preferably using information technology

The quality of a procurement system can be vastly improved by working on just a few of these problem areas, all of which are directly related to governance at the procuring entity level. And strengthening areas of weak governance will also reduce the risk of corruption. Deciding which of these issues should be included in an upcoming reform effort will depend, of course, on country circumstances, and it will take time because it should involve a close partnership between the procurement oversight body and its anti-corruption agency counterparts. But the benefits to be gained are substantial. There is a strong link between good governance and the ability of procurement systems to mitigate the risk of corruption.

Chapter 3

The potential of new technologies to prevent bribery in procurement: e-announcements, e-bidding and e-procurement

Electronic media have the potential to contribute to reducing bribery risks in public procurement: they limit face-to-face contacts between suppliers and procurement personnel, allow the efficient distribution of information to a large number of potential suppliers at low cost, increase transparency of forthcoming and current tender opportunities and collect evidence throughout the process that can help trace bribery. As electronic media become widely available in an increasing number of Asian and Pacific countries, their use in public procurement is rising.

Technology alone, however, will not help reduce corruption—the potential to curb bribery only unfolds if electronic tools are employed to reduce bribery risks and if mechanisms are tailored for this specific purpose. Experience from countries that have been forerunners in the implementation of electronic public procurement reveals the strong potential of different media to reduce bribery in procurement, as well as highlights pitfalls and risks related to the use of e-procurement.

One potential benefit of electronic procurement is increased transparency, as a survey on the impact and benefits of e-procurement in 14 countries has shown; providers and users of e-procurement services in these countries ranked greater transparency, competition, and efficiency as the most significant benefits of e-procurement.

The introduction of e-procurement only complements, and can not replace, a comprehensive regulatory approach. Experience from Indonesia and

India further indicates that e-procurement brings new risks that need to be mastered in order to benefit from e-procurement in the fight against corruption.

The impact of e-procurement on corruption: The potential of e-procurement for curbing corruption risks

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Transparency International has found that public procurement presents one of the highest risks of corruption. Systematic corruption has been estimated to account for 20%–30% of government procurement, and maybe more. The curtailing of procurement corruption may be one of the most effective economic development programs that a country can adopt.¹

Much of what we heard in earlier sessions of this conference reflected the traditional reform responses to the issues. Traditional reform agendas for public procurement have started with a reform of the legislation and regulations, followed by formalization of processes around these regulations and some associated training.

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Traditional reform agendas

A target for procurement regulatory reform has specifically been the discretionary power of officials, which is perceived as presenting high risk:

- “The discretionary power of public officials, and the corresponding opportunities for abuse of power, can be reduced...eliminating, for example, ‘gatekeepers’ who are in a position to collect illegal tolls from users, or streamlining the steps required to gain government approvals, serv[ing] to reduce the opportunities for delay and discretion—the breeding ground of corrupt practice.”²
- “The higher the degree of regulatory discretion, the higher the incidence of bribery of officials.”³
- “Whenever regulatory officials have discretion, an incentive for bribery exists.”⁴

To minimize discretion, the procurement framework is often codified into comprehensive regulatory rule sets that prescribe processes for as many specific cases as possible. Thus, procurement is largely defined in terms of the regulations around it and compliance with these regulations.

An attempt to facilitate and standardize procurement regulations is the Model Law on Procurement of Goods, Construction and Services developed by the United Nations Commission on International Trade Law (UNCITRAL, 1994) through its Working Group on the New International Economic Order. This model law was formalized to guide countries in evaluating and modernizing their procurement laws and practices.

Micro-regulation of the process, while often considered crucial, also has the perverse and unintended consequence of eroding the skill requirements of procurement officials, thereby undermining professionalism in this activity—a further corruption risk. Procurement training in this context consists of learning the rules. This may also erode accountability except in terms of compliance.

Significantly, the transparency goal of this regulatory model can also be self-defeating: the daunting volume of regulations reduces transparency by making the processes difficult for stakeholders such as business to comprehend. Similarly, it is observed that: “The impact of new rules on the challenge of corruption has regularly been overestimated. Judicial tools are insufficient unless the risk for those involved in corruption is increased.”⁵

Finally, the regulatory approach, like any other, needs to be assessed in terms of the degree to which it delivers against its objectives and, if possible, compared with alternative approaches, the immediate objective being transparency, and the ultimate goal, corruption control. Evidence suggests that

countries with an abundance of such laws often experience the very same problems as those where laws are subsumed into mainstream administration.

Transparency

While transparency is the foundation for anti-corruption agenda and is a precondition for accountability, transparency essentially represents information access. The OECD Global Forum (2004) titled *Governance: Fighting Corruption and Promoting Integrity in Public Procurement*⁶ agreed that transparency is among the most effective deterrents to corruption in public procurement. "Transparent procedures allow a wide variety of stakeholders to scrutinize the decisions and performance of public officials and contractors. This scrutiny, in addition to other mechanisms, helps keep officials and contractors accountable. Conversely, the lack of transparency creates a haven for corruption" and represents one of the major threats to the integrity of the procurement process.

"The belief that increased transparency can achieve not only more meaningful levels of accountability, but can do so in a highly cost-effective fashion, is now expressed universally."⁷

Transparency is recognized as a precondition to allow stakeholders to exercise scrutiny over decisions and performance of public officials and contractors, thereby minimizing their capacity to abuse their discretionary power. This is a matter of relevant and timely information access to all stakeholders.

It is in driving this transparency agenda that technology, or specifically *information* technology, has such powerful potential.

Impact of technology

Procurement of goods, works, and services through Internet-based information technologies (e-procurement) is emerging worldwide with the potential to reform processes, improve market access, and promote integrity in public procurement. E-procurement, when properly designed, can drastically reduce the cost of information while at the same time facilitating access to information. The strength of e-procurement in the anti-corruption agenda arises from this capacity to greatly reduce the cost and increase the accessibility of information, as well as automate and thereby reduce discretion in practices prone to corruption.

E-procurement can also be a means of standardizing and monitoring processes, thereby facilitating the control and reduction of discretion through

benchmarking. Decisions become comparable and histories profiled, thereby allowing for internal control, audit, and exception reporting.

E-procurement can have several benefits. It

- enhances management and audit data and transparency;
- automates processes that might otherwise attract bribery;
- provides real-time information systems, including real-time bidding;
- facilitates supplier management, including identifying past performance;
- reduces discretion in calls for quotations for small acquisitions;
- applies policies and rules more consistently at each phase;
- simplifies processes, for example, by allowing payment through purchase cards;
- reduces the costs of competition through one-time registration; and
- makes document transmission efficient and secure.

Electronic standardized catalogs including product and service classifications also facilitate the creation of more meaningful management information and allow for more accurate price and supplier comparisons. Moreover, e-procurement systems can also be configured to provide gatekeeper roles in management checklists and authorizations, to strengthen control and accountability.

E-procurement implies procurement reform

E-procurement is a reform program rather than a software program. It does not replace the need for procurement law reform but rather complements this traditional approach.

These technologies do more than simply provide access to information: the effective application of these technologies requires that processes be formally defined, lines of authority and accountability clearly specified, and procedures and terms and conditions standardized. Thus, e-procurement is not simply the application of technology to existing processes, but a reform process in itself that requires, in many instances, that traditional processes be modified or abolished, and that management processes, protocols, and procedures be standardized, reformatted, and often simplified for greater transparency. E-procurement also requires new training of both procurement officials and business stakeholders, and even a public awareness program to develop civil oversight. Standardization itself with the appropriate computer protocols acts, among others, to reduce discretion of public officials.

It has been noted that transparency is a cornerstone of anti-corruption programs, and transparency means comprehensive access to relevant information. This is precisely what information technologies should be designed to exploit. An approach to e-procurement that simply maps existing processes and protocols into the online environment will not achieve the potential.

Reconciliation of process control with efficiency

The enhanced transparency arising from the application of technology to the procurement function delivers directly what many rules and regulations seek to do indirectly. Both for high-value bidding exercises and low-value purchasing, procurement regulations are usually aimed at ensuring transparency through due process by stipulating procedural steps. The outcome of this is, as already noted, often a lack of transparency because of overregulation. Technology can bypass much of this by delivering very low-cost audit paths and highly accessible activity records: transparency is delivered more directly.

E-procurement adds more than transparency, however. By automating some basic process controls such as the distribution of forms and the acceptance of bidding documents, this technology removes officials from steps that have often been associated with bribery.

Thus, technology has effects at three levels. First, technology can reduce the monopoly or rents available by increasing competition. Second, technology, when applied to standardize and regularize processes, will reduce discretion by officials to arbitrarily vary many processes to bias the outcome. Finally, technology can significantly increase transparency through its capacity to track, retrieve, and process information.

Complementary functions

Clearly e-procurement can greatly strengthen corruption detection in public procurement. It strengthens the effectiveness of anti-corruption institutions, civil oversight, and sanctions, rather than replaces them.

E-procurement, if properly designed and implemented, can significantly enhance the anti-corruption agenda. However e-procurement, like other anti-corruption initiatives, cannot deliver these outcomes in a vacuum. Much greater access to audit information will be of little benefit if the role of audit itself is weak. Similarly, improved information and systems to detect collusion will be of little benefit if anti-trust legislation is ineffective. Online systems will be of little benefit if officials are also permitted to conduct procurement offline. And,

ultimately, enhanced corruption detection capabilities will mean little if the courts are corrupt or the public is indifferent. E-procurement also requires other reform such as the ways in which audits are undertaken, the training of procurement officials, and the services provided to the business sector.

System design

The benefits of technology do not automatically arise simply because technologies are applied, but instead are the result of design, implementation, and associated reforms. For example, the implementation of an e-bidding service requires the posting of all bidding information on a single Internet site, streamlining traditional management and information systems, and facilitating oversight by the general public.

The functional capabilities that make up an e-bidding service suitable for public procurement in most countries include:

- A single central site;
- A supplier registry;
- A complaints function;
- Downloading of bid documents and technical drawings;
- Uploading of bid documents and technical drawings;
- A capacity for suppliers to use the site to request hard copies;
- Intelligent search facilities by locality, business type, and value if applicable;
- All procurement policies and regulations for each department;
- Annual and quarterly procurement plans for each department;
- Advertising of bid opportunities online;
- Early advice on bids currently under preparation in public agencies;
- Electronic bidding by suppliers;
- Customized e-mail/SMS notification of new bids and amendments to suppliers;
- Online tracking capacity for suppliers in relation to their bid processing;
- Online data and indicators on major procurement operations;
- Contract award information;
- Archived contracts with public interrogation capabilities;
- Authenticated supplier histories and reports;
- A secure procurement management and information system that enables, for each step, decision, or activity, audit trails, access logs, and comprehensive management information, allowing for aggregation as well as disaggregation down to the individual officer level.

The provision of information on a single Internet site about the bidding processes will generate the dynamics involved in the use of this Internet site by

government agencies and suppliers. This high-profile site will also promote ease of access to information and therefore civil oversight.

Because e-bidding procedures are similar to traditional bids, the laws and standards already in effect often apply.

Similarly technology assists with contract management. Government agencies typically manage numerous contract relationships simultaneously, each with various deadlines, expiry times, conditions, and performance criteria, and often without any standardization between contracts for easy monitoring. The opportunities for corruption in contract management are acute. There have been cases in various jurisdictions where important schedules, conditions, and performance criteria have been overlooked. For construction contracts, Transparency International has reported that the problems are even more entrenched. An e-contract management system can be designed to address many of these issues, standardize processes, exploit templates and automatic "bring-ups," and strengthen transparency and efficiency for both government and businesses.

This task also includes the preparation of final evaluations of contract performance based on previously defined parameters. These evaluations are then used to compile records of each process, identify best practices, and systematize the information on each supplier's performance for use in subsequent operations.

The major contracting agencies and suppliers, especially for works contracts, can participate in the development workflow management, bring-ups, and approvals templates for online performance management of large contracts. The prospects for greater transparency in this area are considerable.

E-procurement information systems

From the foregoing discussion, it is clear that government procurement processes generate a large amount of information. In the case of bidding processes the information relevant to transparency and accountability includes:

- Bid details and identifiers;
- Bid addenda;
- Potential bidders;
- Bid submissions;
- Bid workflow actions;
- Bid method roles and actions;
- Suppliers (from supplier register);
- Government personnel (from buyer register);

- Government offices (from corporate facilities register).

Similarly government procurement based on the use of online price quotes or sometimes framework contracts also generates large amounts of data. This method is to be used for low-value goods and services, for which bids are not required; instead, a list of sources of supply is used for such purchases.

The information generated during e-procurement processes can be automatically entered into a database for subsequent use in auditing and reviewing individual transactions and classifying information by purchasing individuals, organization, suppliers, region, price, type of good, and any combination of these criteria. This information is basic for oversight by civil supervisory and auditing units, budgeting, etc. These statistics furnished by the system can be used to monitor practices and control corruption by individual officials through profiling of their activities.

E-bidding promotes transparency primarily by increasing information access directly by the business sector and civil society generally. For small purchases, the mechanism is different. Transparency in this case is ensured by the development of "data warehouses," or databases designed to allow comprehensive analyses of all aspects of purchasing and the behavior of purchasing officers and suppliers.

E-procurement risks

E-procurement is itself not without risk of corruption. The heavy use of computer systems exposes new vulnerabilities around system integrity and security. Clearly also incorrect data can be entered in relation to any project or contract, although the much stronger capability through e-procurement to cross-reference and audit information makes this form of corruption more difficult. Corrupted contract bidding processes will have security risks, although these are often less than those under traditional procurement, which also include physical threats to individuals submitting a bid.

Some jurisdictions have introduced online tender submission without any security technologies at all. This can even enhance the risk of corruption by reducing the barriers to improper access of submissions before the submission deadline has closed. Security breaches in the online environment also tend to be of higher visibility than for traditional procurement and as such have greater potential to undermine confidence in procurement reform.

Greater areas of risk for e-procurement often arise from the lack of understanding of some of the key design issues and governance requirements

such as the need for open access for suppliers, open standards (such as for catalogs) that reduce the barriers to interoperability of systems, the need for sound management systems around security, and appropriate business models that do not restrict or discourage use.

Some countries also sometimes depend significantly on the application of digital certificates as another security overlay. Countries have required that the authentication processes to obtain a digital certificate requires the bidder to physically attend a local office, thus effectively disqualifying numerous potential international bidders. These issues can be significant barriers to competition.

Results

The foregoing discussion has identified significant potential outcomes from the introduction of e-procurement capabilities and applications. The actual effects of technology on the procurement environment should be evaluated in terms of the broad objectives of transparency of process and efficiency, and the direct and indirect impact on corruption in procurement.

E-procurement programs implemented in Korea, Mexico, Italy, Brazil, and Australia are examples that demonstrate the innovative use of information technology to prevent and control corruption in public procurement and which have reported significant increases in transparency and public confidence.

While there has yet to be a definitive study to quantify the impact of technology on procurement corruption, research into e-GP by the multilateral development banks (MDBs) has revealed some supporting information. A comprehensive study of the effects of technology on procurement corruption should seek to measure not only the overall before-and-after levels of corruption but also changes in the levels of public, media, and business awareness and perceptions of the issues. The measure of perceptions toward public procurement is especially important, as it reflects the level of public confidence in its governance. Such an assessment would need to be carefully designed, given that there have been several observations where e-procurement has experienced negative feedback from users, but on closer analysis these were corrupt users who had lost out from this innovation.

A study by the Curtin University of Technology, sponsored by the MDBs, has reported the experiences from 14 countries from Europe, Asia-Oceania, and South America. The comments from respondent countries have been provided in terms of the providers of the procurement services and systems (providers) as well as for the buyers and suppliers that use the services and systems (users). The reported benefits of e-procurement from this sample are listed in table 1.

Table 1: Benefits of Using the Systems (All Regions)*

Priority	For Providers of e-Procurement Services and Systems	For Users of E-Procurement Services and Systems
1	Improved transparency of the process (9)	Reduced time for procurement (7)
2	Larger pool of suppliers, increased competition (9)	Improved access to procurement opportunities via a single national portal (5)
3	Reduced cost to provide the procurement service (6)	Improved transparency of the process (5)
4	Reduced time for the procurement process (6)	Reduced errors in process and documentation for buyers (2)
5	Access to better information for decision making and assessment of issues (4)	Sophisticated market intelligence based on past transaction history and record (2)
6	Better consistency of process via standard process and documentation (3)	Increased participation in the market (1)
7	Improved efficiency and effectiveness (3)	Better work integration for buyers(1)
8	Improved engagement / communication with suppliers (3)	SME promotion (1)
9	Better audit trail of the process and transactions (2)	Transparent and secure way to cut costs and to make real savings (1)
10	Guaranteed quality standards in PA purchases (1)	Access to price comparisons (1)
11	Reduced errors in process and documentation (1)	Time- and cost-effectiveness (1)
12	Reduced use of paper (1)	Product standardization through international catalog use (1)
13	Timely announcement of procurement information (1)	Less paperwork (1)
14	Promotion of SMEs worldwide (1)	

*The numbers in brackets indicate the number of responses out of 14 countries.

The system providers were predominately either private sector or a public-private consortium or contracted arrangement. Table 1 shows that providers of e-procurement services ranked greater transparency as its most significant benefit while users (suppliers) also ranked this highly. Both providers and users also identified greater competition as a significant outcome and also, as discussed, a counter-corruption influence. As expected, both groups were also able to cite various forms of efficiency gains, which in turn also promote competition. This study has further reported a significant reduction in supplier complaints since the introduction of e-procurement.

This research also sought responses to a range of other factors associated with integrity and transparency. The scope of e-GP to enhance transparency arises from many stages in the procurement cycle including more extensive advertising of tender opportunities and results, greatly improved decision-tracking capability, as well as capacity to generate standard and ad hoc reports of a scope that is impossible in the paper environment.

E-GP also enhances transparency because it catalyses the standardization of documentation, tendering templates, and tendering rules; policies, and procedures; and enhances supplier and civil society access to oversight of procurement processes. The responses listed in table 2 show these effects. Table 2 further shows that for a range of indicators these systems have generated positive outcomes for transparency and integrity of the process. However, the research also showed that the technology has usually not penetrated back into many of the management systems related to procurement, which sometimes still lack transparency. Also, it has been noted that the greater share of malpractice in procurement occurs where all of the specified procedures have nominally been complied with. This means that greater attention is required of the monitoring and reporting systems as well as all the other governance controls.

Table 2: System Support for Process Integrity and Transparency

Questions		Positive responses (max. 13)
1.	The system has resulted in the government procurement processes being consistent from agency to agency?	10
2.	Government procurement is held in high regard by suppliers?	12
3.	All information to help potential suppliers plan, develop, modify, and submit bidding documents is available online?	10
4.	All suppliers get exactly the same information throughout each individual procurement process?	12
5.	Each parcel of information provided to suppliers is made available at one time and is date- and time-stamped?	10
6.	Suppliers are not impeded from accessing the system by their location?	12
7.	Suppliers are not impeded from accessing the system by the cost of access or time it is available?	11
8.	Suppliers are not impeded from accessing the system by the requirement to have specialized hardware or software?	11
9.	Procurement policies, process, and guidelines are available online?	10
10.	Procurement legislation and regulations are available online?	10
11.	The public can access the system to see details on contracts awarded, prices, and the successful suppliers?	10

Table 3: Technology-Driven Reforms

Reforms		Positive responses (max 13)
Policy		
1.	Procurement policy was reviewed to ensure it supported the e-procurement vision and objectives	10
2.	E-Procurement aspects of policy were linked to policies for e-Commerce and e-Government	10
3.	Procurement guidelines were reviewed to ensure consistency and relevance to e-procurement	11
4.	Polices and guidelines applicable to e-Procurement were made available online	10
Management and Planning		
5.	Existing procurement process structure, efficiency, and effectiveness were reviewed to better support the introduction of e-procurement systems	10
6.	Standardized documents for the use of supplies are available online (e.g., supplier request/response forms, response to request for tender)	11
7.	A procurement information database was established to assist government buyers in better understanding the market and making future procurement decisions	7
Legislation and Regulation		
8.	The responsibilities for the legislation and regulation relating to e-procurement were allocated and effectively resourced	8
9.	Regular monitoring and reporting of compliance by government agencies with the policy, legislation, and regulatory framework is carried out	9
10.	Regular monitoring and reporting of e-procurement performance at the national/regional level is carried out	9
11.	Regular internal monitoring and reporting of e-procurement performance at the government agency level is carried out (i.e., agencies are accountable for their procurement performance)	9

E-procurement systems can support improved process integrity and transparency through wide access to opportunities and information, and the means to build a consistent approach to the process.

Similarly, table 3 suggests that e-procurement is a catalyst for significant reform of procurement. This is encouraging, given that there has sometimes been a tendency for authorities to regard e-procurement as simply a technical matter to be attended to independently of procurement reform. Nevertheless, these responses were also consistent with the observation that in a number of cases the authorities perceive e-procurement to be a mechanical mapping of their

existing processes into a software system, rather than taking advantage of the technology to review and redesign policies and procedures.

Also, some authorities apparently have not established performance criteria for the management of procurement. Additionally, others have not established databases to gather procurement data.

While more studies are needed, these results seem to support the proposition that e-procurement can be a significant influence in the reform of procurement and in the anti-corruption agenda.

Summary and conclusions

Corruption in government procurement represents the greatest share of worldwide corruption and is of a proportion that is undermining not only good governance and economic performance but also the political and social institutions of developing countries.

Various strategies have been proposed to address the issues, including reform of procurement law, training, and codes of conduct, removal of discretion from public procurement officials, and debarment.

Many governments also have been pursuing reform but frequently there is insufficient understanding of procurement itself, with some pursuing this through law reform while others by strengthening management. In many cases these proposals seem not to reflect the structure of public procurement and the potential for proposals relating to reform of the procurement rules to conflict with legitimate procurement management agenda. The simplification of rules is seen as an important element for transparency but may be incompatible with removal of discretion and with other aspects of the corruption agenda. A compromise is required between performance management, rule simplification, reduction of discretion, and transparency. Such compromise leaves the way open for continuing corruption. This analysis helps to explain the difficulties that have been faced by procurement reform strategies and their record of progress.

There would seem to be considerable potential to apply information technologies to these issues to reconcile the need for greater transparency, control of discretion, and efficiency. In addition, the very large amount of data and information required to properly account for and manage government procurement can, realistically, only be organized through such technology. Electronic government procurement provides extensive new management information, management controls, and new procurement methods. e-procurement is a reform program rather than a software program. It does not

replace the need for procurement law reform but rather complements this traditional approach. The enhanced information availability strengthens transparency and audit, while, by providing easier access for business, it increases competition and lowers prices as a result. It was also noted that, rather than dispensing with other accountability measures and anti-corruption strategies, technology has the potential to strengthen them.

Despite the strengths of the technology, few if any governments have as yet implemented a fully comprehensive e-procurement system that addresses all aspects of this function, and considerable potential remains.

While the potential of technology to have an impact on corruption would seem to be very significant, this is sometimes assumed to be easily done; if results do not come easily, the potential is assumed to be not so significant. It needs to be recognized that technology can significantly enhance the procurement function, but only if these objectives are part of the design itself. The reform of public procurement through the application of information technologies has many advantages. Success is, however, not assured unless there is a clear understanding of what e-procurement is about. A lack of understanding of e-procurement by governments represents the major risk to its successful implementation. Such a reform program also needs strong government leadership, standardization of procedures, and retraining for procurement professionals as well as for the business sector itself.

Recognition needs to be given to the impracticality of marrying an effective anti-corruption agenda with traditional procurement management tools, not least because traditional procurement management cannot hope to process the information and data requirements for the transparency and oversight requirements of such an agenda.

The strengths and relevance of information technologies to procurement reform and the anti-corruption agenda mean that e-procurement should not be perceived merely as an adjunct to traditional procurement, to be incorporated when time and opportunity become available.

Rather, given the very great significance of procurement corruption and the transparency and information systems needed to combat it, the application of information technologies, that is, e-procurement, could be a centerpiece of such reform.

NOTES

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E-procurement impact on corruption: E-GP Scenario/Model in Indonesia

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To support the anti-corruption efforts and initiatives of the Government of Indonesia, the Millennium Challenge Corporation (MCC), through the Indonesia Control of Corruption Project (ICCP) under its Country Threshold Program, is assisting the Government in implementing a set of reforms to measurably reduce corruption in the country. These reforms will include implementing administrative reforms and greater judicial transparency, increasing enforcement capabilities to fight money laundering, prosecuting cases of public corruption, and finally reducing opportunities for corruption by developing and implementing an electronic government procurement system in five selected provincial governments.

E-GP potential impact on bribery

E-procurement is one of the most efficient tools of governments for not only helping the public sector to achieve efficiency gains but also restoring public trust by preventing corruption in public procurement.

Good governance in procurement is characterized by values such as transparency, accountability, open competition, and value for money. All known

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As the head of Mobilia Company's procurement unit for four years, Mr. Alilovic developed an innovative e-procurement system that allows review of supplier performance against key indicators modeled on Croatian procurement regulations. As the public procurement management specialist on the USAID-funded Local Government Reform project in Croatia for three years, Mr. Alilovic collaborated with the Public Procurement Office and USAID/Croatia.

anti-corruption procurement initiatives recognize transparency as a cornerstone of anti-corruption programs.

E-GP introduces transparency in all procurement decisions/actions, rules, procedures, and performance of procuring entities. Sophisticated procurement management information and reporting tools integrated in e-GP systems give the public an opportunity to monitor and scrutinize public administration and hold it accountable. E-GP definitely increases the level of trust in the procurement system among bidders, the media, and citizens.

E-GP builds public, managerial, political, and financial accountability of procuring entities by providing greater access to information to citizens, senior managers, institutions such as parliament, and institutions that provide the financing for the organizations. Standardized and explicit rules and procedures, which must be stipulated in e-GP systems, reduce abuse of discretion of regulatory officials and other opportunities for corruption.

The manual procurement system exposes procurement personnel to the bidders at every stage of the process, and this could lead to various undesirable practices. In the e-procurement system, contacts between public officials and vendors are restricted to the utmost. The possibility of using the e-procurement system to track decisions and actions additionally discourages corrupt activities. The ability of e-GP to track past transaction history and records forces procuring entities to comply with rules and regulations, and thus simplifies auditing of operations.

Common procedures in e-GP systems

Some common procedures in e-GP systems that directly prevent corrupt activities of public servants involved in procurement are as follows:

- System administrators create certificates and passwords, and assign quotas for using system resources.
- Public administrations register/subscribe to the system and organize their electronic environment by
 - identifying to the system the type and characteristic of tenders;
 - assigning user profiles and associated access levels to staff;
 - assigning user profiles and associated access levels to subscribed bidders;
 - activating a search engine to facilitate user search of tenders by keywords;
 - activating tracking mechanisms at certain time intervals to monitor use of resources;
 - time-stamping all documents submitted during the tendering period;

- date-locking all tender documents after the submission deadline;
- opening submitted tenders while preserving the four-eyes principle (only authorized public servants and members of the receiving and evaluation committees can access the system and open the tenders by simultaneous actions); and
- evaluating and awarding contracts based of predefined criteria.

E-GP systems outcomes review

Multilateral development banks have undertaken research on e-procurement systems in South America, Asia and the Pacific region, and Europe. Table 1 shows encouraging results of measuring e-procurement systems outcomes.

The low number of responses on some outcomes indicates that reporting and monitoring systems in some countries are not at a satisfactory level.

Results suggest that e-GP systems have generated increased transparency to the extent of online publication of tender documentation and award results, significant online engagement of suppliers with substantial numbers of tenders submitted online and documents downloaded, a reduction in complaints, and greater satisfaction of suppliers.

Table 1: Measures of E-GP System Outcomes

Outcome Measures	Asia and Oceania	South America	Europe
% of procurement opportunities advertised online	100 (4) 50–80 (2)	100 (3)	92
% of government bidding documents made available online	95–100 (5) 40 (1)	100 (4)	47
% of government bidding documents distributed online	70–100 (5)	100 (3)	ND
% of government contract awards made public online	35–40 (2) 95–100 (4)	97 (1) 100 (3)	ND
% of bids submitted online	30 (1) 93–100 (3)	0 (1) 100 (2)	25
% of increase in number of suppliers participating in e-GP	100 (1)	ND (3) 5 (1)	ND
% reduction in supplier complaints regarding transparency, integrity and fairness of the e-GP processes	50 (1)	97 (1) 100 (3)	ND
% of suppliers satisfied with the use of the e-GP system	78–86 (2) 75–90 (1)	0 (2) 100 (1)	90

ND = no data. Sources: Multilateral Development Bank. 2007. *International Survey of E-GP Systems*. May; Ramboll Management. 2004. *Impact Assessment of an Action Plan on E-GP*. December.

Potential risks in e-GP systems

It should be emphasized that e-procurement brings some new risks, which may jeopardize efforts to prevent bribery in public procurement. The potential technical risks posed by e-procurement infrastructure pertain to the following:

- Conversion of documents from electronic form to hard copy;
- Modern bureaucratic dependencies;
- Introduction of computer viruses into electronic tenders;
- Nonelectronic material accompanying bids;
- Lack of availability of the system near deadlines due to increased demand in bandwidth;
- Availability of the submission service;
- Increased participation of bids in the process;
- Private channels of communication.

The security features of the e-GP system should be configured, enabled, tested, and verified before e-procurement activities begin.

It is worth mentioning that required sophisticated technical infrastructure, as well as highly skilled IT personnel, introduces modern bureaucratic dependencies. To eliminate such a risk, we should concentrate on implementing systems that are highly parametric, are user-friendly, and can be easily customized and maintained.

E-GP Scenario/Model in Indonesia

The development and implementation of an e-GP system nationwide is one of the most important priority objectives of procurement reform in Indonesia. Instead of analyzing and trying to estimate which e-procurement software available on the market might be the best one, the Government of Indonesia has decided to gradually develop and implement its own single, integrated, Internet-enabled National Electronic Procurement System (NEPS). Metaphorically speaking, the system will operate like a master light panel where everyone is using the same energy source (data) and processes.

A single point of access for all government procurement, including access to local procurement opportunities, is a basic benefit NEPS plans to provide to citizens. The NEPS portal will allow all system users to access online services from their offices, home terminals, and public Internet kiosks.

NEPS will run on a single database that records every transaction processed in all regional e-GP centers. Having all the relevant data in a single

location, and stored in an integrated, standard format, means that management can access this information whenever they need to.

Access to collaborative contracts will be possible for all government organizations. NEPS as centralized system will act as a watchdog, ensuring that national public procurement policies are applied.

Procurement transparency will be improved by supplying up-to-date comprehensive procurement management information and reports. One true source of data will ensure working with the most current and accurate information. Data sharing by all system users will reduce the likelihood of fraud.

NEPS anti-corruption activities

Since people generally resist change, the most difficult element of any implementation relates to people issues, mainly the users and suppliers, but can also include implementation team members.

As training, technical assistance, and policy dialogues are capacity-building techniques identified by the United Nations Development Programme (UNDP) as a key component of all anti-corruption strategies and programs, the MCC/ICCP, together with its Indonesian counterparts, plans to implement various capacity-building activities.

It plans to redesign procurement processes according to new electronic tools that will be used, draft required policies and guidelines to implement e-GP, and create an interpretative document on the new rules on e-GP.

Since a lack of understanding and strong executive support by governments is the major risk to the successful implementation of the e-procurement initiative, a specific communication strategy for introducing the system to government agencies (elected and senior bureaucrats) will be put in place.

Training in the use of the new e-GP system will be provided to public servants, who will learn not only about the benefits of using the e-GP system but also about the consequences of noncompliance. Even if the change makes business sense and they see the benefits and are part of the process, people will still go back to old habits if there are no consequences.

Columns in table 2 show the impact of each capacity-building activity on transparency and competition.

Table 2: Impact of Capacity-Building Activities of the Government of Indonesia and the Millennium Challenge Corporation

Activity	Impact on Transparency	Impact on Competition
Drafting required policies and guidelines to implement e-GP	★★★	★★★
Creating interpretative document on the new rules on e-GP	★★★	★★
Putting in place specific communication strategy for introducing the system to government agencies (elected and senior bureaucrats)	★★	★★
Training public servants to use new e-GP system	★	★
Waging public awareness campaign on benefits and requirements for e-GP to introduce the system	★★★	★★
Implementing specific PC channels and tools for SMEs, young entrepreneurs' associations, businesses owned by women and disadvantaged groups, etc.	★★	★★
Training vendors to use the new e-GP system before it is introduced	★★	★★★
Training civil society, university lecturers, traditional community leaders, etc., with an interest in government transparency	★★★	★
Providing grants to watchdog NGOs that will monitor e-GP processes	★★★	★★
Promoting transparency, auditing and traceability of e-GP	★★★	★★

NEPS performance measures

Finally, the success of NEPS implementation can be estimated only by measuring performance against the goals set at the start.

GOI and MCC ICCP tactical goals and outputs are the following:

- Reduce corruption in procurement by up to 50% in each of the five selected provinces through a more transparent, open, fair, and accountable process.
- Reduce by at least 10% the cost of government procurement in each of the five selected provinces.

MCC ICCP has developed the following key performance indicators:

- Percentage increase in procurement undertaken by electronic means;
- Percentage decrease in sole-source public procurement; and
- Percentage increase in number of registered e-GP vendors.

A true story

Instead of the next steps, let us see what the captain of the *Titanic*, E. J. Smith, had to say about technology.

Never in all history have we harnessed such formidable technology. Every scientific advancement known to man has been incorporated into its design. The operational controls are sound and foolproof.

The history of the *Titanic* is an excellent testimony that technology is not almighty. Technology should work to accelerate the process, not define it. With a clear understanding of how technology can work, and with well-defined processes and motivated, committed, and collaborative Indonesian leadership, MCC/ICCP has great chances for success.

Indian government tender system and e-procurement in the Indian Railways

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The Central Vigilance Commission (CVC) in India was established in 1964 at the recommendation of the Santhanam committee. It has a mandate to look into irregularities and misconduct committed by civil servants in the central government, public sector units (PSUs), and public sector banks. In pursuit of the above mandate, the CVC issues circulars and guidelines for the benefit of all organizations under its purview. Its philosophy is to maintain integrity in civil/public service.

Public procurement covers the procurement of goods, works, and services by all government ministries, departments, agencies, statutory corporations, and public sector undertakings in the Center, states, municipal corporations, and other local bodies, and even by private sector undertakings providing public service on a monopoly basis. The canon is to procure work, material, and services of a specified quality within the specified time at the most competitive prices in a fair, just, and transparent manner. In fact, the quantum of procurement in the public domain is so huge that the World Bank estimates the Government of India procurement at over USD 250 billion per year, or about INR 10 trillion. Thus, with money involved being so large, there is huge scope for manipulation throughout the public procurement process, unless measures are taken to ensure that procedures are transparent and equity is guaranteed to the bidders.

Transparency in public procurement shall involve the display of all information, rules and procedures, terms and conditions, specifications, eligibility

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In his over 30 years of service, Mr. Ramachandran has served in various capacities in the Materials Management Department of the Indian Railways. He was executive director in charge of stores procurement policy in the Railway Board (Ministry of Railways), executive director (vigilance) in the Ministry of Railways, and divisional railway manager of Central Railway in General Administration.

criteria, evaluation methodology, and prequalification conditions up front by all purchase authorities for every participating bidder. This shall mean that everything is to be clearly visible and understandable to every bidder without any hidden or concealed information, option, or interpretation. In this regard, the CVC strives to improve transparency in the procedures followed by departments by issuing guidelines/circulars.

To tackle corruption, the CVC has issued various important circulars/instructions in the area of procurement/tendering. A few of these are:

- Observing that negotiations provide great scope for corruption, the CVC has issued instructions that there shall be no negotiations with bidders after tender opening. If under exceptional circumstances it becomes necessary to negotiate, this may be permitted after clear valid reasons are recorded, and that too shall be with the L-1 bidder only.
- Tenders must be published on the organization's Web site with information such as type of tender, value, number of bidders who have participated, information about whether a contract has been awarded to the L-1 party with details of the award of contract, along with progress in contract negotiation.
- To reduce delays as well as face-to-face contact between purchasers and suppliers, the implementation of e-payment has been recommended and is being monitored.
- E-procurement/Reverse auction using information technology has also been recommended for phased adoption by organizations.
- Improving vigilance administration with the help of technology is another way to increase transparency.
- To ensure greater transparency in the award of contracts through nomination, the CVC has issued guidelines on the circumstances this could be resorted to.

The latest initiative of the CVC is the introduction and implementation of the Integrity Pact by all major procuring government departments and PSUs in all their contracts. This is to be monitored by independent external monitors to be cleared for appointment by the CVC. The Defense Ministry and defense PSUs, and many other major PSUs, such as the Oil and Natural Gas Corporation Ltd. (ONGC), major steelmaker Rashtriya Ispat Nigam Ltd (RINL), and the Steel Authority of India (SAIL), have already implemented the Integrity Pact for their procurement.

Taking note of the fact that there is scope for a great deal of bribery to take place in tendering at the initial stage of issue of tenders and curtailment of publicity, the CVC, as mentioned earlier, has made it mandatory for all

organizations and government departments to upload their tender inquiries to their Web sites or the Government Tenders portal (<http://tenders.gov.in>). The latter portal, which was originally developed for publishing the National Informatics Centre's (NIC's) own tender notifications, has been extended and customized to provide a common platform for online publication of tender information by all government departments and organizations in India, including public sector enterprises. This portal allows a government department or organization to publish complete tender specifications and related documents on the Web for access by all stakeholders including bidders and the public. Tenders can be published anytime from the user end through an online form and uploaded from the organization's server through XML interface. The user organization has the privilege to edit/update, delete, and correct already published tenders as and when required. A facility to create multiple tender administrator accounts can also be created for various divisions/units/branches, if required. Publication on the portal and access is free of charge.

The CVC has recommended the adoption of the e-procurement application using a secure Web site to provide a common platform for buyers and sellers to participate in the procurement process in a fair and transparent manner. The system is to be governed by the security features provided under the Information Technology Act of 2000.

The e-procurement application is expected to ensure uploading of tender documents to the secure Web site of Indian Railways, irrespective of whether they are limited or open tenders. It shall also enable online vendor registration. The system is being implemented with digital signing on tender documents. There is a provision for the issue of online corrections and online submission of commercial and technical bids. Tender downloads shall be free. Tenders shall be opened online and automatically tabulated as they are uploaded. Purchase orders shall also be uploaded to the Web site after they are finalized.

The above features of the e-procurement module essentially eliminate the need for vendors to be present to collect the tender document and submit bids during bid opening, since they can participate from remote locations through the Web portal. The features also eliminate opportunities to tamper with bids before and after the tender opening, since the bids are stored in electronic format and are less vulnerable to tampering unlike physical documents. The procurement module also has an online payment facility.

The entire e-procurement process as implemented in the Indian Railways provides for total transparency in tendering, online access to tender information, online participation and information sharing, online evaluation of financial bids, online technical and commercial evaluation, remote access for tender activities,

time saving on tender tabulation vetting, and reduced procurement cycle time. This has also improved material and inventory management, ensuring faster payments through the payment gateway. The shift to the electronic system from a paper-based system has also improved cost efficiency by reducing the cost of logistics. There is the advantage of online data sharing between units with reduced cost for vendors in tender sale, participation, tender opening, contract tracking, and payments.

While a switchover from the manual system to electronic tendering is technologically advantageous, with all the benefits cited above, the channels through which data pass over the Internet are not secure. The electronic system is also fraught with other dangers of technology that need to be tackled on the security front, failing which the system is liable to be misused or become more prone to corruption. In this regard, several important security services are required to ensure reliable, trustworthy transmission of business messages.

The various security issues that have been managed in an e-procurement process are: confidentiality, integrity authentication, non-repudiation, and access controls. Indian Railway has arranged to address the various security issues as detailed below.

Confidentiality. The most effective technique for making the message confidential is by encryption.

Integrity. A message that has not been altered in any way either intentionally or unintentionally is said to have maintained its integrity. Hash function is used to verify that the contents of a message have not been altered in any way. The message digest is also called a hash function, which is an algorithm that translates one set of bids into another set called a hash value in such a way that a message yields the same results every time the algorithm is executed with the same message as input. It is computationally not feasible for a message to be derived or reconstituted from the result produced by the algorithm, or to find two different messages that produce the same hash result using the same algorithm.

Authentication. When an electronic message is received by a user or a system, the identity of the sender needs to be verified (i.e., authenticated) to determine if the sender is who he claims to be.

Non-repudiation. Non-repudiation provides proof of the origin or delivery of data to protect the sender against a false denial by the recipient that the data have been received or to protect the recipient against false denial by the sender that the data have been sent. Well-designed e-commerce systems provide for non-repudiation, which is a provision for irrefutable proof of the origin,

receipt, and contents of an electronic message. There can be repudiation over the date and time a message was sent by the sender or received by the recipient. The most effective way to enable non-repudiation is through the combined use of hashing in both the transactional direction and digital signing. Transaction certificates, time stamps, and confirmation services help satisfy the non-repudiation concern regarding proof of the time when the message was created, when it was sent, and when it was received. Digital signatures help provide proof of origin and proof of content. Confirmation services and time stamping help to provide assurance of proof of receipt and time.

Access controls. Access controls restrict the use of computer system resources to authorized users, limit the actions authorized users can take with those resources, and ensure that users obtain only authentic computer system resources.

Other security features of the Indian Railways e-procurement system are time-locking of the electronic tender box, tender opening with secure digital permission (private key), and public key infrastructure (PKI) support and digital signature at different stages of tendering and bidding.

Digital signature. A digital signature functions for electronic documents as a handwritten signature does for printed documents. The signature is a piece of data that asserts that the person named wrote or otherwise agreed to the document to which the signature is attached. A digital signature cannot be forged and actually provides a greater degree of security than a handwritten signature. The recipient of a digitally signed message can verify both that the message originated from the person whose signature is attached and that the message has not been altered either intentionally or unintentionally since it was signed.

Digital signature is created using hash algorithm and public key cryptography. To compute the digital signature, hash algorithm is first used to calculate a message digest. Then the message digest is encrypted with the use of the sender's private key. The encrypted message digest is what is commonly referred to as a digital signature. It is a unique creation of the contents of the message and the sender's private key, from which it is generated. The receiver uses the sender's public key to decrypt the digital signature and reveal the message digest. The receiver applies the hash function to the original message. If the hash value of the message matches the message digest included in the signature, then there is message integrity.

Northern Railway has finalized over 500 tenders using the e-procurement system. This system, after its successful implementation in Northern Railway, is being ported and will be implemented in eight other zones of the Indian Railways by March 2008 and in the rest of the zones of the Indian Railways by year-end.

Chapter 4

Preventing bribery through criminal law: international standards and national examples of bribery offences

Criminal law and proportionate and dissuasive penalties are important complements to preventive mechanisms against bribery in public procurement. Enforcement of these laws is key, of course. The absence of clear and comprehensive criminal provisions on bribery and ineffective enforcement allow bribery to flourish.

Many countries have toughened their criminal legislation against bribery to bring it in line with international standards. As part of its obligations under the OECD Anti-Bribery Convention, Australia passed anti-bribery laws making it an offence to bribe a foreign public official and introduced provisions on corporate criminal liability for this offence. These provisions allow for corporate bodies, as well as individuals, to be prosecuted for bribing a foreign public official in certain circumstances. Under these provisions, liability can be triggered by a corporate culture that encourages its employees to pay bribes.

Indonesia has passed a wide array of criminal provisions making various forms of bribery and corruption an offense. Law 31/1999 names both active and passive acts of bribery as criminal offenses. The law identifies 12 types of bribery offenses and specifies penalties for each. The law imposes the same level of punishment on those who attempt, assist, or conspire to corruption as on those who actually commit the offense. The law also provides for criminal liability of companies in case of corruption committed by or on behalf of a corporation.

Criminal law alone is clearly not sufficient to deter bribery and corruption in public procurement. Much also depends on the effectiveness of law enforcement. As law enforcement first requires the detection of offenders, countries seek to increase the likelihood that corruption is brought to light.

The example of the US False Claims Act shows how citizens or competitors can be encouraged to trigger scrutiny of procurement proceedings by the judiciary. This Act empowers an individual to file a claim against a person or a supplier suspected of knowingly having caused financial damage to the government. By promoting whistleblowing through monetary awards and protection of plaintiffs and their attorneys, the Act contributes to recovering substantial government funds and to deterring the private sector from engaging in procurement fraud.

Detering companies from bribing to win government contracts: Corporate criminal responsibility in Australia

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In 1997 Australia implemented innovative and progressive provisions making it clear that a body corporate could be prosecuted for criminal offenses. Then in December 1999, it implemented anti-bribery laws making it an offense to bribe a foreign public official.

When these two provisions operate together, the result is significant,¹ allowing, for example, a corporation to be prosecuted if the "culture" encourages employees to bribe foreign public officials in order to secure a government contract.

Foreign bribery provisions

Division 70 of the Criminal Code Act of 1995 makes it an offense for a person to provide a benefit to another person with the intention of influencing a foreign public official in order to obtain or retain business when the benefit is not legitimately due.²

There are two exceptions to this provision:

- when there is a written law in a foreign country requiring the provision of the benefit,³ and
- when the payment is merely a facilitation payment.⁴

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A facilitation payment is a payment of minor value⁵ that is made for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature. An example of routine government action is granting a permit, license, or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country.⁶ A record must also be made of the payment.⁷

The offense applies when it has been committed wholly or partly in Australia or wholly outside Australia when the person who committed the offense is:

- an Australian citizen,
- an Australian resident, or
- a body corporate incorporated in Australia.⁸

Corporate criminal responsibility

Division 12 of the Criminal Code Act of 1995 provides that a body corporate can be found guilty of any offense, including one punishable by imprisonment. A body corporate will be liable for offenses committed by an employee, agent, or officer of a body corporate acting within their actual or apparent authority,⁹ when the body corporate expressly, tacitly, or impliedly authorized or permitted the commission of the offense.¹⁰

A body corporate may be found to have authorized or permitted the commission of the offense when the board of directors or a high managerial agent of a body corporate authorized or permitted the conduct of the offense.¹¹ This follows the well-established decision in the case of *Tesco Supermarkets Ltd v Nattrass*.¹² While this is a useful provision legislators did not consider that it went far enough, especially as today's companies have a flatter structure with junior officers having more responsibility.¹³

The concept of "corporate culture" casts a more realistic net of responsibility over corporations,¹⁴ as the corporate culture provisions recognize that corporations can have subjective mental states and that they can intentionally, knowingly, and recklessly commit an offense.¹⁵

As a result, Australia's corporate criminal responsibility provisions also allow a body corporate to be found to have authorized or permitted the commission of the offense when it can be established that:

- a corporate culture existed that directed, encouraged, tolerated, or led to the offense,¹⁶ or
- the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.¹⁷

Corporate culture is essentially a close analogy to the key concept in personal responsibility—intent¹⁸—and is defined to mean “an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities take place.”¹⁹

The corporate-culture provisions have the benefit of capturing situations where, despite formal documents of a company appearing to require compliance, the reality is that noncompliance is expected. For example, employees who know that if they *do not attempt* to bribe a foreign public official to win a government contract, they will be dismissed. A corporate culture may be evidenced by the body corporate or high managerial agent previously giving authority for an agent to commit an offense of a similar nature, or the employee, agent, or officer of the body corporate believing on reasonable grounds that management would have allowed the commission of the offense.²⁰ However, a good corporate culture can be developed in a number of ways, for example, by having minuted resolutions of the board of the company with a clear and concise statement of policy that complies with the law.

The provisions also include a due-diligence provision, which specifies that if a high managerial agent is directly or indirectly involved in the conduct, no offense is committed where the body corporate proves that it exercised due diligence to prevent the conduct or the authorization or permission.²¹ For example, where the body corporate has done everything in its power to ensure compliance, and the offending employee has deliberately hidden its unlawful practices from the body corporate, the body corporate would not be found guilty of an offense.

A body corporate can also be found guilty of an offense where its conduct is negligent when viewed as a whole.²² This covers situations where numerous company officers are guilty of careless behavior, but none of them depart significantly from the standard of care, allowing them to be individually guilty of criminal negligence, but the collective conduct demonstrates that the company as a whole was acting negligently.²³ This provision is mainly used for environmental and manslaughter offenses.

Where a body corporate is being charged with a strict liability offense, the body corporate must demonstrate that it exercised due diligence to prevent the employee, agent, or officer from being mistaken as to the facts.²⁴

Penalty

If a body corporate is found guilty of an offense that has a pecuniary penalty, it is fined five times the amount of the maximum pecuniary penalty that

could be imposed for the offense.²⁵ However, if the offense only specifies a penalty of imprisonment, the courts may instead impose a fine.²⁶ The fine is calculated by multiplying the months of imprisonment by five.

The maximum penalty for bribing a foreign public official is 10 years' imprisonment, and therefore a company would be fined AUD 330,000 (about USD 294,000) if it was found guilty of committing this offense.²⁷

Benefit as a deterrent against bribery in public procurement

Australia's provisions on corporate criminal responsibility mean that a body corporate can be prosecuted for trying to bribe a foreign public official to win a government contract. An example of how this would occur follows.

- Jack works for an Australian company, Building Company.
- Building Company is trying to secure a government contract with a foreign country, Mars.
- Jack offers a Mars public official a yacht if Building Company is given the government contract.

In order for Building Company to be found guilty:

- Jack must have been acting within the apparent scope of his employment,²⁸ and have been a high managerial agent and acted with intent,²⁹ or
- if Jack is not a high managerial agent, his intention to influence the official can still be attributed to Building Company if a corporate culture of noncompliance or a failure to establish a corporate culture of compliance can be proved.³⁰

It should be noted that the due diligence defense would also be open to Building Company.

Australia's experience

Australia prosecuted 60 companies for breaching regulatory offenses such as environmental health and safety offenses, in 2006–2007, using the corporate criminal responsibility provisions. While Australia has not, as yet, prosecuted anyone for bribing a public official, the legislation does allow this and is particularly innovative in its application to a body corporate.

NOTES

- ¹ Brand, Vivienne. 2000. Legislating for Moral Proprietary in Corporations? The Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999. *Company and Securities Law Journal* (18 October): 476.
- ² Section 70.2 of the Criminal Code Act of 1995.
- ³ Section 70.3 of the Criminal Code Act of 1995.
- ⁴ Section 70.4 of the Criminal Code Act of 1995.
- ⁵ The legislation does not define a "minor payment"; this is a matter for the court to determine. This allows the court to consider all of the surrounding circumstances.
- ⁶ Subsection 70.4(2) of the Criminal Code Act of 1995.
- ⁷ Section 70.5 of the Criminal Code Act of 1995.
- ⁸ Section 70.5 of the Criminal Code Act of 1995.
- ⁹ Section 12.2 of the Criminal Code Act of 1995.
- ¹⁰ Subsection 12.3(1) of the Criminal Code Act of 1995.
- ¹¹ Subsection 12.3(2) of the Criminal Code Act of 1995.
- ¹² [1972] AC 153, this decision was then supported in *Trade Practices Commission v Tubemakers of Australia Ltd* (1983) 47 ALR 719.
- ¹³ Criminal Law Officers Committee of the Standing Committee of Attorney-General. 1993. *General Principles of Criminal Responsibility*. Final Report. Canberra: Australian Government Publishing Service. p 105.
- ¹⁴ Woolf, Tahnee. 1997. The Criminal Code Act 1995 (Cth): Towards a Realist Vision of Corporate Criminal Liability. *Criminal Law Journal* (21 October): 257.
- ¹⁵ Criminal Law Officers Committee of the Standing Committee of Attorney-General. 1993. *General Principles of Criminal Responsibility*. Final Report. Canberra: Australian Government Publishing Service. p 107.
- ¹⁶ Subsection 12.3(2)(c) of the Criminal Code Act of 1995.
- ¹⁷ Subsection 12.3(2)(d) of the Criminal Code Act of 1995.
- ¹⁸ Woolf, Tahnee. 1997. The Criminal Code Act 1995 (Cth): Towards a Realist Vision of Corporate Criminal Liability. *Criminal Law Journal* (21 October): 258.
- ¹⁹ Subsection 12.3(6) of the Criminal Code Act of 1995.
- ²⁰ Subsection 12.3(4) of the Criminal Code Act of 1995.
- ²¹ Subsection 12.3(3) of the Criminal Code Act of 1995.
- ²² Section 12.4 of the Criminal Code Act of 1995.
- ²³ Woolf, Tahnee. 1997. The Criminal Code Act 1995 (Cth): Towards a Realist Vision of Corporate Criminal Liability. *Criminal Law Journal* (21 October): 269.
- ²⁴ Section 12.5 of the Criminal Code Act of 1995.
- ²⁵ Subsection 4B(3) of the Crimes Act of 1914.
- ²⁶ Subsection 4B(2) of the Crimes Act of 1914.
- ²⁷ [Term of Imprisonment (expressed in months) x 5] x [5 x 110 (penalty units)] = maximum penalty that can be imposed on a company.
- ²⁸ Section 12.2 of the Criminal Code Act of 1995.
- ²⁹ Subsection 12.3(2)(b) of the Criminal Code Act of 1995.
- ³⁰ Subsection 12.3(2)(c) and (d) of the Criminal Code Act of 1995.

International anti-bribery standards in public procurement in Indonesia

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First of all, I would like to congratulate ADB/OECD and the Corruption Eradication Commission (KPK) for their hard work in preparing this seminar. Allow me to extend my highest appreciation to all participants, who wish to share their views and ideas about anti-corruption measures, in particular the development of international standards in fighting bribery in public procurement. We are in the midst of emerging developments on so many anti-corruption efforts. Some international initiatives have been implemented and we are witnessing countries strengthening their work and cooperation. We would like to thank the United Nations Convention against Corruption (UNCAC) and people who have worked hard within its framework. We hope we can benefit from the implementation of the Convention to promote justice, increase prosperity, reduce poverty, and maintain a peaceful society.

We have quite a broad definition of corruption and corrupt conduct. It includes bribery of public officials. Bribery is one of the problems facing our country. Taken from our penal code, it was criminalized in our old anti-corruption law,¹ as well as in our law on eradicating corruption² and the law on bribery.³ Although sometimes the definition of bribery and corruption in other countries may be different from ours, the act is generally speaking a crime. Corruption is equivalent to theft from the government and the whole country suffers.

Indonesian legal reforms are aimed at enhancing good governance in the public sector by passing laws and regulations, strengthening institutions, and promoting good practice. We have developed legal frameworks to fight corruption in the public sector. One of the areas most vulnerable to corrupt behavior is public procurement.

We are convinced that we have made excellent progress as a result of ongoing legal reforms to combat corruption, and the Government is fully aware of the need to have strong policies and instruments. The President of the Republic of Indonesia, Dr. Susilo Bambang Yudhoyono, has demonstrated a great deal of political will to boost anti-corruption efforts. In line with his policies, our office and other anti-corruption authorities will continue to work together,

using laws to bring those guilty of corruption to justice as well as to prevent corruption.

In 2005, our President established the Coordination Team on the Eradication of Corruption Offenses.⁴ I was privileged to lead the team and found it an extremely good example of multiagency collaboration. It consists of officials from our office, the Indonesian National Police, and the Government Auditor. It was not intended to substitute for the existing anti-corruption institutions, but rather to improve interagency coordination and implement specific changes. The team is considered successful and reflects the Government's commitment to deal with corruption.

In the area of public procurement, bribery and other types of corruption can be a problem. We know the risks, but sometimes face difficulties in tackling these problems. We have worked together with other relevant agencies, such as national auditor agencies and the National Development Planning Agency, to minimize the risk of manipulation and bribery in public procurement. Our aim is to eliminate corrupt practice in the purchase of goods and services and increase efficiency. It is true that in environments where regulations and procedures are weak and controls do not work, procurement is not transparent. An increase in one single firm's propensity to bribe induces the same behavior in others. This can equally happen in the case of public officials, but the situation is made worse by the fact that public officials are not usually rewarded for refusing bribes.⁵ This poses a challenge for us to provide a more effective and fair system in public procurement.

Indonesia ratified the Convention in 2006. This will, of course, strengthen our legal frameworks to cope with bribery in public procurement. As provided in Article 9 on public procurement and management of public finances, states parties are obliged to take the necessary steps to establish appropriate systems of procurement based on transparency, competition, and objective criteria in decision making. These help to make the system more effective and to prevent corruption.

In the field of public procurement, Indonesia has legal frameworks for preventing bribery and other corrupt conduct. Presidential Regulation 85 (2006) on the 6th Amendment of Presidential Decree 80 (2003) on Guidelines on Purchasing Goods/Services for the Government provides a set of regulations and procedures for public procurement.

The Government passed the decree on 3 November 2003 to ensure that the purchase of goods and services for the Government with state or local funds can be carried out effectively and efficiently according to the principles of fair competition, transparency, openness, and equal treatment of all parties.

Procurement outcomes are expected to be more accountable from the physical, financial, or beneficial standpoint to support government duties and public services.

Moreover, the regulation strictly and transparently provides systems starting from proposal application, bidding, and verification, up to the implementation of purchasing goods and services. As mandated in the regulation, the basic principles are efficiency, effectiveness, openness and competitiveness, transparency, fairness, and accountability.

In addition to the risks of bribery and manipulation in public procurement, political patronage can also be a source of the problem of lack of transparency and accountability. In the long term, this problem disrupts national development and undermines institutional values and trust in the public sector. In many ways, these situations might undermine public confidence in the system. We should be aware of this situation and continue to ensure that regulations and procedures of public procurement are adhered to. We will enforce the laws, impose sanctions, and promote transparency and accountability. I believe that our achievements will contribute to the development of our society.

Our regulation requires a form of "integrity pact" to be signed by relevant officials and persons involved in purchasing goods and services for the Government.⁶ Other countries might have a different approach to preventing misconduct by officials.⁷ The promotion of integrity in public procurement management will result in good governance and a culture of fairness. A fair and transparent system will respect the constitutional rights of our people to enjoy benefits from the state, in line with the UNCAC.

The development of international standards for preventing bribery in public procurement is essential. To ensure fair competition in this process, it is important to promote the participation of civil society, through nongovernment organizations or other mechanisms. Our system requires the dissemination of information on forthcoming public procurement.⁸ In addition, to improve transparency, we are starting to introduce e-procurement in the purchasing of goods and services.

As more than 100 countries have ratified the UNCAC, it is important to start taking a broader look at the Convention. We have seen many initiatives in the area of asset recovery. However, in my opinion, public procurement is central to our efforts to fight corruption. As the purchasing of goods and services for government continues to be a big industry, we understand that corrupt practices pose major risks. These risks should be minimized if we want our country to develop further. There are some mechanisms to increase our knowledge of the Convention. I believe the United Nations Office on Drugs and Crime (UNODC),

ADB/OECD, and other donors are very keen to promote specific actions in this area. I am convinced that an intensive discussion through a forum such as this seminar will be beneficial to our cooperation in applying international standards in fighting bribery in public procurement.

There are two very important points I wish to make. First, public procurement is now part of the global economy and involves transnational businesses. Both good and bad practices in public procurement in one country will affect another. Second, good and bad practices in public procurement will also affect international relations, because public procurement affects relationships between governments. We also understand fully that it is important to recover the proceeds of corruption. We are happy to see the development of financial intelligence units at the regional and international levels. This will support the need to track stolen funds and kickbacks. Tracing these funds is pivotal, but providing mutual legal assistance and other cross-jurisdiction mechanisms is also important in repatriating the proceeds of corruption to the affected government.

In this context, the existence of anti-money laundering laws is helpful.⁹ Although we realize that the implementation of relevant articles of the UNCAC is not easy, we agree that it is very important and beneficial to society. We are optimistic in moving toward more effective cooperation in fighting bribery in public procurement.

There are situations where corrupt conduct involves other jurisdictions. In this case, it is important to use international cooperation mechanisms provided in the Convention. We would like to see corrupt practices reduced and regional cooperation in fighting these practices increased.

This seminar is only one part of a continuing process to boost our efforts, both preventive and restrictive, to take real action in fighting corruption in public procurement. Global initiatives taken by UNODC, ADB/OECD, and other institutions are only tools. What is more important is how our national laws can converge with global standards and be applied domestically. This, of course, requires effective work and coordination by public procurement officials, oversight committees, suppliers, law enforcement agents, and society.

I am convinced that one of the best ways of enhancing regional cooperation in implementing international standards for public procurement is by sharing best practices and understanding a country's legal system. Furthermore, by learning from others' experiences in coping with bribery and corruption in public procurement, we should be able to reduce the risks and increase our capacity to prevent damage to the public.

In addition to global cooperation in fighting corruption, Indonesia is now preparing itself for the second session of the Conference of the States Parties to the UNCAC in January 2008, as well as the Second Annual Conference and General Meeting of the International Association of Anti-Corruption Agencies in November 2007. I hope some of you will attend these conferences to enrich our knowledge of global counter-corruption efforts.

I would like to conclude by saying that I hope this seminar will result in effective recommendations to implement global standards in public procurement. I encourage all participants to share their knowledge and experience in dealing with public procurement in their respective countries. As the sector will continue to grow, I am optimistic we can make a difference by increasing our knowledge and strengthening our commitment to preventing and detecting bribery in the purchasing of goods and services for the government.

NOTES

- ¹ Act No. 3 (1971) on the Eradication of Corruption Offenses was repealed in 1999.
- ² Act No. 31 (1999) as amended by Act No. 20 (2001) on the Eradication of Corruption Offense.
- ³ Act No. 11 (1980) on Bribery of Public Officials.
- ⁴ Based on Presidential Decree 11 (2005).
- ⁵ Abramo, Claudio Webor. Prevention and Detection in Bribery-Affected Public Procurement. Abstract. *Transparancia Brazil* <http://Ideas.repec.org/p/wpa/wuwppe/0309001.html>
- ⁶ Where appropriate, measures regulating matters related to procurement personnel, such as declaration of interest in particular public procurements, screening procedures, and training requirements.
- ⁷ <http://www.epsu.org/r/71>. The city of Amsterdam has developed a guide to assist its procurement officers when buying clothes. The aim is to ensure that the clothes bought are in accordance with clean clothes standards, and thus the production and related processes respect appropriate environmental and social standards.
- ⁸ Article 9 Paragraph 1 (a) UNCAC: The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant information on the awarding of contracts, allowing potential suppliers sufficient time to prepare and submit their tenders.
- ⁹ Act No. 15 (2002) as amended by Act No. 25 (2003) on the Crime of Money Laundering.

Bribery patterns in Indonesia: An analysis of cases

Amien Sunaryadi*

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Public procurement process and bribery risks

Public procurement processes may be different from one country to another for various reasons. The risks that apply to those processes may also vary. One of them is bribery, which may occur in various phases of the processes.

Types of corruption in public procurement

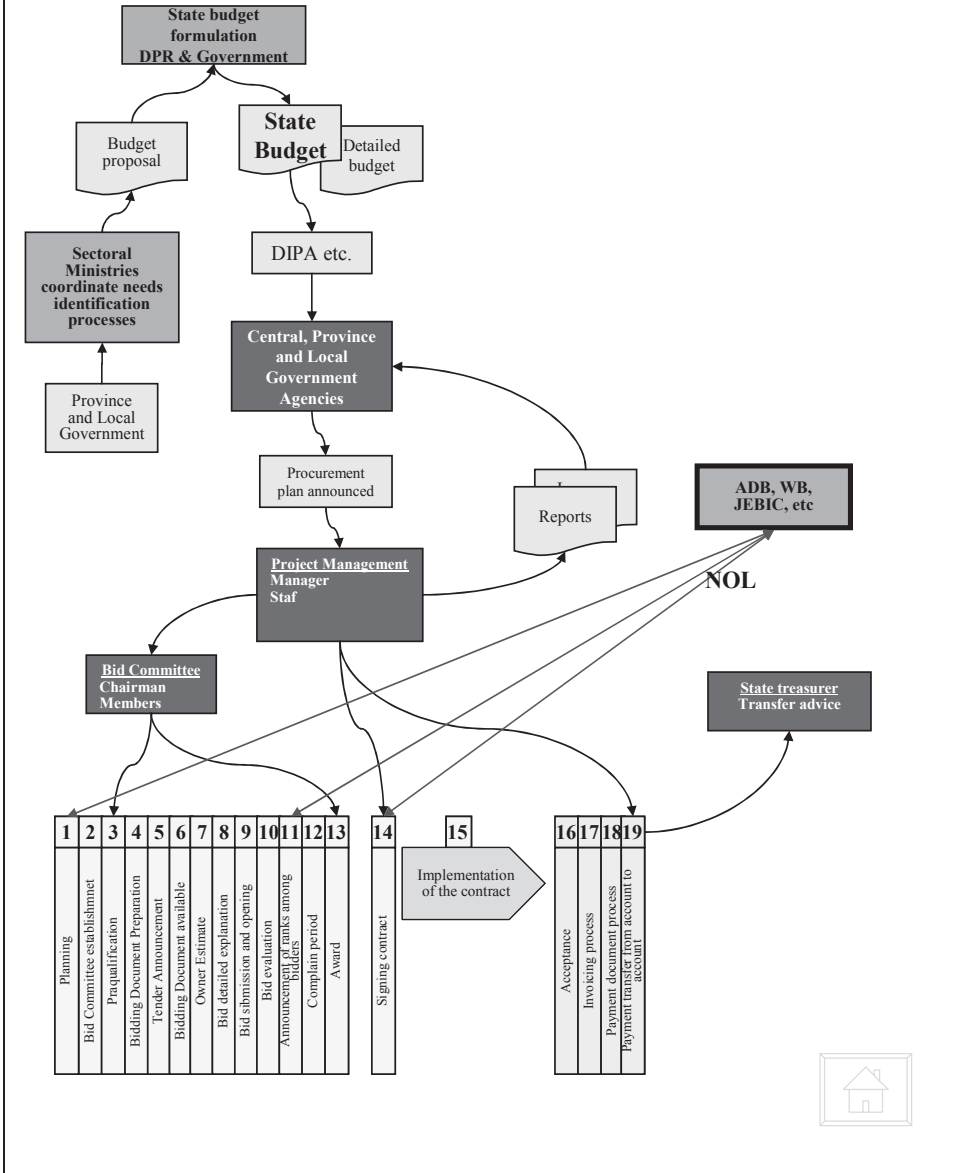
Corruption in the procurement process, often in the form of bribery, happens at every step of the process. The following are the most common forms of irregularities. Let me start at the end of the process, contract implementation.

- The construction has not been completed or the goods and services have not been fully delivered, but the project report confirms finalization or receipt of all goods and services. The project never gets finished.
- Although the construction has not been completed or the goods and services have not been fully delivered, the project report confirms finalization or receipt of all goods and services. But the project gets finished.

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Before joining KPK, Mr. Sunaryadi worked for three years with PricewaterhouseCoopers in Jakarta on forensic accounting, fraud investigations, and computer forensics, as well as the development of anti-money laundering measures. Mr. Sunaryadi also served for 18 years at the Indonesian Government Audit Agency (BPKP). His last assignment at the BPKP was the development of a national anti-corruption strategy (SPKN), published in March 1999. It was Indonesia's first comprehensive anti-corruption strategy.

Bribery Risks Analysis



- The quality of the construction, goods, or services is below standard or below the agreed standard, but is stated as good or as agreed in the project report.
- Construction materials, stocks, and supplies for consultants are not according to standard or as agreed, etc.

Misuse also often happens during the tender process, with the following symptoms:

- The tender package is broken up into smaller pieces for certain reasons, and the owner's estimate is marked up.
- The tender is not advertised or is advertised in media with an unclear distribution, advertised during a holiday, advertised with incomplete information, or advertised but with an unreasonably short time limit for requests for the tender documents.
- The application criteria for the tender are not realistic and can be met only by certain candidates. The specifications are tailor-made to fit only a certain candidate. The evaluation criteria are geared to the selection of a certain candidate.
- The complete tender documents are given to only one or a few candidates; others receive incomplete documents. The location where the tender documents are to be submitted is hard to find.
- Parties outside the tender committee interfere with or influence the tender committee during the prequalification process, in the evaluation of offers, or in the ranking of winners. The previously agreed criteria are not applied in the evaluation.
- The guarantee letter that is submitted by the tender candidates is issued by the same bank with successive numbering; some of the candidates' tender documents bear suspicious similarities.
- For several years, the tenders always have the same few applicants and no new ones.
- The tender applicants use invalid, faked, or otherwise manipulated documents.

The selection of the project management team may be flawed, with corrupt objectives, for example:

- Staff who do not meet the criteria are forced to join the project management team.
- Project management positions are given only to friends, groups affiliated with certain officials, or persons with certain party or other affiliations.

- Blacklisted persons with a reported bad track record are forced to become members of the project management.
- The project management team is endorsed on the understanding that the members will follow the instructions of the official who appointed them.

Misuse happens during budget allocation for the project, when, for instance:

- A member of the legislature "instructs" the official of a department to assign a project to a specific contractor.
- An official in a line ministry asks for something in return (part of the contract or part of the budget) from a district, city, or province for the successful budget allocation in the Satuan Tiga/DIP (annual government project list).

Lastly, but actually the first step in the process, the budget allocation proposed to the legislature or government for a certain project may be flawed when:

- The budget figures are inflated.
- An official from a line ministry, the National Planning Board, or the Department of Finance asks for something in return for the inclusion of the project proposal of a local or provincial government in the draft state budget.
- A member of parliament asks for something in return for the endorsement of a departmental budget proposal for a project.

Clear criminal rules

Bribery has been criminalized in Indonesian criminal law since the colonial era. But it became a corruption offense only in 1971, and the provisions against it were strengthened in 1999 and 2001. For example, Article 11 of Law 31/1999 as amended by Law 20/2001 criminalizes bribery as follows:

A civil servant or state apparatus who receives prize or promise believed to have been given because of the power or authority related to his/her position or prize or promise which according to the contributor still has something to do with his/her position, shall be sentenced to a minimum of 1 year's imprisonment and a maximum of 5 years' imprisonment and be fined a minimum of Rp 50 million (USD 5,435) and a maximum of Rp 250 million (USD 27,174).

Another example, Article 5 of Law 31/1999 as amended by Law 20/2001 criminalizes bribery as follows:

(1) Shall be sentenced to a minimum of 1 year's imprisonment and a maximum of 5 years' imprisonment and/or be fined a minimum of Rp 50 million and a maximum of Rp 250 million. Any person that:

a.gives or promises something to a civil servant or state apparatus with the aim of persuading him/her to do something or not to do anything because of his/her position in violation of his/her obligation; or

b.gives something to a civil servant or state apparatus because of or in relation to something in violation of his/her obligation whether or not it is done because of his/her position,

(2) The civil servant or state apparatus who receives the award or promise as referred to in paragraph (1) letter a or b shall be sentenced to the same jail term as that referred to in paragraph (1).

According to Law 31/1999 as amended by Law 20/2001 on Anti-Corruption, 30 types of offenses are punishable as corruption offenses. Twelve of these are for bribery. The complete text of articles related to the offenses appears in the Annex. The types of corruption covered by the law can be grouped as follows:

- loss to the state (2 types),
- bribery (12 types),
- embezzlement (5 types),
- extortion (3 types),
- fraud in procurement (6 types),
- conflict of interest in procurement (1 type), and
- acceptance of undue gift (1 type).

Ineffective law enforcement

In general, the Anti-Corruption Law is not yet being effectively enforced. Even though there are 30 types of corruption, law enforcement agencies mostly only enforce corruption that creates loss to the state. As in other countries, the provisions related to bribery should be comprehensively enforced. No statistics on enforcement are so far available, however.

From our observation and experience, most cases of abuse are detected during project implementation and tendering, when independent on-site evaluation, for instance, of the quality of streets, walls, and materials can be undertaken and tender documents can be scrutinized. Irregularities are harder to prove at the budget proposal and allocation stage.

It is also more difficult to gather evidence of when and where decisions for these irregularities were taken, secret agreements were made, and undue reciprocity was arranged. Many of these arrangements are never written down. To catch offenders in the act, patient surveillance by law enforcers is needed.

Modern technology provides the tools for improved surveillance. In Indonesia we are just beginning to use modern surveillance techniques to trace the actual chain of irregularities.

Detection and prosecution is, of course, only one approach. I am pleased that during this seminar we will focus mostly on the prevention of bribery and irregularities in public procurement.

In summary, ineffective law enforcement in crimes of corruption is caused by the following:

- **Mind set:** not enough understanding of the various types of bribery;
- **Capability:** not enough effort to develop the capability to detect bribery; and
- **Self-protection:** bribery within the law enforcement agency itself.

Therefore, for Indonesia to be more successful in fighting against corruption, mind set, capability, and willingness to fight against bribery are the most important things. Fighting against bribery in government procurement is the first step.

Annex: Law 31/1999 as revised by Law 20/2001 of the Republic of Indonesia

CHAPTER II—THE CORRUPTION CRIME

Article 2

- (1) Any person who unlawfully doing an act that benefit himself or another or any corporations, which possible make any damages for state's finance or economics of state, shall be sentenced by imprisonment for a minimum of 4 years and a maximum of 20 years and a minimum fine of Rp 200 million and a maximum fine of Rp 1 billion.

Elucidation:

The concerned "unlawfully" in this article include unlawfully activity in both formal and material meaning, while although the act not be regulated in law and regulation. But if such act assumed badly because mismatch with justice or social life norms in society. Hence such act can be punished. In this rule, word "can" before phrase "harming finance or economics of state" indicating that corruption is a formal crime that is existence of corruption fulfilled enough by elements of act which have been formulated and not with establishment of effect.

- (2) In case the corruption crime as mentioned on section (1) has done in certain condition, death penalty could be punished.

Elucidation:

Referred to as "certain condition" is the condition that may serve as a reason for meting out heavier punishment to those embezzling funds earmarked for the control of emergency state, national disaster, widespread social unrest, economic and monetary crisis, and corruption offenses.

Article 3

Any person with purpose to benefit himself or another or any corporations, abuses his power, opportunity or means on his duty or position, which possible make any damages for state's finance or economics of state, shall be punished by whole life imprisonment or by imprisonment for a minimum of one year and a maximum of 20 years and a minimum fine of Rp 50 million and a maximum fine of Rp 1 billion.

Elucidation:

Referred to as "possible" in this article as well as definite on elucidation of article 2.

Article 4

Return of loss of state's finance or economics of state [do] not abolish the crime of perpetrator of doing an injustice as referred to in Section 2 and Section 3.

Elucidation:

In the case of perpetrator of corruption doing an injustice as referred to in Section 2 and Section 3 have fulfilled such section elements, hence return of loss of state's finance or economics of state, [do] not abolish crime to perpetrator of doing an injustice of tsb. Return of loss of state's finance or economics of state only is one of [the] factor lightening.

Article 5

- (1) Shall be sentenced to a minimum of one year's imprisonment and a maximum of 5 years' imprisonment and/or be fined a minimum of Rp 50 million and a maximum of Rp 250 million. Any person that:
- a. gives or promises something to a civil servant or state apparatus with the aim of persuading him/her to do something or not to do anything because of his/her position in violation of his/her obligation; or
 - b. gives something to a civil servant or state apparatus because of or in relation to something in violation of his/her obligation whether or not it is done because of his/her position,
- (2) The civil servant or state apparatus who receives the award or promise as referred to in paragraph (1) letter a or b shall be sentenced to the same jail term as that referred to in paragraph (1).

Elucidation:

Referred to as "state apparatus" in this article is the state apparatus as referred to in Article 2 of Law No.28/1999 on the Running of Government, free of Corruption, Collusion and Nepotism. The definition of "state apparatus" also applies to other articles in this Law.

Article 6

- (1) Shall be sentenced to a minimum of 3 years' imprisonment and a maximum of 15 years' imprisonment and be fined a minimum of Rp 150 million and a maximum of Rp 750 million. Any person that:
- a. gives or promises something to a judge with the aim of influencing the decision of the case handed down to him/her for trial; or
 - b. gives or promises something to an individual who according to the legislation is appointed a lawyer to attend a trial session with the aim of influencing the advice or views on the case referred to the court for trial,
- (2) The judge that receives the award or promise as referred to in paragraph (1) letter a or the lawyer that receives the award or promise as referred to in paragraph (1) letter b, shall be sentenced to the same penalty as that referred to in paragraph (1).

Article 7

- (1) Shall be sentenced to a minimum of 2 years' imprisonment and a maximum of 7 years' imprisonment and/or be fined a minimum of Rp 100 million and a maximum of Rp 350 million:
- a. A building contractor, building consultant who at the time of constructing buildings, or a seller of building materials who at the time of delivering building materials commits a swindle that may endanger the safety of people or goods or the safety of the nation in the state of war;
 - b. Any person who is assigned to supervise constitution activities or the delivery of building materials intentionally lets the swindle as referred to in letter a;
 - c. Any person who at the time of delivering necessities to the National Defense Forces and/or the National Police commits a swindle that may endanger the safety of the nation in the state of war; or

- d. Any person who is assigned to supervise the delivery of necessities to the National Defense Forces and/or the National Police intentionally lets the swindle as referred to in letter c,
- (2) The individual who receives the delivery of building materials or the individual who receives the delivery of necessities for the National Defense Forces and/or the National Police and lets the swindle as referred to in paragraph (1) letter a or c, shall be sentenced to the same jail term as that referred to in paragraph (1).

Article 8

A civil servant or non-civil servant who is assigned to take up a general post continuously or temporarily intentionally embezzles money or securities kept because of his/her position, or lets or helps other person take or embezzle the money or securities shall be sentenced to a minimum of 3 years' imprisonment and a maximum of 15 years' imprisonment and be fined a minimum of Rp 150 million and a maximum of Rp 750 million.

Article 9

A civil servant or non-civil servant who is assigned to take up a general post continuously or temporarily intentionally falsifies books or register books specifically for administrative audit, shall be sentenced to a minimum of one year's imprisonment and a maximum of 5 years' imprisonment and be fined a minimum of Rp 50 million and a maximum of Rp 250 million.

Article 10

A civil servant or non-civil servant who is assigned to take up a general post continuously or temporarily intentionally

- a. embezzle, destroy, or damage goods, official documents, letters or registers used to convince or prove before the authorized official under his/her control because of his/her position; or
- b. lets other person embezzle, destroy or damage the goods, official documents, letters or registers; or
- c. helps other person embezzle, destroy or damage the goods, official documents, letters or registers,

shall be sentenced to a minimum of 2 years' imprisonment and a maximum of 7 years' imprisonment and be fined a minimum of Rp 100 million and a maximum of Rp 350 million.

Article 11

A civil servant or state apparatus who receives prize or promise believed to have been given because of the power or authority related to his/her position or prize or promise which according to the contributor still has something to do with his/her position, shall be sentenced to a minimum of 1 year's imprisonment and a maximum of 5 years' imprisonment and be fined a minimum of Rp 50 million and a maximum of Rp 250 million.

Article 12

Shall be sentenced to life imprisonment or a minimum of 4 years' imprisonment and a

maximum of 20 years' imprisonment and be fined minimum of Rp 200 million and a maximum of Rp 1 billion.

- a. A civil servant or state apparatus who receives prize or promise believed to have been given to encourage him/her to do something or not to do anything because of his/her position in violation of his/her obligation;
- b. A civil servant or state apparatus who receive prize believed to have been given due to the fact that he/she has done something or has not done anything because of his/her position in violation of his/her obligation;
- c. A judge that receives prize or promise believed to have been given to influence the verdict of the case handed down to him/her for trial;
- d. An individual who according to the legislation is appointed a lawyer to attend a trial session, receive gift or promise that knew or believed those gift or promise to have been given to influence the advice or view on the case referred to the court for trial;

Elucidation:

Referred to as a "lawyer" is the person whose profession is to provide legal aid either inside or outside the court and meets the requirements according to the existing law.

- e. A civil servant or state apparatus who intentionally benefits himself/herself or other people in violation of law, or by abusing his/her power, forces a person to give something, pay, or receive discounted payment, or to do something for himself/herself;
- f. A civil servant or state at the time of performing task, asks, receives or cuts payments from other civil servant or state apparatus or from the general treasurer as if the other civil servant or state apparatus or the general treasurer owed him/her;
- g. A civil servant or state apparatus who at the time of performing task, asks or receives job or goods from other party as if the latter owed him/her;
- h. A civil servant or state apparatus who at the time of performing task, uses state land for which the right to use land has been issued, as if based on the law it has harmed the people entitled to it, while in fact the action violates the law;
- i. A civil servant or state apparatus who directly or indirectly takes part in a contract work, procurement, or lease, in which at the time the activities is carried out he/she is assigned to arrange or supervise it wholly or partially,

Article 12A

- (1) The provisions on jail terms and fines as referred to in Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 shall no longer apply to corruption cases of less than Rp 5 million.
- (2) The perpetrator of a corruption case of less than Rp 5 million as referred to in paragraph (1) shall be sentenced to a maximum of 3 years' imprisonment and fined a maximum of Rp 50 million.

Article 12B

- (1) Any gratification for a civil servant or state apparatus shall be considered as a bribe when it has something to do with his/her position and is against his/her

obligation or task, with the provision that:

- a. when the gratification amounts to Rp 10 million or more, it is the recipient of the gratification who shall prove that the gratification is not a bribe;
- b. when the gratification amounts to less than Rp 10 million, it is the public prosecutor who shall prove that the gratification is a bribe.

Elucidation:

Referred to as "gratification" is reward in broad sense, including money, goods, discount, recompense, interest-free loan, travel ticket, lodging, tour, free medicine, and other facilities. The gratification includes the gratification received at home or from abroad and the gratification done using electronic device or not using electronic device.

- (2) A civil servant or state apparatus who is found guilty of the criminal offense as referred to in paragraph (1) shall be sentenced to life imprisonment or a minimum of 4 years' imprisonment and a maximum of 20 years' imprisonment and be fined a minimum of Rp 200 million and a maximum of Rp 1 billion.

Article 12C

- (1) The provisions as referred to in Article 12B paragraph (1) shall not be valid if the recipient reports the gratification to the Commission for Corruption Eradication.
- (2) The recipient of gratification shall convey the report as referred to in paragraph (1) no later than 30 working days after the gratification has been received.
- (3) The Commission for Corruption Eradication within a period of 30 working days at the latest after the receipt date of the report shall decide whether the gratification belongs to the recipient or the state.
- (4) The procedures for conveying the report as referred to in paragraph (2) and for determining the status of the gratification as referred to in paragraph (3) shall be laid down in Law on the Commission for Corruption Eradication.

Article 13

Any person who giving promise or present to public servant base on the authority or power at his position or occupation, or by giver have gift or promise assumed, stick at such position or occupation shall be sentenced to a maximum of 3 years' imprisonment and/or be fined a maximum of Rp 150 million.

Article 14

Any person who offends against provision on the law which expressly states that breach to provision on the law mentioned as corruption, the provision on this law shall be applied.

Elucidation:

Referred to as "the provision on this law" is either material or formal criminal law.

Article 15

Any person who attempt, assist or conspiracy to commit corruption, shall be punished by same penalty as referred to in article 2, article 3, and article 5 up to article 14.

Elucidation:

This provision is special order because penal sanction for attempting and assistance

to the crime is in general lessened 1/3 of penal sanctions.

Article 16

Any person in the territory of the Republic of Indonesia that giving assistance, opportunity, instrument, or description to commit corruption crime, shall be punished by same penalty as a perpetrator as referred to in article 2, article 3, and article 5 up to article 7.

Elucidation:

This provision aims to prevent and fight against corruption having the character of transnational or territorial border passage so that all kind of monetary transfer/property as proceeds of the crime of inter-states corruption can be prevented in an optimal and effective.

Referred to as "assistance, opportunity, instrument, or description" in this provision is as according to law and regulation applying and development of technology and science.

Article 17

Besides can be sentenced as referred to in article 2, article 3 and article 5 up to article 14, the defendant can be subject to addition sanction as referred to in article 18.

Article 18

- (1) Besides such additional sanction in Penal Code as additional penalty is:
 - a. forfeiture of any movable or unmovable goods which use as instrument to or obtained from corruption crime, including company owned by the sentenced person where corruption crime committed, so even also price of goods replacing the goods
 - b. payment of substitution money which the was amount of as much as possible with good obtained from corruption
 - c. closing of business or some of companies for time at longest one year ;

Elucidation:

Referred to as "closing of entire or some of companies" is repeal of business license or stop of activity for the time being as according to court judgment.

- d. Repeal entire/all or some of selected rights or abolition or some of selected advantages, which have or can be given by Government to be punished
- (2) If the sentenced person hasn't pay for substitution money as referred to in paragraph (1) letter b at longest during 1 (*satu*) month of after court judgment which have final legally enforce, hence his property can be confiscated by attorney and by auction to fulfill over substitution money.
- (3) In the event that the sentenced person have no enough property to pay for substitution money as referred to in paragraph (1) letter b, hence punished with imprisonment not exceed maximum basic penalty as according to provisions in this law and while that penalty have been determined in court judgment.

Article 19

- (1) Court judgment on confiscation of property that not owned by defendant not

be decide, if the rights of third party which have good interest will be harmed.

- (2) In the event that court judgment as referred to in article (1) including also property of third party which has good interest hence such third party can raise objection letter to the court mentioned during 2 month after the court judgment said in open court for public.
- (3) Proffering of objection letter as referred to in article (2) shall not delay or stop an execution of the court judgment.

Elucidation:

If objection of third party accepted by judge after executing, hence state obliged to indemnify to third party equal to value result of auction of such property.

- (4) In circumstances as referred to in article (2), judge shall ask the statement of public prosecutor and the interested parties.
- (5) Judge decision for the objection letter as referred to in article (2) possible to appeal to the Supreme Court by public prosecutor or applicant.

Article 20

- (1) In the event that corruption committed by or on behalf of a corporation, hence prosecution and sentence judgment can be done to corporation and or the official member.

Elucidation:

The concerned "official member" is corporation organ running management of such corporation. As according to statutes, including them which in reality have authority and participate to decide policy of corporation which able to qualified as corruption.

- (2) Corruption crime committed by corporation if such crime done by persons which either pursuant to work relationship or other relation, acting in the corporation environment either by himself and together.
- (3) In the event that criminal prosecution conducted to corporation hence corporation shall be represented by official member.
- (4) Official member who representing corporation as referred to in paragraph (3) can represent by others.
- (5) Judge possible to order the official member of corporation to present by himself in the court and possible also to order such official member be brought to the court.
- (6) In the event that criminal prosecution to corporation, hence writ to present and delivery of the writ submitted to official member in residence or the office of official member.
- (7) Basic penalty able to be dropped to corporation is only fine, with maximum penalty added by 1/3.

The False Claims Act as a new tool against corruption: The False Claims Act in the USA

Neal Roberts*
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"There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the Government."
-Benjamin Franklin (1706–1790)

The United States False Claims Act

Abraham Lincoln and the Creation of the False Claims Act (FCA) in 1863

Qui tam pro domino rege quam pro si ipso in hac parte sequitur
(Who sues on behalf of the King as well as for himself)

When William Blackstone wrote his famous Commentaries between 1765 and 1769 he noted that in early English Law "much reliance was placed on common informers to secure the enforcement of laws effecting public order and safety."¹ These *qui tam* lawsuits were brought by private citizens at a time when there was no organized police force. The actions were civil claims for money, not

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criminal proceedings, and usually the statutes would provide that the damages would be for double or treble what the King (the Government) had lost. A key notion was that private citizens would be granted a portion of the civil monetary damages as a reward for all their efforts. So in effect, the King's Government has used private parties to root out corruption and to give those high-minded citizens a large bounty for their efforts.

Abraham Lincoln, who was famous for having read the common law by candlelight, knew of the English *qui tam* tradition. As President of the United States, Lincoln faced a very big problem in 1863, namely, the Union was losing the Civil War even though the North had all the industry, mills, and munitions plants. One major reason for this was that the supplies of the Union Army were consistently tainted and shoddy. The word "shoddy," in fact, refers to the fabric, which was made from old materials and glue, dyed blue, and made into Union uniforms. The only problem with shoddy fabric was that when it rained on the battlefield the glue dissolved and the soldiers were left in tatters. Government officials, including the secretary of war Simon Cameron and various members of Congress, were complicit in these frauds in that they received kickbacks known as broker's fees for steering procurement contracts to unscrupulous suppliers.² In a nutshell, there was bribery in the procurement process, which resulted in false bills for extravagant sums. Fraud and profiteering by government contractors perverted the procurement process. The Congressional record of 1863 had stories of gunpowder barrels full of sawdust and soldiers' boots made of paper rather than leather.

There were few tools to combat bribery and profiteering in the procurement process. There was no Federal Bureau of Investigation or other government agency to investigate wrongdoing and ensure the integrity of the procurement of war goods. So President Lincoln decided to enlist the efforts of private lawyers and their clients to go after the individuals and companies that were bribing the United States government officials, who were not inspecting the goods and rejecting them prior to delivery to the battlefield.

The original 1863 FCA provided that only the individual could prosecute the case and the Government could not stop the action. These private attorneys general were then entitled to 50% of the monies recovered in the lawsuit. While these deputized private attorneys general were sometimes pilloried in the press or even by the senators who gave them their statutory powers ("Setting a rogue to catch a rogue"³) they were effective at eradicating fraud in the Union Army procurement process.

The creation of the modern United States FCA⁴

During the Second World War the old FCA was amended and in effect eviscerated in part because of very effective lobbying efforts by the defense suppliers who were beset with FCA cases and in part because there was a public hue and cry over the fact that the old statute did not require the *qui tam* whistle-blower (by then called in the statute a “relator”) to have secret or inside information about the wrong. These legislative changes resulted in an almost complete absence of privately initiated FCA *qui tam* cases for almost 40 years.

The situation changed dramatically in the 1980s and again it was a war, the Cold War, which occasioned the legislative changes that created the modern US FCA statutory scheme. President Ronald Reagan convinced the Congress that the only effective way to deal with the Soviet Union was to outbuild it in an armament race, and this required spending vast sums on military hardware. While many historians credit President Reagan with success with this strategy, few mention that he signed the legislation that created the modern FCA. It was his attorney general, Edwin Meese, who put in place the structure within the US Department of Justice (DOJ) to administer the new law.

The congressional debate about the new statutory scheme was very interesting because the premise was that the government prosecutors were not doing an adequate job under their criminal investigative powers to stop the suppliers who were committing the frauds. The government officials were simply overwhelmed by the amount of fraud in the procurement process and the Congress decided that the DOJ needed the help of private lawyers and high-spirited citizens. The resulting unchecked fraud was costing the United States taxpayers a fortune. The DOJ at the time of the legislation was not supportive of the changes.

The congressional team that ultimately passed the new legislation was composed of both very conservative members of the Republican Party such as Senators Charles Grassley and Orrin Hatch and very liberal members of the Democratic Party such as Senator Joseph Biden and Congressman Howard Berman.

The legislation was passed in 1986 and there was not a great deal of opposition from the government suppliers, such as the defense contractors, probably because there had been a number of bribery and corruption scandals involving those companies and they tended to keep a low profile.

The False Claims Act

The post-1986 modern FCA allows an individual with a lawyer to initiate a claim wherever a defendant has undertaken conduct (made a claim) when the defendant knows that it illegally increases payment by the Government or illegally reduces a payment to the Government, or even conduct that deprives the Government of revenue.

Liability

A defendant is liable under the FCA for a claim against the Government if at the time the claim was made the defendant had actual knowledge of the false information or acted in deliberate ignorance or disregard of the truth or falsity of the information. This is not a criminal statute, which requires specific intent to defraud the Government; mere knowledge that there was falsity is enough to make the defendant liable under the law.

Damages

The FCA mandates that the defendant who is found liable must pay back more than what was taken from the Government. The defendant pays either double or treble the amount of the damages that the Government sustains because of the false claim. Simply put, the Government first gets "single damages," which is the amount of money it paid for the procurement minus the amount it would have paid had the claim not been false. This sum is then multiplied by three if the case goes to a full trial; if it is settled then the Government will agree to some lesser multiple, such as two-and-a-half times the single damages.

Examples of damage calculation situations are:

- **Overcharges**, where the Government is billed for higher-priced goods or services than it actually gets from the supplier.
- **Fraud-in-the-inducement**, where the supplier on a Government contract bribes a public official, rigs the bids with other suppliers, gives kickbacks, or gives the Government information about the price of the products (defective pricing). In each of these cases the Government would not have purchased the goods at all or at the price it did had it known about the falsity or the fraudulent behavior.
- **False certification, testing, or product quality**, where the supplier falsely claims either that it has undertaken necessary procedures or tests or that the product is of a certain quality.

The qui tam provisions

The plaintiffs in the civil FCA action are both the Government and the *qui tam* plaintiff. The United States is a named party along with the private party plaintiff called the "relator." The case is first disclosed to the Government and then a claim is filed with the federal court under seal (meaning that it is kept secret from the outside world and from the defendant). The Government then investigates the allegations in the civil action and has a period of time to decide whether to intervene and assume control of the litigation. If the Government decides to take over the case, to intervene and assume control of the litigation, then the United States becomes the major force in the litigation and is merely helped by the private party and that party's attorney.

If the Government does not take on the case and actively litigate it, if it declines to intervene, then the private party can still move forward but the Government is still a party and will receive at least 70% of any proceeds of the case.

To bring the case the relator must have secret inside information (direct and independent knowledge of which the relator is an original source) that is not out in the open (publicly disclosed) in the press or known as part of a government study (such as a General Accounting Office report) or disclosed in a criminal, civil, or administrative hearing.

The relator's award

The 1986 Amendments to the US FCA increased the awards payable to whistle-blowers to encourage them to expose procurement fraud and to litigate their claims if the Government declines to do so. These awards can be as high as 30% of the total damages paid, or up to three times the damage the false claims caused to the Government.

Most of the cases where the Government intervenes and takes on the cases are settled. In these settled cases the amount of relators' awards is between 15% and 25% of the proceeds. This percentage is often fought over between the allied plaintiffs once the settlement amount is determined. Awards are not granted when the relator planned and initiated the wrongdoing. There are also frequent disagreements over civil and criminal fines and penalties, which are paid outside of the FCA action.

Attorney's fees

In addition to the relator's award, the relator's attorney is also entitled to normal hourly rates for time spent in the prosecution of the case.

The Success of the US FCA 1986–2007

The basic goals for the US FCA when it was amended in 1986 were to mobilize private resources to eliminate individual situations of procurement fraud, bring in substantial revenue to the Government, and, perhaps most importantly, change the incentives for corruption of the procurement process and the corruption of public officials. It was hoped that it would have a deterrent effect on all suppliers to the Government. It was intended to bring the corruption into the light of day in a judicial forum, augment scarce governmental investigative resources, and change the bargaining process in government procurement.

Most commentators, as well as a broad coalition of members of Congress, believe that the modern US FCA has been very successful at accomplishing its goals. In 1987, the first year after the legislation was enacted, a mere USD 86.5 million was collected by the Government for procurement fraud. All of these cases were initiated by the Government, not by a whistle-blower. Between 2001 and 2006, a whopping USD 1.7 billion was collected annually; USD 1.1 billion of that came from whistle-blower cases initiated by private citizens. While the Government intervenes in only about 19% of the cases brought by private individual whistle-blowers, it has a success rate of over 90% in prosecuting those cases where it chooses to intervene. In almost all of those cases (95%), the defendants understand the corruption case against them and agree to settle the cases with the Government without ever going to trial.

Since 1986 the US FCA has brought in a total of USD 18.2 billion. About USD 11.1 billion, or 61% of this amount, was derived from cases initiated by private whistle-blowers. Whistle-blowers and their counsel have received a total of USD 1.8 billion, or on average of 16%, of the total damages paid to the Government on whistle-blower cases.

These cases have changed the entire dynamic of US federal procurement. By focusing on the entities that make payments or kickbacks or bribes, the US FCA has changed the incentives for corruption in a variety of settings. The initial cases focused on the defense industry, which has a relatively small number of companies that dominate defense contracts and that rely on the Government to spend for their very existence. These companies tended to learn the lessons of the FCA early and the number of defense cases as a percentage of the whole dropped during the 1990s. On the other hand, the Government spends a great deal of money through the Medicare health-care system and many companies continue to dominate the list of biggest cases. Each year there are also tales of various other areas of rampant fraud such as financial entities that deal with the Government, professional firms that receive kickbacks, and computer companies that corrupt the procurement process with the

Government. Even more interesting have been the cases where the Government or the Indian nations allow the exploitation of the national lands in return for a license fee that has frequently been fraudulently computed and underpaid.

A false claims act as a new tool against corruption

Adapting the FCA concept to developing countries like Indonesia

An FCA regime is a simple and practical way of inducing the private sector to fight corruption by giving whistle-blowers and their attorneys a reward for stepping forward and returning monies taken from the public purse. The civil remedy of getting the corrupting entity to return three times what was taken can also be used by the government itself as a weapon in addition to the usual criminal remedies. There are many items to consider in adapting this tool for use by other developing countries, such as Indonesia, but most can be grouped under the following four headings:

- Strengthening the judicial system infrastructure,
- Codifying the law of corrupt practices and disclosure,
- Establishing the false claims act, and
- Protecting whistle-blowers.

Strengthening the judicial system infrastructure

First, a part of the court system must itself be immune from corruption so that the FCA lawsuits that are brought are not themselves corrupted by the malefactors. Such a system is already in place in various countries under the mandate of various anti-corruption commissions like those in Hong Kong, China and in Indonesia. For instance, KPK in Indonesia has established a special anti-corruption court to deal with privately generated complaints about corruption.

Second, a part of the public prosecution service must also be immune from corruption. In the case of Indonesia, the expansion of the KPK powers to include the administration of an FCA would reinforce the KPK mandate of eliminating corruption among public servants by supplying a tool against the companies that corrupt those public servants.

These public prosecutors have to be both competent and honest and have some training in civil cases and financial damages. For instance, in Indonesia the KPK has assembled a very good group of competent and honest prosecutors to pursue corruption claims. The FCA system of having whistle-blowers and their attorneys prepare both a disclosure letter and a civil

complaint, which would include the evidence the whistle-blower has of the corruption, should help an anti-corruption commission in sifting through allegations of corruption by providing a more professional and well-documented claim of corruption. These FCA claims should also lead to more evidence of criminal actions particularly on the part of the corrupting companies. The size of the FCA claim should be quite large, and in the case of Indonesia, perhaps even larger than the present rupiah amount—equal to about USD 100,000 to perhaps USD 1 million—so as to focus the FCA process on large frauds.

Third, there must be mechanisms that allow for the discovery of documents in the hands of the defendant company to assist with the investigation and the unearthing of documents by the whistle-blower and the government. Whistle-blowers and their lawyer and public prosecutors must be given the right to seize documents through the use of broad subpoena powers. The FCA system starts with the public prosecutor leading the investigations, but if there is no activity on the part of the government and it does not intervene, then the FCA allows the whistle-blowers and their attorneys to lead the investigation and use the subpoena powers.

Fourth, whistle-blowers with the standing to bring FCA claims should be defined to fit each country setting. In particular, in addition to individual persons, certain entities like nongovernment organizations should be able to bring such actions.

Codifying the law of corrupt practices and disclosure

If a country is to adopt an FCA system it must understand and perhaps strengthen all the laws concerning conflicts of interest of public officials. It is equally important to pull together and strengthen all the laws concerning corrupt practices by the companies and corporations that cause the conflict of interest. These corrupt practices include various behaviors that are already illegal, such as bribing public officials, as well as rules against kickbacks and bid rigging, money laundering, and illegal conflicts of interest by the corrupt company and not just the public official.

This system of laws must also be buttressed with a set of disclosures. Public officials will be put through a regime of financial disclosure. Equally, if not more, important, all companies dealing with procurement or natural resource issues with the government will need to certify at the time of contracting that they have complied with all of the various corrupt practices acts and that they have not made payments or have co-ownership or made kickbacks.

The violation of these laws will be the underlying violation that makes the procurement contract false when it is submitted for payment. That false claim then allows the whistle-blower to come forward under the false claims act.

Establishing the false claims act

The FCA needs to be written to be understood by nonlawyers. It must contain the basic system of reward for bringing lawsuits on behalf of the government against malefactors who corrupt the procurement process. The system is based on new secret information brought forward by the whistle-blower and it must give the public prosecutor's office time to investigate the underlying illegal acts. It is a civil remedy, which will result in the payment of damages. The prosecutor may decide to use the criminal law as well, but that will be a separate matter. The damages paid must be a multiple of the amount taken, say triple damages, and the attorney's fees must additionally be paid. The whistle-blower will in turn be rewarded with a share, say, up to 30% or 40%, of the amount recovered, and the malefactor must also pay the attorney's fees for the whistle-blower. The FCA law must also allow private attorney to share in the whistle-blower's reward on a contingent basis up to some limit, say, 40%–50%, because it will be the private lawyer who will spend a great deal of time fighting corporations with tremendous financial resources.

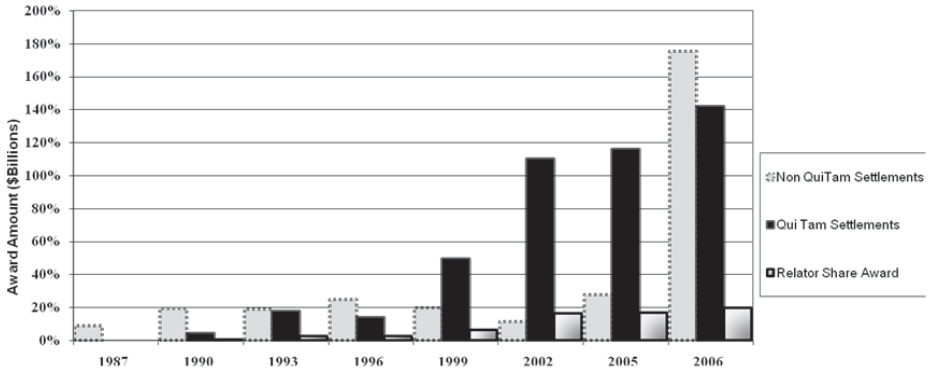
The recovery of the judicial award after a successful FCA lawsuit will require a set of laws for seizing the assets of the defendant companies and for tracing assets taken by the companies outside the country. The asset tracing laws that are being revised should include the tracing of assets of defendants in FCA cases brought by the government or on its behalf by whistle-blowers and their attorneys.

Protecting whistle-blowers

Whistle-blowers and their private attorneys will need protection from retribution. For whistle-blowers this will need to include protection from countersuits, job security, and protection from defamation suits. In addition, in high-profile cases there may be a need for some witness protection system to protect the whistle-blowers from personal attack. Their attorneys will also need similar protection, particularly from countersuits and defamation laws.

Annex

FRAUD STATISTICS
Civil Division, U.S. Department of Justice
October 1, 1986 to September 30, 2006



Note: Non-qui tam settlements include a settlement with Boeing initiated by the Government.

NOTES

- 1 Blackstone, William. *Commentaries*.
- 2 See Scammell, Henry. 2004. *Giant Killers*. Atlantic Monthly Press. Chapter 5.
- 3 Howard, Senator Jacob (1863) *Cong. Globe*. 37th Cong., 3rd Sess. 953.
- 4 Senate Report (Judiciary Committee) No. 99-345, 28 July 1986.

Chapter 5

Role and responsibility of suppliers in preventing bribery in public procurement

Procurement reform has long been perceived as an exercise for governments, not businesses. However, bribery can only occur if there is supply of bribes. Effective measures against bribery therefore need to address both the supply and the demand sides with equal emphasis. Today, many businesses that supply goods and services to governments and bid for public contracts understand their role and responsibility in curbing bribery in public procurement. Ethical management is increasingly seen as an indispensable element of a business policy.

Two trends drive this development: collectively, businesses understand that paying bribes to win government contracts harms their long-term interests. Individually, companies also seek to prevent reputational and economic risks that arise from anti-corruption mechanisms and sanctions that recent procurement reforms have introduced.

The Indonesian Committee on Business Ethics promotes businesses' compliance with rules and regulations, and encourages government authorities to increase transparency and accountability and change regulations that currently hinder fair competition.

Businesses' eagerness to establish explicit codes of conduct, compliance systems, whistleblower protection mechanisms, and leadership in anti-corruption has economic foundations as well: more and more businesses are now seeking ways to prevent corruption within their companies to avert risks of legal processing and damage to their reputation; investors and shareholders also expect enterprises to change. Corporate social responsibility is increasingly being seen as a precondition to corporate sustainability.

The role of suppliers in preventing bribery in procurement in Indonesia

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Before answering the question of what suppliers can do to prevent bribery in procurement, we need to understand why suppliers bribe. To answer this question, we need to analyze the background of business in Indonesia.

Bribery is not an original concept of businesses, but rather a reaction to what that blocks businesses and their functions. Through an analysis of Indonesian business functions, we found that Indonesia had a very regulated market. In such a regulated market, Indonesia had a great deal of collusion, cartels, and other monopolistic practices. To answer this problem, Indonesia enacted in 1999 the Competition Law, or to be more precise, the "law to prohibit the monopolistic practices and unfair business practices." The Competition Law prohibits practices in the form of abuse of a dominant position or monopolistic practices.

Another characteristic of Indonesian businesses in the past was negative conglomeration. Conglomerates are often considered as a success story when, in fact, they are not. We can look at the story of Japan and think about why World War II happened. It happened because the dominant position of the Japanese zaibatsus affected the policies of the Government. The Japanese Government had to expand the country's territory to save raw material resources and widen the market for the *zaibatsus*. Therefore, conglomeration is not really

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evidence of business success, but rather over ambitious and greedy attitude of businesses which resulted in abuse of the dominant position. That was the reason why MacArthur imposed restrictions on the *zaibatsu* after World War II.

A third characteristic of Indonesian businesses not only in the past but even up to the present is the existence of too many state enterprises. The number of state enterprises in Indonesia has increased to over 130 plus their subsidiaries make a total of approximately 180. Just mention any field in business or any business sector, and the state enterprises will always be there. What does that mean? This means that the Government, which owns the enterprises, often cannot distinguish between its roles as regulator and business actor.

The next characteristic is the large number of collusive tenders in government and state enterprise procurement.

This is the landscape of Indonesian businesses or the economy in general, and that is the cause of bribery. In such a business environment with so much blockage, businesses will try to bribe to unblock and open doors. The bribe is an additional cost, and not an estimated cost, and is never included in business calculation. So businesses really do not need bribery but they have to bribe to open doors, speed up processes or get a business order. Bribery occurs when there is no fair business and no professionalism.

What can suppliers do?

Now, what can suppliers do in such a situation? They can act individually as businessmen or as business units. But businesses can also act together as a group through an association or through the Indonesian Chamber of Commerce. However weak single businesses are, they are the fundamental players in the market. They are the players that must act. Internally, they have to promote good corporate governance, which is lacking here in Indonesia. One of the main reasons for the economic crisis, which later developed into a multidimensional crisis in Indonesia and in other Asian countries, was the absence of good corporate governance, and no good governance on the government side. Therefore, every individual businessman or business unit must promote good corporate governance internally and respect business ethics, which are superior to regulations. Unfortunately, people always look to regulations. Politicians and government officials always give importance to regulations. Community social responsibility is part of business norms or business ethics. It is not regulated or formulated as a regulation. It must come from the internal consciousness of the businesses that they need to preserve their surroundings or environment and to sustain their businesses.

Businesses can ask for transparency and public accountability from public officials. That means understanding the rights of every individual business in tenders. Often, businesses are not in a position to ask for transparency or public accountability from public officials. Through reform and democratization, everybody including the business community can express their aspirations and talk about their rights besides complying with their responsibilities.

The Competition Law has already established a competition agency in Indonesia. It is a very comprehensive agency. Besides investigating, it also judges, pronounces verdicts, and implements its decisions. That means it acts as investigator, attorney, and judge. The Competition Law is so comprehensive that it not only regulates the conduct of businesses but at the same time is so much related to consumers' protection and welfare and regulators' position. For example, article 22 of the law prohibits bid rigging and collusive tenders. KPPU has produced guideline where KPPU looks not only into horizontal competition but also into vertical collusions between the tender committee and institutions that organize the tender with business players. The Competition Law must be well understood and followed.

Every business must be encouraged to avoid political intervention, particularly when the process of democratization is still at an early stage. Political cost in Indonesia at present is so huge that it dwarfs the budget for other sectors such as economic welfare, education, and health care. That has become a reason why corruption in Indonesia is even getting worse.

Lastly, businesses must promote the corporate concept into non-business or non-commercial institutions. The corporate concept means matching input and output, and cause and effect. Corporate practices are real-world practices because corporations are in the market, they have to be realistic, and their calculations must be correct. The practices are not simply normative like bureaucratic practices. Also, the budget system of corporations is so realistic because it is so market-oriented, while the bureaucratic, state, and municipality budgets are so normative that government officials manipulate them to fund so many activities that are not covered by under the normative standards.

Now, what can suppliers do together? The first is to comply with the Competition Law to avoid cartel conduct. Suppliers must promote transparency and public accountability through an association because an association can do more than individual companies can.

Businesses must also understand the correct purpose of licensing and certification. Licenses and certificates should be misused as passport or permit to do business, but it must be a proof of competence.

Corruption risk management by companies and the role of civil society: The experience of the Integrity Pact

Michael Wiehen

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Partnership for Transparency Fund

The fight against corruption is waged both through control and through prevention. Control is a function of the state. Here, criminal laws are the most important instruments. On the issue of whether companies can be held criminally liable, I believe that they should. The other instruments of control are civil and administrative sanctions and the debarment or blacklisting of corrupt companies.

Prevention measures both by government and by companies that are active in the market are necessary. Effective risk management is owed to citizens and shareholders.

On the company side, prevention efforts will need three key elements: a code of conduct, an effective compliance system, and the leadership of the company, which must “live” the code of conduct. It makes no sense if the code is printed on glossy paper but is not being applied from management down.

Code of conduct

Today, the code of conduct is prepared and used by most companies around the globe that do business internationally. The most important element of the code of conduct is commitment to integrity and corruption prevention. The code should very explicitly prohibit bribery and not talk around it. We believe it should also explicitly prohibit facilitation payments. The OECD Anti-Bribery Convention does allow facilitation payments, or at least it does not prohibit them. So most of the member states interpret this to allow facilitation payments, but I think the time has come to also call for a clear prohibition of facilitation payments as many international companies have started doing.

The code of conduct must also contain clear rules about gifts, entertainment, and political and charitable donations—everything that the staff

need to deal and comply with the code of conduct—because the staff need to understand precisely what is expected of them.

A fourth element that is very important here and should be dealt with in the code of conduct is the use of agents, middlemen, intermediaries, consultants, etc. Internationally, these middlemen are very often used actually as agents of corruption. Therefore, in the future, a company code of conduct should stipulate that there should be due diligence in the selection of the agents and clear terms of reference. Remuneration must be appropriate for legitimate work that has actually been carried out. The payment for this work must be made only into named accounts, not in tax havens. Companies must introduce central control of the use of agents and not leave this to the directors or the salespeople out in the field.

What is needed is an effective compliance system, which includes regular training for all staff, Instruments for assisting the staff in difficult situations, and instruments for capturing knowledge of wrongdoing. Instruments that have been developed and proven worldwide are hotlines, internal anti-corruption contact persons, and external ombudsmen. Whistle-blowers should be encouraged and protected. Very important also for effective compliance is prompt application of sanctions when violations are uncovered.

Role of civil society

Now, what is the role of civil society in this context? Civil society is often too busy with advocacy with governments and companies to install adequate prevention systems. We recommend that governments require effective corruption prevention systems of all bidders on government contracts. Civil society also assists governments and companies in developing effective prevention systems. Many civil society organizations (CSOs) have developed models. I would like to mention here three model codes of conduct and compliance systems that we at Transparency International have developed.

The most important one is TI's Business Principles for Countering Bribery. We have very recently finished work on the Business Principles for Small and Medium Enterprises. In the past, we concentrated on big international companies, but more and more often now small and medium enterprises also work across borders. So we have adopted and adjusted the Business Principles for Small and Medium Enterprises. We will very soon come out with the Self-Audit Form, which helps companies determine through self-audit whether they meet the requirements or not.

What are national chapters of Transparency International doing in this field? First of all, TI has adopted a coalition approach and works together with governments, companies, and other CSOs rather than being confrontational. National chapters in many countries are helping companies comply with government requirements. A number of national chapters have corporate members. Where corporate members exist, there is a very lively give-and-take not only among the corporate members but also with other members of the national chapters about the development and application of prevention systems.

National chapters are also busy monitoring the execution of government purchase or construction projects and government and company compliance with rules. In addition, a number of national chapters are busy developing or applying surveys and measurement tools, publishing results, and suggesting appropriate measures to deal with negative results.

Integrity Pact

The Integrity Pact has a few critical and necessary elements. The first one is mutual commitment/pledge by the principal and bidders to refrain from all acts of bribery and the commitment/pledge by the winning bidder to refrain from all acts of bribery "throughout the execution phase." Second is commitment by the bidders to disclose all payments to third parties.

There are normally agreed sanctions for violators. Issues are very often resolved through arbitration. Perhaps the most critical element of the Integrity Pact is monitoring by civil society, usually an external expert monitor. Through monitoring, civil society plays a key role in holding government and the bidders to account. To do their job right, the monitors must have full access to all documents and parties.

The advantage of the Integrity Pact is that bidders can refrain from paying bribes in the knowledge that their competitors are covered by the same pledge—a controlled environment. The demand for the Integrity Pact comes normally from government departments, but companies about to bid for a major government contract can also approach the principal and demand the use of an Integrity Pact.

Today, several hundred Integrity Pacts are in place worldwide. The feedback generally is very positive, and the compliance rate is high. There have been significant savings in numerous cases (10%–60%). Sanctions have been applied. For example, in Italy large-scale debarment of companies has taken

place. Very interestingly, bidders are usually quickly convinced of the benefits when they see how it works.

Selected examples of Integrity Pacts

Among examples of Integrity Pacts, I would like to mention a case in Germany: the Berlin International Airport with a total contract value of EUR 2.5 billion–EUR 3 billion. All contracts are covered by the Integrity Pact. Interestingly enough, the initiative started with the airport company because there had been a history of corruption. The monitor is an independent external expert, who is selected and is being supervised by TI Germany. To date, many contracts have been awarded. There have been no problems. So far, bidders have raised no complaints at all.

There are two major hydroelectric projects in Latin America. One is an Ecuador case of monitoring of document preparation, the actual bidding process, and public access to information. Our chapter here in Ecuador maintained close contact with the bidders throughout and kept out corruption and political influence in the decision making.

The other big project is the monitoring of the bidding and implementation of the projects related to the largest-ever hydroelectric dam in Mexico. Here, the interesting element is the use of social witnesses, who are independent and technically competent experts appointed by TI-Mexico.

The social witnesses publish final assessment reports of their projects. Good results of this El Cajon hydroelectric dam project are that the Government decided to apply the Integrity Pact and appoint social witnesses for many other large projects.

Finally, a word about India. Mr. Ramachandran mentioned that public corporations in India are now using the Integrity Pact. The interesting part about India's case is that these public corporations in India select an independent external expert to do the monitoring. But they can be appointed only after being vetted and approved by the Central Vigilance Commission. So they are selected by the companies and monitor and supervise the companies, but they have the imprimatur of the CVC. As far as I've heard, the experience so far has been very good.

Bribery concerns for international businesses

Cliff Rees*

Partner, PricewaterhouseCoopers Indonesia

Pressure for change

Pressure for change is building up as we see increasing pressures for transparency around the world. In an ideal world, international corporations would conduct business in an ethical manner even though doing so may cause them to lose revenue, albeit short-term. Unfortunately, however, the pressures on businesses to increase revenue, market, etc., sometimes overlie their will to conduct business in an ethical manner. The most important issue in any business decision is not ethics. For businesses, it is risks. If a transaction is considered to be low-risk with high returns, then from a business perspective, it is an ideal transaction. Now, if we want to change the decisions made by businesses, then we have to change our approach, and not focus purely on ethics.

This means that we need to increase the legal risks associated with corruption. Through the passage of strong laws prohibiting corruption, enforcing the law is actually publishing the identities of wrongdoers. Second, we need to ensure that businesses start considering the legal and reputation risks associated with corruption and consider these risks in making decisions. PricewaterhouseCoopers (PWC), an international business, is now seeing how the pressure of doing business in an ethical manner affects businesses. The pressure comes from organizations like the OECD, from anti-corruption standards, and from stronger enforcement by market regulators like the Securities and Exchange Commission (SEC). Japan has just brought in similar regulations. We will look at the consequences to international Japanese businesses.

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Mr. Rees' main focus now is heading the crisis management team in Indonesia consisting of business advisers and consultants in dispute analysis and investigation. He is on the board of Indonesia Business Links and is treasurer of the European Business Chamber of Commerce in Indonesia.

Five years ago, when we started the forensic business in Indonesia, we were looking at companies and investigating individual fraud. That was what our clients were asking us to do. Today, that has changed. We are looking more at preventive measures for systems and fraud. Foreign companies are introducing systems to prevent fraud. We spend most of our time in that area now looking at the Foreign Corrupt Practices Act (FCPA), among others. There are significant risks for international businesses, significant fines, and loss of profits. In addition to the legal risks, shareholders of international businesses have high expectations in terms of ethical values of companies. They just want their companies to act in an ethical manner. The companies on the stock exchanges are often the ethical companies, the ones who practice the code of conduct. So they have abandoned the old ways and moved forward. They have to redefine the way they do business. Shareholders also look at the financial risks of their investment by checking the ethical procedures and processes of the investments they make. It has a serious impact on share value.

Increased legal risks through enactment and enforcement of FCPA legislation

Many corporations have been suspended or investigated by the SEC not because of what they are doing in the US but because of what their foreign subsidiaries are doing in other countries. There are an increasing number of countries enacting FCPA-type standards like the Japanese. The risks are serious. They include criminal prosecution, seizure of profits derived from the bribery, fines, and damage to reputation and the morale of the employees. It is standard in most anti-corruption laws for the definition of foreign officials to also include the employees of state-owned companies. This is quite important because it expands the relationship and the investigation power of the regulatory bodies. But note that FCPA regulations cover only employees of state organizations. They do not cover the private sector. The private sector is very much exempt not from criminal or civil suits but from the FCPA regulations.

I want to comply with the law but is it impossible in Indonesia?

I come to a foreign country and want to do business, but everybody does business like this. How do I change? How do I face the music? How can I do things differently? I have pressures from the police, local government, customs, and excise. How do I get my equipment through the front door? I have tax issues. How do I prepay taxes and get them back? All these issues are forcing companies to continue in the old ways. They must stop. This is the hardest battle

you will fight. It is a vicious circle that you will get yourself into if you follow these corrupt ways.

The historical perception is that you cannot operate in Indonesia or other similar countries without paying bribes. There is no doubt. It is a courageous step for any company to change those ways. We have seen many of our clients face these issues because of a change of corporate policy or that of the SEC. But they have to change. And they have changed. These are among the more difficult decisions and business practices you will ever meet. But it can be done. Many of our clients are changing.

It is a dangerous world. We have talked about the pressures earlier. Investigations do take place. PWC at the moment, just in Indonesia and representing worldwide clients, is investigating 12 or 15 of these noncompliance issues with SEC companies.

What can trigger a compliance audit/investigation?

Where do these audits start? They start from disgruntled employees, whistle-blower schemes, competitors, SEC, and due diligence. Due diligence is quite an interesting perspective. Those who are in the transaction business today not only go into a company to work out what is on its balance sheets, whether its assets are valued properly, or whether other liabilities actually state correctly any other contingencies. They also do other things. They look at the code of conduct. A great deal of our transaction work is looking for systems that protect against bribery. Those who buy these companies are responsible for their history, inheriting their problems. They have to be aware of the past. So much of the efforts nowadays for international companies doing acquisitions are in business ethics, corruption, and the systems that protect the companies against corruption.

What are international companies doing to prevent corruption?

To prevent corruption international companies are setting clear policies prohibiting bribery. They are ensuring that the code of conduct has anti-bribery provisions and that there is documentation making sure that employees sign off when they read those codes of conduct and that they know these exist and the way of doing business with their suppliers and customers. They are creating compliance divisions primarily with an anti-bribery focus and ensuring that anybody they contract with signs off that they have not committed any bribery.

We also need due diligence, to look at who our suppliers and customers are and whether there is any bribery or history of wrongdoing.

This is vital change for the future in doing business. Associations, whichever industrial area they are in, should set minimum anti-corruption standards. It is important that we all have a level playing field. But if we can all agree as a business association that these are the minimum anti-corruption standards we should apply, then the world becomes a better, more competitive place.

Increased awareness of corruption risk by investors

Again, we are talking about due diligence. Investors now recognize the high legal, operation, and reputation risks of investing in companies that do not have effective anti-corruption strategies. We have to understand that small subsidiaries can implicate the holding company in a big way if they are found to have any links to corruption. Investors are now investing in companies that have major standards of high ethics for anti-corruption.

Lastly, if I were an investor, what would I be looking for? Not only for high returns. I would be looking for a company that has a business strategy with an anti-bribery code of conduct and that contracts with suppliers with certain governance. I am looking for a company whose management and staff are aware of the code of ethics and that has a compliance department. I am looking for a company that knows, when they have deals with the government, how those deals are standardized, reviewed, and ensured to comply with these standards. If a company has to do business with the government, it has to get permits or licenses from the government. How does it actually go and get those licenses? Transparency and documentation is what I am looking for when I am investing in a company. If we all apply these standards, the level of corruption will go down, the world will be more ethical, and the risks will become less. It will be a better world in which we can do business.

Chapter 6

The role of civil society in curbing corruption in public procurement

Governments and administrations set procurement rules, and public officials execute the actual procurement processes. However, civil society can play important roles in the conduct of procurement and in procurement reform. In a rather classic role, civil society actors scrutinize procurement procedures. Procurement is carried out to provide services to citizens, and citizens pay for the goods, works and services procured; they therefore have an obvious role in contributing to needs assessment decisions and in scrutinizing the proceedings that administrations carry out on their behalf. Decentralization of a large share of procurement to local level in many countries in Asia-Pacific increases opportunities for civil society's involvement in public procurement.

However, civil society's role is not limited to scrutinizing individual procurement proceedings. Civil society has, from early stages, taken an active role in advocating reform and in developing mechanisms to protect procurement against corruption.

The Partnership for Transparency Fund (PTF), an initiative to monitor public procurement, demonstrates how civil society has stimulated demand for good governance. In Indonesia, the national chapter of Transparency International (TI) monitors the implementation of integrity pacts, an instrument developed by TI to contain corruption in public procurement (see also Chapter 5 on integrity pacts).

The procurement that took place to rebuild shelter and infrastructure after a massive earthquake in Pakistan is an example of how civil society can be involved in procurement in large-scale emergency situations. Government agencies and civil society actors cooperated closely, and transparency mechanisms and integrity pacts were introduced to avoid corruption in the procurement process. This success story shows that even under difficult circumstances, civil society can be closely involved in order to mitigate corruption risks in public procurement.

Enabling civil society to participate in monitoring and safeguarding public procurement: The experience of the Partnership for Transparency Fund

Michael Wiehen*

Member of the Advisory Council, Transparency International/
Partnership for Transparency Fund

PTF stimulates demand for good governance

Good governance requires action by the government (supply side) and by the private sector, civil society organizations (CSOs), and nongovernment organizations (NGOs) (demand side). The Partnership for Transparency Fund (PTF) is engaged in stimulating the demand for good governance.

The demand side of good governance involves the active engagement of civil society, the private sector, and the media. Civil society includes a very wide range of actors. The demand side also involves advocacy, consultation, and monitoring. Transparency International does all three of these activities. Good governance cannot be imposed from outside a country; it has to be developed within. Citizen demand in any country stimulates government action, creates local ownership of reform programs, and raises accountability and professionalism in public service. The role of civil society, we believe, is a key factor in building demand for good governance. The PTF supports civil society capacity building.

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Mr. Wiehen joined Transparency International in 1995, helped build up the global movement and the German national chapter of TI, served on the board of TI for several years, and is still a member of the advisory council of TI and of the board of TI Germany.

He was a member of the Bar in Munich, Germany, from 1996 to 2003.

PTF supports small projects

The PTF supports small projects. The activities of the Fund are demand-driven. We get requests from both CSOs and NGOs. All the projects that the Fund supports are time-bound, and direct action and results-oriented. The Fund does provide design assistance usually with the help of volunteer project advisers, who are normally retired specialists in governance. Before the PTF supports any activity, it assesses the project and the organization for viability and impact.

Since its inception in 2000 the PTF has funded over 60 projects in 35 countries; total disbursements are some USD 1 million; the average grant is less than USD 25,000. An independent evaluation of the activities of the PTF suggests a significant positive impact on the large majority of projects.

What kinds of projects does the PTF support? The critical one is monitoring. The organizations supported by the PTF are involved in monitoring public procurement, public expenditures, privatization, and auctions. The organizations monitor the implementation of freedom-of-information laws and the delivery of public services, for example, health services and driving permits. The second major activity of the organizations the PTF supports is civic engagement. This includes drafting anti-corruption legislation, building anti-corruption coalitions in individual countries, and developing citizen charters. Media campaigns and investigative reporting is the third kind of activity supported by the PTF.

Examples of PTF projects in public procurement

Let me give you a few examples of the activities of the PTF in public procurement. The first one involved the Karachi Water Supply Project in Pakistan. This was in fact one of the earliest projects the PTF supported, and it was a project to which the Transparency International (TI) Integrity Pact was applied. The people who were funded by the PTF on this activity were engineer members of TI Pakistan. They were very much involved in the drafting of procurement documents, the procurement process itself, and the evaluation of the bids received. This project was an eye-opener. It was the second phase of a very similar project funded by the World Bank a few years earlier. The savings obtained on this new project supported by the PTF were in the 60%–70% range. There were very few applicants—four or five bidders—who bid for this consultancy activity. But they obviously knew that they had to do without previous useful practices and quotes. A very good low price was received and there were no complaints from any of the bidders, the consultant engineers. The second phase of actual construction of this water supply project was again done

on the same principles. It came in 8% under budget and about 10% of the allowed time. So again a very satisfactory outcome was achieved.

Another case in which I was personally involved was in Latvia. Latvia decided to implement three very large construction projects: a national library, a national concert hall, and a national museum of contemporary arts. All three were in the central area of Riga and you can imagine the degree of public interest aroused by these three monster projects. They were called the three "big brothers." Again, the national chapter of TI in Latvia was involved here in monitoring and advising the project agency. It was very interesting that the project agency came to TI Latvia and made a number of technical requests, which fortunately the chapter in Latvia could respond to. All contracts were checked during the bidding, and the first one is now in the major contract phase. The chapter of TI in Latvia succeeded in raising much public awareness and interest in a clean procedure.

Another case was in Poland, where our chapter was involved in developing a citizens' anti-corruption tool kit. The PTF in this case supported the publication of a monitoring manual for citizens, which was broadly distributed within the country and has turned out to be very useful. PTF also financed the development of a software that allowed citizens to monitor public procurement. What is now happening is the direct strengthening of civil society in general to enable it to monitor public procurement.

Still another example is a project in Peru. The national chapter of TI in Peru, Proetica, has monitored several public supply and construction contracts in Lambayeque province. The chapter organized public hearings and online discussions about these projects and allowed the public to participate in a very general and easy way in these public hearings and online discussions to express their views about certain aspects of the projects. In fact, as a result of these public discussions the projects have been adjusted to reflect public opinion. Where the chapter of TI could not respond to some technical issues, they brought in independent experts to review the contract terms.

Small can be powerful

Small can be powerful. Small amounts of money strategically placed can have big returns. The quality of NGOs is critical. The quality of CSOs—their capacity, vision, and relationship with a public sector champion—is the single most critical success factor. Where this relationship does not exist or where the situation is confrontational, the role is very much more difficult. Many NGOs

worldwide need help in improving project design and the results framework to achieve output-oriented and measurable results.

Country conditions matter, too. Working with the right partners in the public sector affects the outcome very considerably.

The PTF has project assessment reports done by outside experts. Every single project, when it is completed, is evaluated by outside experts, and the feedback is visible in the next project.

Stimulating the demand side of governance is a powerful instrument for change. A little money can have a big impact—USD 25,000 can have a return many times as great. The harmony of interest between a willing public agency and a responsible CSO/NGO partner is crucial.

PTF governance and funding

The PTF is a not-for-profit company. Ten countries are represented on its 13-member board of directors. Kumi Naidoo of CIVICUS is the chair. It is a virtual Internet-based organization. The entire management team and advisers, except the finance manager, are all volunteers.

Finally, we are very grateful to those organizations for supporting the activities of the PTF, which we at TI believe are very critical and constructive.

The role of civil society in monitoring public procurement: The Indonesian experience

Rizal Malik*

Secretary General, Transparency International Indonesia

The Indonesian context

I am really honored and grateful to be given the opportunity to share our experience in working with various stakeholders in Indonesia to make public procurement more transparent, participatory, and accountable. I would like to start my presentation by sharing the context where we are working.

Transparency International publishes every year the Corruption Perceptions Index (CPI), which has always put Indonesia at the bottom. My colleagues from the Corruption Eradication Commission (KPK) are embarrassed every time we publish the CPI, and especially this year because the CPI score of Indonesia has gone down from 2.4, which is already low, to 2.3.

With funding from the Millennium Challenge Corporation (MCC), we conduct our own survey, whose respondents are Indonesian businesspeople. We surveyed businesspeople in 21 cities in 2004 and 32 cities in 2006. In 2008, we will increase the target cities to 34.

The results have been quite different. In 2004, according to the global CPI, which was based on the views of experts and businesspeople from outside Indonesia, corruption in Indonesia was very low, at a score of 2. In contrast, the Indonesian businesspeople on average put Indonesia at 4.7, more than double the CPI score. In 2006, the global CPI increased from 2 to 2.4, but Indonesian businesspeople still considered the score of Indonesia to be much higher than in the global survey.

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I would like to remind you that the margin of error has always been very low, so you can see that from 2001 to 2007 the global CPI scores of Indonesia were not much different.

Then why do Indonesians perceive corruption in their country to be less than outsiders do? There are two theories. One is that Indonesian businesspeople see progress in anti-corruption efforts whereas people outside Indonesia have fixed perceptions of Indonesia, which are difficult to change. The second theory is that Indonesian businesspeople are often tolerant of corruption. So now we are collaborating with KPK to find out the cause of this discrepancy and also to build a national corruption measurement that every major actor in the anti-corruption sphere in Indonesia can refer to as an input for policy decisions.

But overall we are still low in the CPI in comparison with our neighbors around the region.

Public procurement is a significant state expenditure in Indonesia. It accounts for around 30% of the state budget and around 10% of the country's gross domestic product.

Public procurement, more specifically public works and construction, is the sector with the highest bribe payments according to the Bribe Payers Index (BPI) released by Transparency International (TI) in 2002. The highest amount of bribes was paid in public works and construction, the second highest was in the armed forces and defense, and the third was in oil and gas. Both defense and oil and gas are areas with low transparency not only in Indonesia but also in other countries.

Public procurement problems in Indonesia

In this context, if we want to increase integrity in public procurement, where should we start? TI Indonesia did some assessments on the mode of operation not only at the end or during the bidding process but also in the planning process. This is because there are informal rules in the government system of Indonesia. If you ask for a hundred, you will probably get fifty. So if you need fifty, then you have to ask for a hundred. This is still part of the Indonesian culture. According to this "double-counting" practice, you propose two bridges when you need only one. During implementation, you count expenditures for two although you built only one.

About fictitious expenditures, I think these also happen in other places. Arranged bidding refers to cases where the company that will get the contract has already been decided and the bidding process is only pro forma. Arranged

bidding often uses real companies. But sometimes the one who wins the contract is the only real company and the others are fictitious companies. Even now, not only are fictitious companies used but fictitious bidding is going on. In the latest scandal, which was reported in the newspapers, the bidding committee never put out an advertisement in the newspaper; it just spliced its announcement into an old newspaper and copied it as evidence that the whole bidding process had taken place.

Since 2000, Indonesia has been decentralized. We have to focus on local governments because the project managers, most of whom are at the local level, are each responsible for up to USD 5 million. Most of the local government projects are probably below that ceiling.

Indonesia has 17,000 islands, 33 provinces, and about 400 districts and municipalities. TI Indonesia at the moment works in 22 of those districts and municipalities: twelve in Sumatra Islands, the westernmost part of the country; six in Java Island, where 70% of the population lives; two in Kalimantan, the Borneo part of Indonesia; and two in Sulawesi or Celebes.

The Integrity Pact

We have worked with three ministries and two big state-owned companies at the central level. But what I would like to share with you is our experience with local governments because we have longer experience with them. We have been working for more than two years in the pilot projects of local governments. Some results have come out from that experience. We are introducing the Integrity Pact into the procurement system at the local governments. The Integrity Pact is stipulated in Presidential Decree 80/2003. However, the decree does not elaborate on the Integrity Pact. So we use this window of opportunity to approach local governments and work out the details of the Integrity Pact under Presidential Decree 80/2003.

The Integrity Pact is an agreement to bring fairness into business transactions between business agents in the bidding of government projects, and to ensure transparent and accountable bidding.

In Indonesia, many people have adopted the Integrity Pact in name but not in practice. So public officials pledge that they will not take bribes, and companies that they will not give bribes. But other aspects of the Integrity Pact, related to independent monitoring from civil society and limitation of secrecy, have not been institutionalized. In public procurement in Indonesia, sometimes all information is secret and is not accessible to civil society. There should also be a

conflict resolution mechanism and protection for whistle-blowers. Without all these, we cannot truly say that we have adopted the Integrity Pact.

The role of CSOs in public procurement

We have introduced the whole package of the Integrity Pact in 22 districts and municipalities. Through community organizing in those areas, we first created demand not only for development projects but also for transparency and accountability of public services, that is, for good governance. At the same time, we are working with local governments to make sure that they have the capacity to deliver public services. So in those areas we work with local governments and civil society, and also with local business associations.

The second role that we play with our local partners is advocating reform of the bureaucracy. This is because public procurement is only part of the problem in the bureaucracy in Indonesia. From the experience that we had in Swala, for example, we learned that we cannot do without reforming the local bureaucracy and streamlining the institutions and the procedures; public procurement is only the end of the whole process.

A great number of enabling environments need to be established at the local level, including local legal frameworks. In many cases, we are facilitating the drafting of local regulations. Civil society groups are also proposing new draft laws, which will then go through the local parliament.

Another role is monitoring the implementation of the Integrity Pact. Once the local government agrees to implement the whole package of the Integrity Pact, then we need independent monitors for that. Independent monitors will check for violations and channel those into the conflict resolution mechanism that has been established in that area.

We are not only working on the procurement process itself. The Integrity Pact is a tool for good governance in public procurement, but it is merely a point of entry. The end result—our aim—is to change all the processes and institutions involved in the delivery of public services in this area.

If people do not trust security agencies and governments to provide protection to whistle-blowers, sometimes civil society organizations (CSOs) can step in, in much the same way that they do in cases of domestic violence. We often facilitate this process where whistle-blowers give information about breaches of the Integrity Pact in exchange for protection.

Lessons learned

What can be learned from this experience? The first lesson is that commitment from the local political leader is important. The reason why this commitment is so difficult to get is that reforming local governance is risky. A district head who had been introducing many reforms was not reelected and was even suspected of corruption because he tried to introduce a new way of working that was not based on existing regulations. Local political leaders will not commit to reform unless they are given incentives. These could be related to integrity awards or national exposure. For example, the Swala district head, because of his success in good governance, went on to become a governor. There are many other incentives. Without them, nobody will take the political risk of introducing reforms like those we introduced in 22 districts and municipalities. So commitment is also based on calculated risk.

Another lesson is the need for capable and rooted CSOs. We generally work with local nongovernment organizations (NGOs) or CSOs. These can be religion-based or faith-based organizations. But in one area, the district heads, the speaker of parliament, and the heads of important NGOs are all related. In that case, we have a risk. People from within the society have a more difficult time introducing change. Organizations like ours, which come from outside the area, have to build local capacity so that when we leave the local capacity stays.

Independent and engaged local media are also important. In many places that have vibrant media, it is usually much easier to introduce reforms especially those related to transparency. In Indonesia, however, there are also many independent journalists who get a living by extorting money from public officials. Public officials who do not give money get bad press. So we must also work with media associations and with the press to make sure that the whole package of reforms that we introduced can be implemented.

Holding governments accountable: Procurement for reconstruction after the earthquake in Pakistan

Akhtar Ahsan*

Director General (Procurement), Earthquake Reconstruction and Rehabilitation Authority (ERRA), Pakistan

The earthquake of 8 October 2005, measuring 7.6 on the Richter scale, was the worst to hit Pakistan so far. It changed the lives of thousands of people. What was built in decades and generations was lost in seconds. The earthquake left widespread destruction in 30,000 square kilometers of the affected area in Pakistan and Azad Jammu and Kashmir. As a result of the earthquake, 73,000 people died, about 120,000 were injured, and 5 million people were left homeless. There were thousands of orphans, paraplegics, amputees, and, above all, traumatized people, who needed psychological care. The affected area suffered extensive structural and economic damage. Over 600,000 houses were destroyed or damaged. Around 8,000 educational institutions were razed to the ground and over 18,000 students were buried alive. Seven hundred eighty-two health facilities were destroyed. The earthquake disrupted communications and supply lines. The enormity of the task before us took us a while to grasp. But once we did, we moved quickly and every stakeholder played a major role. We mobilized all assets of the state—the government, the people, the armed forces, nongovernment organizations (NGOs), civil society—and then the exercise gradually became global.

We got together with meager resources. There was no institutional mechanism available, no technical resource or capacity to handle this crisis, and

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no trained manpower to comprehend and respond to it. Civic order had utterly collapsed. Inadequate infrastructure and closed roads prevented us from providing immediate relief in the disaster areas. There was no platform available for handling the relief goods that had started pouring in from various countries and organizations. The capacity to handle relief work of such magnitude was totally nonexistent. At first, the civil government in the affected areas was almost dysfunctional. With these handicaps the Federal Relief Commission set up for the purpose began relief operations and managed them so successfully that its handling of the crisis became a success story of the time. No epidemic broke out, no one died because of food shortage or inclement weather.

Credit goes equally to 59 international NGOs, 61 local NGOs, and 22 United Nations (UN) organizations, which participated in relief work. The UN Humanitarian Coordinator provided overall leadership for the humanitarian community and established thematic clusters led by nominated agencies like the International Organization for Migration (IOM), the World Food Programme (WFP), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), and the World Health Organization (WHO).

After the major relief work of the Federal Relief Commission was completed, the Earthquake Reconstruction and Rehabilitation Authority (ERRA) was set up on 31 March 2006 to get the affected areas and population back to normal, turn adversity into opportunity, and start rebuilding.

The ERRA was set up in the Prime Minister's Secretariat. A legal and institutional framework provided under the ERRA Ordinance of 2006 made it an autonomous statutory body.

The first few months were used for preparatory activities like establishing the institutional setup, assessing damage, conducting seismic zoning and fault-line mapping, surveying damage to housing, surveying vulnerable groups, preparing housing construction guidelines and designs, setting up housing reconstruction training centers and material hubs, preparing sectoral strategies, developing a management information system and database. Now the sectoral strategies for 12 major socioeconomic sectors—housing, health, education, water and sanitation, environment, governance, power, transportation, communication, social protection, industry, and tourism—are being implemented.

Public accountability

Corruption and poverty are linked. Like other developing countries, Pakistan is also faced with the challenge of public sector corruption. Its CPI score

has gradually improved but is still very low. The low CPI score indicates that public institutions are heavily compromised and they need greater accountability and institutional integrity. The Government of Pakistan has taken certain drastic measures in this direction. It ratified the United Nations Convention against Corruption on 11 August 2007.

The National Anticorruption Strategy (NACS) has been prepared by the National Accountability Bureau (NAB), the federal anti-corruption agency. Monitoring is one of the principles of the strategy, which recommends regular and systematic measurement of the nature, causes, and extent of corruption through reliable and verifiable data collection, analysis, and coordination. Empowerment will result partly from transparency, but also from initiatives such as public participation in the monitoring of an institution's services. In public procurement the procuring agency must supply information on a specially designed contract evaluation form to NAB in all tenders worth PKR 50 million (about USD 800,000) and above. This gives NAB an opportunity to review high-cost procurement and prevent corruption and abuse of authority.

The ERRA Ordinance of 2007 has declared the staff members of ERRA public servants and thus subject to all the anti-corruption laws and under the jurisdiction of the anti-corruption agencies.

The ERRA Ordinance provides for a three-tier exclusive system of audit—internal audit, annual audit by the Auditor General of Pakistan, and third-party validation. Internal audit is an ongoing exercise within the ERRA to ensure that financial procedures are followed and procurement guidelines are observed. For third-party validation the UK Department for International Development (DFID) has been requested to hire the services of a firm through international competitive bidding, to ensure thorough scrutiny by a fairly independent source.

Procurement regulatory framework

All procurement is regulated by the Public Procurement Regulatory Authority (PPRA), a statutory body that is empowered to exercise such authority needed to improve governance, management, transparency, accountability, and quality of public procurement of goods and services and works. Procurement by ERRA is constantly monitored by PPRA. All procurement is advertised on the PPRA Web site.

Under the PPRA Rules of 2004, procuring agencies, when engaging in procurement, must ensure that it is fair and transparent, that the object of procurement brings value for money to the agency, and that procurement is efficient and economical. Like all other federal government procuring agencies,

ERRA was also subjected to the regulatory framework enacted under the PPRA Ordinance of 2000 and the PPRA Rules of 2004. All procurement out of donor funding, however, is made in consultation with the donor agency and according to its procurement guidelines.

The PPRA Rules require all procuring agencies to provide clear authorization and delegation of power for different categories of procurement, and to initiate procurement only after obtaining the approval of the competent authorities concerned (R.11). The earthquake reconstruction and rehabilitation strategy decentralizes decision making including procurement. At the district level the district advisory committees can approve contracts costing up to PKR 100 million (about USD 1.6 million). The provincial steering committee is competent to approve projects costing up to PKR 250million (about USD 4 million). The ERRA board can approve schemes costing up to PKR 500 million (about USD 8 million). Projects costing more than PKR 500 million (about USD 8 million) are submitted to the executive committee of the National Economic Council, the highest planning body in the country, for approval.

For transparency and consistency, public procurement follows standardized procedures and is fully documented.

In the ERRA standard operating procedures have been laid down within the framework of the procurement rule to ensure transparent, competitive, and quick procurement. Different procurement evaluation committees have been set up with a representative of the procurement wing as a member. In case of technical advice a technical expert is co-opted as member of the committee.

The staff of the procurement agencies are shielded from temptations by an integrity pact with suppliers, seeking a declaration from the bidders that they will not indulge in corruption or use other illicit means to influence the procurement. In contracts exceeding PKR 10 million (about USD 160,000) the contractor declares that he has not obtained or induced the procurement of any contract, right, interest, privilege, or other obligations or benefit from the Government of Pakistan or any of its administrative subdivisions or agencies or any other entity owned or controlled by it, through corrupt business practices.

Procuring agencies, under a specified mechanism, can bar permanently or temporarily from participating in their procurement proceedings, suppliers and contactors that consistently fail to provide satisfactory performance or are found to engage in corrupt or fraudulent practices. Such barring action is duly publicized and communicated to the PPRA.

Under the PPRA Rules, the procuring agencies shall announce the results of bid evaluation in a report, giving justification for acceptance or rejection of bids,

at least 10 days before the award of the procurement contract. In the case of the ERRA, because of the emergency situation this period has been reduced to three days.

To avoid corrupt practices there shall be no negotiations with the bidder that submitted the lowest evaluated bid or with any other bidder (R.40).

To avoid unnecessary delays in payments to suppliers and contractors against their invoices or running bills, the procuring agencies shall make prompt payment within the time given in the contract, which shall not exceed 30 days (R.43). Under the ERRA's standard operating procedures the payment should be made within a week from the submission of the bill/invoice.

For the purpose of public access and transparency, as soon as the contract is awarded, the procuring agency shall make public all documents related to the evaluation of the bid and award of contract. Where the disclosure would be against the public interest, the agency can withhold only such information from public disclosure, subject to the prior approval of the PPRA.

A monthly compliance report on noncomplying departments is sent to the Prime Minister by the PPRA managing director.

The role of civil society

During the relief phase, the whole country was galvanized into action to face the challenge of national calamity. National and international NGOs played an incredible role. Partner organizations and local communities were associated at each step of policy planning and implementation.

Civil society organizations could sponsor or finance a scheme in the earthquake-affected area without interference from the Government, provided they followed the earthquake-resistant designs of ERRA. Their schemes were, however, cleared by the ERRA sponsor and donor cell for the purpose of coordination and to avoid duplication.

The planning and implementation of various schemes have been decentralized at the district and provincial level. At the district level, all schemes are prepared and approved by the district advisory committee headed by the district nazim, an elected representative of the local community. At the ERRA level, general advisory groups and core groups comprising experts, civil society organizations, donors, etc., have been set up to pursue and monitor the implementation of strategies for various sectors.

Under the housing strategy, the housing reconstruction program is owner-driven to ensure house owners' participation, and the inspection teams for damage assessment and evaluation are each composed of a representative from the Army, a schoolteacher, the local body representative, and a village revenue officer.

The media, both print and electronic, play a vital role in public accountability, public awareness, education, and grievance redress through public participation. Advertisements in the media and the authority's Web site keep stakeholders involved and informed about ongoing processes and applicable procedures.

On the ERRA board, the policy formulation and implementation body, almost half the members represent civil society. Ms Yasmeen Lari, a trustee of Transparency International, is a member.

Conclusions

- Because of lack of capacity and the emergency situation, some violations of the procurement procedures occurred at the initial stage of relief and reconstruction. However, the PPRA was contacted to build capacity and extend certain exemptions to meet the special procurement requirements of ERRA. The PPRA trained the procurement staff and allowed the requested exemptions. The emergency provisions available in the PPRA Rules of 2004 were also invoked to meet emergency situations.
- Contractors and suppliers, used to the system of institutionalized corruption in the procurement agencies and works departments, were discouraged from bidding by the ERRA's introduction of high standards of quality, a new set of contract awarding procedures and supervision channels, and effective and strict monitoring and evaluation parameters. A shortage of local contractors and suppliers resulted. At first, only contractors rated as first class by the Pakistan Engineering Council were allowed to participate. In view of the poor response, class 2 and 3 contractors were later also allowed to bid.
- A strong legal and regulatory framework was enforced by ERRA. The PPRA Rules of 2004 were strictly followed in procurement funded by the Government of Pakistan, and the procurement guidelines of the donor agencies were followed in the case of procurement from foreign funding. This requirement reduced the avenues of improper procurement and corruption.

- Periodic meetings with the civil society organizations engaged in the affected areas and donor agencies, to exchange information and views, raised their comfort level and built confidence.
- Observations of the midterm review missions of donor agencies were followed and midcourse corrections were made where required in the light of these recommendations. The project performance rating of ERRA, as assessed by the World Bank mission, was satisfactory during the first year and highly satisfactory in the last year.
- Civil society can provide effective supervision if given access to relevant information throughout the project cycle. Pakistan's legal framework caters to this requirement. Civil society organizations like Transparency International are therefore actively involved in this role.
- Financial safeguards and administrative capacity were strengthened through improved considerations and mechanisms. In damage assessment for housing subsidy, data were processed through the centralized data resource center and channeled through the banking system without any intermediary, to avoid malpractice.
- In the audit report of the Auditor General of Pakistan, no maladministration, malfunctioning, embezzlement, or fraud has been reported.

I conclude my presentation with the remarks of Mr. Jan Vender Moortele, UN resident/humanitarian coordinator, at the second annual review conference on 4 October 2007:

Disasters not only happen, they also unfold. And the way they unfold is very much shaped by the way national leaders, local authorities, the society at large and international actors respond to [them]. On that count and two years after the disaster, it can be said that the aftermath of the earthquake has been as uplifting as the earthquake itself was upsetting. Smiles and laughter have returned to the affected area.

Chapter 7

Support from international and regional partners in improving procurement frameworks to prevent bribery

It is governments' responsibility to strengthen their countries' anti-bribery legislation and regulatory frameworks to mitigate bribery risks in public procurement. However, in their overall efforts to curb bribery in public procurement, they can draw on support from development banks, international organizations and regional processes. Many countries in the Asia-Pacific region have taken advantage of these actors' expertise in reforming sectors relevant to the fight against corruption.

As remaining and emerging challenges require further efforts in bolstering policies, legislation and institutions against bribery, international and regional partners remain an important source of support and expertise. Two initiatives undertaken by ADB and OECD, respectively, demonstrate how such assistance can impact procurement reform, notably with regard to integrity and transparency.

ADB's technical assistance programs for Indonesia constitute support mechanisms at country level. Since these programs were launched in 2001, ADB has assisted the Indonesian government in improving its legislative framework, in standardizing documents, in establishing a national agency dedicated to coordinating government procurement policies, and in strengthening capacity of procurement officials in Indonesia. The programs also assisted the government in establishing institutional mechanisms to ensure integrity in the procurement process by enacting anti-corruption legislation and establishing the Corruption Eradication Commission KPK.

The joint statistical project of the World Bank and the OECD Development Assistant Committee (DAC) is an example of a regional and even global support mechanism. The joint venture endeavors to develop indicators to assess country procurement systems. Baseline Indicators serve to assess procurement systems with respect to international standards, and Compliance or Performance Indicators evaluate these systems. The program is still in its pilot-testing phase and will soon be available to assist countries in identifying bribery risks in their frameworks and practices, in further improving their procurement systems, and in strengthening capacity.

ADB assistance for strengthening procurement frameworks

Jean-Marie Lacombe*

Head, Portfolio Management, ADB Resident Mission in Indonesia

In 2007, after excluding the expenditures of the state-owned enterprises and the oil and gas sectors, about 11% of the Indonesian budget was spent for public expenditures involving procurement activities. To ensure efficiency objectives the procurement of works, goods, and services is bound to comply with competitiveness, transparency, and fairness principles.

Since mid-1994, public procurement has been governed by national laws and regulations, and technical guidelines. After the 2000 Consultative Group for Indonesia (CGI) meeting in Tokyo, the Indonesian Government initiated the reform by issuing a presidential decree on public procurement (Keppres 18/2000) to introduce transparency and open and fair competition and address procurement issues under the country decentralization law.

ADB's country program for Indonesia has provided technical assistance (TA) programs to assist the Government with the development of the legal and regulatory framework and built capacity in the public procurement area. ADB's assistance covers four aspects: regulatory, institutional, capacity building, and integrity.

The public procurement legal framework introduced in 2000 lacked consistency, and overlapped and even in some instances contradicted other laws and regulations. As a result, the legal framework met only partly the efficiency and competitiveness objectives and was prone to fraudulent and corrupted practices.

In 2001, ADB provided a grant financed technical assistance aimed at strengthening procurement policies, the legal framework, and institutions. The TA

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contributed to the revision of Keppres 18/2000 by removing the provisions limiting the competition such as certification procedures and market segmentation and making the amended presidential decree, Keppres 80/2003, more consistent with international best practices. The TA produced a set of standard bidding documents to be applied nationwide to the procurement of civil works and goods, the recruitment of consultants, and the procurement of other services. In the current decentralization context, the standardization of bidding documents across the Indonesian administration is a major achievement in the procurement reform and the harmonization process.

The 2001 ADB TA also assisted with the establishment of the National Public Procurement Office, an independent institution whose key mandates will be to develop, maintain, and enforce public procurement policies, regulations, and guidelines.

ADB, through the procurement unit of the Indonesia Resident Mission, provides further assistance to the ministries and government agencies involved in the implementation of ADB-financed projects. The procurement unit, through comprehensive reviews of all procurement documents and activities, ensures that the procurement of ADB-funded works, goods, and consulting services complies strictly with ADB's procurement rules and guidelines. The procurement unit works closely with ADB's Integrity Division in ensuring that all parties involved in ADB-funded projects observe the highest standards of ethics during the procurement and execution of contracts. Violation of ADB's anti-corruption policy at any stage of procurement may result in ADB's declaring a contract ineligible under ADB financing and ineligibility sanctions against suppliers, contractors, and consultants involved in corrupt practices.

Through the above-mentioned technical assistance and through a second TA aimed at improving public sector procurement, ADB has assisted the Government with the certification of procurement officers and capacity building through a sustainable training and certification program to professionalize public sector procurement.

To supplement the Government's capacity-building programs, ADB is providing training in procurement to government staff involved in ADB-funded projects. While focusing on ADB's procurement guidelines and procedures, the ADB training contributes to disseminating international best practices among the government staff and improving their understanding of procurement and good governance principles.

To assist in building the required level of integrity among procurement officers, ADB has provided three grant-financed TAs. The first one assisted the Government with the issuance of the Eradication of Corruption Bill and the

establishment of the Corruption Eradication Commission. The second strengthened the capacities of the Ministry of Settlements and Regional Infrastructures in combating corruption by implementing new policies and procedures to handle allegations of fraud and corruption in procurement and execution of contracts. The last one contributed to building the capacity of the Corruption Eradication Commission through the development of standard operational procedures related to investigations, interrogations, and prosecutions.

Assessing public procurement frameworks: The Joint Venture for Procurement

Ajay S. Guha*

Principal Procurement Specialist, Central Operations Services
Division 2, ADB

It is recognized that there is a need for more effective use of public funds, which may also include funds provided through official development assistance. Public funds are a major source of financing for the developmental needs of a country, whether for infrastructure or for social development. One way of improving effectiveness is to adopt national procurement systems that meet international standards¹ and operate accordingly. However, assessing or evaluating national procurement procedures and systems requires a set of tools and standards that can suggest improvements.

To develop common tools for assessing the quality and effectiveness of national procurement systems, developing member countries and bilateral/multilateral donors, under the World Bank and OECD Development Assistance Committee, formed a Joint Venture (JV) for Procurement. The JV developed a methodology for applying identified indicators including those associated with compliance and performance.

* Ajay S. Guha has about 32 years of professional experience primarily in the management of infrastructure projects. Before joining ADB, Mr. Guha was associated with setting up large coal- and gas-based power stations. He joined ADB in 1995 at the Resident Mission in India, where he was responsible for the administration of ADB-financed projects in the energy and transport sectors. At present, he is the principal procurement specialist responsible for all ADB-financed procurement and consultant recruitment for the Southeast Asia region.

This presentation is based on research material made available by the OECD Donor Assistance Committee (DAC).

¹ OECD. 2006. *Methodology for Assessment of National Procurement Systems*. Paris.

The process

Through extensive consultations and interaction, the JV, in 2006, developed the first draft of a methodology for benchmarking and assessing public procurement systems. This draft went through extensive peer review, after which the current format was adopted for pilot-testing. The methodology, available on the OECD/DAC Web site, includes a numeric scoring system with defined criteria that will provide a qualitative scoring of a country's procurement system. The scoring criteria are also designed to support capacity development in procurement.

Two types of indicators, namely, baseline and compliance or performance indicators, were identified. The baseline indicators present a snapshot comparison of the actual system against international standards. The compliance or performance indicators deal with how the system actually operates.

The baseline indicators address four pillars as follows:

- Existing legal frameworks that regulate procurement in the country,
- Institutional frameworks of the system and management capacity,
- Operation of the system and competitiveness of the national market,
- Integrity and transparency of the procurement system.

Each baseline indicator is subdivided into the indicators given below along with their assigned weight:

Pillar 1: Legislative and regulatory frame (25%)

- Legislative and regulatory provisions (15%)
- Existence of implementing rules (10%)

Pillar 2: Institutional framework and management capacities (25%)

- Public sector governance system (9%)
- Functional normative body (8%)
- Existence of institutional development (8%)

Pillar 3: Procurement operations and public procurement market performance (25%)

- Efficient procurement operations (10%)
- Functionality of public procurement (10%)
- Existence of contract administration and dispute resolution (5%)

Pillar 4: Integrity and transparency of the procurement system (25%)

- Effective control and audit system (8%)
- Efficiency of appeals mechanism (5%)
- Degree of information access (4%)
- Ethics and anti-corruption measures (8%)

The compliance or performance indicators evaluate the operation of procurement frameworks and systems, identify weaknesses in compliance, and recommend more in-depth review, if required. Although no scoring system has been recommended, the OECD Users' Guide provides a list for consideration.

These indicators alone cannot give a full picture but must be viewed as a tool for identifying broadly the strengths and weaknesses of a system. Applications of these indicators provide for subjective professional judgment. However, subjectivity cannot be fully avoided but should be minimized. The assessors should keep in mind that there can be no single model for a procurement system and there are different models developed that work well. Thus, the focus of the assessment should be to evaluate how each existing system works in terms of outcomes, results, transparency, and efficiency in facilitating the achievement of social, economic, and developmental objectives.

Testing

Subsequently, the process went through pilot-testing. Experienced procurement specialists were invited from all adherents to the Paris Declaration to participate in familiarization workshops. Twenty-two countries volunteered for the pilot-testing, nine of them from Asia. ADB has actively supported the pilots directly or by active association in Mongolia, Vietnam, Philippines, and Sri Lanka.

Based on the assessment after these pilots, a general consensus that emerged is that the concept of baseline indicators is a well-developed tool for evaluating the legal and organizational set-up of procurement systems. However, the focus should now be on further improving the systems and layout, designing targeted comparators, and increasing consultations and risk assessments. Further, some issues that were raised are capacity development, need for linkages between public procurement and public financial management, the need for transparency and stakeholder consultations.

Looking ahead

From the experience gained so far, the next steps will be to assist more countries in conducting such analysis, developing action plans for improvement, and developing performance measuring tools. In addition, there is a need to strengthen links and collaboration to fight corruption through the use of transparent and reliable systems by trained procurement professionals. These issues will be further deliberated at the Accra conference scheduled for late 2008.

Annexes

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Seminar agenda

Monday, 5 November 2007

09:00–10:15 Opening and keynote address

Welcome remarks

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Frédéric Wehrlé

Coordinator Asia-Pacific, OECD Anti-Corruption Division; Secretariat ADB/OECD Anti-Corruption Initiative for Asia-Pacific

The fight against bribery and corruption ranks high on the reform agenda of Asian and Pacific countries, as corruption constitutes an obstacle to investment, economic development, and welfare. Various reforms have been implemented over the past years to prevent corruption and to establish frameworks to sanction bribery when it occurs. Despite these efforts, bribery, and especially bribery in public procurement, remains recurrent in many countries, and further strengthening of frameworks and policies in this area is urgent.

International instruments now set standards for anti-bribery policies, legislation, and institutions. The OECD anti-bribery instruments and the UN Convention against Corruption (UNCAC) are the most relevant instruments in Asia and the Pacific in this regard; they establish specific standards that seek to prevent and sanction bribery, in public procurement and other areas. The Anti-Corruption Action Plan for Asia-Pacific, which supports the principles of both the OECD anti-bribery instruments and the UNCAC, also underscores the importance of mechanisms to prevent, detect, and sanction bribery in public procurement.

Translating these international standards into legislation and policies constitutes considerable challenges. This opening session seeks to outline the detrimental effects of corruption in public procurement and to map out risk areas that need to be addressed as a priority by governments of the region.

10:15–11:00 Coffee break and group photo/press conference with speakers from opening session

11:00–12:45 Challenges and risk areas for bribery in public procurement

Chair: **Kathleen Muktan**, Director, Capacity Development and Governance Division; Secretariat, ADB/OECD Anti-Corruption Initiative

Progress and challenges in Asia-Pacific in addressing bribery risks in public procurement

Joachim Pohl

Secretariat, ADB/OECD Anti-Corruption Initiative for Asia-Pacific

Fighting bribery in public procurement: The work of the OECD Working Group on Bribery

Nicola Ehlermann-Cache

Policy analyst, Anti-Corruption Division, OECD

Challenges and risk areas for corruption in public procurement

Joel Turkewitz

Head, Procurement Hub Coordinator South Asia, World Bank

Progress and challenges in procurement reform in Indonesia

Agus Rahardjo

Head, Public Procurement Policy Development Agency, National Development Planning Agency, Indonesia

Reform of P.R. China's government procurement system

Shimin Han

Deputy Section Chief, Supervision Department, Ministry of Finance, People's Republic of China

Focusing on the particular bribery risks in public procurement is a cornerstone of efforts to develop appropriate procurement and anti-bribery mechanisms. Public procurement frameworks have undergone considerable reform throughout Asia and the Pacific over the past 10 years or so. Much of this reform has taken bribery risks into consideration. However, even in countries that have taken actions to ensure that an appropriate framework is in place, bribery often continues to occur, albeit sometimes in unexpected areas or forms. This session seeks to assess bribery risks in procurement frameworks that become apparent after reforms have been passed, despite the reforms, or even as a consequence of certain reforms, for the purpose of identifying what governments should do to improve their ability to prevent and deter bribery in procurement contracts.

12:45–14:15

Lunch

14:15–17:00 The need for clear anti-bribery rules: International standards and national examples of bribery offenses in public procurement

Chair: **Joachim Pohl**, Project Coordinator, Anti-Corruption Initiative for Asia-Pacific, Anti-Corruption Division, OECD

Detering transnational bribery in government contracts: The standards of the OECD anti-bribery instruments

Frédéric Wehrlé

Coordinator Asia-Pacific, Anti-Corruption Division, OECD

Bribery patterns in Indonesia: An analysis of cases

Amien Sunaryadi

Vice-Chairman, Corruption Eradication Commission, Indonesia

Detering companies from bribing to win government contracts: Experience with criminal responsibility of legal persons for bribery

Lauren Thomas

Criminal Law Branch, Attorney-General's Department, Australia

Experiences with the False Claims Act in the US

Neal Roberts

Lawyer, United States

Addressing effectively bribery risks in public procurement requires first that the appropriate anti-bribery laws are in place. Clear criminal rules with substantial penalties have proven time and time again to be one of the most effective means to combat bribery in public procurement. Enforcement is key, of course. Indeed, the fact that businesses continue to pay bribes in order to win government contracts seems, at least in part, to result from doing business in countries without clear anti-bribery rules and effective enforcement. This is why it is important that countries adopt clear rules making bribery a criminal offense.

This session will start by clarifying international standards for measures and procedures to prevent and deter bribery in public procurement set out by the OECD Convention on Bribery of Foreign Public Officials that sets common standards for making bribery in public contracts abroad a criminal offense.

Based on contributions from policy-makers and law enforcement officers, this session will then discuss the experience of countries that have adapted, or are in the process of adapting, their legislation to such anti-bribery standards. It will in particular highlight the challenges and the solutions that countries have found when transposing the international standards into national law to enable countries that plan similar reform steps to anticipate possible difficulties and emulate solutions.

Tuesday 6 November 2007

09:00–10:30 The role of specialized procurement authorities in defining policies and overseeing their implementation

Chair: **Mochammad Jasin**, Director of Research and Development, KPK

A systemic approach to enhancing integrity in public procurement

Elodie Beth

Administrator, Innovation and Integrity Division, Public Governance and Territorial Development Directorate, OECD

The role of the specialized central procurement agencies: The example of Bangladesh

Sk A K Motahar Hossain

Secretary, Implementation Monitoring and Evaluation Division (IMED), Ministry of Planning, Bangladesh

The role of the Philippine Government Procurement Policy Board in the anti-corruption program

Ruby Alvarez

Executive Director, Government Procurement Policy Board Technical Support Office, Philippines

How procurement oversight bodies can contribute to curbing corruption

Peter Pease

Public Procurement Adviser

Ensuring that appropriate anti-bribery laws are in place and enforced is a first step; a second area of action for governments is the development of adequate procurement rules and controls. Over the past decade, many countries in Asia and the Pacific have significantly modernized their regulatory frameworks for procurement and often decentralized the conduct of public procurement. The implementation of modern and complex regulations by procuring entities can constitute insurmountable difficulties, especially at local levels. These difficulties are often aggravated by the absence of standard documents and procedures. This situation may lead to unequal implementation and a wide variance in the application of procurement policies and frameworks. Uncertainty about the application of procurement rules may provide new opportunities for corruption and bribery that the passing of modern legislation was meant to prevent.

Experience in many countries has shown that the thorough and systematic implementation of complex procedures such as procurement by a multitude of independent executing agencies can benefit from the intervention of a specialized authority that supervises the implementation of the regulatory framework, defines policies that respond to recurrent problems and risks, collects and disseminates

information on good practice, prepares standard documents, and organizes and conducts training.

Some countries in Asia and the Pacific have established such specialized institutions that assume the role to design policies and oversee procuring agencies in their implementation; other countries are setting up such agencies. This session seeks to lay out the potential that specialized procurement agencies bear in curbing corruption risks, and endeavors to identify features and powers that these agencies need to be given to fulfill their mandate.

10:30–10:45

Coffee break

10:45 – 12:30

The role of civil society in controlling and supervising public procurement

Chair: **Paul McCarthy**, Governance and Civil Society Adviser, World Bank Indonesia

Enabling civil society to participate in monitoring and safeguarding public procurement: The experience of the Partnership for Transparency Fund (PTF)

Michael Wiehen

Member of the Advisory Council, Transparency International

The role of civil society in monitoring public procurement: The Indonesian experience

Rizal Malik

Secretary General, TI Indonesia

Holding governments accountable: Procurement for reconstruction after the earthquake in Pakistan

Akhtar Ahsan

Director General (Procurement), Earthquake Reconstruction and Rehabilitation Authority (ERRA), Pakistan

Control and supervision are essential to ensuring that procurement regulations are respected and that bribery risks are checked. Various actors can contribute to controlling the conduct of public procurement. The above-mentioned specialized procurement offices play an important role, and civil society can complement this institutional approach. In fact, nongovernmental actors often have specific advantages such as knowledge and resources, that can, combined with governmental oversight bodies, form a very effective and constructive system of control and oversight over procurement agencies and processes.

This session seeks to identify ways to involve civil society in the control and supervision over procurement processes so that it can contribute to preventing and detecting bribery in procurement. The session will draw on experience from countries that have empowered civil society to participate in procurement processes.

12:30–14:00 Lunch

14:00–15:30 The potential of new technologies in preventing bribery in procurement: E-announcements, e-bidding, and e-procurement

Chair: **Elodie Beth**, Administrator, Public Governance and Territorial Development Directorate, OECD

The impact of e-procurement on corruption

Paul Schapper

Curtin University of Technology, Australia

E-procurement impact on corruption: The E-GP Scenario/Model in Indonesia

Miroslav Alilovic

Government E-Procurement Adviser, MCC Control of Corruption Program

Indian government tender system and e-procurement in the Indian Railways

Venkataramani Ramachandran

Chief Technical Examiner, Central Vigilance Commission, India

Electronic media bears potential to contribute to reducing bribery risks in public procurement in various ways: it limits face-to-face contacts between suppliers and procurement personnel, allows the efficient distribution of information to a wide audience at low cost, increases transparency of forthcoming, current, and past tender opportunities, and produces evidence throughout the process that can help uncover patterns that may indicate bribery. As electronic media become widely available, the use of electronic media in procurement plays an increasing role.

However, it is not technology itself that will help reduce corruption—the potential of technical means to curb bribery only unfolds if these means are employed and tailored for the specific purpose of reducing bribery risks. How this can be done and what pitfalls and risks may arise has been experienced by countries that have been forerunners in the implementation of electronic means in public procurement.

This session will assess the potential of electronic media for the purpose of reducing bribery in procurement. It will highlight features that can contribute to preventing bribery and set out risks that countries would need to anticipate if they seek to introduce or expand the use of e-procurement.

15:30–15:45 Coffee break

15:45–17:00 Role and responsibilities of suppliers in curbing corruption in public procurement

Chair: **Waluyo**, Deputy Commissioner in charge of Prevention, Corruption Eradication Commission, Indonesia

What can suppliers do to prevent bribery in procurement?

Soy M. Pardede

Chairman of the Commission on Business Ethics, BTP and Anti-Bribery Movement, Chamber of Commerce and Industry, Indonesia

Corruption risk management by companies and the role of civil society: The experience with the Integrity Pact

Michael Wiehen

Member of the Advisory Council, Transparency International/ Partnership for Transparency Fund

Bribery concerns for International Businesses

Cliff Rees

Partner, PricewaterhouseCoopers Indonesia

Bribery can occur only if there is supply of and demand for bribes. Effective measures against bribery therefore need to address with equal emphasis the supply and demand sides. So far, many countries have focused their anti-bribery efforts on public officials involved in public procurement; the potential of the business sector as a partner in efforts to fight corruption is often neglected.

This session seeks to highlight possible contributions that the business sector can make to curbing bribery in public procurement. It will feature experiences of individual companies and assess the role of business associations as a standard setter and as a forum for exchange of good practice.

Wednesday, 7 November 2007

09:00–10:30 Support from international and regional partners in the development of procurement frameworks to prevent bribery

Chair: **Joanna Perrens**, Indonesia Group, Australian Agency for International Development

ADB assistance for strengthening procurement frameworks

Jean-Marie Lacombe

Head, Portfolio Management, ADB Resident Mission Indonesia

Assessing public procurement frameworks: The OECD/DAC joint venture for public procurement

Ajay S. Guha

Principal Procurement Specialist, Central Operations Services Division 2, ADB

While countries are responsible for strengthening their anti-bribery legislation and regulatory frameworks to mitigate bribery risks in public procurement, they may benefit from support offered by development banks, international organizations, and regional processes. Many countries in Asia and the Pacific have in the past taken advantage of these actors' expertise in reforming sectors relevant to the fight against corruption.

As remaining and emerging challenges require further efforts in bolstering policies, legislation, and institutions against bribery, international and regional partners remain an important source of support and expertise.

Based on past experience and plans for future cooperation, this session seeks to identify the roles that international and regional partners as well as bilateral assistance programs can play in supporting countries in these countries' efforts to bring their anti-bribery frameworks in line with international standards and in reforming procurement frameworks.

10:30–11:00 Coffee break

11:00–11:30 Key outcomes of the seminar and closing

Frédéric Wehrlé and Kathleen Maktan

Secretariat, ADB/OECD Anti-Corruption Initiative

Taufiequrachman Ruki

Chairman, Corruption Eradication Commission, Indonesia

This session draws conclusions on a way forward to bolster the fight against bribery and to strengthen frameworks and practice to prevent, detect, and sanction bribery and corruption in public procurement.

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ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

Fighting Bribery in Public Procurement in Asia and the Pacific

Public procurement accounts for some 20% of government expenditure worldwide. In many countries, one-quarter or more of this amount is estimated to be lost to corruption. Complex procedures, broad discretion, weak oversight, and limited implementation capacity are among the main reasons for this enormous loss of public resources to corruption.

Asian-Pacific countries have made significant efforts to address weaknesses in their procurement frameworks and practices. To support these efforts and to assist the ADB/OECD Anti-Corruption Initiative's 28 member countries in strengthening their public-procurement mechanisms, the Initiative conducted a Regional Seminar on Fighting Bribery in Public Procurement in November 2007. This seminar follows earlier work by the Initiative in the area, notably a thematic review of public-procurement frameworks and practices in Asia and the Pacific conducted in 2005/2006, and a regional seminar held in 2004.

This volume compiles the experience that experts from Asian and Pacific countries – as well as beyond the region – shared during the seminar. It is addressed to policy makers and experts who wish to learn from other countries' experiences in strengthening frameworks to protect public procurement from bribery and corruption risks.

The Asian Development Bank (ADB)/Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific supports its 28 members in their efforts to establish sustainable safeguards against corruption as set out in the Anti-Corruption Action Plan for Asia and the Pacific. For more information, please consult www.oecd.org/corruption/asiapacific.

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