United Nations Development Programme

Tackling integrity risks in government contracts

An opportunity to unlock resources for sustainable development in Asia and the Pacific

Guidebook

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Acronyms and abbreviations

CIPS	Chartered Institute of Procurement and Supply
CPC	Commission for the Prevention of Corruption (Slovenia)
CPI	Corruption Perception Index (Transparency International)
CSOs	Civil Society Organizations
DAC	Development Assistance Committee
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
IPCA	Integrity and Corruption Prevention Act (Slovenia)
KONEPS	Korea On-Line E-Procurement System
MAPS	Methodology for Assessing Procurement Systems
OECD	Organisation for Economic Co-operation and Development
OECD/DAC	OECD/Development Assistance Committee
PPL	Public Procurement Law
SAINT	Self-Assessment Integrity (The Netherlands)
SDGs	Sustainable Development Goals
SIGMA	Support for Improvement in Governance and Management (division within OECD)
SMEs	Small and Medium-sized Enterprises
TI	Transparency International
TPP	Trans-Pacific Partnership
UK OGC	United Kingdom Office of Government Commerce
UML	UNCITRAL Model Law on Public Procurement
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNODC	United Nations Office on Drugs and Crime
WTO	World Trade Organization
WTO/GPA	WTO/Government Procurement Agreement

Terms and definitions

Capacity development. Process through which individuals, organizations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time; helps strengthen institutions to perform at a consistently high standard and to both respond to and manage shocks and changes.

Conflict of interest. Conflict between the public duty and private interests of a public official in which the public official has private-capacity interests that could improperly influence the performance of their official duties and responsibilities.

Corruption. Misuse of entrusted power for private gain.

Integrity. Use of funds, resources, assets and authority, according to the intended official purposes and in a manner that is well informed, aligned with public interest and with broader principles of good governance.

Integrity pact. A transparency and accountability tool—legally binding—developed by Transparency International for preventing corruption in public contracting. It includes an integrity pledge, between the government agency offering a contract and the companies bidding for it, that both parties will abstain from bribery, collusion and other corrupt practices for the extent of the contract. A third party, such as a civil society organization, monitors the integrity pact to ensure compliance.

Integrity violations in procurement. Facets of corruption, which includes bribery, kickbacks, nepotism, cronyism and clientelism; fraud and theft of resources, for example through product substitution during delivery, resulting in lower quality materials; bid collusion and bid rigging; abuse and manipulation of information; discriminatory treatment in the public procurement process; and waste and abuse of organizational resources.

Objectivity in public procurement. Procurement decisions based on the principles of non-discrimination, equal treatment and proportionality for providers, namely that they should be based solely on commercial grounds without taking into account any irrelevant considerations.

Transparency in public procurement. Publicity of procurement opportunities and the disclosure of the rules to be followed; undertaking procurement processes publicly and visibly, according to prescribed rules and procedures that limit the discretion of officials; and the provision of a system of monitoring and enforcing applicable rules.

Public procurement. Process of identifying what is needed, determining who is the best person or organization to supply this need, and ensuring what is needed is delivered to the right place, at the right time, for the best price, and that all this is done in a fair and open manner.

Risk assessment. The overall process of risk identification, risk analysis and risk evaluation (UNDP, 2016).

Foreword

Public procurement is big money. The funds spent by governments on buying goods and services and building infrastructure such as roads and hospitals account on average for 15% to 20% of the gross domestic product in developing countries (World Bank, 2015). At the same time, it is estimated that between 10-30% of the investment in publicly funded construction projects may be lost through mismanagement and corruption (COST, 2012).

Governments looking for ways to finance the Sustainable Development Goals, or simply looking for efficiency gains, will get a high return on investment if they tackle integrity risks in government contracts. Tackling these risks not only contributes to better quality of services for the people and stronger infrastructure, but also enables substantial government savings, resulting in increased domestic resources.

This Guidebook on *Tackling integrity risks in government contracts: An opportunity to unlock resources for sustainable development in Asia and the Pacific* is designed as a practical methodology to help countries diagnose integrity risks in the public procurement system and processes, as well as to indicate proper actions to mitigate them. In addition, the Guidebook is designed to help governments in the region upgrade their procurement systems during the Second Review Cycle of the UN Convention against Corruption (2017-2021).

This Guidebook was developed building on the experience of UNDP in the region with helping governments mitigate integrity risks in procurement. The methodology was successfully piloted in 2014 upon the request from the Government of Thailand to assess integrity risks in public procurement to help reform its public procurement system and step up its efforts against corruption. Three years after the risk assessment, the Thai Government introduced the first public procurement law in Thailand, accelerated the upgrade of its e-procurement system and piloted Integrity Pacts in major infrastructure projects. Over the last few years several governments in Asia-Pacific have approached UNDP to share the lessons learned at international level with mitigating integrity risks in public procurement, most recently during the *South-to-South Dialogue on Mitigating Integrity Risks in Government Contracts* in October 2016.

Accordingly, this Guidebook builds on the lessons learned from various countries around the globe and provides a user-friendly point of reference to navigate through existing international standards, good practices and tools prepared by international organizations, such as UNDP, the United Nations Office on Drugs and Crime (UNODC), the Organisation for Economic Co-operation and Development (OECD), the United Nations Commission on International Trade Law (UNCITRAL), the World Bank, and Transparency International (TI).

The United Nations Development Programme stands ready to support governments' efforts in this important reform area, building on this well-tested methodology as well as its long-standing experience with capacity-building and curriculum development through the UNDP Procurement Services Unit.

Valerie Cliff
Deputy Regional Director for Asia & the Pacific
Director, Bangkok Regional Hub
United Nations Development Programme

1. Introduction

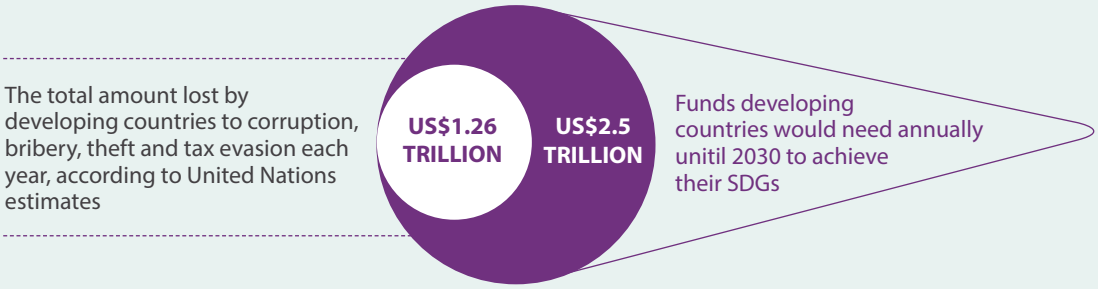
Public procurement is the process through which governments buy goods, services and infrastructure, and is at the heart of delivering public services. Sound public procurement systems can reduce costs, ensure quality and produce timely results, while poor practices, often tampered by corruption, can lead to delays, missed service delivery and a waste of public money.

Government contracts account for a big portion of the national gross domestic product (GDP), both in OECD and in developing countries. For example, general government procurement in 2013 accounted for 16.22% of GDP in Japan, 12.8% in Korea and 14.56% in New Zealand (OECD, 2015). In developing countries, public procurement accounts for an estimated 15-20% of the GDP and up to 50% or more of total government expenditure (World Bank, 2015).

The extensive volume of business transactions that take place between private and public sectors, as well as excessive bureaucracy, makes procurement particularly vulnerable to corruption.[1] Estimates show that 20-25% of the procurement budget is drained through corruption (OECD, 2013). Red tape and corruption constitute significant risk factors for service delivery because they lead to excess costs and inefficiency, as well as to distortion of the competitive environment, with severe consequences for the fundamental functions of a society.

The total amount lost by developing countries to corruption, bribery, theft and tax evasion each year, according to United Nations estimates, costs some US $1.26 trillion.[2] As governments face the challenge of finding resources to finance the Sustainable Development Goals, which will cost developing countries around US$2.5 trillion annually (UNCTAD, 2014), they often overlook the resources that can be unlocked by mitigating waste and corruption in public procurement. Governments struggling to finance the SDGs, or simply looking for ways to achieve efficiency gains at a time of rapidly building debt across the region, will find that strengthening procurement systems triggers a virtuous cycle. It not only contributes to better quality of services and stronger infrastructure, but also enables substantial government savings, resulting in increased domestic resources that can be invested in development programmes.

Figure 1. Engaging in the virtuous cycle of combating corruption to accelerate progress towards the Sustainable Development Goals (SDGs)



As governments are looking for ways to finance the Sustainable Development Goals, they often overlook the resources that can be unlocked by fighting corruption.

Source: http://www.un.org/sustainabledevelopment/peace-justice/ - UNCTAD, 2014

[1] The costs of corruption are substantial. Although these costs are hard to measure, a sense of the size can be gauged from bribes paid every year in both developing countries and advanced economies. A recent estimate put the annual cost of bribery alone at about $1.5 to $2 trillion (roughly 2 per cent of global GDP) . The overall economic and social costs of corruption are likely to be even larger since bribes constitute only one aspect of the possible forms of corruption.

In the context of the newly created ASEAN Economic Community, corruption can also undermine efforts for regional integration, such as the development of major infrastructure projects. A sound procurement system is vital for continued regional integration and remains an important trigger for economic growth in the region. The Asia-Pacific region accounts for almost 37% of world trade. More than half of trade in the region is inter-regional (UNESCAP, 2014). Over 50% of the Asia-Pacific preferential trade agreements, such as the Trans-Pacific Partnership (TPP), have included measures targeting government procurement (UNESCAP, 2015).[3]

It is particularly timely for governments in Asia-Pacific to mitigate risks in public procurement since, commencing in 2017 and covering the following four years, their systems will be reviewed in the context of the Second Review Cycle of the United Nations Convention against Corruption (UNCAC). States Parties to the Convention (181 States Parties as of December 2016[4]) will undergo reviews to assess their compliance with Chapters II and V of the UNCAC, regarding Preventive Measures and Asset Recovery, respectively. In the recent *Regional Conference on Fast-tracking Implementation of UNCAC For Economic and Social Development in Southeast Asia*,[5] around 200 delegates from both government agencies and civil society organizations agreed on a series of priorities in order to effectively implement the UNCAC provisions. Extensive discussions focused specifically on public procurement and on how to make it more transparent and efficient. Some of the most pressing priorities include building the capacity of all stakeholders involved in procurement to effectively implement procurement legislation and/or regulations at all stages of the procurement process. This ranges from contract management and administration, through targeted national training initiatives; and building the capacity of procuring entities and oversight bodies to prevent and detect irregularities, to periodically engage in procurement fraud and corruption risk assessments, as well as to take mitigating actions on the identified risks.

Objectives

In response to this call, UNDP has developed this Guidebook, which specifically intends to help governments:

- Introduce risk management measures in their public procurement systems and processes in order to map existing corruption risks and initiate actions aimed at strengthening their public procurement systems accordingly. These risk management measures will be considered at the system, organizational, process and/or individual levels, depending on the specific country context.

- Organize consultations on how to improve their public procurement systems before the country undergoes the Second Review Cycle. This continues the support that UNDP provided in the First Review Cycle with the methodology "Going Beyond the Minimum", which encouraged governments to involve a wide range of stakeholders at different stages of the Review Cycle.

This Guidebook draws on the analytical framework of MAPS (the Methodology for Assessing Procurement Systems) developed by the OECD/Development Assistance Committee (DAC) and the World Bank. This is a familiar analytical tool to many procurement policy and law makers in Asia and the Pacific. However, this Guidebook does not provide an assessment tool, which is an integral part of the MAPS methodology, where the aim is to measure and determine the standard and quality of a national public procurement system against a set of baseline indicators. Instead, this Guidebook provides a logical structure for the identification of integrity risks in procurement and also provides guidance for governments to devise a capacity development action plan. This Guidebook also aims to be a useful analytical tool during the Second Review Cycle of UNCAC.

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[2] Facts and figures are available on the Sustainable Development Goals website: http://www.un.org/sustainabledevelopment/peace-justice/

[3] The government procurement chapter of TPP mandates a fair and transparent bidding process for central government contracts, including well-outlined criteria for how contracts will be awarded. Any alleged infractions are subject to the state-to-state dispute settlement process and could ultimately threaten trade benefits (Greenaway-McGrevy, 2016).

[4] United Nations Convention against Corruption Signature and Ratification Status as of December 2016: https://www.unodc.org/unodc/en/treaties/CAC/signatories.html.

[5] More information on the conference, organized by UNODC in Bangkok from 31 January to 3 February 2017, can be found at: http://www.unodc.org/unodc/en/ngos/cn24_-csos-call-for-action-in-implementing-uncac-in-the-asean.html

This Guidebook builds on the findings from the integrity risk assessment that was conducted in Thailand in 2014 and 2015, as well as on existing guidelines and checklists, to help countries "take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making that are effective, inter alia, in preventing corruption" (UNODC, 2004). These guidelines were prepared by several international organizations,[6] such as UNODC, UNCITRAL, OECD, and TI. The main source of guidance for countries aiming at conformance with the UNCAC Article 9(1) on procurement is the UNODC Guidebook on anti-corruption in public procurement and the management of public finances ("Good Practices in Ensuring Compliance with Article 9 of the United Nations Convention against Corruption"). In addition, UNDP's "Public Procurement Capacity Development Guide" provides a user-friendly reference for engaging stakeholders in developing capacity development plans on procurement.

Target audience

This Guidebook is targeted mainly at anti-corruption agencies that are, in most countries, the focal points for the UNCAC Review process, as well as at public procurement agencies responsible for procurement policy and regulatory initiatives. However, this report is also directed at other important stakeholders, such as ministries and other major procuring entities. The responsibility of developing integrity risk management policies and action plans at the national level normally rests with various government agencies, and ultimately with the political leadership. On the other hand, the implementation of integrity policies at the level of the procuring entities will become the responsibility of those entities' managements.

This Guidebook is structured in a way that enables organizations to diagnose and manage integrity risks in public procurement at various levels of the system, as well as to indicate actions to prevent and mitigate integrity risks along the various public procurement processes. The analytical framework provides guidance on **why, what, by whom** and **how** to improve (i) the regulatory framework and the central institutional structure and capacity (system-level); and (ii) the market functionality and operational performance (organizational and process levels), as well as the integrity position of public officials (individual level). Thus, integrity risk management mechanisms in public procurement are designed to identify and manage integrity risks at four levels of a public procurement system, namely:

1. National system level
2. Organizational level
3. Procurement process level
4. Individual level

[6] An overview of the main international standards and guidelines on integrity in public procurement is available in Annex 1.

This Guidebook also addresses the specific integrity risks attached to the respective levels. The combination of proposed reform actions is seen primarily from an integrity perspective. However, a sound public procurement system cannot be established unless the performance and efficiency of the system is economic, and "value for money" is secured in parallel. The overriding goal of public procurement, as expressed by the new World Bank procurement framework policy, is to "achieve value for money with integrity for sustainable development". This Guidebook will identify international good practices and standards in all these contexts, and provide practical guidance on appropriate preventive measures with specific reference to the requirements under Article 9 of the UNCAC on public procurement.[7]

It should be said that while the review of compliance with the UNCAC Article 9(1) is focused on defining gaps in the public procurement system and identifying needs for technical assistance, the overall assessment of the system will additionally provide information and guidance on the general performance status of the public procurement system, including in terms of "value for money" outcomes.

[7] Art. 9 of the UNCAC is available for consultation in Annex 2.

Box 1. How to read this Guidebook

The analytical approach used in this Guidebook builds on international experiences and practices, such as those undertaken by the OECD, the World Bank and the UNDP, on how to assess public procurement systems at different levels. The review of the public procurement system at the national system level is modelled on the Methodology for Assessing Procurement Systems (MAPS). At all the other levels, the assessment approach also draws on international experiences and practices, but is structured in a way as to reflect the requirements under the United Nations Convention against Corruption (UNCAC) Second Review Cycle.

Chapter 2 provides the rationale and background for fighting corruption and fraud in public procurement, and includes an overview of important international agreements and commitments.

Chapter 3 presents the overall analytical framework and provides guidance on how the countries could organize and conduct the assessment.

Chapter 4 addresses integrity risks at the national system level (1) using the MAPS methodology and the four-pillar analytical approach, with each pillar discussed separately.

Chapter 5 analyses and discusses integrity risks at the organization level (2) of procuring entities, covering specific issues related to procurement function, decision-making and capacity development.

Chapter 6 analyses integrity risks at the process level (3), covering the pre-bidding phase, bidding phase and post-bidding phase. It includes a presentation on how to identify integrity risks by using red flags and measures for the prevention of said risks. In addition, *Annex 3* provides a comprehensive checklist on how to identify and mitigate integrity risks in the procurement process.

Chapter 7 covers integrity risks at the individual level (4), with the purpose of addressing matters related to the integrity of the procuring entities' staff, such as codes of conduct and the declaration of assets. References are made to Article 9(1) of UNCAC.

Chapter 8 illustrates how to design and implement a capacity development action plan, following the integrity risk assessment, to mitigate these risks.

Finally, Chapter 9 summarizes key takeaways and emphasizes how countries can use this Guidebook to prepare for UNCAC's Second Review Cycle.

These Annexes complement this Guidebook:

Annex 1. List of the main international standards and guidelines on integrity in public procurement
Annex 2. Article 9 of the United Nations Convention against Corruption
Annex 3. A checklist for the identification and prevention of integrity risks in the procurement process
Annex 4. Risk mitigation actions to prevent and address conflicts of interest and bid rigging
Annex 5. Modern procurement instruments
Annex 6. The legislative and regulatory framework: Basic content and good practices
Annex 7. Public procurement integrity risk assessment report

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2. Mitigating risks in public procurement in Asia-Pacific

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Rationale

Procurement is a crucial pillar of service delivery for governments, which requires identifying what is needed, selecting the supplier, and delivering goods and services in a fair, economical and open manner.

Due to the extensive volume of business transactions that take place between the public and private sector, procurement is among the functions most prone to corruption in the public sector. Subsequently, engaging in an integrity risk assessment in public procurement can be an important first step in reducing public sector corruption. In addition to being an important strategic governance tool for the achievement of a number of political priorities, an integrity risk assessment offers information on the performance of the public procurement system and enables governments and parliaments to improve the quality of the service delivered.

Undertaking an integrity risk assessment can offer vast benefits, as illustrated by the experience of Thailand (*see Box 2*).

Box 2. Public procurement risk assessment in Thailand to advance reform

From 2014-2015, UNDP Thailand, together with the Office of the Public Sector Development Commission, the Office of Public Procurement Management, the Comptroller General's Department, the Ministry of Finance, the Anti-Corruption Organization of Thailand, the State Enterprise Policy Office, as well as other key stakeholders, established the *Project on Mitigating Risks to Integrity in Public Procurement*. The main objective was to undertake an integrity risk assessment in public procurement to identify gaps and provide recommendations for improvement and capacity development. Using MAPS, the analytical approach developed by the OECD and World Bank, as well as desk reviews, interviews and surveys with several stakeholders from government, the private sector and academia, a twenty-point action plan was proposed. It included, among others, the following recommendations:

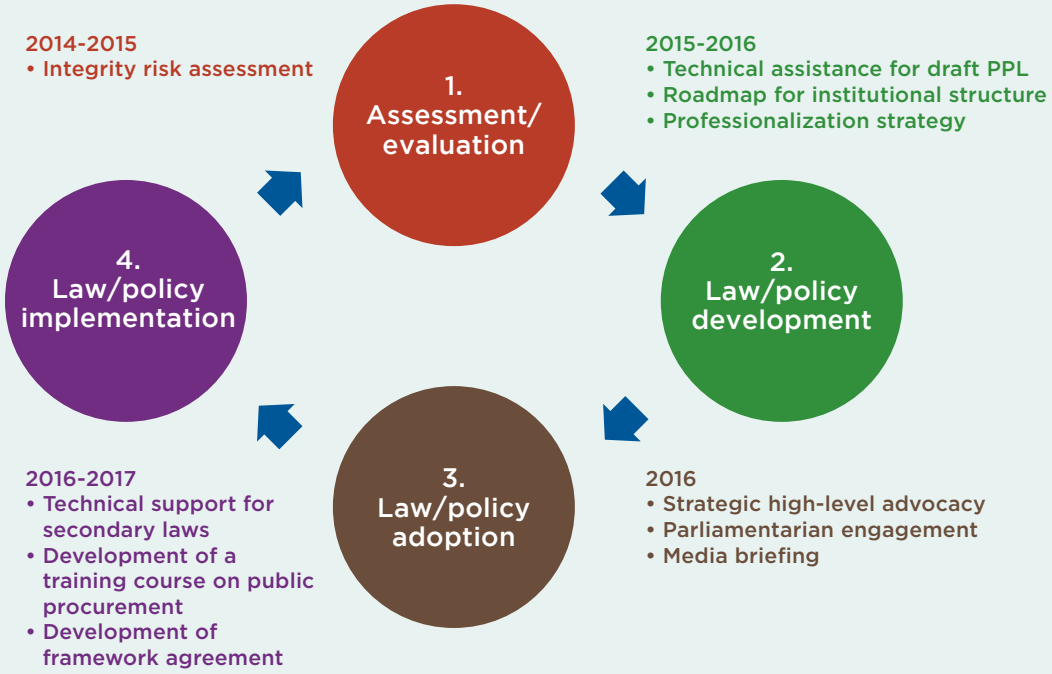
- Develop and adopt a coherent, sound and modern public procurement law (PPL).
- Continue the development of an e-procurement system.
- Support and invest in the professionalization of the procurement function by developing a national training and career development strategy in public procurement.
- Increase transparency and accessibility to public records and documents.
- Develop a risk indicator system with red-flags that could signal potential problems in the procurement process.

As a result of the integrity risk assessment, the Thai Government set up a sub-committee on procurement as part of its National Reform Council, and initiated a training of government officials on the UNDP Checklist on how to mitigate corruption risks. Trainings were also conducted on international instruments, such as the WTO Agreement on Government Procurement and the UNCITRAL Model Law. Integrity Pacts were introduced in big infrastructure projects to mitigate risks to integrity. In 2015-2016, UNDP continued providing technical assistance to the Thai Government in order to develop the first Public Procurement Act, based on international models with the aim to maximize value for money, enforce integrity standards and set up a coherent public procurement system. In 2016, UNDP proactively advocated for the adoption of the law, engaging with the Prime Minister's Office, as well as with parliamentarians. On 15 December 2016, the Public Procurement Act was approved by the Parliament of Thailand. The law was announced in the Royal Gazette of Thailand on 24 February 2017. The law covers the whole public sector (public organizations and state-owned enterprises) at national, provincial and local levels, and includes provisions on framework agreements, the professionalization of public procurement functions, transparency, and citizen monitoring of public procurement functions.

In 2016, the Government, with the support of UNDP and in partnership with the Chartered Institute of Procurement and Supply (CIPS), is developing secondary regulations and guidance on implementing framework agreements, as well as designing a procurement curriculum as part of the professionalization of public procurement functions

This project was supported jointly by UNDP and the United Kingdom's Foreign & Commonwealth Office.

Figure 2. UNDP engagement in the policy cycle for public procurement reform in Thailand



Source: UNDP Thailand, 2016.

Overview of international agreements

This section provides an overview of the most relevant international agreements and standards pertaining to good governance, anti-corruption and public procurement. It outlines the UNCAC's scope and objectives, as well as introduces other international agreements.

United Nations Convention against Corruption (UNCAC)

The UNCAC is the most comprehensive and only legally binding international treaty on anti-corruption. Its objectives are to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and to promote integrity, accountability and proper management of public affairs and property.

In the Asia-Pacific region, all countries are States Parties to the UNCAC with the exception of Japan (signatory), Niue, North Korea, Samoa and Tonga.[8]

The UNCAC, Article 9(1), requires each State Party, in accordance with the fundamental principles of its legal system, "to take the necessary steps to establish sound and appropriate systems of procurement,

[8] The updated list of States Parties to UNCAC is available at https://www.unodc.org/unodc/en/treaties/CAC/signatories.html

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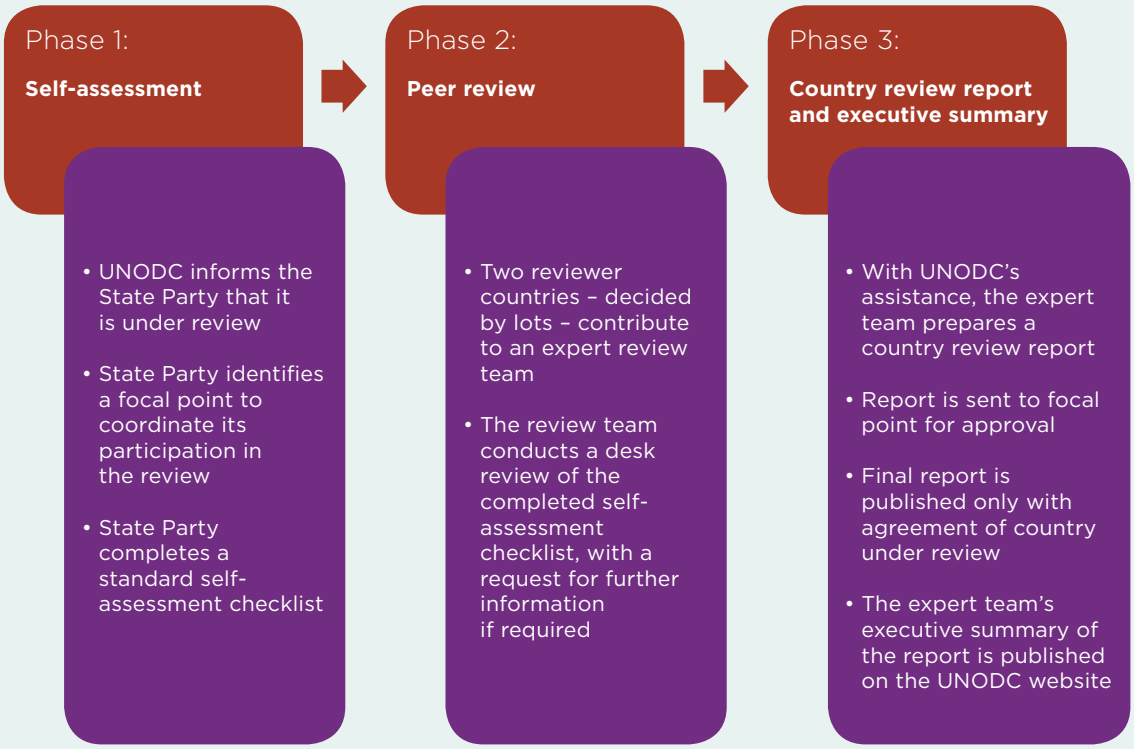
based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption" (*see Box 3*). Such systems, which may take into account appropriate threshold values in their application, shall address: (i) the establishment of a sound procurement system; (ii) transparency in procurement; (iii) objective decision-making in procurement; (iv) domestic review (or bid challenge) systems; (v) integrity of public officials; and (vi) soundness of public records and finance (Article 9(3)).

Box 3. UNCAC requirements for sound and appropriate systems of procurement

- The public distribution of information related to procurement procedures and contracts, including information on invitations to tender, and relevant information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
- The establishment of conditions for participation in advance, including selection and award criteria as well as tendering rules and their publication;
- The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
- An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures are not followed;
- Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as a declaration of interest in particular public procurements, screening procedures and training requirements; and
- The necessary administrative measures to preserve integrity in accounting books, records and financial statements.

In November 2009, the Conference of the States Parties to the UNCAC established the UNCAC Review Mechanism. It was agreed that all States Parties will be subjected to peer review over two successive five-year Review Cycles. The first five-year cycle, which started in 2010, reviewed compliance with Chapters III and IV (enforcement of the Convention), while the second five-year cycle, which starts in 2017, will review compliance with Chapters II and V (prevention and asset recovery, respectively).[9]

Figure 3. UNCAC country review process



Source: Adapted from the UNCAC Coalition.

The requirements under Article 9 of the UNCAC are further elaborated on in the *UNODC Guidebook on anti-corruption in public procurement and the management of public finances,* and in *the UNODC Legislative and Technical Guide on UNCAC*.

Governments may also refer to the *UNCITRAL Model Law on Public Procurement* (UML) and international good practices, such as the *OECD Recommendation on Public Procurement* or the *World Trade Organization (WTO) Government Procurement Agreement (GPA)*. Governments are also invited to take into account the several good practices included in this Guidebook as solutions that have emerged in different countries to implement UNCAC provisions on public procurement.

[9] The country pairings for the UNCAC second review can be found at <https://www.unodc.org/documents/treaties/UNCAC/Review-Mechanism/CountryPairingSchedule/2016_07_14_Country_pairings_SecondCycle.pdf>.

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UNCITRAL model law on public procurement

The UNCITRAL Model Law on Public Procurement, first adopted in 2004 and later revised in 2011, serves as a model for a wide variety of countries regarding the evaluation and modernization of their procurement laws and practices, as well as the establishment of procurement legislation where none currently exists or where there is a need of replacing current regulatory frameworks. The second purpose is to support the harmonization of procurement regulation internationally, and to consequentially promote international trade. Reference is made to the UML under the *UNCAC Technical Guide for Article 9*, describing it as an excellent model for all States Parties to use in their programmes in order to modernize their public procurement laws and make the regulatory framework compatible with the UNCAC requirements, as well as with other international agreements such as the WTO/GPA.

World trade organization government procurement agreement

The GPA is a multilateral agreement within the framework of the World Trade Organization, meaning that not all WTO members are parties to the agreement. It currently has 47 members and 29 observers. The fundamental aim of the GPA is to mutually open government procurement markets among its parties. It establishes rules requiring that open, fair and transparent conditions of competition be ensured in government procurement. The revised GPA was adopted in 2014.

OECD recommendation on public procurement

The "2015 OECD Recommendation on Public Procurement" supports an important shift from an administrative and compliance-based approach to a more strategic and holistic one in order to realise government policies. In addition to delivering goods and services necessary to accomplish the government's mission in a timely, economical and efficient manner, governments might also use procurement for secondary objectives, such as sustainable green growth, the development of small and medium-sized enterprises, or broader industrial policy objectives. When designing reforms, governments should keep in mind the broader goal of value for money with integrity, to avoid narrowly focusing on corruption control. Otherwise there is a risk that this narrow focus may generate negative impacts on the efficiency of the procurement system without providing any definitive evidence of reduced corruption, and can lead to a "double failure risk scenario", by which neither of the policy goals of the public procurement reform will be achieved.

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Box 4. Opportunities and challenges of joining international trade agreements: The case of Viet Nam

On 4 October 2015, Viet Nam, together with 11 other countries (Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and the United States), concluded Trans-Pacific Partnership (TPP) negotiations. Even though the US announced its withdrawal on 23 January 2017, the TPP, while pending other governments' endorsements, is still expected to be a high-standard trade agreement that will promote economic growth; support the creation and retention of jobs; enhance innovation, productivity and competitiveness; raise living standards; reduce poverty; promote transparency and good governance; and enhance labour and environmental protections in TPP countries. These long-term benefits are the main drivers for Viet Nam to join TPP negotiations and consider signing this historic trade agreement.

With regards to government contracts, Viet Nam will be able to procure better goods and services thanks to wider competition, and attract more suppliers. TPP can enhance domestic suppliers' competitiveness (including state-owned enterprises) as well as the capacity of the Government's procuring entities. Viet Nam will also be able to attract more foreign investment. Additionally, TPP offers Vietnamese companies the opportunity to access government procurement markets in the other member countries of the agreement. Last but not least, TPP provides Viet Nam with an opportunity to increase public procurement transparency.

The Government Procurement Chapter sets high quality standards for public procurement to be transparent and allow suppliers to participate fairly in the processes. These are the obligations that Viet Nam, like other TPP countries, will have to follow:

1. Non-discrimination against foreign suppliers when assessing tenders and awarding contracts.

2. Encourage the use of electronic means to increase transparency, predictability and certainty.

3. Non-application of offsets, according to which Viet Nam cannot apply favourable measures facilitating national goods and suppliers.

4. Establishment of an independent administrative review mechanism which is not a judiciary authority to handle claims, challenges and appeals from contractors.

Despite the opportunities, Viet Nam will face challenges by joining the TPP, which include:

1. Aligning domestic law to the requirements and obligations of TPP. This will require dissemination and training of key stakeholders on TPP commitments.

2. Enhancing capacity of domestic bidders and procurement entities to become international market players (technical and professional improvements).

3. Dealing with the negative short/medium term effects on local industries in case a large proportion of government contracts is carried out by foreign suppliers.

Viet Nam will benefit from international assistance, training and good practice exchange to successfully overcome these challenges and maximize the positive impact of ratifying the TPP.

Source: UNDP Viet Nam, 2016.

3. Integrity risk assessment of public procurement

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This Guidebook is a tool for governments in Asia-Pacific to set up a process for identifying integrity risks and capacity gaps in their public procurement systems. Based on the results, governments are called to devise an action plan to build their procurement capacities and upgrade their systems during the UNCAC's Second Review Cycle.

Process and stakeholder management

The risk assessment process—which aims at evaluating potential risks and establishing procedures to minimize negative impacts—needs political commitment at the highest level and a strong, well-anchored assessment organization and consultation process.

Process

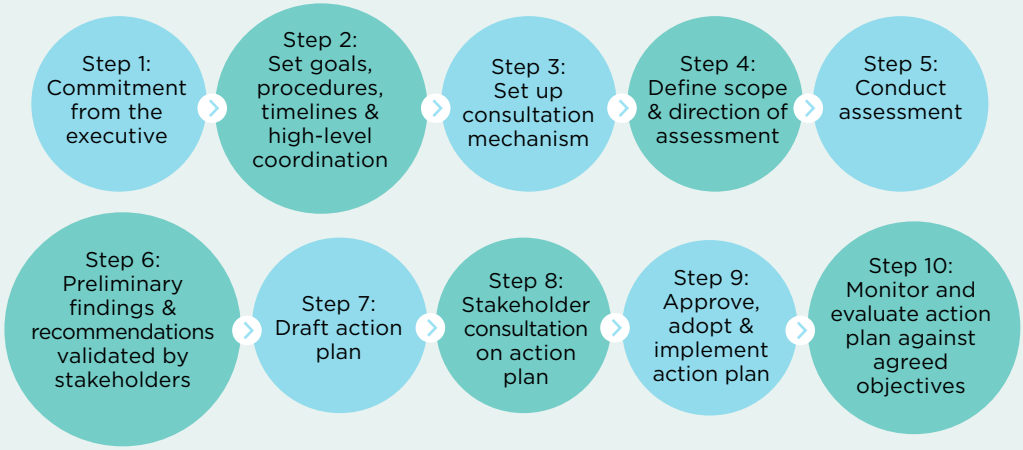
The following steps are recommended for identifying integrity risks in public procurement and for developing an action plan:[10]

1. Obtain a high-level commitment from executives to embark on a public procurement integrity risk assessment;
2. Decide the goals, objectives, and procedures—including the timetable—for the procurement integrity assessment and appoint a high-level official to coordinate the process;
3. Establish the organization and consultation mechanism;
4. Decide on the scope and direction of the assessment;
5. Conduct the assessment process in accordance with goals and objectives decided by government;
6. Present the findings, integrity risks and preliminary recommendations to be validated by the key stakeholders;
7. Prepare a draft action plan as an input to public procurement and anti-corruption reforms;
8. Organize a consultation among key stakeholders on the proposed action plan;
9. Approve and implement the action plan; and
10. Monitor and evaluate the action plan against the agreed objectives.

More specifically, applying a systematic methodology of risk mapping is a good approach for conducting the assessment process and mitigating integrity risks. The UNDP Integrity Risk Management methodology stresses the most risky phases and indicates the measures for reducing these risks. The main objectives of the methodology used for mapping the risks are:

- Identifying the risks in order to put in place efficient means to prevent fraud and corruption; and
- Identifying risks to investigations to make them more efficient, done by concentrating the efforts on sensitive processes, methods or persons.[11]

Figure 4. The UNDP integrity risk management methodology for public procurement



Source: UNDP, 2016.

[10] A proposed outline of the report on national public procurement integrity risk assessment is available in Annex 7.

[11] UNDP has published a number of sector analyses of integrity risk management (for example in health and education). For more information, please see the list of publications at the UNDP Bangkok Regional Hub webpage http://www.asia-pacific.undp.org/content/rbap/en/home/ourwork/democratic-governance-and-peacebuilding/responsive-and-accountable-institutions/anti-corruption.html.

Stakeholders

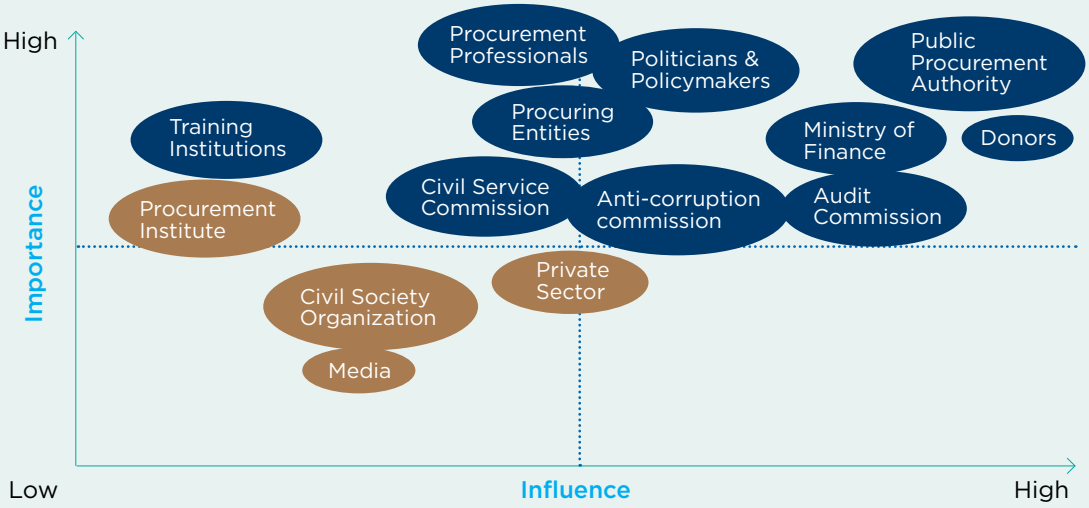
The main stakeholders that should be invited to take part in the assessment and consultation process for designing the capacity development action plan should preferably represent the following groups:

- Public procurement authority;
- Specialized anti-corruption bodies;
- Relevant parliament committees;
- President administration;
- Prime Minister's office;
- Key ministries with interest in public procurement, such as the Ministry of Finance, Ministry of Justice, Ministry of Local Authorities, Ministry of Public Administration, Ministry of Education, Ministry of Works, Ministry of Health, and Ministry of Transport and Communications;
- Audit and financial control bodies;
- Competition authority;
- Standardisation bodies;
- Large purchasers;
- Small and Medium Enterprises (SMEs);
- Private sector associations (that provide a representative sample of the business community in the country);
- Academia and research centres;
- Civil society; and
- Training institutions.

Public procurement policy, regulatory and monitoring authorities, including other important stakeholders such as main purchasers and private sector associations, need to be closely involved in the development of the action plan on integrity in procurement.

A systematic approach should be taken to identify and map stakeholders prior to commencing procurement capacity development processes so that an appropriate stakeholder communication and engagement strategy can be applied throughout. One approach may be to identify the stakeholders and map them according to their relative influence and importance, bearing in mind that this may vary at different stages of the process (UNDP, 2010). An example of such a stakeholder mapping is shown in *Figure 5*.

Figure 5. An example of stakeholder mapping



Source: UNDP, 2010.

It is vital that there is a good mix of procurement and integrity policy knowledge and responsibility, professional procurement expertise, and complementary knowledge, such as in external audits, financial control, civil service and administrative law.

Analytical frameworks

The risk assessment is based, at the system level, on the analytical framework of MAPS to determine the standard, integrity and compliance of national public procurement systems with international good practices.

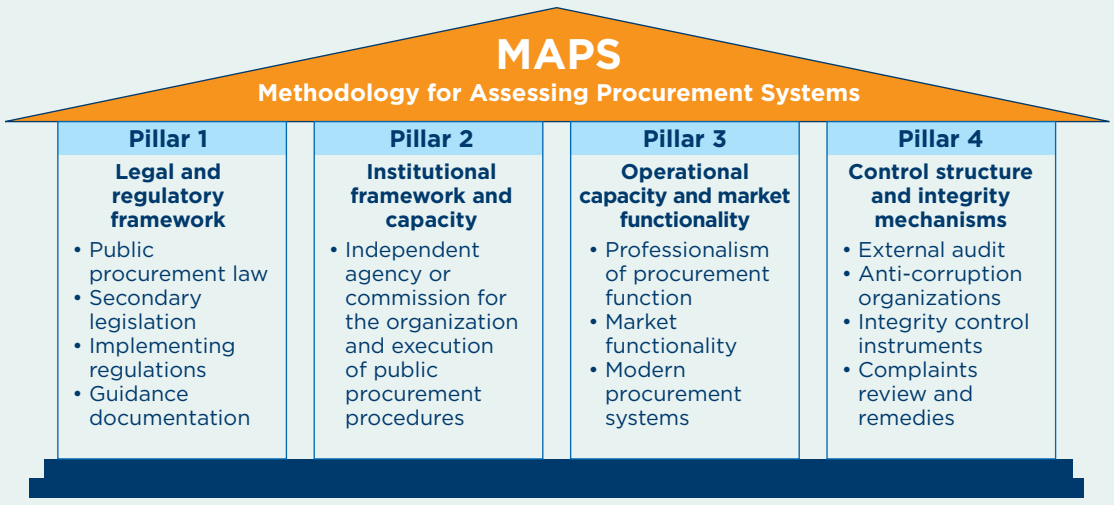
MAPS was originally developed by OECD and the World Bank in 2003. MAPS covers public procurement in all its aspects and offers a set of indicators that allows evaluation on how well a public procurement system works or where reforms are needed.

The present integrity risk assessment uses the 2010 version of MAPS. However, a stakeholder group of MAPS users (countries, international institutions and experts) launched a revision process of the methodology in 2015 to reflect new developments within public procurement, such as e-procurement, strategic public procurement and an increased focus on performance. A first draft was published for consultation in 2016. While the indicators have been revised substantially, the basic structure of MAPS has remained the same.

In order to make the assessment of a public procurement system at the national level manageable, it is necessary to identify and include areas directly associated with public procurement, and deliberately exclude areas of less direct influence. Four key areas (pillars) have been identified, in broad terms, to constitute the basic components of a national public procurement system: 1) **legal and regulatory framework**; 2) **institutional framework and capacity**; 3) **operational capacity and market functionality**; and 4) **control structure and integrity mechanisms**. Integrity has to be granted throughout the entire public procurement process, through measures aimed at reducing corruption and enhancing transparency in all the pillars.

The MAPS analytical framework, however, applies only to the assessment at the national system level. For the **organizational**, **process** and **individual levels**, other approaches will be used, which will be described in detail in the respective chapters.

Figure 6. The MAPS methodological framework



Source: OECD and World Bank, 2009.

Pillar 1. Legal and regulatory framework

The regulatory instrument governing public procurement should be a **public procurement law** (PPL) complemented with an appropriate set of secondary legislation, implementing regulations and guidance documentation. However, some countries may still rely on government regulations, which generally constitutes a problem in terms of compatibility with international standards and often provides weaker legal certainty and enforceability for procuring entities and bidders.

Further information on the design of the legislative and regulatory framework is available in *Annex 6.* It is important to note that a comprehensive examination of the legal and regulatory framework should not be limited to the tender process alone. Depending on the particular country context, the legal and regulatory framework of related arenas—such as budgeting, appropriation, contract execution and management—should also be considered.

Box 5. Checklist questions on the legal and regulatory framework

To support governments in undertaking a risk assessment, this Guidebook proposes a set of generic questions that can be used for references. These questions should be tailored to the specific context of each country.

- ☐ Is public procurement regulated by law or regulations?
- ☐ Are all procuring entities and contracts covered by the regulatory framework?
- ☐ Which entities and contracts are exempted from the regulatory framework?
- ☐ Is open competitive tendering the default method and are there other available procurement methods based on clear justifications, and do they follow the principle of transparency?
- ☐ Is the design of technical specifications clearly laid down in the procurement law, based on standards, leaving no room for biased descriptions?
- ☐ Are there clear rules on the qualifications of bidders and their selection (eligibility, technical and financial capacity, and debarment)?
- ☐ Are the award criteria clearly described in the law, such as lowest evaluated price or most economically advantageous tender?
- ☐ Is the provision and format of tender documentation sufficiently described in the law?
- ☐ Are there clear rules for publication of tender notices and sufficient minimum time limits for the submission of tender; normally between 10-40 days?
- ☐ Is the opening of tenders done publicly in accordance with law?
- ☐ Is the tender evaluation process clearly described in the law?
- ☐ Is there a complaint procedure laid down in the law?

Pillar 2. Institutional framework and management capacity

To establish a sound and efficient public procurement system, institutional structures and arrangements should be in place to ensure an effective implementation of policies and the proper functioning of the regulatory system. It should be noted that while it is not explicitly stated in the UNCAC under Article 9(1) that a State Party would need to build an efficient institutional infrastructure, institutional aspects are addressed under other articles of the UNCAC.

According to the UNODC Technical Guide on UNCAC, it is good practice to establish either an independent agency or commission for the organization and execution of public procurement procedures. The functions normally associated with these central public procurement institutions are as follows (OECD, 2007):

- Responsibility for developing primary legislation and regulation;
- Preparing and issuing secondary legislation (implementing regulation and operational guidelines);

- Oversight and monitoring of public procurement with the right to attend or access information on any part of the procurement process;
- Advisory and operational support to contracting entities;
- Developing integrity strengthening policies and instruments;
- Collating intelligence on procurement fraud and corruption, including (i) receiving all complaints, (ii) creating a confidential telephone "hotline", (iii) reviewing publicly available debarment lists, and (iv) ensuring the effective exchange of relevant information with other parts of the government involved in contracting with the private sector, as appropriate;
- Developing and overseeing integrity pacts;
- Monitoring specific awards, such as single source procurement;
- Promoting freedom of information legislation and access to information;
- Promoting specialist training, codes of conduct and asset declaration requirements for procurement staff and auditors;
- Developing and managing an e-procurement system, including publication and information functions;
- Professionalization and capacity building;
- Operational development and coordination; and
- International cooperation.

Central public procurement functions are exercised by central bodies that may be organized with a variety of reporting lines. Commonly these central bodies are organized within or subordinated to:

- The Ministry of Finance or the Treasury;
- The Ministry of Works;
- The Ministry of Regional Development;
- The Office of the Prime Minister/Chancellor/President as a subordinate body;
- The Council of Ministers;
- Parliament; or
- The Competition Authority or another public body.

There might be a multitude of units covering one or more public procurement functions and organized in a combination of institutional environments. Furthermore, it is also important that the Public Procurement Authority works in close cooperation with controlling bodies, such as Anti-Corruption Commissions and External Audit Authorities. The establishment of a forum for consultations with important stakeholders on policy development and integrity is a key ingredient within the institutional structure.

Box 6. Checklist questions on institutional frameworks and management capacity

To support governments in undertaking a risk assessment, this Guidebook proposes a set of generic questions that can be used for reference. These questions should be tailored to the specific context of each country.

- ☐ Which ministry or body is responsible for policy coordination and the regulation of public procurement, support, monitoring and oversight with regards to public procurement?
- ☐ Are the main functions and responsibilities of this body clearly laid out in the procurement law?
- ☐ Is this body sufficiently organized and staffed to undertake its duties effectively?
- ☐ Does the body operate a web portal for the publication of tender notices and the opportunity to upload and download tender documentation?
- ☐ Is the body responsible for e-procurement development?
- ☐ Does the body have a sufficient mandate to carry out its monitoring responsibilities effectively, e.g. the right to collect information and data from the contracting entities?
- ☐ Does the body have the right to propose or even issue interpretive and implementing guidelines?
- ☐ Does the body have the right to issue and manage debarment lists?
- ☐ Does the body take any regulatory initiatives to prevent corruption and fraud in public procurement?
- ☐ Does the body provide any training in public procurement for procuring entities and bidders?

Pillar 3. Operational capacity and market functionality

The integrity risk management of the public procurement system should cover the quality and capacity of the procurement function, including the purchasing organization, processes, and procurement managers and staff. The identification of main integrity risks at the national level covers the following areas in particular:

- **Professionalism of the procurement function:** A cornerstone of an efficient public procurement system is the availability of a professional procurement function within procuring entities. It is important that this function can produce "value for money" for its users by acting professionally, cost-effectively and with integrity within all key aspects of the procurement processes. Professionalization cannot be limited only to training in public procurement for procurement managers and staff. Equally important are the organization and decision-making structures within the procuring entities that need to be tackled simultaneously and comprehensively.

- **Market functionality:** The public market's attractiveness to the private sector depends on many factors, such as potential economic gains, costs of participation, the complexity of tender and contract documentation, the fairness and relevance of qualifications and award criteria, the availability of de-briefing and a complaints mechanism, etc. The market should also be free from trade barriers and other technical or commercial hindrances for participation.

- **Availability of modern procurement systems:** Successful public procurement operations strongly benefit from the use of tools that modernize and generate more efficient and cost-effective public procurement operations. They are powerful means to reduce transaction costs; provide more competitive prices; simplify tendering and contracting for contracting entities and tenderers/suppliers; increase transparency; improve the collection of procurement data; enhance monitoring and controlling capacities; and generally mitigate integrity risks in the procurement process. These modern systems include e-procurement systems, framework agreements and central purchasing.

For more information about modern procurement instruments, refer to *Annex 5*.

Box 7. Checklist questions on operational capacity and market functionality

To support governments in undertaking a risk assessment, this Guidebook proposes a set of generic questions that can be used for reference. These questions should be tailored to the specific context of each country.

- ☐ Is there systematic or institutionalized training in public procurement available?
- ☐ Is the position of procurement manager and staff defined within the public administration?
- ☐ Is there a certification system for procurement officers in place?
- ☐ Is the procurement profession recognized?
- ☐ Are there clear rules laid down in law or regulations on the authorization to make procurement decisions?
- ☐ Is the overall competitive position in the market for public contracts satisfactory?
- ☐ Are there problematic sectors from a competitive point of view?
- ☐ Is there any indication of integrity risks, in particular for collusive practices?
- ☐ Are there legal or technical obstacles for participation in public tenders?
- ☐ Are modern techniques, such as e-procurement, centralized purchasing and framework agreements introduced?
- ☐ What operational capacity, such as infrastructure and trained staff, exists for using modern procurement techniques?

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Pillar 4. Control structures and integrity mechanisms

Control of public procurement is exercised at different levels, with a mix of aims and objectives, and a broad spectrum of actors within the society. Within the government environment, external audits, financial control, public expenditure management and budget processes normally constitute the main control functions. The integrity risk management analysis should preferably cover the following main components:

- **External audit:** External audits of procurement procedures play an important role in verifying both compliance with the rules and the performance of the procurement operations (value for money). Compliance criteria, against which the process is to be assessed, are based on the regulatory framework applicable in the particular context of a country and generally include the "three E" criteria—economy, efficiency and effectiveness.

- **Anti-corruption organizations:** Under Article 6 of the UNCAC, States Parties need to establish specialized, preventive anti-corruption bodies (UNODC, 2009). Furthermore, these bodies are often the designated Lead Agencies for the UNCAC Review process. Such bodies shall be given the task of developing, maintaining, revising and monitoring the implementation of effective, coordinated anti-corruption policies. The success of anti-corruption bodies rests on a number of key conditions, including political support from a broad array of national political leaders, political and operational independence to investigate all levels of government, access to documentation and the power to question witnesses, and leadership with great integrity.[13] With respect to public procurement, it is important that the anti-corruption body has a clear mandate for its operations and that this mandate coincides with the legal and institutional foundation for public procurement—particularly for procurement law—as well as the oversight and monitoring responsibilities of the central procurement institutions.

- **Specific control instruments:** Control in public procurement is primarily aimed at ensuring that public funds are used for the purposes intended. There are also special control instruments, legally and institutionally, designed to minimize the risk of irregularities in public procurement, as well as specialised bodies and instruments that are given responsibility for combatting corruption and fraud. Some examples of these instruments are:

    - *Price control mechanisms:* The practice of reference or standard prices is not only for guidance. Reference or standard prices also tend to operate as ceiling prices not to be exceeded by the tenderers. The positive impact of standard price control mechanisms on integrity enhancement is debateable, while the negative effects on market functionality are more clearly demonstrated.

    - *Rules on conflict of interest:* Article 26 of the UNCITRAL Model Law mandates a code of conduct for officers or employees of procuring entities. The code of conduct shall address, inter alia, the prevention of conflicts of interest in procurement and, where appropriate, measures to regulate matters regarding personnel responsible for procurement. This includes declarations of interest in particular procurements, screening procedures and training requirements.

    - *Whistleblower protection:* A whistleblower protection act should be put in place and provide sufficient protection to whistleblowers.

    - *Integrity pacts initiatives:* The Integrity Pact consists of a process that includes an agreement between a government or government agency ('the authority') and all bidders for a public sector contract, setting out rights and obligations to the effect that neither side will pay, offer, demand or accept bribes; nor will bidders collude with competitors to obtain the contract or bribe representatives of the authority while carrying it out. A third party, Civil Society, monitoring mechanism is a pre-requisite.

[13] See the Jakarta statement on the "Principles on Anti-corruption Agencies", issued by UNDP/UNODC in 2012. For more information on the conditions for anti-corruption bodies to work effectively, please see: https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf

- *Private sector integrity initiatives:* These initiatives could be commitments to Integrity Pacts, Codes of Conduct and Certification Instruments for companies. Foreign firms are often bound by international agreements and internal compliance policies and codes of conduct.

- *Soundness of public records and finance:* The integrity of records helps to provide accurate information for fiscal forecasting and establishes an audit trail to deter corruption. The UNODC Guidebook (2013) provides more information on how to meet these requirements under Article 9(3).

- *High-level reporting mechanism:* This is not a legal procedure; it is a voluntary process (companies can always choose legal redress if they prefer), which offers an alternative and complementary approach to other functions or dispute resolution systems of legal, administrative or regulatory natures (Wehrle, 2015).

- *Complaints review and remedies:* The establishment of an effective mechanism to handle bidders' complaints is a specific requirement under the UNCAC Article 9(1). The review and remedies system, established by procurement legislation, should provide speedy, effective and competent handling and resolution of complaints, including comprehensive publication of judgments and their rationale. Globally, the main methods of enforcement used involve different forms of: (i) direct supervision, (ii) complaints made to administrative review bodies, (iii) complaints made to independent review bodies, and (iv) complaints brought before judicial authorities.

- *Risk management initiatives:* An example of a risk management initiative is where external professional observers under the public procurement law may have access to the procurement process during the tendering process with the right to express opinions and to request remedial actions, such as the "UK Gateway Review."

Box 8. Australia and the gateway review process

One example of a successful control structure is the United Kingdom's Office of Government Commerce (UK OGC) Gateway Review Process™ (Gateway). Gateway is a project assurance methodology that uses short, intensive interviews during the project cycle to:

- Assess the project against its stated objectives at a particular stage in the project life cycle;
- Provide early identification of areas that may require corrective action;
- Validate that the project is ready to progress to the next stage; and
- Meet with relevant actors—including the sponsoring unit (Project Manager and Project Team), Gateway Unit, Gateway Review team and other project stakeholders—at each Gateway Review.

In November 2005, the Australian Government endorsed and adopted the Gateway mechanism. Gateway applies to new projects under the Financial Management and Accountability Act of 1997 and to projects above the financial threshold of $10 million for IT projects, and $20 million for other procurement and infrastructure projects.

Source: Australian Government, Department of Finance, 2006.

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Box 9. Checklist questions on control structures and integrity in the public procurement system

To support governments in undertaking a risk assessment, this Guidebook proposes a set of generic questions that can be used for reference. These questions should be tailored to the specific context of each country.

- ☐ Is there an independent external audit institution set up by law?
- ☐ Has the external audit institution been designated a clear role and mandate in the auditing of public procurement operations?
- ☐ Has any specialized anti-corruption body been established by law?
- ☐ What are the main responsibilities and powers of such an anti-corruption body?
- ☐ Is there a specialized complaint review mechanism established by the procurement law?
- ☐ What are the mechanisms in place to handle complaints in relation to collusion?
- ☐ Is there a law on conflict of interest?
- ☐ Is there a law on whistleblower protection?
- ☐ Are there any integrity pact initiatives?
- ☐ Are there any risk management strategies or control mechanisms set up in public procurement?

In conclusion, an integrity risk assessment of a national public procurement system should follow the four-pillar approach, with particular attention to UNCAC requirements, such as a sound procurement system, transparency, objective decision-making, fair and sufficient competition, and complaint review mechanism.

4. Integrity risks at the system level

The system level refers to the overall national public procurement system as defined under the MAPS methodology covering the four pillars: legal and regulatory framework, institutional framework and capacity, operational capacity and market functionality, and control structure and integrity mechanisms.

This chapter addresses the main integrity risks that may occur as a consequence of weaknesses and gaps identified in the overall structure, with reference to international good practice benchmarks. Using an analytical framework and approach modelled on the MAPS methodology, the integrity risks of public procurement at the system level are those included in the following table.

Table 1. Integrity risks in public procurement at the system level

Legal and regulatory framework	• Absence of a solid and modern regulatory framework • Procedural deficiencies • Inconsistencies in the surrounding regulatory framework • Insufficient policy and coordination instruments
Institutional framework and capacity	• Insufficient legal base for operations of Public Procurement Authorities (PPA) • Unclear coordinating responsibilities and functions • Unclear and insufficient mandate and organizational location within the administration • Inefficient serviceability • Low credibility • Politicized institutional structure • Inefficient information technology and administrative systems capable of collecting and analysing procurement data and information • Lack of financial resources and professional capacity in the organization of PPA
Operational capacity and market functionality	• Insufficient procurement management and staff capacity • Lack of power and credibility of the procurement department within the administration • Lack of recognition of the procurement profession and limited career opportunities • No institutionalized procurement training • Unsatisfactory competition reflected by low participation rates on tenders • Burdensome and bureaucratic qualification requirements • Discriminatory technical or legal rules • Price or other preferential schemes favouring domestic suppliers • Lack of public sector credibility among private sector operators • Ineffective contract management, including slow payment procedures
Control structure and integrity mechanism	• Weak legal base, processes, capacity and enforcement of external audit bodies • Lack of sufficient mandate, capacity and enforcement mechanisms within the anti-corruption body • Lack of coordination and cooperation between the main actors within the procurement system • Low credibility and lack of political support of the control bodies • Improper and unsatisfactory complaint system

Integrity risks in the legal and regulatory framework

The absence of a sound and modern public procurement law that covers the public sector in the country, including utilities companies, and is compatible with international requirements and models, constitutes an overriding integrity risk.[14] A poor legal base constitutes risks of fragmentation, weak enforceability and coverage, lack of legal certainty for the bidders, insufficient protection for procurement staff, opportunities for unjustified exemptions, and misuse of discretion. A well-functioning and sound public procurement system is not only dependent on its own core legislation and institutional structures, but is also highly reliant on how well and to what extent the surrounding regulatory framework manages to address the specific needs of the public procurement system. This environment is made up of external audits, financial control, budget rules and planning, administrative and civil service laws, competition law, commercial law, and environmental legislation, in addition to the law on conflict of interest and the law on whistleblower protection.

Furthermore, integrity risks in the regulatory framework can be exacerbated by procedural deficiencies. Some procedural deficiencies are:

- Unclear scope of application for public procurement law and unjustified exemptions to the regulatory framework;
- Unjustified use of direct contracting and other non-open tender procedures, such as limited tendering or negotiated procedures;
- Biased technical specifications or specifications that are not based on industry standards;
- Lack of clarity in the rules and implementing regulations on bidder selection and qualification criteria, particularly when in breach of the principles of proportionality and fair and equal treatment;
- Lack of clarity in the rules and guidance documentation concerning the evaluation process, as well as poor rules on how this process should be managed and controlled;
- Unclear rules on aggregation of contract values and abuse of time limits for submission of tenders;
- Unjustified lack of public bid opening, especially where regularity and transparency requirements are not met by other proper means; and
- Unclear regulation on how the proposed award should be communicated and managed.

Integrity risks in central institutional structure and capacity

Central regulatory bodies (public procurement authorities) play an important role in developing policies, ensuring effective implementation of the regulatory frameworks and policies, developing technological tools (such as e-procurement), providing support to procuring entities and the private sector, monitoring procurement in the country, collecting procurement data and statistics, and preparing and issuing guidance documentation. A central regulatory body with an unclear and insufficient mandate, low credibility, politicized structure, inefficient capacity, and insufficient financial resources poses significant integrity risks.

Box 10 illustrates the virtuous experience of the Public Procurement Service of the Republic of Korea in setting up an efficient e-procurement system.

[14] A common problem of significant complexity is how to deal with state-owned enterprises outside the group of utilities companies. Corruption is a prevalent phenomenon within this sector in many countries. The main issue is to determine under which conditions state-owned enterprises should be covered by the procurement law or, alternatively, are in the position to decide their own procurement rules.

Box 10. E-procurement as a tool for transparency and accountability: The model of KONEPS (Republic of Korea)

An example of a modern procurement instrument that enhances system capacity is the e-procurement system in South Korea. Launched in October 2002 by the Public Procurement Service, Korea's Central Government Procurement Agency, the Korea On-Line E-Procurement System (KONEPS) provides a web-based procurement platform for 120,000 private businesses and 37,000 public organizations. The online system addresses the entire procurement process—including procurement requests, bids, contracts and payments.

There are many benefits to using an e-procurement system. E-procurement systems improve market access and competition, promote integrity, reduce costs, and increase access to information (Luijken and Martini, 2014). Additionally, e-procurement systems are economical and efficient. Since its establishment, KONEPS has saved the public sector USD$1.4 billion and the private sector USD$6.6 billion. KONEPS has also reduced the time needed to process bids from an average of 30 hours to 2 hours (de Swardt, 2015).

Additionally, e-procurement is a tool used in the fight against public sector corruption. By automating processes, e-procurement systems essentially minimize direct human interactions between bidders and procurement personnel, the very interactions that are one of the main sources of corrupt behaviour in public procurement. Furthermore, e-procurement allows for easy data generation and data management, a requirement under Article 9(3) of the UNCAC.

As illustrated by KONEPS, e-procurement systems can be an important technological tool for enhancing institutional capacity and helping countries achieve the goals of transparency and accountability under UNCAC.

Source: Public Procurement Service, Republic of Korea, 2016.

Integrity risks in the context of operational capacity and market functionality

The capacity and professionalism of the procurement function within the procuring entity plays a decisive role for the efficient outcome of procurement operations. Its function and status within the administration, the level of professionalism of management and staff, the way procurement processes are organized and managed, and issues such as staff recognition, development and training support are of significant concern. Authorization, approvals and decision-making rules should be well prescribed in the regulatory framework. Additionally, insufficient confidence with the procurement function and low professionalization are serious integrity risks.

With regards to market functionality, the main integrity risks are linked to the competitive position in the market as a whole, as well as in individual market segments. Legal and/or technical obstacles and other means of discrimination for participation in public tenders strongly affect the attractiveness of the public sector market to the private sector. In fact, collusive practices might actually be inspired by technical and legal hindrances to fair and open competition. Domestic preferences are another negative factor to the functionality of the market. Foreign companies, which are bound by strong international commitments to act with integrity,[15] generally improve competition. Important indicators on market functionality are public market statistics concerning participation rates on tenders and types of procurement methods used.

[15] For example the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (http://www.oecd.org/corruption/oecdantibriberyconvention.htm), the UK Bribery Act 2010 (http://www.legislation.gov.uk/ukpga/2010/23/contents) and the US Foreign Corrupt Practices Act (https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act).

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Integrity risks in the control structure and integrity mechanisms

Key weaknesses in the control structure and integrity mechanisms include unclear mandates and low credibility of the control bodies, as well as a lack of coordination and cooperation between the main actors within the procurement system. Furthermore, integrity risks in public procurement need to be analysed and tackled by the control structure at different levels in a society and in different aspects. For example, bid collusion and systemic corruption are areas which need to be tackled by other measures outside the direct sphere of public procurement (this topic is discussed in more detail in Chapter 6). A number of questions needs to be addressed, such as:

- What are the most common collusive bid-rigging schemes and how can they be prevented?
- How to spot bid rigging in the pre-contract stage?
- What are the most common bid suppression schemes?
- How to create indicators that will help to identify collusive behaviour?
- How to counteract bid rotation schemes?
- What are the best practices and prevention techniques to avoid bid rigging?
- How to determine whether a subcontracting form fulfils the criteria of bid rigging?
- Why is it essential to have an in-depth knowledge of the market and price level?

Systemic corruption is probably the most challenging task since it is more a consequence of a dysfunctional society than a necessarily clear weakness in the legal and institutional setup in the area of public procurement. Consequently, the overriding challenge then will be how to change an existing "non-integrity culture", with extensive credibility problems, in the eyes of the general public and other important stakeholders.

Summary of the main integrity risks at the system level

1. Unacceptable procurement regulatory standards—no or unsatisfactory public procurement law and standards of guidance documentation;
2. Insufficient rules and systems for the publication of tender notices and contract awards;
3. A number of identified procedural deficiencies and practices incompatible with the UNCAC requirements;
4. No or unacceptable bid challenge mechanisms;
5. Weak central institutional structure and capacity to support an effective implementation of the regulatory framework;
6. Weak operational and contracting capacity within procuring entities—insufficient training and career opportunities;
7. A number of serious public sector market imperfections have been observed, discriminatory rules and practices being the most common problems; and
8. Weak control structure with insufficient capacity, coordination and credibility.

5. Integrity risks at the organizational level

The organizational level is where procurement transactions take place and where the final outcome of the procurement operations will be determined and measured in terms of "value for money". The areas of specific importance for addressing integrity risks are: the capacity and quality of the procurement function and staff, and how procurement decisions are made and accountability secured.

An integrity risk management system at the organizational level needs to cover a number of important aspects of procurement operations and processes within the procuring entities, including in central purchasing organizations. The mapping and prevention of integrity risks should be based on a solid understanding of the risk areas within the operational structure, the availability of appropriate analytical tools, the way an integrity risk management policy and action plan is designed, and the goals and methods to ensure effective implementation and sound practices.

While the integrity risk assessment of a country's public procurement system at the system level uses the four-pillar approach, the identification and prevention of integrity risks at the contracting and organizational level, though linked to the overall situation and status of the preventive infrastructure, requires a different analytical approach. Using a performance measurement system, the integrity risks of public procurement at the organizational level are those described in the following table.

Table 2. Integrity risks in public procurement at the organizational level

Procurement organization and function	• Primarly functioning as clerical service units for tender committees instead of driving the process and delegating specific tasks to the committees • Lack of strategic function and mandate
Capabilities and capacity of procurement staff	• Lack of recognition, appreciation and attractive career opportunities in the procurement profession • No institutionalized professional training
Decision-making, responsibility and accountability	• Overstretched collective approach in decision-making • Strict dependency on tender committee decisions
Conflicts of interest	• Project and budget allocations designed and decided by public officials with specific private interests and relationships in those sectors • Technical specifications prepared by officials with private interests or relationships in product or service areas • Committee for preparation of technical specifications or committee for evaluation and award of contracts comprises of members with private interests in product or service areas • Qualification requirements favour a certain supplier in which a public official has an interest • Awarded firm controlled and supervised by officials with private interests in the company working in the inspection or finance departments • Involvement of consultants in tender preparation that leads to biased procurement decisions
Discretionary power	• Unclear rules on the authorization of procurement decisions at different investment and contract values during the entire procurement process • Unsatisfactory organization and management structures and decision-making rules • Unclear rules on the mandate of tender committees • Lack of clear rules on exemptions to competitive tendering in the public procurement law • Weak control capacities
Political interference	• Pressure from politically appointed executives to favour certain bidders in the process • Immense power for the politcally appointed chairman coupled with a lack of effective power for the tender committees • Biased procurement decisions where certain bidders are favoured or where the most favourable bid is not chosen • Domestic suppliers and bidders favoured • Lack of credibility and competitiveness in the procurement system

Procurement organization and function

Many procuring entities have designated procurement departments with specialized procurement staff, although many other expert staff outside the procurement department are involved in all steps of the procurement process. The procurement department should play an important role in all phases of the procurement cycle, from the point of defining the needs until the closure of the file. It acts, or should act, as the main organizer of procurement processes and as the internal knowledge centre for the procuring entity. The size and role of the procurement department will vary depending on the nature of the procuring entity.

A major risk identified is that procurement departments operate more as service units for the tender committees, providing a clerical function. The procurement departments should preferably be 'driving' the process and relying on the committees to carry out specific tasks. Other integrity risks relate to the operational function and mandate of the procurement department. It should be used as a strategic function within the operations of the procuring entity, but this is often not the case.

Capabilities and capacity of procurement staff

Experiences often indicate that training and capacity building of procurement staff and functions are insufficient and would need stronger attention and support. The procurement profession frequently lacks recognition, appreciation and attractive career opportunities, which in turn makes it difficult to recruit and keep procurement staff. An important pre-condition and factor for enhanced professionalism in procurement rests very much on official recognition of the procurement profession within civil service regulations, with clear job descriptions for different positions and salary levels.

The nature of the profession might also be different if the position deals with the procurement of goods, services or works contracts. Consequently, any official recognition of the vocation should offer sufficient flexibility in order to accommodate the wide variety of tasks and responsibilities at hand within the procurement cycle. The lack of recognition is not only a formal matter of a regulatory nature, it also constitutes a perception problem of how the procurement profession is viewed from the outside. Additionally, there is often no institutionalized professional training at the academic level or certification schemes of procurement staff available. Equally important is that procurement staff members are offered the right opportunities to acquire knowledge and skills on the job.

Box 11. UNDP procurement training and certification

The United Nations Development Programme offers specialized procurement training and certification to staff from the UN system, governments, non-governmental organizations and international development financing institutions and their borrowers.

UNDP/CIPS cooperation on procurement training and certification

UNDP procurement certification courses are fully accredited by CIPS, the Chartered Institute of Procurement and Supply, assuring compliance with high-quality international standards. All training and certification courses are tailored to reflect UN and public procurement rules, policies and procedures.

Each certification level provides a tailored set of student training materials, references and work books, case studies, exercises, and an assessment process leading to a qualification accredited by CIPS. Included in the package for each level is a one year student membership to CIPS, providing access to a world-wide community of procurement professionals, as well as access to

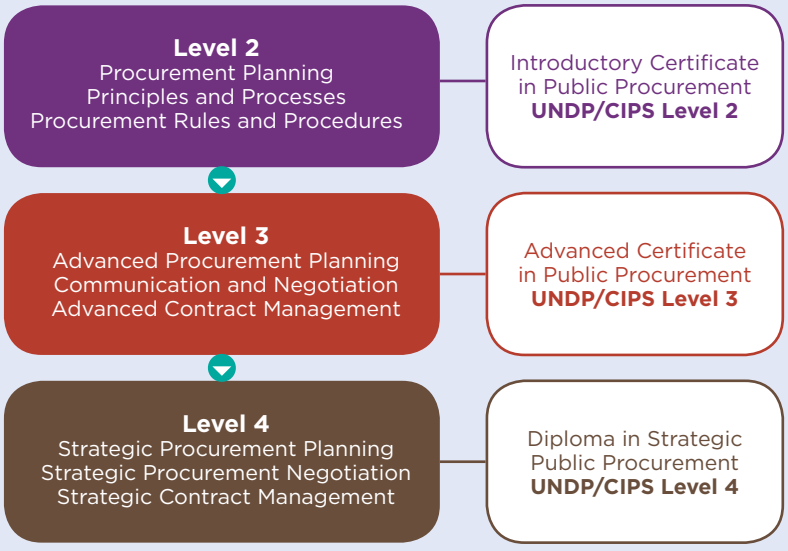
the CIPS knowledge portal. All the courses will be followed by a written work-based assessment. Assessments are optional for participants but are a requirement to achieve full CIPS qualification. The final course certificate is issued by CIPS directly to the participants, ensuring full compatibility with CIPS qualifications.

All training courses employ modern, adult participatory learning methods. Each training module commences with an overview of the rules, procedures and/or theory of the subject in question, and is then followed by case studies, group discussions or exercises. This creates a forum for participants to apply theory and methods to real cases and to foster productive knowledge sharing.

Why procurement training and certification?

Procurement certification is relevant for several reasons. There has been massive growth in procurement volume and an increase in the risk and complexity of procurement transactions that require new skillsets and competencies. As such, the UNDP/CIPS certificate levels offer a range of options and modules. Level 2—the UNDP/CIPS Certificate—focuses on procurement planning, principles and processes, and procurement rules and procedures. Level 3—the UNDP/CIPS Advanced Certificate—deals with advanced procurement planning, communication and negotiation, and advanced contract management. Level 4—which is the UNDP/CIPS Strategic Diploma—emphasizes strategic procurement planning, strategic procurement negotiations and strategic contract management.

Figure 7. UNDP procurement certification courses

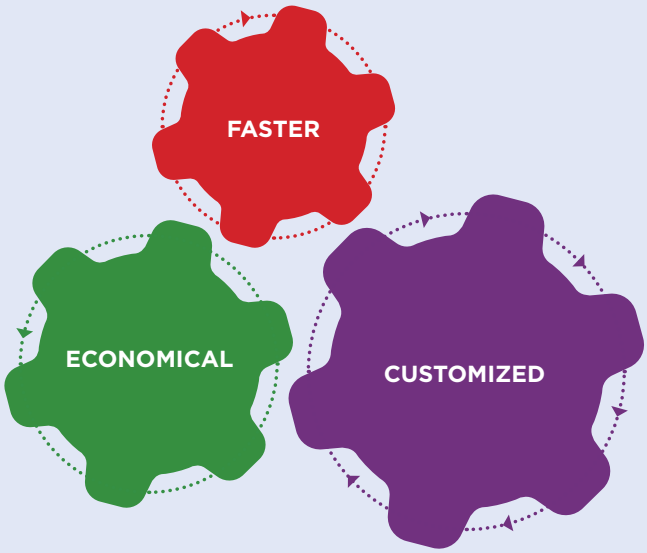


Source: UNDP Procurement Support Unit, 2017.

The Objective of the UNDP/CIPS Certification Course

The objective of the UNDP/CIPS certification courses aims to provide faster, economical, and better customized procurement certification that reflects public procurement procedures, policies and practices.

Figure 8. Characteristics of the procurement certification offered by UNDP/CIPS



In this programme, UNDP oversees: curriculum development/management, training and exam opportunities, student registration, training logistics/administration, and evaluation and statistics. CIPS focuses on: accreditation, issuing of CIPS membership cards, verification of marking, and distribution of the final UNDP/CIPS course certificates.

The certification programme is helping to create a cadre of professional procurement staff, it links delegation of procurement authority to staff certification level and aims to establish a license for procurement recognized across organizations and locations.

More than 8,200 staff were trained in the last seven years.

More information is available on the UNDP procurement site, as well as the CIPS platform.

Figure 9. Staff trained with UNDP/CIPS curriculum up to August 2016

YEAR	LEVEL 2	LEVEL 3	LEVEL 4	TOTAL
2010	529	0	0	529
2011	683	116	0	799
2012	850	360	43	1253
2013	885	431	80	1396
2014	853	275	181	1309
2015	1168	217	148	1533
2016*	942	396	94	1432
Total	5910	1795	546	8251

Source: UNDP Procurement Support Unit, 2017.

Decision-making, responsibility and accountability

Procurement regulations usually include in the management of the procurement process, the need to establish committees to prepare tender documentation, arrange tender openings, and conduct evaluations and award contracts, as well as to lay down rules on authorization or approval at different administrative levels. The extensive committee approach is a typical feature in many countries. Built on the "four eyes principle", where administrative decisions should always involve more than one person in order to ensure the legality and effectiveness of the decisions, this "collegial or collective approach" could have negative implications on issues such as management efficiency, accountability and responsibility.

For the purpose of accountability, it is important to define the point of responsibility correctly within the line organization. Strict dependency on committee decisions has a tendency to dilute responsibility, which might undermine the possibility of establishing accountability in cases of poor performance, as well as make it more difficult to act in cases of suspected irregularities in public procurement. While the formation of tender committees is done with the good intentions of improving both the quality and integrity of procurement decisions, it also offers management an opportunity to hide behind a committee decision and blame the committee if something goes wrong. There is a clear line between tender committees that have the authority and obligation to make a procurement decision and those with the authority to make recommendations only. The latter approach is recommended.

Box 12. Preventing corruption by promoting trust: Insights from behavioural science

Some of the approaches to corruption prevention are built on distrust towards officials and employees, who are seen as potentially corrupt actors. Recent criticism of these methods, which are even seen as having little effect in countering corrupt behaviours—both in the public and private sector—rely on evidence from behavioural science. Laboratory tests show that people are (mostly) trustworthy and are responsive to encouragement, praise, expressions of gratitude and criticism. Assuming that everyone is prone to engaging in corruption can be counterproductive, creating an atmosphere of distrust that can reduce interpersonal trust, intrinsic motivation, and the self-esteem that people get from contributing to public goods and working responsibly.

The idea of "Preventing Corruption by Promoting Trust", based on evidence from behavioural science, is gaining more and more attention, supporting the thesis that creating positive incentives for good behaviour can help design more effective anti-corruption policies.

Does the "four eyes principle" perform well?

The "four eyes principle" is the idea that one can improve behaviour by having people in teams of two monitor each other. A second employee must verify and sign off on the decisions of his or her colleague before they are implemented. Subjecting individual decisions to this type of peer review is a standard organizational method, aimed at avoiding individual mistakes. Having a second, independent person supervise a decision is seen as an insurance that a control mechanism is in place. It often has been suggested that the four eyes principle qualifies in limiting corruption. Reports on anti-corruption in the public sector often make reference to the four eyes principle as a method for containing corruption. Successfully bribing two, it is widely believed, is far more difficult and less likely than bribing just one decision maker (Six et al., 2012).

However, the behavioural science evidence shows that this approach not only fails to reduce corruption, it might even increase corruption (Schikora, 2010; Li et al., 2015), since groups of people are often more selfish than individuals (Charness and Sutter, 2012).

The four eyes principle brings together two people who form a group, develop sympathy for and solidarity with each other. Due to their solidarity, one official may feel inclined to turn a blind eye to an infraction by the other and consequently becomes entrapped in a corrupt network. The principle also diffuses responsibility by providing employees and officials with excuses and justifications, as it might be considered justifiable to take something as long as the second employee does not intervene.

While the four eyes principle appears intuitive to the layman, it has been critically challenged by an increasing amount of laboratory experiments.

Distrusting employees and inventing methods for reducing their discretionary power can easily backfire. The reason is that the diffusion of responsibility diminishes a sense of individual responsibility for ethical conduct. The atmosphere of distrust that such control mechanisms create can reduce interpersonal trust, intrinsic motivation and the self-esteem that people get from contributing to public goods and working responsibly.

Does limiting discretion effectively curb corruption?

Another standard approach to preventing corruption is to limit discretion. In the case of procurement, officials are often required to base their decisions only on objective and predetermined criteria. This is supposed to make it harder for corrupt officials to manipulate the procurement process. But this approach also means that honest procurement officers cannot use their experience for selecting high-quality and not corrupt suppliers.

Moreover, the impulse to eliminate discretion often requires procurement officials to pick the lowest price offer, completely disregarding issues of quality. Quality is supposed to be then guaranteed by complex tender documents, easily more than 100 pages long, which specify all relevant details, but can also act as a deterrent to bidders, generating inefficiencies and suffocating competition (Kelman, 2003). Procurement officials' tasks are then reduced to checking that bids comply with the tender documents.

Some argue (Bandiear et al., 2009; Wells, 2014) that procurement officials should be given more discretion to choose the most appropriate approach and justify their decisions, rather than remaining saddled with an over-simplified and bureaucratic system. According to behavioural science, procurement officials are likely to be intrinsically motivated and take pride in procuring good quality goods and services, and are therefore deserving of some level of trust.

Adapted from: Preventing Corruption by Promoting Trust – Insights from Behavioral Science, Johann Graf Lambsdorff, 2015.

Conflict of interest

In the procurement context, the issue of a conflict of interest might arise whenever public officials' decisions can be influenced by their private interests at various stages of the procurement process.[16] Internationally, the regulation of procurement-related conflicts of interest is done in different ways. Some countries rely only on the general laws regarding conflict of interest and might possibly include some provisions with direct bearing on public procurement, while others include specific conflict-of-interest rules into the public procurement laws or regulations.

The following parts of the procurement process can be considered most vulnerable:

Planning and tender preparation

- Projects and budget allocations are designed and decided by public officials with specific private interests and relationships in those sectors;
- Technical specifications are prepared by officials with their own private interests or relationships in the product or service area;
- The committee for the preparation of technical specifications is composed of members with private interests in the products and service areas; and
- Qualification requirements are set to favour a certain supplier in which a public official has an interest.

Evaluation and award of contracts

The evaluation and award of contracts can be affected if the evaluation committee is composed of public officials with an economic interest, or other type of interest, in any of the bidding firms. Such interests can be shareholding, relatives or friends working in the firm, previous employment in the firm, or offers of future employment. It also might have political reasons, such as firms providing party financing support and other types of benefits to the political system.

Contract execution and management

Contract implementation can be affected by conflicts of interest on the same grounds as the planning and evaluation phases, but not necessarily with the same officials. The awarded firm might be controlled and supervised by officials with private interests in the company working in the inspection or finance departments, which might lead to the improper acceptance of errors and other cases of poor contract performance.

[16] It should also be understood that a conflict of interest is not the same as corruption. Sometimes there is a conflict of interest where there is no corruption and vice versa. Despite this however, there are potentially links between the two. Thus, it would be wise to consider conflict of interest prevention as part of a broader policy to prevent and combat corruption. Situated in this context, conflict of interest policies are an important instrument for building public sector integrity.

Additionally, the use of consultants in the tender preparation can create conflicts of interest for the following reasons:

- When consultants are engaged in the preparation of projects and tenders, such as preparing feasibility studies, project design and even drafting the terms of reference, public purchasers have to make a decision with respect to conflict of interest. Are those consultant firms eligible to take part in the following tender or will their participation constitute a conflict of interest? Generally, the policy is that those firms are not allowed to participate in a tender in which they have had a significant prior involvement.

- Ownership or economic ties might lead to a conflict of interest in the bidding process. Bidding firms or subcontractors might appear under a common ownership or financial umbrella, but act as individual firms under different names. It might also be the case that the manufacturing firm owns wholly, or partly, a consulting firm that has prepared the tender (terms of reference or TOR) where the manufacturing firm participates in the bidding.

- Bidders might have the same possibilities as public officials to have personnel with interests and background in the public administration, which might affect the impartiality and cause a conflict of interest in the procurement process.

Discretionary power

The level of discretion in a public procurement system is determined by the application of rules and procedures; the authorization and decision-making rules and instruments; and the design, capacity and independence of the structure for control and legal enforcement. In the absence of natural incentives and control mechanisms, as in the private sector (profit drivers), a regulatory and institutional framework is put in place so that the political system can assume accountability for public sector decisions and operations.

In a politically corrupt procurement context and environment, the legal and institutional frameworks operate in opposite directions to allow for excess discretion and exemptions from competitive tendering, as well as to minimize the impacts of the accountability instruments. Such an environment is often characterized by a weak legal and institutional framework, politicized management structure of the bureaucracy, undue executive or influential power to politically appoint non-merit based managers in the public procurement process, lack of necessary corrective means in the control structures, and a lack of an independent and adequately powerful judiciary. This can lead to incorrect procurement decisions, excess costs, loss of credibility and weakened competitiveness and market attractiveness.

As discussed in this Guidebook, an excessively stringent rule-based approach deprives procurement organizations the amount of flexibility needed to achieve the best economic results (the “policy choice dilemma”). The challenge is to strike the right balance between different, or even conflicting, policy objectives in the design of the regulatory framework. It is important to analyse to what extent the current authorization rules are adequate for the purpose or need to be changed. Political and administrative accountability, together with transparency, is key in developing strong procurement capacity (Beke et al., 2013).

Institutions should establish a clear and comprehensive set of rules and responsibilities for their procurements that include a clear division of roles between: (i) elected officials; (ii) senior management officials responsible for establishing and enforcing compliance with procurement rules; and (iii) front-line procurement professionals responsible for running specific projects. The regulatory framework should also address any loopholes or vagueness with respect to how procurement decisions are made and in terms of exemptions to competitive tendering. Lastly, the procurement organization should be strengthened by training and increased professionalism.

Political interference

Political interference should be defined as undue political influence on the decision-making processes within public procurement.[17] Integrity problems occur when the political power of the administration, together with the managerial power, violate the fundamental principles of an efficient and sound state apparatus, as well as the overriding goal of public procurement, namely to deliver public services on the basis of "value for money with integrity".

Political influence over public procurement can be direct, with politicians interfering in the process in order to secure their personal, party or indirect interests (Trepte, 2005). Procurement officials will often take balanced decisions that not only include their own objectives (i.e. efficiency, value for money, competition, etc.), but also their political objectives (i.e. economic sector-specific or electoral interests). Nonetheless, the interactions between political actors, the private sector and public administrations are complex and the efforts to seek influence could balance between legality and illegality.

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Good examples of integrity risk management systems at the organizational level are found in Slovenia and the Netherlands (*see Boxes 13 and 14*). It should be noted that those integrity risk management systems do not directly focus on procurement organizations, but on the public administration in general.

[17] The dilemma is that the political system has a legitimate interest to be involved in public procurement in many key aspects, such as formulating policies on how procurement should be used as a strategic tool for the realization of political priorities and making investment decisions in infrastructure, health, education and environment. Subsequently, the political system even has a responsibility to ensure that the public administration executes policies in accordance with political decisions in all phases of the tendering processes. Political interference should therefore not be confused with legitimate political influence.

Box 13. Self-assessment integrity tool for public institutions in the Netherlands

Corruption risk assessment is obligatory in the Netherlands for all public sector institutions (ministries, provinces, water boards, municipalities, etc.). Corruption risk assessment is not based on a law. Instead, public sector institutions agree in writing to conduct these analyses (the agreement, although not a law, is considered to be binding). There are no sanctions for non-compliance with the agreement to conduct corruption risk assessment. However, if a public sector institution gets involved in an integrity breach and if internal integrity systems or control mechanisms turn out to be of poor quality, then the management will face consequences.

The most used corruption risk assessment tool developed in the Netherlands for public sector organizations is the Self-Assessment Integrity or SAINT. This tool enables public sector organizations to assess their vulnerability and resilience to integrity violations and provides recommendations on how to improve integrity management. SAINT is designed to identify the main integrity weaknesses and risks, to significantly increase awareness of integrity, and to strengthen the organization's resilience in the face of identified shortcomings (therefore, the tool is not aimed at detecting and punishing concrete integrity violations).

Being a self-assessment tool, SAINT demands that the organization itself take the initiative to test its integrity, which means that the assessment is based on the knowledge, opinions, ideas and recommendations of the staff. They receive methodological advice at a one-day workshop where they learn how to consider vulnerability and risk, as well as how to develop recommendations on minimizing them. The end product of the workshop is a concrete management report/action plan with recommendations on where measures must be taken to strengthen the organization's resilience in response to integrity violations. SAINT is based on the five-steps methodology:

Step 1: Identification and assessment of areas of vulnerability inherent to the activities and processes of the organization (this can include contracting, document issuing, legislative activities, law application, relationships with the private sector, management of state property, etc.).

Step 2: Assessment of the factors increasing vulnerability (such as increasing complexity of work, rapid legal or other changes, management and personnel).

Step 3: Assessment of the integrity-based control system (with the aim of establishing how resilient the individual organization is in terms of arising corruption risks).

Step 4: Deviation analysis (aimed at establishing whether the balance between the vulnerability profile determined in steps 1 and 3, and the level of the integrity-control system (step 3), is sufficient).

Step 5: Follows only if step 4 shows insufficient balance between the identified vulnerability and the control-system. In this case, based on the results of the deviation analysis, a plan is prepared on how to manage the most dangerous processes and what measures are required to improve the organization's resilience against corruption risks. The whole process can be compiled in a risk map that illustrates corruption risks and designates responsibilities.

Source: Corruption Risk Assessment in Public Institutions in South East Europe Comparative Study and Methodology, Liljana Selinsek, 2015.

Box 14. The integrity plan as a tool to establish and assess integrity in Slovenia

In Slovenia, the integrity plan is a tool for establishing and verifying the integrity of public sector organizations and institutions. It is a documented process for assessing the level of vulnerability of an organization and its exposure to unethical and corrupt practices. It is devoted to: identifying relevant corruption risks in different working fields of an individual organization, assessing what kind of danger the corruption risks might pose to an individual organization, and determining measures to reduce or eliminate corruption risks.

The main objective of the integrity plan is to systematically and comprehensively implement national and international standards, principles and objectives in the prevention of corruption. Furthermore, the integrity plan is used by institutions to determine their exposure, as well as the exposure or vulnerability of their organizational conditions, processes and employees, to corruption and other illegal and unethical behaviour.

The idea of an integrity plan is based on the fact that the process of identifying risks and planning and implementing adequate measures to eliminate those risks should strengthen integrity and an anti-corruption culture in the public sector. Given that the integrity plan identifies and eliminates the causes of corruption, the rule of law and people's confidence in the institutions are consequently enhanced.

In 2010, a new Integrity and Corruption Prevention Act was adopted and offered a new approach in drawing up the integrity plans by: introducing an obligation to draw up the integrity plans for more institutions than the previous act; providing a new and more descriptive methodology; providing a more detailed process of drawing up integrity plans (assessment of exposure, indicators for dividing into groups, etc.); and securing more transparency, given that it prescribes publication of the integrity plans.

In particular, the integrity plan must consist of:

- An assessment of corruption exposure of the institution.
- Personal names and work posts of persons responsible for the integrity plan.
- A description of organizational conditions, staff and typical work processes, as well as on corruption risk exposure.
- Assessment and proposed improvements regarding:
    - o The quality of regulations, management, administration, etc.
    - o The integrity of staff and institution.
    - o Transparency and efficiency of processes.
    - o Measures for timely detection, prevention and elimination of corruption risks.
    - o Other parts of the plan defined in the guidelines prepared by the Commission for the Prevention of Corruption (CPC) of the Republic of Slovenia.

The integrity plan implementation methodology, as prescribed by the Integrity and Corruption Prevention Act, was developed by CPC in the form of guidelines based on international conventions, standards and principles for fighting corruption transposed into the national legislation.

Source: Corruption Risk Assessment in Public Institutions in South East Europe, Comparative Study and Methodology, Liljana Selinsek, 2015.

Summary of the main integrity risks at the organizational level

1. Unprofessional procurement function and organization with low status and mandate;
2. Clear indications that the procurement policies and rules are not implemented and practised correctly;
3. Lack of training and career development opportunities;
4. Poor recognition and extensive internal and external credibility problems;
5. Poor management and planning systems to run procurement processes;
6. Unclear or overly bureaucratic procedures for preparing and evaluating tenders, as well as awarding and implementing contracts;
7. Apparent lack of accountability and enforcement mechanisms;
8. Inability to manage situations of conflict of interest;
9. Misuse of discretion indicated by, for example, overuse of non-competitive procedures and not respecting the authorization rules; and
10. Clear signals of undue political interference in procurement processes.

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6. Integrity risks at the process level

The process level refers to the pre-bidding, bidding and post-bidding phases. A comprehensive checklist on the identification and prevention of integrity risks in the procurement process is available in Annex 3.

At the process level, a corrupt scheme in procurement can take various forms, ranging from a demand for or offer of payment, fraud to cover up the scheme, bid rigging, or a combination of these.

- **Demand for or offer of payment:** A government official demands a bribe or kickback from a firm or individual, or a firm or individual offers a bribe, in exchange for a contract award. In most cases, the corrupt official will permit the bribe payer to inflate the price to cover the bribe and preserve its profits. Different types of corrupt payments include monetary payments, facilitation payments and additional indirect payments.

- **Fraud:** To recover the cost of the bribe and to exploit the corrupt relationship, the firm, usually with the knowledge and complicity of government officials, inflates prices, bills for work not performed, fails to meet contract specifications or delivers substandard products during implementation. This often requires further corrupt facilitation payments to inspectors or auditors.

- **Bid rigging:** To ensure that the contract will be awarded to the bribe-paying firm (whose prices are now inflated to cover the cost of the bribe), the actors manipulate the bidding process to exclude other (presumably cheaper) competitors. There are several different types of bid-rigging agreements, such as cover bidding, bid suppression, bid rotation, market sharing and price fixing *(see Box 15)*. Bid-rigging conspiracies can remain undetected for many years, resulting in higher costs for goods and services, and depriving government purchasers—and consequently taxpayers—of the benefits of true competition.

Although bid rigging can occur in any sector, some markets are more susceptible than others due to particular features of the product or market. The presence of the following factors, for example, might increase the need for vigilance:

- **A small number of bidders:** The fewer the bidders, the easier it is for bid rigging to occur. This is particularly so when you have the same bidders involved in repeated procurements.
- **Little or no new entry to the bidding market:** A lack of new entrants into the bidding market might facilitate existing bid-rigging efforts.
- **Simple or identical products:** If the goods or services being purchased are standardized, simple and do not change over time, it is easier for competitors to reach an agreement on price and to make that agreement longstanding.
- **Few substitutes:** Where there are few, if any, suitable alternative goods or services, companies and individuals wishing to rig bids have the comfort of knowing that their efforts to raise prices are more likely to be successful.
- **Regular and recurring bidding:** Regular bidding for the same product or service allows cartel members to allocate contracts among themselves. It also allows the cartel to credibly threaten to punish a member that acts against the interests of the cartel by targeting bids originally allocated to that member, and in that way, minimize deviations from the cartel agreement.
- **Existence of trade associations or other forums (professional or social) in which competitors are given the opportunity to get together and discuss matters face to face, coupled with predictable demand:** A constant flow of demand tends to increase bid-rigging arrangements, whereas significant changes in demand or supply conditions can upset existing arrangements.

Box 15. Types of bid-rigging agreements

Cover bidding: Competitors agree to submit a bid that is higher in price than that of the cartel's designated winner, or the bid contains terms that are unacceptable to the purchaser. Such an agreement ensures that the bid of the designated winner is selected by the purchaser, while still giving the impression of competition.

Bid suppression: Competitors agree not to submit a bid, or to withdraw a previously submitted bid, so that the cartel's designated bid will be selected.

Bid rotation: Competitors agree to take turns being the winning bidder. Contracts might be allocated equally among competitors by volume or value, or the division might correspond to the respective sizes of each company.

Market sharing (or market allocation): Competitors agree to divide up markets among themselves. This could be through the allocation of customers, products or geographic regions to particular members of the cartel. Following such an agreement, cartel members will rig bids to ensure that the winning tender is submitted by the party to whom that customer/product/region had been allocated.

Price fixing: Competitors agree to raise, fix or otherwise maintain the price of a good or service by setting a minimum price, eliminating or reducing discounts, adopting a formula for computing prices, increasing prices or holding prices firm.

Integrity risks in public procurement at the process level, categorized by the phases of the procurement cycle are presented in the following table.

Table 3. Integrity risks in public procurement at the process level

Pre-bidding phase	• Inclusion of unnecessary items in the procurement plan • Unjustified use of non-competitive methods and/or discriminatory rules for tenders • Contract splitting • Inappropriate bundling • Rigged specifications • Biased evaluation criteria
Bidding phase	• Unbalanced bidding submission • Leakage of confidential information • Exclusion of qualified bidders • Manipulated evaluation and award procedure
Post-bidding phase	• Substantial change in contract conditions to allow more time and/or higher prices • Substitutions of products, services or sub-standard works not meeting contract specifications • Theft of new assets before delivery or being recorded in the asset register • Lack of accountability or replacement of sub-contractors or joint venture partners without any justifiable reasons • Deficient supervision and poor recording • False or inaccurate invoicing and payment procedures • Extensive and unjustifiable cost overruns or time delays in the implementation of the contract

Source: World Bank, 2014

Pre-bidding phase

The planning and preparation of the procurement process, including the design of tender documentation and contracting strategies, essentially determine the quality (value for money) of the outcome of the tendering process. The starting point is the preparatory phase with the annual and multi-annual budget exercises, including investment and feasibility studies, and the approval of the procurement plan with the attached budget and procurement strategy (procurement method).

At this stage, integrity risks are found in possible political interference, expressed in terms of biased project selection, as well as investments made to satisfy a specific political interest, region, city or even a particular group of firms. Integrity risks might also occur in connection to the approval of diverse financing schemes, including public-private partnerships. At this stage, conflicts of interest are often a typical ingredient.

On the more operational side of the preparatory phase, the design and decision of the procurement plan, including the contracting strategy, represents one important integrity risk area. The procurement plan and the contracting strategy determine the procurement method that should be used; whether it should be a turn-key contract or divided into lots, how to deal with sub-contractors, how to bundle the requirements, etc. The second major integrity risk area covers the preparation of the technical specifications and terms of reference, the design of the instructions to bidders regarding the setting of the qualification and evaluation criteria, time limits for submission of bids, draft contract conditions, etc.

Bidding phase

The main purchasing activities at the bidding phase include the invitation of tenders with the publication of tender notices; clarification of tenders; receipt and opening of tenders; request for clarifications, qualification and evaluation of tenders; possible negotiations; and making award decisions. After the award decision is made and the contract concluded, information and debriefing of unsuccessful tenderers should be carried out.

The tenderers should respond to the invitation of tenders by requesting the qualification or tender documentation, and if so requested, confirm its interest to participate. Other steps include planning and organizing the preparation of tenders, and reviewing the tender documentation (in particular the technical specifications), instructions to tenderers and draft contract conditions. All these actions are done in order to conclude to what extent the firm has the possibility of submitting a technically and contractually responsive and competitive tender.

The preparation work also comprises of discussions on whether the firm should act on its own or form joint ventures with other firms, as well as the need for engaging sub-contractors, depending on the nature and size of the tender. Other important internal tasks would imply deciding the pricing strategy, agreeing with the bank on tender security, collecting qualifications and technical documentation, and finally, compiling the tender and making it ready for submission at the time and place stipulated. In case an e-auction will take place, the tenderers will need to decide on the pricing tactics.

Post-bidding phase

The post-bidding phase covers a number of important steps, such as notifying the successful tenderer, debriefing unsuccessful tenderers, issuing performance security, concluding and signing the contract covering general and special conditions, including all attachments, the control and inspection of deliveries, executing payments, and finally, the closure of the file.

The integrity risks might occur in all these steps, but the main risks are found in the modification of contract conditions. These include, in particular, the modification of prices and substitutions for products or services that are neither commercially justified nor in accordance with the applicable rules, as well as on non-delivery or non-fulfilment of contract obligations by the main contractor or sub-contractors. Incorrect approvals and execution of payments are other important integrity risks. Falsification of reports and files are often needed in order to cover illegal actions. Efficient external audit and financial control mechanisms are important tools to detect irregularities.

Integrity risk indicators assess the presence of integrity risks in procurement. These indicators will not prove fraud, but will only highlight that the number of “red lights” or “red flags” is too high and that further investigation might be needed. In other words, red flags act as countermeasures to detect risks. More red flags indicate a higher chance of corruption, but say nothing about actual corruption in an individual case.

Procurements with lots of red flags—and thus a high chance of corruption—might be non-corrupt, while procurement with no red flags—and thus a low chance of corruption—might still turn out to be corrupt. While chances of corruption and its actual presence might be misaligned in individual cases, the chance of corruption does allow estimates of the total number of corrupt cases in a large group.

A checklist for the identification and prevention of integrity risk is included in *Annex 3*. Additionally, a list of risk mitigation actions to prevent and address conflicts of interest and bid rigging is presented in *Annex 4.*

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Box 16. How citizen monitoring promotes integrity in contract implementation: An experience from the Philippines

In 2016, the Department of Education in the Philippines partnered with UNDP to implement the Department of Education Computerization Program, which aims to provide public schools with appropriate technologies to improve student learning and equip them with the knowledge and skills to be globally competitive.

Under a national acceleration partnership,[i] using resources from the Department of Education, UNDP was tasked to procure, deliver and install computer packages worth about PhP2.8 billion (est. US$60 million) in almost 5,000 schools throughout the country, including in remote and disadvantaged areas.

UNDP manages procurement activities by adhering to the general principles of best value for money; fairness, integrity and transparency; effective international competition; and the interest of UNDP and its partners. To ensure the highest standards of transparency and accountability, and to minimize corruption risks during the contract implementation phase, UNDP established a citizen monitoring system which allowed civil society organizations (CSOs) to use technology-based tracking of delivery and installation of the equipment.

For this endeavour, UNDP partnered with CSOs that have a track record of monitoring the implementation of government contracts. These CSOs trained community-based monitors who were deployed to inspect four aspects: 1) school readiness, 2) product delivery to schools, 3) product installation, and 4) responsiveness of school management to citizens' feedback on readiness issues. School "readiness" in this instance meant having a room available for the computer laboratory, with adequate electrical outlets and wiring, desks and chairs, air conditioning or electric fans, and security grills and locks.

The CSOs built coalitions in their regions to organize, prepare and mobilize community-based volunteers. They involved a variety of community representatives, including faith-based organizations; lesbian, gay, bisexual and transgender (LGBT) groups; parents and teacher associations; students and alumni; and marginalized sectors such as fisherfolk and persons with disabilities.

UNDP and the CSO-partners developed simple online and mobile-based tools using open platforms in order to enhance the monitoring process. The citizen monitors were taught how to take geo-tagged photos using their mobile phones and how to fill out online monitoring forms. For instance, Google My Maps was used to build a "One Map" showing the location of the beneficiary schools, as well as additional information, such as the readiness of information and photos from the delivery and installation.

The information provided by the citizen monitors proved useful for UNDP and the Department of Education in managing the delivery and installation of the computer equipment, which included adjusting the schedules to give the schools ample time to prepare. The community-based monitors also went the extra mile to bridge the schools' needs with their local government units and other stakeholders. For the future, the Department of Education is considering setting up a fund to help schools prepare for the Department of Education Computerization Program.

[i] The National Acceleration Modality is UNDP Philippines' implementation of the government cost-sharing modality. Through this implementation, UNDP Philippines helps government agencies in implementing programmes using the latter's resources and supports their efforts in implementing reform and building capacity.

The citizen-monitors also sent timely information to the Department of Education and UNDP on the quality and timeliness of delivery and installation, and reported on damaged or incomplete items, as well as on unforeseen events that hampered the process (such as a typhoon in the Bicol Region and an earthquake in the Caraga Region). Having external and impartial citizen monitoring helped avoid corruption and inefficiency risks and ensured that the goods procured reached the intended beneficiaries.

At present, the Department of Education, UNDP and the CSO-partners are preparing for the mobilization of citizen-monitors for Lot 4 of the partnership,[ii] which covers the delivery and installation of information and communication technology equipment and solar power systems to nearly 4,000 energy-deficient schools nationwide. The Department of Education is also considering ways to strengthen citizen participation in procurement and public financial management.

Source: UNDP Philippines, 2017.

[ii] The partnership is composed of four (4) lots: 1) computer laboratory packages for 184 stand-alone senior high schools; 2) computer laboratory packages for 889 specialised senior high schools; 3) desktop computers and laptops for 209 school division offices of the Department of Education; and 4) computer equipment and solar power systems for about 3,700 energy-deficient schools.

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Summary of the main integrity risks at the process level

1. Poor understanding or awareness of management of integrity risks in the procurement process;
2. Lack of integrity risk management plans in general within the procuring entities;
3. No or insufficient guidance documentation on procurement integrity risks;
4. No training of staff available on integrity risks;
5. Insufficient internal control mechanisms in place; and
6. Insufficient follow-up or negligence of external audit decisions.

7. Integrity risks at the individual level

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The individual level refers to the specific requirements of the UNCAC under Article 9 where implementing states should take measures to regulate personnel matters of importance in order to secure the integrity of the individuals involved in the procurement process, such as declarations of interest and assets, and the adoption of a code of conduct.

Article 9(1) of the UNCAC suggests that implementing states should undertake "measures to regulate matters regarding personnel responsible for procurement, such as declarations of interest in particular public procurements, screening procedures and training requirements" in the course of establishing appropriate systems of procurement. In general, this clause refers to ethics regulations for officers and employees of procuring entities. Such regulations usually require procurement personnel (including public officials) to pursue ethical, fair and impartial procurement procedures in line with applicable legislation and tendering rules for a particular procurement.

Article 8 of the UNCAC regarding codes of conduct for public officials has direct relevance to public procurement, including to procurement personnel. In paragraph 5, it refers in particular to "measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result". Additionally, Article 9(1) of the UNCAC suggests instituting screening procedures for public officials.

A comprehensive integrity risk assessment at the individual level must include not only the individuals directly involved in the procurement process, but also those individuals that indirectly participate or influence public procurement and might not be subject to the controls of the procurement system. These actors can include planning and budgeting officials, contract execution and management officials, and other key decision-makers.

The following questions help identify integrity risks of public procurement at the individual level for all relevant personnel.

Box 17. Checklist questions on integrity risks in public procurement at the individual level

- ☐ Does your country's system of public procurement lay down any measures regulating matters regarding procurement personnel?
- ☐ Are there any screening procedures regarding procurement personnel? If so, do such screening procedures apply during the selection of the personnel and/or throughout their employment?
- ☐ Are there any requirements as to the training of procurement personnel? Does this training cover how to award contracts in line with the relevant public procurement legislation or how to award a contract in line with the relevant anti-corruption laws?
- ☐ Are procurement personnel required to declare any interests in a particular public procurement (e.g. due to a possible conflict of interest)?
- ☐ Are codes or standards of conduct for correct, honourable and proper performance of procurement personnel required by law?

The public procurement officials screening procedures could be used to assess prospective employees during the appointment process. Furthermore, it is suggested that entities address training requirements and that public officials concerned with procurement should have to declare any interest they might have in a particular procurement.

The lack of professionalism and managerial accountability are the main integrity risks at the personal level. Unskilled, underperforming and unmotivated procurement managers and staff represent a huge problem in many national contexts, from both an integrity and performance perspective. Institutionalized training, better career opportunities and better working conditions for procurement officials need to be included in a national procurement development strategy. The ethical standards of the procuring entity staff, including the procurement staff, should be secured by a professional recruitment and development plan, as well as with the adoption of a code of conduct, proper rules on conflicts of interest, asset declarations when appropriate, and the signing of a declaration of impartiality during individual procurement processes.

Summary of the main integrity risks at the individual level

1. No or insufficient regulation of ethical standards and behaviours for procurement management and staff;
2. No or undeveloped recruitment policy and career development for procurement officials;
3. Lack of institutionalized training in public procurement; and
4. Lack of screening procedures.

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8. Addressing the integrity risks: Capacity development action plan

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The integrity review of the national public procurement system, based on the analytical framework and approach as described in this Guidebook, will help governments to identify strengths/weaknesses and critical capacity gaps in the public procurement system. The assessment exercise should not be seen as a stand-alone activity, but should result in the establishment of a priority framework, adopted by the government, for long-term public procurement integrity reform—reflecting the specific country context—covering key aspects and components of the public procurement system, including all requirements under UNCAC. The priority framework, including a strategy and capacity development action plan for strengthening the integrity and the functionality of public procurement systems, would normally address first the regulatory and institutional frameworks, and secondly, the need of operational capacity development. A menu of options is presented below: governments can select those more suitable to their country context.

1. Ensure the adoption of a **coherent, sound, and modern public procurement law**—with a full set of secondary legislation, guidance and model documentation—covering all public sector entities (government, regional and local authorities, as well as utilities companies), **meet the UNCAC requirements**, and be compatible with international standards such as UNCITRAL, WTO GPA requirements and international good practices.

2. Ensure availability of a well-functioning and sufficiently resourced **central institutional structure and capacity** by clarifying responsibilities, functions and statuses of a **Public Procurement Authority** under a public procurement law.

3. Ensure the **functionality** and **attractiveness** of the **public procurement market**, characterized by open and fair competition with no legal or technical discriminatory barriers for participation.

4. Develop **e-procurement techniques** to strengthen transparency and efficiency, and create the basis for developing statistical and monitoring systems. It should be linked to the budget, expenditure and payment systems.

5. Develop an effective **statistics and reporting system** that includes data on integrity risk indicators.

6. Consider implementation of **centralized purchasing arrangements and framework agreements** to increase efficiency and integrity. Centralized purchasing and framework agreements, correctly implemented, will generate better prices due to aggregation benefits, lower transaction costs, simplification, increased legal and contracting certainty, and compatibility and standardization gains. In addition, those instruments will also reduce the number of tenders (risk mitigation) and improve oversight, which might positively affect the integrity dimension of procurement operations.

7. Invest in the **professionalization** of the procurement function, management and staff, including strengthening the credibility of the procurement profession by developing a **national training and career development strategy in public procurement and other capacity building measures** (i.e. certification).

8. Establish an effective **complaints review and remedies mechanism** in compliance with the UNCAC requirements under the public procurement law.

9. **Establish a procurement integrity consultation forum** where the main stakeholders, such as the main purchasers, private sector organizations, civil society, budget and financial control, audit, and other controlling bodies of the procurement community, can be represented for exchanges of information and dialogue on important integrity matters.

10. Develop a **performance measurement and indicator system** based on the OECD/DAC methodology (need for an efficient data collection system).

11. Prepare a **guideline** on how to **mitigate integrity risks** in the public procurement process.

12. Prepare a **guideline** on how to specifically prevent and detect **collusive practices**.

13. Develop a **special training system and materials on mitigating integrity risks** in public procurement.

14. Strengthen the **rules on conflicts of interest** by adopting a code of conduct for both the public and private sector.

15. Introduce a secure **whistleblower mechanism** in order to give sufficient protection to actors.

16. Implement an **integrity pact** between the private sector and the contracting authorities to promote integrity in the tendering process, which should be reflected in the tender form for submission (part of the tender documentation).

17. Develop a **management procurement integrity risk system**, including for conflicts of interest, within contracting entities, covering key aspects of the procurement process, addressing the recruitment of procurement staff, the composition of tender committees, decision-making procedures, contract implementation, etc.

18. Increase **transparency and accessibility to public records** and **documents**. Engage civil society to scrutinize public procurement.

19. Initiate **research on the extent and costs of corruption and fraud** in the country by engaging universities and international organizations.

20. Prepare and implement **awareness raising campaigns** on integrity in public procurement should be prepared and implemented.

21. Develop a **risk indicator system with red flags**, which could signal potential problems in the procurement process.

22. Consider introducing a **specific ex-ante control mechanism** for tenders of important national interest. Ex-ante control refers to contexts where the intended procedure or process by the procuring entity is checked for compliance, budget control and financial viability, or other key aspects prior to or during the procurement process, and before any decision can be made by the procuring entity.

23. Other options would be to form special **observatory mechanisms** where external professional observers, under the public procurement law, have access to the procurement process during the tendering process, with the right to express opinions and to request remedial actions.[18]

Ultimately, the success of the procurement review by governments depends highly on how well the assessment exercise has been planned and managed, as well as consulted on with the wider national and international community.

Box 18. Recommendations from the ASEAN Regional Business Integrity Conference

During the ASEAN Regional Business Integrity Conference, held on 6-7 March 2017 in Singapore, UNDP organized, together with the ASEAN Corporate Social Responsibility Network, a workshop on "**Mitigating risks in public procurement: tools and good practices**". Participants included government representatives, as well as delegates from the business sector and private company associations. They participated in group discussions to identify the main challenges companies face when trying to access government contracts in ASEAN.

These challenges include:

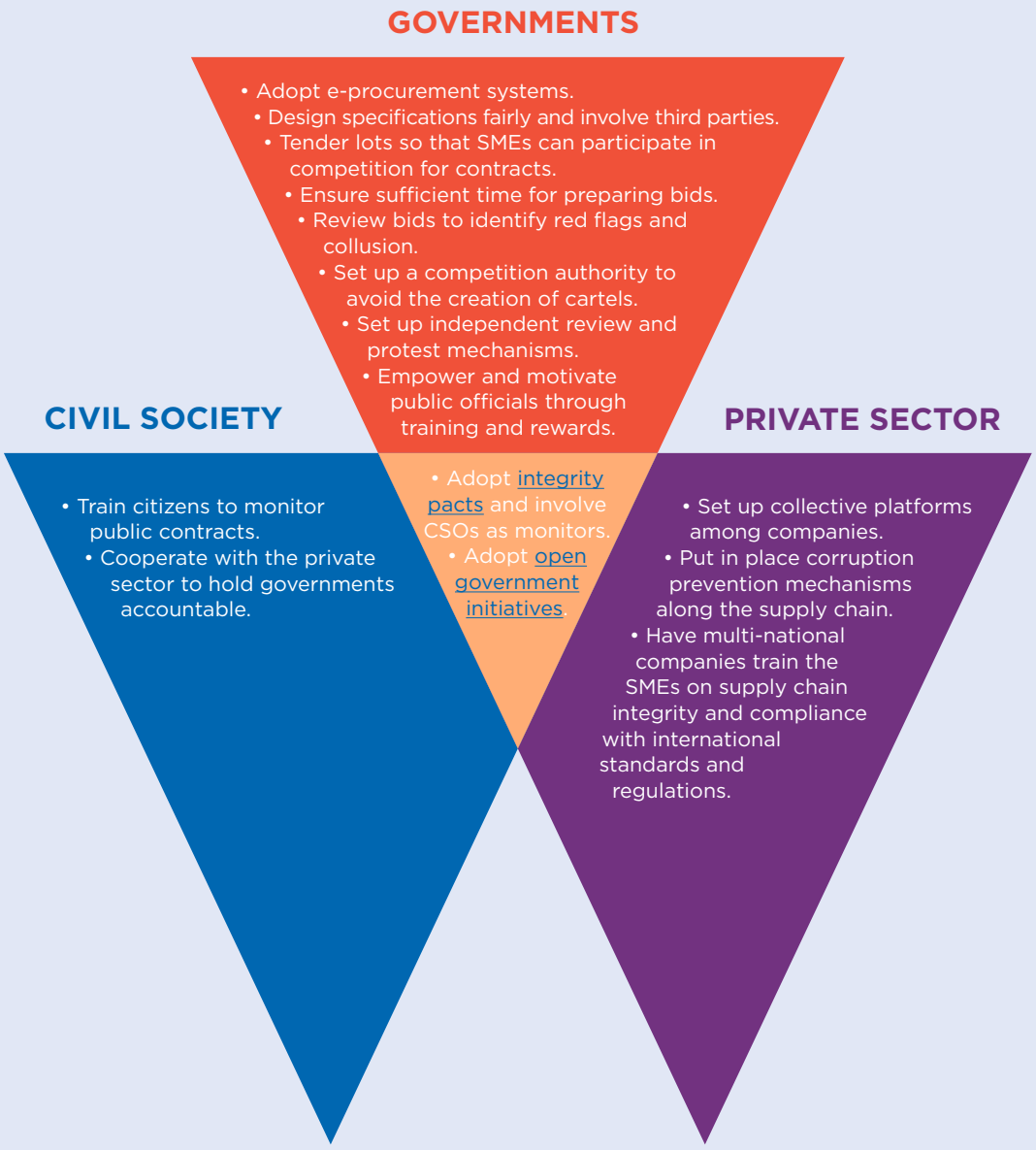
- Bid rigging (especially related to collusion);
- Tailored specifications in the terms of reference to favour a company;
- Leakage of information (from public officials to favour a company);
- Bribery;
- Lack of policies on gifts and hospitality;
- Lack of clarity on laws and regulations regarding procurement, including on some conflicting laws;
- Lack of awareness of the legislation, especially among SMEs;
- Obstacles for SMEs to participate;
- Lack of incentives to stop corrupt behaviour;
- Difficulties identifying measurable indicators of corruption/inefficiency risks;
- Sacrificing quality when choosing only the lowest price to avoid auditing and scrutiny; and
- Undue influence (hidden decision-makers) – In the media industry in particular, the undue influence manifests itself as a dependence on advertising expenditure.

Participants stated that a wide variety of stakeholders need to be involved to make sure that public procurement is conducted fairly and efficiently in a competitive and clean environment.

[18] See the Public Procurement Authority in Romania for an example <www.anap.gov.ro>

A series of actions were recommended by participants to the different actors involved in the process (governments, private companies and civil society) to ensure that the public procurement system is fair, effective and free from corruption, as illustrated in the following figure.

Figure 10. Stakeholders' actions to build a fair and effective public procurement system



9. Conclusions

This Guidebook is one of the responses offered by UNDP to the demands of governments in the region to improve their procurement systems in order to promote value for money with integrity, as well as ensure that public services are effectively delivered.

It provides a pioneering methodology for working with a variety of stakeholders in identifying and mitigating integrity risks at the system, organizational, process and individual levels. This methodology was successfully piloted at the country level in Thailand and provided a basis for developing a roadmap for reforms based on a capacity development action plan.

This Guidebook is published at a time when governments are preparing for the second UNCAC review cycle to support them in their efforts to upgrade their procurement and anti-corruption systems. We hope that governments will find it a user-friendly guide to navigate through the variety of existing procurement and integrity standards, measures and tools.

Procurement is not just a process, but also a key instrument in a nation's development strategy. Tackling integrity risks in government contracts can trigger a virtuous cycle of ensuring higher quality public services, as well as pursue broader development results.

In the context of the Sustainable Development Goals, governments should consider investing in sound and corruption-free procurement systems that will lead to savings and thus unlock resources for financing development projects.

UNDP stands ready to support governments in building sound public procurement systems to ensure that people are provided with the best infrastructure and services, and contribute to the achievement of the Sustainable Development Goals by 2030.

Annexes

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Annex 1. List of the main international standards and guidelines on integrity in public procurement

UNCITRAL Model Law on Public Procurement

World Trade Organization Government Procurement Agreement

UNODC Guidebook on anti-corruption in public procurement and the management of public finances

UNODC Legislative Guide on UNCAC

UNODC Technical Guide on UNCAC

2015 OECD Recommendation on Public Procurement

MAPS (Methodology for Assessing Procurement Systems) developed by the OECD/DAC and the World Bank

UNDP Public Procurement Capacity Development Guide, 2010

Transparency International (Kuhn and Sherman), A Practical Guide for Curbing Corruption in Public Procurement, 2014

Annex 2. Article 9 of the United Nations Convention against Corruption[19]

Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

    (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
    (b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
    (c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
    (d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
    (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

    (a) Procedures for the adoption of the national budget;
    (b) Timely reporting on revenue and expenditure;
    (c) A system of accounting and auditing standards and related oversight;
    (d) Effective and efficient systems of risk management and internal control; and
    (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

[19] For more information on the convention, please see: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

Annex 3. A checklist for the identification and prevention of integrity risks in the procurement process

The checklist below is presented in accordance with the integrity risk areas and circumstances for red flags as described in this Guidebook. It is separated into the three phases of a procurement cycle—pre-bidding, bidding and post-bidding—and begins with a general description of a risk area, followed by "red flags" or possible anomalies in tenders and suggested preventive measures.

A "yes" answer to a red flag **is usually a sign or warning that closer scrutiny is needed**. This extra scrutiny might involve asking for more documents or information from the bidder or, as is often the case, looking for other related red flags. Receiving fewer than the expected number of bids, for example, could be an indicator of rigged specifications or other measures intended to exclude qualified bidders. If detected, procurement officials should look for other indicators of such schemes, as listed in this Guideline. **Procurement officials should not, however, undertake an investigation of possible or suspected wrongdoings. If serious concerns remain after a preliminary review, the matter should be referred to the appropriate agency staff.**

Pre-bidding phase

Risk areas/Red flags	Yes/No		Preventive measures
Risk area 1: The procurement plan includes unnecessary items The procurement plan should be in accordance with the budget and the approved requirements. The purpose of such actions is to exclude items paid by the public budget that can be used for private gains. As an example, a tender for building materials or tools may include a certain amount that can be redirected to a public official for private purposes. It may also be a matter of man/hours under a consultancy contract that can be used for a similar purpose.			
Red flag • The list of contracts for goods, works and services is not consistent with the budget and the project requirements.			• A proper and well-documented technical preparatory phase within the contracting entity. • The approval procedure of the procurement plan should be executed in accordance with the relevant regulatory framework and an independent professional ex-ante review of the procurement plan can be done for contracts above certain thresholds of significant value.

Risk areas/Red flags	Yes/No		Preventive measures
Risk area 2: Unjustified use of methods other than open tendering (usually negotiations and direct contracting) Such methods might be legitimate contracting methods subject to special approval procedures. However, these contracting methods might also be used to steer contracts to favoured companies by avoiding competitive bidding. Attempts to avoid the use of competitive methods coincide with main integrity risks in public procurement. The regulatory frameworks include clear rules when a derogation (exemption from or relaxation of a rule) from the use of open tendering should be allowed. However, the possibility for exemptions is available and efforts to make a case for exemption can be appealing if there is an interest to act improperly. Another possibility to act improperly is to set time limits for the submission of tenders so narrowly that certain suppliers are favoured.			
Red flag • Inadequate or misleading justification or documentation is required by the regulations.			• Ensure that the documentation for justifying procedures other than open tendering, or other acceptable competitive tendering, comply with the legal requirements. • Issue clear instructions and definitions on when an exceptional method can be used. • Be restrictive on the justifications and ensure a proper approval procedure. • Consider introducing possible invalidations of contracts and sanctions against any illegal uses of non-competitive procedures where a correct approval procedure has been neglected.
• Certain contract amendments that would benefit from competition or where the items should have been procured separately (e.g. additional activities that are not a natural continuation of the existing contract)			
Risk area 3: Contract splitting The packaging of contracts is designed to attract as many qualified bidders as possible in order to secure the best price and quality. Legitimate considerations regarding decisions to package certain contracts include: the capacity of potential bidders to deliver the outputs specified, risks related to the bundling or unbundling of items, and sequencing of procurement actions in line with needs. Contract splitting might be a deliberate attempt to limit or entirely avoid competition. By splitting contracts into smaller packages, the need for a greater degree of review and less competitive procurement methods are made possible.			
Red flag • Unusual splits by issuing two or more contracts for identical items over a short period of time and for no apparent reason, resulting in the application of a less competitive procurement method.			• Careful review by professional procurement and technical staff on the procurement plan and terms of reference. • Regular change of the composition of the tender committees for preparing the terms of reference. • Engagement of external experts or observers to the tender committees (at least for high-value contracts).
• Procuring items by each sub-unit that should have been procured jointly.			
• Splitting items that are normally procured together in order to keep individual package values below thresholds.			
• Many awards just below thresholds. Awarding an unreasonably large number of contracts just below public procurement thresholds. Two or more related and simultaneous purchases from the same supplier in amounts just under the legal procurement threshold.			

Risk areas/Red flags	Yes/No		Preventive measures
Risk area 4: Inappropriate bundling This risk area is the opposite of contract splitting, yet yields the same result of reduced competition. The public tender bundles a wide variety of goods that have no relation with each other into one lot (e.g. computer equipment, copper wires and video equipment), with a particular provision stipulating that incomplete lots are not allowed and would be considered non-responsive. This makes the bidding process biased since no manufacturer or authorized dealer is likely to meet the requirements of the entire lot. Typically, the contract will be awarded to a favoured bidder at a price well above the estimates.			
Red flag • Unusual splits by issuing two or more contracts for identical items over a short period of time and for no apparent reason, resulting in the application of a less competitive procurement method.			• Careful review by professional procurement and technical staff on the procurement plan and terms of reference. • Regular change of the composition of the tender committees for preparing the terms of reference. • Engagement of external experts or observers to the tender committees (at least for high-value contracts).
• Items to be procured within a proposed bundle are not related.			
• There is a significant reduction in the number of potential or actual bidders resulting from the bundling.			
• The contracting entity cannot justify the bundling on the basis of cost savings or reduced integration.			
Risk area 5: Rigged terms of reference In a competitive market for goods and services, any specifications that seem to be drafted in a way that favours a particular company deserve closer scrutiny. For example, terms of reference that are too narrow can be used to exclude other qualified bidders or justify improper sole source awards. Unduly vague or broad specifications can allow an unqualified bidder to compete or justify fraudulent change orders after the contract is awarded. Sometimes there is a risk that project officials will go so far as to allow the favoured bidder to draft the specifications.			
TAILORED SPECIFICATIONS **Red flag** • Close similarity between the specifications and the winning bidder's product or services.			• Draft the terms of reference by using international standards. • Use performance or outcome based specifications. • Always ensure inclusion of the wording "or equivalent". • Careful and independent review of the terms of reference. • Proper procedures for the approval of terms of reference in accordance with the regulatory framework. • Regular change of composition of the committee for tender documentation.
• Specifications stipulate the use of a brand name without stating "or equivalent", contrary to national procurement rules.			
• Complaints from other bidders that the specifications match too closely to those of a single competitor or that a bidder prepared the contract specifications.			

Risk areas/Red flags	Yes/No		Preventive measures
POOR SPECIFICATIONS **Red flag** • Vague, ambiguous or incomplete specifications.			
• Specifications are significantly narrower or broader than in previous similar procurement actions.			
• Few bids.			
• Only a few of the companies that purchase the bidding documents submit bids, especially if more than half drop out.			
• Relatively few companies submit bids compared to prior similar tenders.			
• Fewer than the normal or expected number of potential bidders apply for prequalification.			
Risk area 6: Biased qualification and tender evaluation criteria Instituting biased evaluation and qualification criteria is another method used to steer contracts to a favoured bidder.			
Red flag • Complaints from bidders that the qualification or award criteria are irrelevant for the purpose of the contract and are meant to favour a certain firm. A very common reason for complaint in all countries.			• Careful review by professional procurement and technical staff on the procurement plan and terms of reference. • Regular change of the composition of the tender committees for preparing the tender documentation, including for the qualification and tender evaluation criteria. • Ensure that qualification criteria are fair and set in a manner that naturally reflect the nature and size of the contract. • If criteria other than price are used in the tender evaluation, ensure that they are quantifiable, measurable and can be expressed in monetary terms. • Engagement of external experts or observers to the tender committees (at least for high-value contracts). • Reports and documentation in accordance with the regulatory framework.

Bidding phase

Risk areas/Red flags	Yes/No		Preventive measures
Risk area 7: Unbalanced bidding Procurement officials provide a favoured bidder with inside information that is not made available to other bidders. For example, that one of several line items in a request for bids will not be called for after the contract has been awarded or that a certain low-cost solution will be acceptable. This information invariably gives the bidder an unfair advantage by allowing the company to lower its price or otherwise tailor its bid to defeat its uninformed competitors. Project officials can facilitate the scheme by drafting vague specifications to further disadvantage competitors. Unbalanced bidding is also used to describe the practice of bidders quoting prices significantly below cost for some line items and prices significantly above cost for others, in the expectation that the procuring authority will request many more items for prices which have been inflated. As a result, the lowest responsive bidder, as determined at the time of contract award, may not constitute the lowest-cost solution.			
Red flag • Particular line items that are unreasonably low compared to market prices are later removed from the list of requirements under the contract or that other compensation mechanisms will be used.			• Careful planning and approval processes during the pre-bidding phase. • Ensure that integrity pacts are laid down in the tender submission forms. • Ensure professional and independent composition of the tender evaluation committees. • Signing of a declaration of impartiality and integrity. • A solid and trustful complaint review mechanism. • Proper and efficient control and audit processes. • Tender evaluation reports in accordance with the regulatory framework. • Publication of award results.
• Wide and inexplicable disparity in bid prices considering the type of works, goods or services being procured.			
• Inadequate responses or clarifications by project officials to complaints from bidders about vague, ambiguous or incomplete specifications.			

Risk areas/Red flags	Yes/No		Preventive measures
Risk area 8: Leakage of confidential information Information about cost estimates and competing bids may be leaked by government officials to favoured bidders in order to give them an unfair advantage, e.g. enabling them to tailor their bid so as to secure the contract award.			
Red flag • A bid that closely tracks the preferred technical solutions, budgets, estimates, etc.			• Sign non-disclosure agreements with bidders. • Careful planning and approval processes during the pre-bidding phase. • Ensure that integrity pacts are laid down in the tender submission forms. • Ensure professional and independent composition of the tender evaluation committees. • Signing of a declaration of integrity commitment (impartiality and confidentiality). • A solid and trustful complaint review mechanism. • Proper and efficient control and audit processes. • Tender evaluation reports in accordance with the regulatory framework. • Publication of award results.
• The winning bid is just under the next lowest bid.			
Risk area 9: Unfair exclusion of qualified bidders Officials can facilitate the selection of a favoured bidder by improperly excluding other qualified bidders. This can take place at any time, from the drafting of the bidding documents to the receipt of bids. The exclusion of qualified bidders often triggers complaints as potential bidders invest time and money to prepare bids.			
Red flag • Unreasonable qualification criteria (e.g. abnormally high annual turnover or liquidity reserves, or years of experience in the country).			• Ensure the availability of an effective complaint review mechanism. • Ensure that the applied qualification criteria are consistent with those of the tender documents. • Ensure that decisions on exclusion are based on relevant provisions of the regulatory framework. • Ensure that decisions on exclusion are made by authorized managers within the contracting authority following a proper evaluation procedure, including on records of the tender evaluation committee.
• Unreasonable qualification criteria (e.g. abnormally high annual turnover or liquidity reserves, or years of experience in the country).			
• Qualified contractors fail to bid, indicating that the bidding may be rigged.			
• Companies complain that officials refuse to make bidding documents available to potential bidders or to accept the submission of bids (e.g. companies are coerced to refrain from bidding through subtle suggestions, firm statements, or intimidation and physical threats).			

Risk areas/Red flags	Yes/No		Preventive measures
Risk area 10: Manipulated evaluation and award procedure **Bid submission** Bid submission is a sensitive area where late bids are accepted or where bids are tampered with or unfairly excluded. Bids must be received by the agency prior to the date and time indicated in the bidding documents. Corrupt project staff may: (i) accept late bids submitted by favoured bidders with inside information about prices from other bidders; (ii) tamper with the bids received, e.g. by discarding elements of the bid in order to disqualify the bidder; or (iii) exclude bidders by denying access to drop-off points or by failing to open bids. **Bid opening** A key risk in the bid opening phase is the manipulation of bid prices. The bid opening must be conducted in public at the address, date and time specified in the bidding documents. The bids should be opened immediately after the bid submission time. Various tactics may be used to steer contracts to favoured bidders, e.g. the price read aloud for the favoured bidder does not match the actual bid price or a "new" price is later written into the bid. **Bid evaluation report** Questionable evaluation and unusual bid patterns may emerge in the bid evaluation report. After the completion of the evaluation process, the bid evaluation committee should present a report with a summary of the tender evaluation that describes the results and the process by which the committee has evaluated the bids received. The report may include a number of indicators of bid rigging, e.g. questionable disqualifications and unusual bid patterns.			
BID SUBMISSION **Red flag** • Late submission of bids.			• Ensure that the organization and procedures for receipt, opening and evaluation of tenders comply with the regulatory framework, in particular in terms of composition and work of the tender evaluation committees and the tender evaluation reports. • Ensure the availability of an effective complaint review mechanism. • Ensure that the applied qualification and tender evaluation criteria are consistent with those of the tender documents. • Ensure that decisions on exclusion are based on relevant provisions of the regulatory framework. • Ensure that decisions on exclusion are made by authorized managers within the contracting authority following a proper evaluation procedure, including on records of the tender evaluation committee. • Apply a stand still period (10 days at least) after the award decision and before the conclusion of the contract in order to give the unsuccessful bidders a possibility to seek clarifications or file a complaint. • Ensure a proper debriefing of the unsuccessful bidders. • Ensure that the contract price is in line with the budget.
• Not all bids are brought to the bid opening ceremony.			
• A bid is not in a sealed envelope.			
• Bids are not kept in a secure location with limited access.			
• The bid due date has been extended after some of the bids have been submitted.			
• All bids are voided for "errors".			
• Complaints from bidders that they were not allowed to submit bids.			
BID OPENING **Red flag** • Bids are not opened in public.			
• Pages are missing from one or more of the bids.			
• Pages with a different typeset are included in the bid.			
• Changes to the bid prices and bid security list are handwritten.			
• Lack of original signatures of the company representatives supposedly present at the ceremony.			

Risk areas/Red flags	Yes/No		Preventive measures
BID EVALUATION REPORT **Red flag** • The applied evaluation criteria differs from those issued in the bidding documents.			
• Inconsistencies exist between the evaluation report and the supporting documentation.			
• Improper or arbitrary evaluation sub-criteria or procedures developed at the time of evaluation differ from the issued bidding documents.			
• The evaluation committee ignores the evaluation criteria in the issued bidding documents and develops its own method of evaluation.			
• The lowest priced bidder is declared unresponsive (for no apparent reason).			
• A high number of bids are unresponsive.			
• Recommendations and disqualifications are poorly justified.			
• Bids are rejected because of allegedly missing components, such as catalogues and brochures for the goods offered.			
• Changes in the scoring of bids or arbitrary scoring of bids.			
• Pressure by external officials on committee members to select a certain contractor.			
• Complaints from bidders about the evaluation process.			
• Winning bid is poorly justified.			
• Technical specifications are copied from the bidding documents or are incomplete.			
• The manufacturer's authorization is missing, outdated or inadequate.			
• The bid does not match requirements (e.g. in terms of quantity, quality and qualifications).			
• Pages of a bid are missing or not signed (when required).			
• Unusual bid patterns.			
• Same or similar telephone or facsimile numbers, or address shared by bidders.			
• Unreasonably high bid prices by losing bidders for which there are no legitimate explanations and which cannot be attributed to an error.			
• Bid prices differ by a set percentage.			

Post-bidding phase

Risk areas/Red flags	Yes/No		Preventive measures
Risk area 11: Poor contract management and performance Integrity risks involve the abuse of the contractor in performing the contract, particularly in relation to its quality, price and timing; deficient supervision from public officials and/or collusion between contractors and supervising officials; the non-transparent choice or lack of accountability of subcontractors and partners; and a lack of supervision of public officials and the deficient separation of financial duties, especially for payment.			
Red flag • Substantial change in contract conditions to allow more time and/or higher prices.			• Ensure that contracting authorities have efficient administrative systems and routines for contract management. • Ensure that contract management is handled by staff different from those responsible for the preparation and award of contracts. • Use international contract models, at least for larger contracts. • Request contract management staff to sign a declaration of integrity commitment. • Ensure effective control procedures during the life-time of the contract. • Any significant contract modifications should be decided by a contract committee. • Ensure the availability of contract dispute settlement mechanism. • Introduce and inform contractors that an independent performance evaluation procedure will be conducted (for large contracts and on a sample basis). • Inform the bidder that poor contract performance or conduct of irregularities may or will lead to blacklisting.
• Substitutions of products, services or sub-standard works not meeting contract specification.			
• Theft of new assets before delivery or being recorded in the asset register.			
• Sub-contractors or joint venture partners replaced without any justifiable reasons and with no accountability.			
• Deficient supervision and poor recording.			
• False or inaccurate invoicing and payment procedures.			
• Extensive and unjustifiable cost overruns or time delays in the implementation of the contract.			

Annex 4. Risk mitigation actions to prevent and address conflicts of interest and bid rigging

How to mitigate risks of conflict of interest in public procurement?

The most common measures would include the following:

1. Ensure a strong policy and regulatory framework on how to deal with conflicts of interest in public procurement.

2. Establish clear policies and rules on how to manage conflicts of interest when occurred.

3. The adoption of a conflict of interest declaration and confidentiality agreement that all public officials involved in the procurement process must sign. This includes:
    - All members of the procurement team;
    - All members of the evaluation team;
    - Any consultant asked to advise the team;
    - Anyone in making a recommendation or award decision; and
    - Anyone making financial, or other type of important, approvals during the procurement process

4. Rotation of members in the tender committees.

5. Ensure that tender documents include rules on conflict of interest.

6. Request that the submission of tenders include a statement by the bidders on integrity, including on conflict of interest.

How to mitigate risks for bid rigging in public procurement?

The OECD Guidelines for fighting bid rigging in public procurement constitutes an excellent source for understanding and guidance on how to prevent and detect the action. The Guidelines provide a good overview of the main steps, as well as suspect patterns and behaviours in the procurement process. Here follows, as a sample, a number of possible actions to mitigate integrity risks in procurement process.
The risks of anti-competitive conduct in procurement can be mitigated by designing tenders in a way that minimizes the likelihood of collusion. For public buyers, this includes following good procurement practice:

- Learn about the market. This will better enable a buyer to spot any warning signs of collusive conduct. Gather information about the products, suppliers and conditions in the marketplace, especially potential suppliers' prices and costs. Include information about prices in other geographic areas or for similar products. Collect information about past tenders, and, if in the public sector, seek information from other public buyers who have recently purchased similar goods or services to improve your understanding.

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- In relation to the procurement process itself, there are a number of practical steps that you can take to minimize the risk of collusion:
    - As part of the **integrity pact**, include anti-collusion and conflict of interest clauses in your tender documents;
    - Warn bidders that all suspicions of collusion will be reported to the relevant authorities;
    - Require disclosure of all subcontracting arrangements that involve communications between competitors;
    - Require bidders, where possible, to sign a warranty that their bid has been independently developed and that there has been no communication with competitors, as well as no contract, arrangement or understanding entered into with competitors about price, bid submissions or terms of the bid, including quality and quantity of goods or services; and
    - If such a warranty cannot be signed, seek disclosure of contacts with competitors with regard to the bid.

- Reserve the right to not award the contract if there are suspicions of collusion.

- Ensure the largest number of potential bidders. The probability of bid rigging increases if you have a small number of potential bidders.

- Keep tender requirements clear and easy to follow, thereby encouraging more companies to bid.

- Think carefully about unnecessary restrictions on bidders that might eliminate companies that are in fact qualified for task.

- Facilitate bidding and keep the costs of bidding down. Allow adequate time for bid preparation, use electronic portals, do not require information that is of little use, and keep amendments to the forms/ processes to a minimum.

- Ensure anonymity of bidders.

- Consider allowing bids only on a portion of a large contract (dividing into lots), thereby allowing small and medium-sized companies to participate.

- Make it harder for bidders to communicate and agree on a strategy. In particular:
    - Avoid unnecessarily presenting the bidders with opportunities to communicate with each other (e.g. at pre-bid face-to-face meetings or at site inspections);
    - If pre-bid meetings are necessary, mitigate the risk of collusion by, for example, reminding attendees of their obligations (see above); and
    - Where possible and practical, keep the identity of bidders undisclosed to make it more difficult for cartel members to contact all bidders.

- Try to avoid predictable procurement patterns that facilitate bid-rigging schemes (e.g. vary the scope of successive contracts by aggregating or disaggregating contracts).

- Ensure any external consultants used have signed confidentiality agreements and are subject to a reporting requirement in respect of inappropriate competitor behaviour.

- Define terms of reference in terms of what you want the product to do rather than by reference to specific products. Use internationals standards.

- Provide training for all procurement staff to detect and deter cartels, and to design a procurement process that is less susceptible to collusion.

Annex 5. Modern procurement instruments

E-procurement tools, framework agreements and centralized purchasing are examples of procurement instruments with an increasing popularity within the international procurement community that may mitigate integrity risks in the procurement process.

E-procurement

E-procurement has become a key component in the reform and modernization of public procurement frameworks in many countries worldwide (UNODC, 2013). The use of electronic procurement can be very efficient in increasing competition and transparency, and can therefore greatly help in reducing corruption in public procurement.

E-procurement tools include the electronic publication of contract opportunities, the electronic distribution of tender documents and the electronic submission of bids. Importantly, all the tools of e-procurement (e.g. e-communication, e-submission, e-tendering, etc.) have one essential effect: they eliminate or minimize direct human interactions between bidders and the procurement personnel. Such interactions are one of the main sources of corrupt behaviour in public procurement.

E-procurement in the area of anti-corruption is also important for other reasons. In particular, e-procurement has the advantage of allowing for easy data generation and data management. This could be particularly helpful in the assessment of offered prices, to assess whether bid prices are reasonable and in line with market rates (e.g. by benchmarking collected data such as prices/price items in an electronic database with offered prices in a particular tender procedure in order to detect overpricing or bid rigging). Electronic data collection and data management in the area of public procurement could also constitute an important tool in helping to comply with Article 9(3) of the UNCAC, which requires its parties to preserve the integrity of its records, including accounting books or other documents related to public expenditure.

For all the reasons mentioned above, States Parties to the UNCAC adopted resolution 3/2 on preventive measures. This resolution invites States Parties "to consider the use of computerized systems to govern public procurement". The use of e-procurement is well suited to assisting countries in establishing systems of public procurement based on the fundamental principles of transparency, competition and objective decision-making as required by Article 9 of the UNCAC.

Framework agreements

A framework agreement is an agreement between one or more contracting authorities and one or more firms, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. A framework agreement is a type of purchasing arrangement that will follow the rules of one of the tendering procedures foreseen by the regulatory framework for all phases up to the award of contracts based on that framework agreement (in practice, in the majority of cases, open tendering procedures are used). This purchasing arrangement is characterized by two main stages: the award of the framework agreement itself to one or more firms, and the award of the individual call-off contracts under the concluded framework agreement. The duration of a framework agreement is usually up to four years.

Framework agreements are commonly and actually growingly practised in many procurement systems around the world. There are a number of advantages recognized. It simplifies the acquisition process extensively and reduces the number of tenders, thereby affecting the transaction costs positively. From an integrity perspective, it simplifies audit and financial control. On the other hand, it might have negative effects on the competition and might make the participation of SMEs more difficult.

Centralized purchasing

A central purchasing body is commonly defined internationally as a contracting authority that:[16]

- Acquires goods or services intended for one or more contracting authorities;
- Awards public contracts for works, goods or services intended for one or more contracting authorities; or
- Concludes framework agreements for works, goods or services intended for one or more contracting authorities.

Procuring entities might purchase works, supplies or services from or through a central purchasing body in product and service areas of common interest within the public administration. Procuring entities that purchase works, supplies or services from or through a central purchasing body shall be deemed to have complied with the legal framework insofar as the central purchasing body has complied with it.

Savings, in terms of better prices and lower transaction costs, constitute the main rationale for establishing and operating centralized purchasing arrangements. Other main factors of a non-economic nature are simplicity; legal, technical and contractual certainty; and the need for standardization and support of important policy goals of the government, such as those concerning the environment and social issues. From an integrity perspective, the government might have better opportunities to control the processes than under a fully decentralized system, but observe that centralized purchasing should only be introduced in areas covering goods and services of common interest, such as in office supplies and pharmaceuticals.

Both framework agreements and centralized purchasing are excellent instruments in the context of e-procurement.

[16] EU Directive, 2014/24/EU.

Annex 6. The legislative and regulatory framework: Basic content and good practices

Choice of regulatory instrument

Public procurement laws (PPL) will provide the greatest degree of legal certainty and the highest guarantee of compliance, as they are difficult to amend since they require an act of parliament. They also cannot generally be amended retroactively. Stakeholders usually have more confidence in such high level acts and are more likely to apply them.

It is important that the supply market, business community and tenderers are also familiar with all the applicable rules. This does not always mean that they should be contained in a PPL, but it does mean that they should receive adequate publicity.

In terms of enforcement, it is probably the case that all legal norms can be enforced by tenderers, but lower status norms such as regulations, might prove less amenable to enforcement.

Institutional structure

The PPL will establish the necessary institutions, such as the regulatory authority, and will include a definition of its functions, authorities and duties (see the following sections). It will also explain the role and powers of any approval authorities, if appropriate. This will link to delegations of financial authorities. Critically, it will define the role of the procuring entity and explain how the procurement function is organized within the procuring entity, with emphasis on lines of responsibility and accountability. Where different committees are used (e.g. bid opening, bid evaluation), these will also be described. Finally, the law will set out the identity and procedures of the enforcement authority (for complaints) and explain the complementary role of the supervisory authorities (e.g. audit or anti-corruption).

Integrity

The PPL will set out the requirements relating to integrity and probity. It will establish provisions relating to fraud, corruption and conflicts of interest. It also will spell out any specific requirements relating to committee members (e.g. statements of an absence of conflict), procurement officers and others connected to the procurement process which could lead to disciplinary actions, as well as for bidders, including debarment issues.

Scope and coverage

The procurement rules will apply to certain entities and activities only, i.e. the procuring entities which will be defined based on their identity, function or use of national budget, as well as state-owned enterprises and utilities. The law will also define what contracts are covered in terms of their nature (works, supplies, physical services and consultancy services) as well in terms of form (e.g. whether purchase, rental etc.). A PPL will commonly apply only above certain financial thresholds and will set out the various levels differentiated, according to contract type, and will include methods of calculation, aggregation rules to enable scale economies, and a prohibition of fractioning.

The scope of application needs to be clearly defined in the PPL as well as under what circumstances an exemption to the PPL is accepted. Less strict exemptions to the regulatory framework constitute a main integrity risk in public procurement.

Organization of procurement

The key process for procurement needs to be spelled out. This includes planning issues (e.g. pre-publication of annual requirements to notify the supply base of impending procurements); the preparation and content of tender documents; the possibility of holding site visits and pre-bid meetings; how to deal with clarifications and responses (e.g. responses provided only in writing to all bidders simultaneously); and any implications in terms of extensions of time for bid submission.

Procurement methods

These will be established in the PPL, especially with regard to conditions for the use of alternative methods. Generally, open tender procedures will be the default method, and this can be used with pre-qualification or can be carried out in two stages for complex procurement. Alternative procurement methods, such as limited tendering or negotiated procedures, will be foreseen to provide for flexibility, but these will be available only on certain conditions and will offer various possibilities (e.g. direct contracting in emergency situations).

Technical specifications

These are often a cause of problems in procurement, including from an integrity risk angle, so the PPL needs to spell out the requirements very carefully. It will define the type of specifications permitted, e.g. whether design-based (including detailed design drawings, material specifications, bill of quantities, etc.) or performance-based, laying down capacity and performance requirements for specific purposes. They could also refer to physical properties and materials to be used, e.g. in the case of commodities. The law would also cover the use of industry standards, including those needed for testing, certification, inspection, etc. Critically, the law must also apply the principle of the neutrality of specifications so that no bidder is preferred by the use of specific brand names or processes. Where requirements cannot be defined without reference to brand or method of production, the words ‘or equivalent’ should be inserted.

Selection criteria

The PPL will set out the qualifications that will allow bidders to participate in the procurement. These will not only include eligibility issues, such as the provenance of goods and nationality (also trade embargoes), as well as grounds for exclusion (e.g. non-payment of taxes, insolvency issues or cases of debarment), but will also refer to detailed technical or professional capacity and experience, suitability to pursue a professional activity, and the bidders’ economic and financial standing. It will cover the question of evidence to prove the criteria and should also provide for the provision of evidence by both single and joint bidders.

Evaluation criteria

This is of course key to procurement and the PPL will set out which methods are to be used, e.g. lowest price or lowest evaluated price, or most economically advantageous tender, depending on which international model is used. It also will set out what criteria can be used (e.g. commitment to spare parts, environmental friendliness, etc.) and how they are to be measured—by way of monetary values, a merit point system and life-cycle costing. The law would also cover issues such as pricing for sustainability and domestic preferences, what to do in the event of abnormally low tenders, and how to accommodate variations.

Tender invitation

The PPL will address the provision and format of the tender documents to the bidders. This will differ depending on the method, e.g. two-stage tendering (competitive dialogue), invitation to pre-qualify, requests for quotations, direct contracting invitations, and requests for proposals in the case of consultancy. It will provide for the availability of documents (contact details and cost of purchase) and will provide for modern methods of delivery through electronic procurement methods where documents can be downloaded.

Advertising and time limits

The PPL will also set out requirements for the form of the various advertisements needed, e.g. for annual requirements (general notice) and procurement notices (specific notice), as well as details of the minimum content requirements. It will refer to the degree of publicity required, e.g. whether through print media, electronic media or by sending individual notices after publication. Minimum time limits are given for bid submissions. These will differentiate between national and international competition, will usually give credit for the use of electronic media, and will provide shorter limits in special cases such as emergencies. The nature and size of the contract will determine the extent of time limits for submission of tenders, normally with a minimum between 10 and 40 days.

Conditions for participation

These refer to the formal requirements, such as use of forms, insertion of bids into envelopes, required signatures and powers of attorney, certificates, bid validity periods and bid securities.

Submission and opening of tenders

Other formalities also apply to tender submission and opening, which are designed to guarantee the integrity of the process. The PPL will provide for details concerning the time and place of submissions, the formal submission requirements (e.g. envelopes, number of copies and how marked), and modifications and withdrawal before submission deadline. It will also set out whether there is to be a public bid opening or not and, if yes, will provide for such things as bid opening committees, the announcement and recording of data, whether there are to be multiple openings (technical and financial), and dealing with the issue of late submissions.

Tender evaluation

This concerns the formal process of evaluation where the law will address such issues as the establishment of an evaluation committee, if appropriate, the method of evaluation (joint, individual), and will provide for the existence of an evaluation matrix. It will consider majority voting and dissenting opinions and the participation of staff with technical expertise. The PPL will also consider a number of eventualities, such as the need for the correction of arithmetical errors and clarifications, as well as record-keeping issues.

Award of contract

This concerns the authority to award and the form of contract. This is subject to national laws that regulate formalities and signatures for contract formation, entry into force, and the possibility of any conditionalities. The PPL will also address the need for the successful bidder to provide performance securities, as appropriate. If standstill periods are included as part of the enforcement mechanism, then this will be set out here as well.

Debriefing

This is an important element of the system and is required for two purposes: to explain to bidders why they were rejected and how they could improve, and to provide evidence, if any, of non-compliance. The law will set out who may request debriefings, when they may make the request and the extent of the debriefing, as well as issues concerning confidentiality.

Enforcement

The critical element of enforcement must also be dealt with in the law. It will address the right to complain, the forum for complaints, the requirements for submission of complaints, the procedure to be followed and the timing of the steps of the process, as well as the consequence of complaints. Appeals from decisions on first tier complaints will also be covered.

Final provisions

These will include such things as reporting and recording requirements, the power to make regulations, any required repeals, savings and amendments, explicit reference to the date of entry into force of the provisions, and any foreseen transitional arrangements.

Annex 7. Public procurement integrity risk assessment report

The following is a proposed outline of the report on national public procurement integrity risk assessment. It will include the capacity development action plan.

1. Introduction

2. Objectives and Methodology

3. UNCAC Requirements Including the Second Review Process

4. Coordination, Organization and Planning for the Integrity Risk Assessment of Procurement

5. An Overview of the Public Procurement System – Current Status

6. Integrity Risk Assessment of the Public Procurement System – Legal and Institutional Frameworks

7. Integrity Risk Assessment of the Public Procurement System – Operational Capacity and Market Functionality

8. Integrity Risk Assessment of the Public Procurement System – Control Structure and Integrity Mechanisms

9. Integrity Risk Assessment of Public Procurement at the Organizational level

10. Integrity Risk Assessment of Public Procurement at the Process level

11. Integrity Risk Assessment of Public Procurement at the Individual level (Personnel)

12. Vulnerability Analysis of the Public Procurement System as a Whole

13. Main Capacity Gaps Identified in Relation to Article 9(1) of UNCAC and Other International Standards

14. Capacity Development Action Plan to address risks in Public Procurement

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Notes

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