



The International Governance & Risk Institute

Combating Corruption in Public Procurement: Global Challenge, Domestic Concerns and Solutions

Tackling Corruption and Collusion in Public Procurement: Latin
America and the Caribbean

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Combating Corruption in Public Procurement: Global Challenge, Domestic Concerns and Solutions



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Predicate: Effective Governance Demands Efficient Public Procurement

- **Procurement accounts for a significant proportion of Gross Domestic Product (10 – 20 % or more in many countries)**
- **Procurement is critical to government delivery of socially important goods & services, including transportation & other infrastructure, public health, education infrastructure, and national defense & security**
- **Public procurement can play a key role in development, facilitating use of private sector for public ends and supporting goals for development of particular industries, groups, and regions**

- **Global Challenge**

- **Multinational markets**

- **Multinational firms**

- **Global supply chain**

- **Shared experiences**



- ***Free trade facilitates the free flow of capital, information technology & personnel***

- **Harmonization of international procurement norms: WTO GPA, EU, OECD, UN-UNCITRAL Model Law, and bilateral, regional agreements**

Corruption Control

- **Critical to credible governance**
 - High expectations regarding (and scrutiny of) public expenditures
- **Critical to good procurement**
 - Concerns arise at *all stages* of the procurement process
- **Never-ending effort**

Over-arching assumptions

- **Corruption Control** must permeate the system
- Effective (Government and Contractor) ***Compliance Regimes*** are Critical
- Both ***Internal and External Oversight Regimes*** are Necessary
- Corruption is a behavioral issue
 - **It's all about people**

Definition and Scope of the Challenge

- Broad **Definitions** of Corruption
- Unlimited **Opportunities** for Abuse and Chicanery
- **Complex transactions** – at the intersection of government policy, administrative law (and procedure), and business (sometimes commercial) transactions

Transparency International (TI)

defines corruption as “the misuse of entrusted power for private gain.”

“Private gain” ... include[es] gains accruing to an economic actor’s close family members, political party and in some cases to an independent organisation or charitable institution in which the economic actor has a financial or social interest.

Legal Regimes, Norms & Cultures Differ

Transparency International (TI) clarifies:

Activities that are considered illegal in one country may not fall under the criminal code provisions of another country; they may still be considered “corruption” in both countries. *[Or, of course, they may be deemed corruption only in one of the countries.]*

Parade of Horribles

(Concerns, Risks)

- Fraud (and Conspiracy)
- Bribery and Gratuities
- Conflicts of Interest
 - Personal and Organizational
- Collusion
- Post-Employment Restrictions
 - The “revolving door”

Parade of Horribles *(continued)*

- Quality Control and “product substitution”
 - Product integrity
 - False (fraudulent) testing
- Improper Disclosure of
 - Proprietary information
 - Source Selection Info, which includes “Contractor bid/proposal information”

Additional Risk Areas *(TI - Examples)*

- Limited or restricted access to information;
- Abuse of exceptions to open public bidding;
- Limited or ineffective control and monitoring, particularly during the contract implementation [performance] phase;
- Deficiencies and lack of transparency during the budget phase;
- Urgent purchases made at the end of a fiscal year [e.g. haste makes waste];
- “Emergency” Responses to Natural Disasters [and war, contingencies];
- Participation of Official-Owned Companies; and
- Participation of Front/Shell Companies.

Fundamental Predicates to Domestic Corruption Control

- Solid (transparent) procurement principles
- Clear (and transparent) procurement laws and regulations
- Oversight and Law Enforcement
 - Credible Governmental Institutions
 - Disincentives and Penalties
 - Criminal
 - Civil
 - Administrative
- Engagement With the Private Sector

Global Responses (Trends)

- **Increased Oversight**
 - Third-party Oversight (Whistle-Blowers)
 - Open Media
- **Increased Sanctions (Remedies)**
- **Raising Standards**
 - Government Personnel
 - Professionalism
 - Ethics or “standards of conduct”
 - Contractor Personnel/Private Industry
 - Codes of Conduct
 - Compliance Regimes, including “Integrity Pacts”
 - Allowable cost (e.g., cost of doing business)
 - Information Sharing (e.g., DII example)
- **Voluntary Disclosure Regimes**

OECD: Fundamental State Initiatives

- Public procurement procedures are transparent and promote fair and equal treatment;
- Public resources linked to public procurement are used in accordance with intended purposes;
- Procurement officials' behaviour and professionalism are in line with the public purposes of their organisation;
- Systems are in place to challenge public procurement decisions, ensure accountability and promote public scrutiny.

Legislative Tools (Remedies)

- Fraud
 - Civil fraud (monetary penalties, remedies)
 - Criminal fraud (jail)
 - Whistleblowers - qui tam
 - Third-party oversight?
- Conspiracy
- Foreign Corrupt Practices Act
- Disclosure and Defective Pricing
 - Truth in Negotiations Act (TINA) - US

Administrative Remedies

- “Responsibility” (Qualification)
- Contract Adjustment
 - Modification
 - Partial termination for convenience
 - Termination for convenience
- Termination for Default
- Suspension, Debarment, Blacklisting

Transparency:

- **helps fight corruption (which thrives in the dark)**
- **helps increase public trust in the procurement system – and therefore in government overall**
- **means to other important goals of the procurement system, especially, competition & integrity**
- **key to market access (and growth)**

OECD: *Balancing*

Transparency and Accountability with other public procurement aims:

Corruption thrives on secrecy. Transparency and accountability have been recognised as key conditions for promoting integrity and preventing corruption in public procurement. However, ***they must be balanced with other good governance imperatives, such as ensuring an efficient management of public resources – “administrative efficiency” – or providing guarantees for fair competition.***

... [T]he challenge ... is to define an appropriate degree of transparency and accountability to reduce risks to integrity in public procurement while pursuing other aims of public procurement.

Third-Party or External Oversight

Conventional Procurement Oversight:

- Managers
- Auditors
- Inspectors General

Supplemental Oversight:

- Protests
- Disputes
- Fraud (whistle-blowers)
- Media (Investigative Reporting)

Open Media

- Investigative reporting serves an *independent* “third-party” oversight role
- Risk (and expectation) that:
 - mostly (only) bad news will be reported
 - Errors will occur (facts reported incorrectly)
 - Benefits outweigh risk in terms
- Exceptions
 - Contractor confidential (business sensitive) information
 - Proprietary information, trade secrets

The Ultimate Issue

- **Corruption is a behavioral issue**
 - Rules are easy to write
 - Law, regulations are easy to create
 - Implementation – in this case, compliance – is the challenge
- **Implementation (Compliance) is the Critical Issue**
 - It's all about People
- **Professionalization of the Acquisition Workforce is the Key**

- **Government Personnel, Resources**

- Policy makers
 - Legal, regulatory, guidance
- Requirements (needs)
 - Market research
- Contracts drafting
 - Attorneys (counsel)
 - Negotiators
- Contract managers
 - Contract support (CO, COR, COTR, QAR, etc.)
- Oversight
 - Auditors
 - Inspectors General
 - Challenge regimes (judges?)
- Training

- **External resources**

- Industry
- Media
- Private Attorneys General (whistle-blowers)

Human Capital

Human Capital Foundations

- Education and experience
- Independence
- Incentives (compensation) and disincentives
- Professional Development
- Professional standards
 - Performance
 - Ethics

Personnel Challenges:

- Identify and recruit sufficient quantities
- **Train, accumulate experience**
- **Motivate:**
 - Incentives (compensation)
 - Disincentives
 - Failure to balance is problematic
- **Professional Development & Growth**
 - **Expertise in regions, industries, trades, commodities**
- **Retain – compete with private sector, central government for talent**

Conclusion

(and supplemental resources)

- Home
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- About Us
- Events
- Contact Us
- Members

DII Defense Industry Initiative

ON BUSINESS ETHICS AND CONDUCT



Promoting a culture of ethical conduct within the defense industry.

DII Leaders on the importance of ethics.

What is DII?

We are the senior leaders and ethics officers of 85 top U.S. defense firms and other companies serving the U.S. government.



Our Principles

We support our U.S. Armed Forces using taxpayer resources in ways that meet the highest standards of ethics and efficiency.



Training and Resources

We offer frequent training opportunities in ethics and compliance, and teach our



Integrity in Public Procurement

GOOD PRACTICE
FROM A TO Z

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Transparency International (TI) on implementation:
[W]hen analysing corruption risks, ... ***differentiate problems related to inefficiency or to basic lack of capacity (error) from pure corruption.*** Not all efficiency problems are related to corruption, ...what can look as corrupt, may also be simple error.

This distinction is also important as some efficiency-driven reforms may, however, undermine transparency-building efforts... [I]f the goal of a particular reform is speeding up procurement processes, and due attention is not given to transparency issues, a recommendation to reduce publication and evaluation time may backfire. ... [Similarly, a]dvocating for transparency measures that ... render the process inefficient will not achieve their purpose....