

COMPENDIUM OF GOOD PRACTICES FOR INTEGRITY IN PUBLIC PROCUREMENT

PREPARED BY THE OECD

Introduction

Acknowledging that corruption is a threat to markets, trust in government, and the rule of law, and that fighting corruption requires governments and business to work together, the G20 Anti-Corruption Action Plan for 2013-2014 states that building “on our commitments made in Seoul and Cannes, we will continue to promote integrity, transparency, accountability and the prevention of corruption in the public sector, including in the management of public finances”, for example by:

“ensuring we have in place systems of **procurement based on transparency, competition and objective criteria in decision-making to prevent corruption**, and by the end of 2014, continuing our analytical work in this area and **developing and sharing good practices** in the field of public procurement anticorruption policies, measures and legislation including, for example, electronic procurement”

In order to pursue this objective, the G20 Anti-Corruption Working Group (ACWG) requested the OECD to develop the Compendium of good practices in integrity in public procurement. The proposed outline including the methodology and topics for the compendium were approved in the June 2013 ACWG meeting in Ottawa, and the presentation of country examples was approved during the October 2013 ACWG meeting in Paris.

This Compendium of good practices follows the principles agreed upon in the first Monitoring Report, endorsed by the G20 leaders in Cannes in 2011. Country examples present ways to detect and prevent integrity risks, and to promote the application of objective criteria, as well as factors for successful implementation of good practices in a specific country context. In line with the Action Plan, the compendium focusses on two areas: 1) transparency in procurement and fighting red tape; and 2) mechanisms for integrity and accountability.

This Compendium supports G20 countries in mapping good practices and sharing lessons learned in order to shape the global debate and set example for fighting corruption and promoting integrity in public procurement while implementing national standards. The Compendium also helps countries address emerging issues such as promoting integrity in the organization of major public events.

Sharing lessons learned from good practices also support efforts to foster trust in government and public spending.

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I. Transparency in procurement and fighting red tape

Transparency is critical for minimizing the risks that are inherent in public procurement. The financial interests at stake, the volume of transactions and the close interaction between public and private sectors in the award of public contracts all pose risks to integrity. Transparency also serves an important role in levelling the playing field for businesses and allowing small and medium enterprises to participate on more equal footing. International instruments such as the United Nations Convention Against Corruption, the UNCITRAL Model Law on Procurement of Goods, the OECD Principles on Enhancing Integrity in Public Procurement and the APEC Transparency Standards on Government Procurement, provide standards to promote transparency.

1. Transparency of procurement information including opportunities and contract award decisions

Transparency and accessibility of general procurement information are key for promoting integrity, minimizing waste and preventing corruption. Such information includes specific regulations, annual procurement plans, business opportunities, and contracts awarded, as well as procurement statistics. For example in Saudi Arabia, all government tenders shall be announced in the Official Gazette, in two local newspapers and by electronic means.

Most G20 countries now publish online information on procurement regulations and general information for bidders regarding the procurement process. The experience of Australia in publishing procurement information and producing spending statistics is described below.

Box 1. Australian Government's procurement information system

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

On the AusTender website, it is possible to access reports on contract notices, standard offer notices and procurement plans (<https://www.tenders.gov.au/?event=public.reports.list>). As an example, the records that are available online on contract notices include information on the procuring entity, the procurement method, the contract value and period, a description of the contract, and supplier details. The records are searchable by agency, date range, value range, category, confidentiality, supplier name, supplier Australian Business Number (ABN) and report type. It is also possible to download summary records that include information on the total count and value.

Aggregated information that has been extracted from AusTender is available on the website of the Department of Finance.

(<http://www.finance.gov.au/publications/statistics-on-commonwealth-purchasing-contracts/index.html>).

It includes statistics on:

- total procurement contracts reported, including a breakdown of total value and number of contracts per financial year;
- procurement contracts by value threshold, including a breakdown of value, percent of total value, number of contracts and percent of total number of contracts;
- SME participation in procurement;
- overseas procurement contracts (contracts identified by agencies as primarily or entirely based outside Australia);
- individual business participation in procurement;

- the ratio of goods to services contracts procured;
- the top 20 categories for goods and services procurement contracts, including a breakdown of value, percent of total value, and percent of Small and Medium Enterprises (SME) participation;
- the top 10 procuring Financial Management and Accountability Act 1997 Agencies (FMA), including a breakdown of value, percent of total value, and rank in previous years compared to the most recent ranking.

In addition, the Department of Finance, together with Protiviti, has conducted an analysis of AusTender data for 2010-11 and 2011-12 on (i) the split (by value) between the procurement of goods and services by the Australian Government; (ii) the total value of Australian Government procurement for each United Nations Standard Products and Services Code (UNSPSC) in relation to total expenditure in Australia; (iii) the total value of goods procured that are likely to be “Australian made” and services procured that are delivered from within Australia; and (iv) the total value of goods or services procured by the Australian Government that are likely to be imported, in order to determine the impact the Australian Government procurement market has on the Australian economy. The report is available at the Departments’ website (<http://www.finance.gov.au/procurement/analysis-of-australian-overseas-purchasing-contracts.html>).

Source: Department of Finance, Australia.

Online publication of information on procurement opportunities, timelines for submitting bids and selection and evaluation criteria can increase confidence in procurement procedures and increase competition. Mexico’s experience illustrates how a G20 country can promote transparency in procurement by facilitating access to information through a central procurement portal. This central portal makes information available (see below), from pre-solicitation documents, award decisions and supporting information to the testimony from civil society actors scrutinising the procurement process.

Box 2. Disclosure of information through the central procurement system Compranet in Mexico

The Mexican federal government puts particular emphasis on enhancing transparency in public procurement to promote a level playing field for suppliers and achieve value for money in government operations. A large range of procurement information at the central level of government is publicly available. For example, the Law of Acquisitions, Leasing and Services of the Public Sector (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, LAASSP) makes it mandatory for federal institutions to publish procurement information on Compranet.

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

Table 1. Disclosure of information through the procurement system Compranet

Website	Compranet
https://compranet.funcionpublica.gob.mx	
Procurement legal framework	✓
Manuals and guidelines for suppliers	
Annual procurement plans	✓
Long-term procurement plan	
Pre-solicitation documents	✓
Solicitation documents	✓

Minutes resulting from the clarification meetings	✓
Electronic submission of bids	✓
Award decisions and supporting information	✓
Contract modifications	✓
Statistics and database related to past procurement	✓
Payment information	
Registry of suppliers not allowed to be awarded contracts	✓
Social witness testimony	✓
Possibility to file a formal complaint against procurement procedures	✓
Documentation associated with formal complaints	✓

Mexico's commitment in the framework of the Open Government Partnership in the area of procurement is to consolidate the new version of Compranet to achieve better and more efficient administration of public resources. The federal government will seek to improve Compranet. The qualifications and competencies of officials in charge of Compranet will be revised to better fit the needs. The federal government will also develop clearer responsibility chains along with control mechanisms that empower civil society organisations, the media and society to scrutinise government procurements.

Sources: OECD (2013), Public Procurement Review of the State's Employees' Social Security and Social Services Institute in Mexico, as well as OECD (2011), Towards More Effective and Dynamic Public Management in Mexico, OECD Public Governance Reviews, OECD Publishing.

Furthermore, some G20 countries increase transparency by debriefing bidders on contract award decisions and explaining how they were reached. This practice improves suppliers' confidence that processes are conducted in a fair manner and encourage them participate in future processes. Almost all G20 countries publish award decisions. Countries such as Canada, the United Kingdom and the United States debrief bidders on how the award decision was taken.

Box 3. Verbal debriefing in the United Kingdom

Regulations in the United Kingdom require departments to debrief candidates for contracts exceeding European Union procurement thresholds. They also strongly recommend debriefing for contracts below the thresholds.

Debriefing discussions – either face-to-face, by telephone or videoconference – are held within a maximum of 15 days following the contract award. The sessions are chaired by senior procurement personnel who have been involved in the procurement.

The topics for discussion during the debriefing depend mainly on the nature of the procurement. However, the session follows a predefined structure. First, after introductions, the procurement selection and evaluation process is explained openly. The second stage concentrates on the strengths and weaknesses of the supplier's bid to improve their understanding. After the discussion, the suppliers are asked to describe their views on the process and raise any further concerns or questions. More importantly, at all stages, it remains forbidden to reveal information about other submissions. Following the debriefing, a note of the meeting is made for the record. Effective debriefing may reduce the likelihood of legal challenge if suppliers are thereby convinced that the process has been carried out correctly and according to rules of procurement and probity.

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

2. Processing and tracking information on public procurement spending

The role of transparency and citizen engagement in fighting corruption is recognised in international conventions. Transparency provides citizens with the information they need to scrutinize

government decision making. Experiences in some G20 countries such as Brazil and the United States have revealed that specific mechanisms to monitor public procurement and online tools can be effective to encourage public scrutiny.

Box 4. The Transparency Portal of the Federal Public Administration in Brazil

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

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

The Transparency Portal has received recognition internationally. For example, in 2008 the Transparency Portal was recognised as one of the good practices for transparency and the fight against corruption at the 2nd Conference of State Parties to the United Nations Convention Against Corruption.

Source: OECD (2012), *OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service*, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264119321-en>

Box 5. Federal Procurement Data Systems in the United States

Since 1979, the Federal Procurement Data System (FPDS) has been the primary government-wide contracting database. Its name changed to become Federal Procurement Data System "Next Generation" (FPDS-NG) in 2003, following the first major redesign of the system since its launch. The system includes procurement contract actions reported through connections with the contract writing systems of approximately 65 departments, bureaus, agencies, and commissions. With limited exceptions, it stores information on all federal contract actions exceeding the micro-purchase threshold awarded each year for goods and services; with annual totals above USD 450 billion to over 160 000 suppliers. Over time, the number of data elements has increased from 27 in 1979 to around 200 in 2014 and, over the same period, the contract award threshold for capturing data in the system has decreased from USD 10 000 to USD 3 000. Since 2008, the FPDS-NG also serves as the backbone for providing procurement data to www.USASpending.gov – a searchable database of information on federal contracts and other government expenditures such as grants, loans, and co-operative agreements. Congress and the public also rely on the FPDS-NG for a wide range of information including department/agency contracting actions, government-wide procurement trends, and how procurement actions support socio-economic goals and affect specific geographical areas and markets.

In December 2007, www.USAspending.gov was launched to enable greater transparency in reporting on federal spending in accordance with the 2006 Federal Funding Accountability and Transparency Act. The goal was to establish a single searchable website, accessible to the public at no cost, which includes for each Federal award:

- the name of the entity receiving the award;
- the amount of the award;
- information on the award including transaction type, funding agency, etc;
- the location of the entity receiving the award; and
- an unique identifier of the entity receiving the award.

The portal supports citizens in conducting additional analysis of government data by enabling them to track expenditures in a user-friendly manner. USASpending.gov has been recently updated in October 2010 to display of first-tier sub-award data (subcontracts and subgrants).

Source: US OFPP, OECD Public Procurement Review of the United States Federal Government (Forthcoming)

3. E-Procurement

E-procurement – the use of information and communication technologies in public procurement – can facilitate access to public tenders and increase competition. It can help lower costs by reducing administrative burdens and shortening procurement procedures deadlines. Many G20 countries such as Brazil, China, Indonesia, Italy, Korea, Mexico and Saudi Arabia are increasing their use of e-procurement. In Brazil, the Ministry of Planning, Budget and Management estimates that savings of 19% (approximately € 2.4 billion) of the total contract value done through e-procurement were achieved by the Federal Government in 2012 as a result of the use of e-procurement. In the European Union, e-procurement platforms have been established in many countries and are increasingly used for common or off-the-shelf goods.

In addition to efficiency benefits, e-procurement systems can be used to provide integrity benefits as well. These systems can limit direct interactions between officials and potential suppliers. KONEPS, the e-procurement system managed by the public Procurement Service (PPS) of Korea is described below.

Box 6. Integrated e-procurement system KONEPS in Korea

In Korea, a notable improvement has been made in the transparency of public procurement administration since the early 2000s through the implementation of a national e-procurement system.

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

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

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

projects. In 2011, PPS launched a new bidding service allowing the bidding process to take place via smartphones through newly developed security tokens and applications.

Source: Public Procurement Service (PPS), Korea

E-procurement systems can also help to ensure that officials have access to relevant and useful data regarding prior vendor performance, bribery condemnations and other integrity breaches. For example, the United States, requires its contracting officers to determine that a vendor is a “responsible source” before proceeding with a contract award. To be deemed responsible, a prospective contractor must have a satisfactory performance record and a satisfactory record of integrity and business ethics, among other criteria, and contracting officers are allowed considerable discretion in making this type of decision. Two of the systems used to support them in their decision-making are described below.

Box 7. Vendor Performance Information in the United States

In working to build the right supplier relationships, the United States focuses on doing business with contractors who place a premium on integrity, performance and quality. To this end, agencies have been directed to improve the quantity, quality, and utilization of vendor performance information. Vendor past performance information including an identification and description of the relevant contract, ratings across six dimensions (quality, schedule, cost, utilization of small business, etc.), and a narrative for each rating - is contained within the Past Performance Information Retrieval System (PPIRS). Additional information regarding certain business integrity issues - including contracts terminated for default or cause; information about criminal, civil, or administrative procedures related to a federal contract; and prior findings that a contractor is not responsible - is captured in the Federal Awardee Performance and Integrity Information System (FAPIS). Agencies are taking steps to improve the value of both systems by providing information that is both more complete and more useful.

Agencies are required to report past performance information, which will then be available to other contracting officers within PPIRS, on all contracts and orders above USD 150,000 (with various exceptions). However, an initial analysis showed that compliance varied widely among agencies. As a result, in March of 2013, the United States established a tiered-model of annual performance targets to bring all agencies to 100% compliance by 2015.

To improve reporting compliance in FAPIS, the United States utilizes information contained in the Federal Procurement Data System – Next Generation (FPDS-NG) to identify contracts that should have entries within FAPIS (e.g., those where the contract was terminated for default or terminated for cause on the part of the vendor). By cross-checking with existing data sources, agencies are provided with a cost-effective mechanism to improve compliance.

Finally, recognizing that both systems are only as useful as the quality of the data that is entered, agencies were directed to ensure that their acquisition professionals are knowledgeable regarding the past performance regulations and procedures, and trained to use the reporting tools appropriately.

These are all important steps as the United States continues to explore ways to ensure that the most relevant and recent past performance information is accessible, useful, readily available, and transparent to acquisition officials before award decisions are made.

Source: United States Office of Federal Procurement Policy (OFPP), Improving the Collection and Use of Information about Contractor Performance and Integrity (March 6, 2013). Available at: <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/improving-the-collection-and-use-of-information-about-contractor-performance-and-integrity.pdf>

In line with the EU legislation, there are mandatory debarment rules in place in EU Member States according to which bidders against whom final court convictions for corruption have been handed down are excluded from future tenders¹. In many EU Member States laws contain debarment provisions and contracting authorities have also cross-access to their internal debarment databases.

With the leadership of the WB, MDBs have developed an Agreement for Mutual Enforcement of Debarment Decisions and make public the list of companies and individuals ineligible to participate in their tendering process². The 2009 OECD Anti-Bribery Recommendation calls on Parties to the OECD Convention of Bribery of Foreign Public Officials in International Business Transactions to: “suspend, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials and, to the extent a Party applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, ensure that such sanctions should be applied equally in case of bribery of foreign public officials”.

4. Promoting the participation of SMEs

In addition to providing a more efficient system, the reduction of bureaucratic burdens can increase fairness, foster integrity, and decrease corruption, especially in the case of small and medium size enterprises (SMEs). SMEs constitute more than 90% of all established businesses worldwide and are a key driver for economic growth and development. When faced with excessive administrative burdens, SME's are more likely to make illegal payments in order to circumvent the burden.³ The report *Corruption Prevention to Foster Small and Medium Sized Enterprises Development* from UNIDO & UNODC, 2007, states that SMEs are more susceptible to bureaucratic corruption than larger companies. This is due to: their structure (e.g. there is often a greater degree of informality and fewer accountability mechanisms); short-term vision and perspective (as opposed to larger companies, small and medium size enterprises may be less concerned about reputation and other long-term negative impacts of corruption); limited financial resources; and their inability to wield influence over officials and institutions, as they lack bargaining power to oppose requests for illegal payments from public officials. In addition, SMEs are also more susceptible to administrative corruption due to the fact that they often lack the time and resources necessary to get informed about complex regulations and requirements, making illegal payments to cover up mistakes or avoid overly bureaucratic procedures more likely.

Therefore, countries across the world have made use of a variety of measures to reduce bureaucracy, enabling SMEs through capacity development and limiting corruption risks affecting SMEs. Measures include one-stop shops; data-sharing and standardisation; common commencement dates for new rules; simplification of administrative procedures; and tailored guidance and trainings for SMEs, such as the one from Italy described below.

¹ http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

² World Bank Listing of Ineligible Firms & Individuals is available at <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

³ U4. Reducing bureaucracy and corruption affecting small and medium enterprises. Available at <http://www.u4.no/publications/reducing-bureaucracy-and-corruption-affecting-small-and-medium-enterprises/>

Box 8. Supplier Training Desks (STDs) in Italy

Italy has strengthened its co-operation with suppliers by setting up Supplier Training Desks (STDs) (“Sportelli in Rete” in Italian) within the offices of suppliers’ associations. STDs provide training and assistance to local enterprises and in particular micro, small and medium enterprises (MSMEs) on the use of electronic procurement tools. The project consists of a network of dedicated training desks over the country where the central purchasing agency, Consip experts train workforce from the associations that will subsequently train local MSMEs on the use of electronic procurement tools. In Italy, MSMEs (Micro Enterprises) tend to participate to lower value public procurement tenders. Their participation to tenders from 100.000 to 300.000 euros corresponds to 65%, whereas to tenders from 1 to 5 million euros their participation decreases up to 51% and to 30% for tenders with a value higher than 5 million euros.

The project addresses point 5 of the European Small Business Act (SBA): “Adapt public policy tools to SME needs: facilitate SMEs’ participation in public procurement and better use State Aid possibilities for SMEs”, it has also been quoted as a good practice, at a European level, in the “European Code of Best practices facilitating access by SME’s to public procurement contracts” and has been winner of the European eGovernment Awards in the category “empowering business”.

This project has been well received and attended by MSMEs. Since the beginning of the project, more than 2250 MSMEs were supported by the Supplier Training Desks, and obtained the qualification to the public emarketplace implemented by Consip for low value purchases through ecatalogues (MePA). Around 1000 of these enterprises were qualified in 2013, which corresponds to 44% of the total. 11 National Enterprises Associations are involved in the project. Their role is fundamental since they are recognized, by the enterprises, as the local reference institution. As a result, in 2013, more than 21000 SMEs represented 98% of on line enterprises (online at least once between 1st of January and 31st of December) and 14000 SMEs represented 98% of active enterprises (active means having been awarded at least once between 1st of January and 31st of December).

Table 1 On line and active enterprises in 2013

Size of enterprise	On line	Active
Medium	5%	6%
Micro	68%	66%
Big	2%	2%
Small	25%	26%
Total	100%	100%

Furthermore, in 2013 97% of the number of transactions (337.682) was handled by SMEs and 93% of the value (907 million€) was gained by SMEs.

Table 2: Volume and value of transactions in 2013

Size of enterprise	Volume of transactions	Value of transactions
Medium	12%	16%
Micro	54%	42%
Big	3%	7%
Small	31%	35%
Total	100%	100%

Today, more than 200 training desks are active and scattered around the country, providing continuous free training and assistance. The MePA has allowed thousands of SMEs to make business during the last five years making it a very suitable procurement tool for SMEs who are the highest percentage of enterprises using it.

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

Source: CONSIP

The European Commission is also taking action to minimise administrative burdens for SMEs and make it easier for SMEs to participate in tenders.

Box 9. Reducing red tape in the EU

There are more than 20 million SMEs in the EU, representing 99% of businesses. SMEs are a key driver for economic growth, innovation, employment and social integration. The economic outlook for the EU SMEs shows positive signs with a combined increase in aggregated employment and value-added of EU's SMEs. The Commission is taking action to ensure that its policies and programmes sustain this positive trend by reducing administrative burden for small business. Reducing administrative burden for small business is a joint challenge for the Commission and the Member States.

In 2012, the Commission ran a public consultation to identify the Top 10 most burdensome legislative acts. The public consultation on the TOP10 most burdensome legislative acts for SMEs ("TOP10 public consultation") is part of the ambitious policy actions launched by the Commission in 2011 with the objective to minimise the regulatory burden for SMEs and adapt EU regulation to the needs of micro-enterprises.

The following EU laws were identified by SMEs as being the most burdensome: REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals), VAT - Value added tax legislation, General Product Safety, Recognition of professional qualifications, Shipments of waste - Waste framework legislation - List of waste and hazardous waste, Labour market-related legislation, Data protection, working time, recording equipment in road transport (for driving and rest periods), procedures for the award of public contracts (public works, supply and service contracts), modernised customs code.

Progress on reducing burdensome legislation

In Summer 2013 the Commission reported that it had already proposed simplification of the EU laws on:

- data protection,
- posting of workers,
- general product safety,
- public procurement
- recognition of professional qualifications and road transport

New EU directives on public procurement and concession contracts were adopted on 15 January 2014 to ensure better quality and value for money when public authorities buy or lease works, goods or services. They will also make it easier for SMEs to participate in tender procedures.

The Directives aim at:

- Creating a modern public procurement legislative framework and ensuring greater efficiency of public procurement;
- Simplification and flexibility of rules;
- Reducing the administrative burden on public authorities and potential contractors;
- Facilitating Small and Medium Enterprises' participation;
- Stimulating of greater competition across the Single Market;
- Switching to electronic procurement;
- Promoting innovation and contributing to a better use of resources.

Rules under the new directives which are favourable for SMEs include the simplification of the bidding procedure with a standard "European Single Procurement Document" based on self-declarations. Only the winning bidder will have to provide original documentation. The European Commission estimates that this should reduce the administrative burden on companies by over 80%. The new rules also encourage the division of contracts into lots to make it easier for smaller firms to bid.

Source: <http://www.europarl.europa.eu/news/en/news-room/content/20140110IPR32386/html/New-EU-procurement-rules-to-ensure-better-quality-and-value-for-money>

II. Mechanisms for integrity and accountability

Integrity is a cornerstone of good governance and critical for maintaining trust in government. A sound management of procurement contracts is critical for transparent and accountable spending of taxpayer's money -- procurement accounts on average a third of government spending -- and also essential to building a stronger, cleaner and fairer global economy.

Based on the experience of G20 countries, specific standards for procurement officials, such as: codes of conduct, conflict-of-interest policies, could mitigate the risks related to the specificities of the public procurement process, in addition to wider standards and procedures applicable in the whole public service, such as clear whistle-blowing reporting procedures and effective protection for whistle-blowers. Integrity in procurement also depends on mechanisms and capacity that ensure effective internal and external control as well as guidance or trainings on integrity issues for public procurement officials. Finally, in response to citizens' demands for accountability in the management of public expenditures, some governments have also introduced direct social control mechanisms by involving stakeholders – the private sector, end-users, civil society, the media or the public at large – in key stages of the procurement processes.

1. National integrity standards and tools for procurement specialists

Procurement officials bear an important responsibility in maintaining integrity and therefore this impacts the trust that citizens hold in the government's ability to deliver effectively goods and services. Recognizing this, countries apply national integrity standards for all public officials -- for example in civil service regulations -- and standards for specific at-risk positions, such as for procurement officials, tax and customs officials or financial authorities. Specific standards for procurement officials are set in laws and regulations, for example in Saudi Arabia, Mexico, the United States and Turkey (see example below).

Box 10. Setting clear ethical standards for procurement officials: The 2002 public procurement reform in Turkey

The Turkish public procurement system experienced a major reform in 2002 in order to address the following shortcomings:

- Most public agencies were not covered by the law, and had the right to issue their own regulations on procurement. This resulted in a dozen of regulations covering different public agencies.
- Publication of notices was not required for all procurement methods and even when it was obligatory, announcement periods were too short for interested economic operators.
- Selection and evaluation criteria were not objectively determined and pre-announced.
- Unsuccessful bidders were not informed about the decision of the contracting entity.

With the 2002 Public Procurement Law (PPL), the Public Procurement Authority (PPA) was established as an administratively and financially autonomous entity at the central governmental level to regulate and monitor public procurement. In order to prevent problems encountered previously, measures were introduced by the law to prevent pressures from interest groups and set higher ethical standards for officials as follows:

- The Authority shall be independent in the fulfilment of its duties. No organ, office, entity or person can issue orders or instructions for the purpose of influencing the decisions of the Authority.
- The Authority is comprised of the Public Procurement Board, the Presidency and service units. Members of the Public Procurement Board are appointed by the Council of Ministers and must have no past or present relationship of membership with any political party. Members of the Board are nominated for a four-year terms and, once appointed, cannot be revoked before the expiry of their term.

- Members of the Board take an oath that they will fulfil their duties in an honest and impartial manner, that they will not violate and let others violate the provisions of the PPL Law and related legislation.
- Members of the Board, except for some legally-defined exceptions, cannot be involved in any official or Private job, trade or freelance activity, and cannot be a shareholder or manager in any kind of commercial partnership. Members of the Board are obliged to dispose of any share or securities they have acquired prior to taking office, via transferring them to persons other than their relatives by blood up to third degree or by marriage up to second degree, within thirty days following the start of their assignment periods, except for those securities issued by the Under secretariat of Treasury for domestic borrowing purposes. The members who do not act in compliance with this provision shall be deemed resigned from their memberships.
- Members of the Board are obliged to submit a declaration of property, within one month following the date of commencement and expiry of office, and every year during their service period.
- When executing their duties, Members of the Board and the staff of the Authority cannot disclose any confidential information or document to any entity except for those authorised by law for such disclosures, and cannot use them for the benefit of their own or third parties. This duty of confidentiality shall also continue after they leave their offices.
- Members of the Board cannot participate in meetings and voting sessions related to decisions concerning their relatives by blood up to third degree or by marriage up to second degree and fosters.

In addition to safeguards provided in the Public Procurement Law, “Regulation on Principles Which Public Procurement Board Members and Public Procurement Authority Staff Must Observe” was adopted and published in the Official Journal in 21.01.2003. The regulation provides, inter alia, that Members of the Board and Public Procurement Authority Staff:

- Cannot act for real or legal persons who deal with Public Procurement Authority, cannot borrow from them or their employees or cannot use them as personal surety.
- Cannot make a commitment or promise about the regulatory or supervisory activities concerning their duties.
- Neither them nor their spouses and family members which they support can accept a gift from persons who deal with Public Procurement Authority.
- Cannot use confidential information they obtained in carrying out their duties for their own interest, cannot make recommendations or comments based on such information.
- Neither them nor their spouses and family members which they support can acquire goods or real estate from persons who deal with Public Procurement Authority or from their subsidiaries other than goods or real estate they sell as part of their usual commercial activity; Public Procurement Board Members and Public Procurement Authority Staff cannot obtain or become an intermediary for others to obtain goods or services from them below the price announced to public in general.
- Cannot buy, sell or own any share or securities except for those securities issued by the Under secretariat of Treasury for borrowing purposes.
- Must carry out regulatory activities in a transparent manner open to public in order to prevent an impression that contacting with a company or a group of companies in drafting regulation puts them in a privileged position.
- Cannot ask others to intervene/ mediate for their assignment, appointment or promotion within the Public Procurement Authority.

Source: Public Procurement Authority, Turkey.

A few G20 countries, such as France and Canada (see example below), introduced specific codes of conduct for procurement officials in addition to general integrity standards in the form of a code of conduct or code of ethics for the whole public service. They have also developed guides or guidelines to help procurement officials apply these standards in daily practice. The standards expected of procurement officials - in particular specific restrictions and prohibitions - aim to ensure that officials' private interests do not improperly influence the performance of their public duties and responsibilities. Most common conflict-of-interest situations are related to personal, family or business

interests and activities; gifts and hospitality; disclosure of confidential information and future employment.

Box 11. Code of Conduct for Procurement officials in Canada

The Government of Canada spends billions of dollars a year on the procurement of goods and services. The government has a responsibility to maintain the confidence of the vendor community and the Canadian public in the procurement system, by conducting procurement in an accountable, ethical and transparent manner.

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

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

The government expects that all those involved in the procurement process will abide by the provisions of this *Code*.

Source: www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html

Integrity standards in the public procurement process do not apply only to procurement officials, but also to the private sector. For example, Integrity Pacts, developed by Transparency International (TI)⁴ in the 1990s, oblige government officials and companies to adhere to an ethical conduct. The three main objectives are to enable:

- Companies to abstain from corruption by providing assurance to them that the competitors will similarly refrain from corruption, and that government agencies are also committed to prevent corruption;
- Governments to reduce the high costs and the distortion effect of corruption in public procurement; and
- Citizens to more easily monitor public decision-making and their government's activities.

Integrity pacts are adaptable to many contexts and have been applied in various regions of the world. They are flexible tools that can be applied to: construction contracts; goods and services contracts; state asset privatisation programmes; state licences or concessions and extraction rights (oil or gas exploration and production, mining, fishing, logging, for example); or government-regulated services such as public-private partnerships, telecommunications, water supply and waste collection services. They have been used by several G20 countries:

Argentina Public hearings –Poder Ciudadano

⁴ Source: Transparency International. http://archive.transparency.org/global_priorities/public_contracting/integrity_pacts

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

Box 12. Integrity Pacts in India

In the recent past CVC has taken commendable initiatives in terms of promoting electronic solutions and Integrity Pacts. Integrity Pacts in procurement help governments, businesses and civil society to fight corruption in the field of public contracting via an agreement on no corruption between the procurement agency and all bidders for a public sector contract. In India, Integrity Pacts hold additional relevance for the following reasons:

- Low rating in the Corruption Perception Index;
- History of scandals and delays in Public Procurement;
- Existing anti-corruption regulations have had limited success.

39 public sector companies are using Integrity Pacts in their procurement process. According to a Transparency International -India document, 96% of Integrity Pact Compliant Public Sector Undertakings feel that the Integrity Pact has helped in making procurement process more transparent and 100% feel that the procurement process will not be better off without IP.

Integrity Pacts in India has been used in several sector such as energy (gas, oil, thermal power), telecommunication or airport construction. In addition, India has developed specific Integrity Pacts in defence procurement. The Defence Procurement Procedures (DPP) 2006 for the first time introduced a provision called pre-contract Integrity Pact, in a move to eliminate ‘all forms of corruption’ in defence deals. The DPP 2006 provided for the appointment of Independent Monitors (IMs), who would be responsible to examine any violations of the Pact, brought to notice by the buyer. However, DPP 2006 did not mention the precise role and power of the IMs. An Amendment in 2009 includes clauses on precise role and powers to IMs.

Henceforth, IMs are authorised to scrutinize complaints with regards to violation of Integrity Pacts, through the access to ‘the relevant office records in connection with the complaints sent to them by the buyer.’ According to Defence Procurement Procedures 2011, Integrity Pacts are applicable in procurements worth Rs 100 crores (approximately USD 16 million) & above and in Defence Enterprises at Rs 20 crores (approximately USD 322 thousand) & above.

Source: Draft National Anti-Corruption Strategy <http://cvc.nic.in/NationalAntiCorruptionStrategydraft.pdf> and Assessment of Integrity Pact (IP) in IP Compliant Public Sector Undertakings. Transparency International. http://www.transparencyindia.org/resource/survey_study/Assessment%20of%20Integrity%20Pact%20in%20IP%20compliant%20PSUs.pdf

In addition to broad procurement-related standards, or agreements specific to an individual procurement action, some countries have developed standards to fight particular forms of fraud. Bid-rigging is one such type of fraud, as seen in the example from Japan below.

Box 13. Preventing bid-rigging in Japan

Fighting bid rigging is a high priority for the Japan Fair Trade Commission (JFTC). Accordingly JFTC has taken proactive measures against bid rigging by sanctioning conspirators if it finds bid rigging has occurred.

For the purpose of preventing bid rigging, the Act on Elimination and Prevention of Involvement in bid rigging came into force in January 2003. The Act provides that the head of procurement institutions shall take action to eliminate bid rigging if requested by the JFTC.

More generally, in order to promote competition and prevent cartels in public procurement, the JFTC made the following recommendations;

- For contracts open to competition, open bidding is appropriate.
- The names of designated bidders should be announced after the submission of bids.
- The estimated price should only be announced after the submission of bids.

The following table presents the number of JFTC's legal actions in recent years against antitrust violations as a whole and against bid rigging, the amount of penalties against antitrust violations as a whole and against bid rigging, and the number of the JFTC's requests to the head of procurement institutions under the Act on Elimination and Prevention of Involvement in Bid Rigging.

Fiscal year	2008	2009	2010	2011	2012
Number of legal actions against Anti-trust	17	26	12	22	20
Of which bid rigging of public procurement	2	10	3	7	4
Amount of penalty(billion yen) against Anti-trust	25.8	24.2	36.3	44.3	23.4
Of which bid rigging of public procurement	0.6	3.0	1.9	1.7	1.8
Number of the JFTC's request to the head of procurement institutions under the Act on Elimination and Prevention of Involvement in Bid Rigging	1	2	1	1	1

The JFTC organises training sessions for procurement officials in central government agencies and local governments, and provides them with training materials. In 2012, the JFTC sent trainers to central government, local public bodies and specified enterprises on 214 occasions and held 21 training sessions throughout Japan.

Fiscal year	2010	2011	2012
Number of trainers	142	158	214
Number of training sessions	23	20	21
Total number of participants at training sessions	12,495	12,682	18,620

Source: Japan Fair Trade Commission

2. Integrity training for procurement officials

Ethics or integrity training for public officials, and procurement officials in particular, can raise awareness, develop knowledge and commitment, critical elements of a culture of integrity in public organisations. The UN Convention against Corruption (UNCAC) requires that the State Parties adopt, maintain, and strengthen systems "that promote education and training programmes to enable them [civil servants] to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions." Training on integrity, ethics

and anti-corruption is provided in many countries around the world to prevent corruption and mismanagement of public funds. Countries such as Germany and France provide specific integrity training for procurement officials.

Box 14. Integrity training in Germany

The Federal Procurement Agency is a government agency which manages purchasing for 26 different federal authorities, foundations and research institutions that fall under the responsibility of the Federal Ministry of the Interior. It is the second largest federal procurement agency after the Federal Office for Defence Technology and Procurement.

The Procurement Agency has taken several measures to promote integrity among its personnel, including support and advice by a corruption prevention officer, the organisation of workshops and training on corruption and the rotation of its employees.

Since 2001, it is mandatory for new staff members to participate in a corruption prevention workshop. With the help of a prosecutor from the district prosecution authority, they learn about the risks of getting involved in bribery and the briber's possible strategies. Another part of the training deals with how to behave when these situations occur; for example, by encouraging them to report it ("blow the whistle"). Workshops highlight the central role of employees whose ethical behaviour is an essential part of corruption prevention. In 2005 the target group of the workshops was enlarged to include not only induction training but also on-going training for the entire personnel. About ten workshops took place with 190 persons who gave a positive feedback concerning the content and the usefulness of this training. The involvement of the Agency's "Contact Person for the Prevention of Corruption" and the Head of the Department for Central Services in the workshops demonstrated to participants that corruption prevention is one of the priorities for the agency.

Another key corruption prevention measure is the staff rotation after a period of five to eight years in order to avoid prolonged contact with suppliers, as well as improve motivation and make the job more attractive. However, the rotation of members of staff still meets difficulties in the Agency. Due to a high level of specialisation, many officials cannot change their organisational unit, their knowledge being indispensable for the work of the unit.

Source: Federal Ministry of Justice, Germany

Box 15. Specialised training for public procurement in France

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

Issue at stake

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

Stage one: Checking compliance with public procurement procedures

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

Stage two: Replying to the losing bidder

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

Stage three: Suspicions

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

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

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

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

Conclusion

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

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

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

3. Internal and external controls

Effective internal controls are essential to ensuring that goals and objectives are accomplished. Internal controls in procurement, including financial controls, internal audit and management controls, help in monitoring the performance of the procurement system, assisting in compliance with laws and regulations and ensuring reliable reporting. Internal control verifies whether chains of responsibility are clear and the delegated levels of authority for approval of spending and sign-off, and approval of key procurement milestones are well-functioning.

Box 16. Electronic workflow: Processing and tracking information on public procurement in Germany

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

Source: Federal Ministry of Justice, Germany

In many G20 countries, complaints at the administrative level can prove useful, because they can lead to quick and inexpensive resolution of disputes, especially where breaches are caused by negligence of contracting authorities. If, alternatively, no breach has occurred, the authorities are given the opportunity to explain this to the complainant, presenting their arguments for their position. This is for example done by Saudi Arabia.

Box 17. Committee of advisors for the resolution of complaints in Saudi Arabia

The Kingdom of Saudi Arabia adopted in 2006 a new Procurement Law and its Implementation Regulations to improve the efficiency and transparency of the national procurement system in order to achieve value for money and increase accountability. One of the means to increase control and accountability are improved complaints mechanisms.

To achieve a quick resolution of complaints, the Minister of Finance forms a committee of advisors comprised of at least three members from the Ministry and personnel of other relevant government authorities. The committee is headed by a legal advisor and includes among its members a technical expert. The committee is re-formed every three years and its membership may only be renewed once.

This committee reviews compensation claims submitted by contractors and suppliers as well as reports of deceit, fraud and manipulation. It also reviews claims submitted by government authorities to the Minister of Finance requesting to exclude from public contracts the contractors who executed a project in a defective manner or in violation of the terms and specifications of the project, for a period not exceeding five years.

The procedure before the committee can take place in person or in writing. The committee may seek the assistance of technical specialists and issues its decision, with all its members attending, unanimously or by majority. The dissenting opinion, if any, and the arguments of each party is stated in the minutes of the committee.

Source: Government Tenders and Procurement Law and the Saudi National Anti-Corruption Commission

Centralised internal control, for example in Brazil (see below), plays a crucial role in ensuring consistency in the application of procurement rules and standards across the whole public sector.

Box 18. Public Spending Observatory in Brazil

The Office of the Comptroller General of the Union launched the Public Spending Observatory (*Observatório da Despesa Pública*) in 2008 as the basis for continuous detection and sanctioning of misconduct and corruption. Through the Public Spending Observatory, procurement expenditure data are cross-checked with other government databases as a means of identifying atypical situations that, while not *a priori* evidence of irregularities, warrant further examination. Based on the experience over the past several years, a number of daily actions are taken to cross procurement and other government data. This exercise generates “orange” or “red” flags that can be followed up and investigated by officials within the Office of the Comptroller General of the Union. In many cases, follow-up activities are conducted together with special Advisors on Internal Control and internal audit units within public organisations. Examples of these tracks related to procurement and administrative contracts include possible conflicts of interest, inappropriate use of exemptions and waivers and substantial contract amendments. A number of tracks also relate to suspicious patterns of bid-rotation and market division among competitors by sector, geographic area or time, which might indicate that bidders are acting in a collusive scheme. Finally, tracks also exist regarding the use of federal government payment cards and administrative agreements (*convenios*). In 2013, there were 60,000 instances of warnings originated from the computer-assisted audit tracks used by the Office of the Comptroller General of the Union to identify possible procurement irregularities, like:

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

Source: OECD (2012), *OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service*, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264119321-en>

There is growing recognition to assess risk regularly in order to determine the nature and extent of the risks, for example to distinguish between a simple mistake in performing an administrative task and a deliberate transgression of relevant laws and related policies. In order to prevent and detect irregularities and failures in procurement processes, Brazil, France, and Korea have increasingly mapped out risk factors and vulnerabilities of the integrity of the public procurement process.

4. Direct Social Control

Direct accountability to the public and other stakeholders is a fundamental means of increasing transparency and integrity in decision making. In the past, several G20 countries such as Argentina, Indonesia and Mexico have involved stakeholders, including private sector organisations, end-users, civil society, the media and the public at large, in the procurement process. More recently, some countries have introduced direct social control by involving citizens at critical stages of the procurement process. Mexico is one of the first G20 countries with experience of direct social control through the involvement of social witnesses in the procurement process.

Box 19. Social witnesses in Mexico

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

Social witnesses are non-government organizations and individuals selected by the Ministry of Public Administration (SFP) through public tendering. SFP keeps a registry of the approved social witnesses and evaluates their performance; unsatisfactory performance potentially results in their removal from the registry. When a federal entity requires the involvement of a social witness, it informs SFP who designates one from the registry.

As of January 2014, SFP had registered 39 social witnesses for public procurement projects, five Civil Society Organisations and 34 individuals. This number has grown from 5 social witnesses in 2005 to 40 in 2014.

SFP notes that “the monitoring of the most relevant procurement processes of the federal government through social witnesses has had an impact in improving procurement procedures by virtue of their contributions and experience, to the point that they have become a strategic element for ensuring the transparency and credibility of the procurement system”. An OECD-World Bank Institute study (2006) indicates that the participation of social witnesses in procurement processes of the Federal Electricity Commission (*Comisión Federal de Electricidad*) created savings of approximately USD 26 million in 2006 and increased the number of bidders by over 50%.

Source: OECD (2013), *Public Procurement Review of the Mexican Institute of Social Security: Enhancing Efficiency and Integrity for Better Health Care*, OECD Public Governance Reviews, OECD Publishing.
<http://dx.doi.org/10.1787/9789264197480-en>

5. Complaint mechanisms

Effective remedies for challenging procurement decisions are essential to build bidders' confidence in the integrity and fairness of the procurement system. Key aspects of an effective recourse system are timely access, independent review, efficient and timely resolution of complaints and adequate remedies.

Providing remedies before the contested contract is signed is essential to make sure that an aggrieved bidder maintains a chance of winning the contract. Several countries have introduced a mandatory standstill period between the contract award and the beginning of the contract to allow legal action by the harmed bidder in order to secure a reasonable opportunity to be reinstated in the procurement procedure. Reforms of public procurement laws in EU countries have been carried out in compliance with the 2007/66/EC Directive on remedies.

Box 20. Remedies Directives of the European Union

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

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

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

The aim of the Directives is to allow irregularities occurring in contract award procedures to be challenged and corrected as soon as they occur, therefore to increase the lawfulness and transparency of such procedures, build confidence among businesses and facilitate the opening of local public contracts markets to competition from all over Europe. Remedies Directives **coordinate national review systems** by imposing some **common standards** intended to ensure that rapid and effective means of redress is available in all EU countries in cases where bidders consider that contracts have been awarded unfairly. Both Directives were amended by Directive 2007/66/EC which introduced two main features:

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

Source: http://ec.europa.eu/internal_market/publicprocurement/infringements/remedies/index_en.htm<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:335:0031:0046:EN:PDF>

Experiences of G20 countries have shown how essential the efficiency of the resolution of complaints is to reduce the time spent in litigation, for example in Canada, Germany and Japan (see example below).

Box 21. The Office for Government Procurement Challenge System in Japan

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

The Government Procurement Review Board (the Board) composed of 7 committee members and 16 special members receives and reviews complaints. The Office of Government Procurement Review (OGPR) headed by the Chief Cabinet Secretary and with administrative vice-ministers or directors from all ministries and agencies as its members is also notified of review procedures.

Persons or bodies wishing to file a complaint may do so with the Board within ten (10) days after the basis of the complaint is known. The Board will examine complaints received within seven (7) working days of filing and determine whether they will be accepted for review. If a complaint is accepted for review, the Board will immediately notify the complainant, OGPR, and the procuring entity of this in writing and publicly announce its decision through the Official Gazette, the Internet (<http://www5.cao.go.jp/access/english/kouji-e.html>), and other means, soliciting the attendance of participants interested in the complaint. The procuring entity is required to present a report to the Board; if the complainant or the participants disagree with this report, they may present

statements to the Board or request a review by the Board, which the Board will subsequently undertake. Finally, a report on findings will be drawn up within ninety (90) days by the Board in cases of standard review. This period can be shortened if the complainant or the procuring entity so desire. This time limit may also vary according to the type of procurement of the complaint. If the Board finds that procurement has been carried out in a manner inconsistent with any provision of the Agreement on Government Procurement or other applicable measures, it will draw up recommendations with the report. The procuring entity is required, as a rule, to follow the recommendations of the Board.

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

Source: Minister of Foreign Affairs, Japan

Another good practice that resulted from the experience of some G20 countries is the use of alternative dispute resolution mechanisms. These eliminate the need to resort to litigation. Ombudsmen/mediators may conduct investigations of procurement activities and resolve matters by conciliation, for example, in Australia and Brazil. Canada introduced a Procurement Ombudsman to promote fairness, openness and transparency in federal government procurement by reviewing complaints and providing the possibility of an alternative dispute resolution, as described below.

Box 22. Procurement Ombudsman in Canada

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

Objectives

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

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

Implementation process

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

Impact and monitoring

Between May 2008 and March 2011, the Office of the Procurement Ombudsman: handled more than 1 200 inquiries and complaints and conducted 6 investigations into contract award issues; dealt with 21 requests for an alternative dispute resolution process for contractual disputes; and conducted 12 procurement practice reviews

which involved 26 different federal government departments and agencies.

A formal evaluation was carried out which highlighted the following results:

1. The Office of the Procurement Ombudsman is looked upon as a neutral and independent body that stakeholders are willing to work with in a spirit of mutual co-operation to make improvements.
2. The collegial approach to procurement disputes has been very well received.
3. Parties involved in contractual disputes have indicated they appreciate the respectful environment the Office of the Procurement Ombudsman creates and the effect this had on their ability to deal with an unfavourable situation and move forward.

Source: OECD (2013), *Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008*, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264201385-en>

6. Additional safeguards for major public events

Major events usually require the procurement of a wide range of goods, public works and services on a very large scale and in a limited period of time increasing the risks for fraud, corruption and mismanagement of public funds and corruption. Therefore, a better understanding of the risks associated with major events, as well as corresponding policies and procedures to minimize these risks, are needed.

According to UNODC, “Major public events involve complex logistical arrangements, years of planning and can span more than one nation. Examples of these events include: the FIFA World Cup, the Olympic Games, golf's Ryder Cup, cycling's Tour de France, as well as international political events such as the G20 Summits [...] Given the huge amounts of money involved, both in the organization of, and the income derived from major public events, any failure can have enormous political, financial and economic consequences for agencies, sponsors and countries. But, the exceptional nature of these events increases the likelihood that regulations and procedures might be set aside or ignored. These problems are exacerbated by the shortness of time for the delivery of large scale infrastructure projects often leading to a lack of oversight and transparency in the allocation of public funds.”⁵

Box 23. UNODC'S Strategy for Safeguarding against Corruption in procurement of Major Public Events

Communication of information to potential contractors and suppliers

All communications with potential contractors and suppliers must be handled fairly so as to avoid giving or appearing to give an undue advantage to any of them. All communications should be fully documented and kept for future reference.

In order to prevent any abuse of selection procedures and to promote confidence in the selection process, confidentiality must be observed by all parties, especially where negotiations are involved. Proactive measures are necessary to support and supervise employees performing discretionary decision-making on behalf of the organization.

Pre-qualification and pre-selection of contractors

Time pressures and predictable calls for efficiency and expediency should not in any way weaken existing procedures to properly document procurement decisions and allow for the subsequent verification of the application of the relevant rules and criteria.

The Authority responsible for a major event should have well-defined, fair and transparent procedures to pre-qualify or pre-select potential suppliers and contractors. The procedures should be designed to ensure that

⁵ <http://www.unis.unvienna.org/unis/en/pressrels/2013/uniscp728.html>

potential suppliers and contractors meet certain ethical standards, are solvent, and have the capacity to deliver what they offer. The procedures should allow for the exclusion of potential suppliers and contractors when there is evidence of a conflict of interest, or of corrupt or unethical conduct on their part.

Pre-selection procedures should verify the qualifications of potential contractors or suppliers, including professional and technical qualifications, managerial capacity, financial resources, and the legal capacity to enter into a procurement contract. They must meet ethical standards and cannot be insolvent or bankrupt. They should not be the subject of legal proceedings for insolvency, breach of ethical standards, or acts of corruption.

There should be a fair and transparent system in place to ensure that certain potential suppliers or contractors can be excluded from the procurement process when there is evidence that they have bribed or attempted to bribe someone to influence the procurement process, when they are in a position of conflict of interest when they have an unfair competitive advantage.

Proposal evaluation and criteria

The criteria relating to the procurement exercise must be set in advance, be fair, and be publicly available. The evaluation procedure should be made public and the evaluation process must be transparent. The integrity of the evaluation process must be protected at every stage of that process. Develop policies and procedures that employ transparent market-driven approaches to tendering and bid evaluation

Any deviation from stated procedures must continue to maintain high standards of probity and integrity and must be properly justified, documented and recorded. If it is deemed necessary to revise and adapt existing policies and processes, or if deviations from these policies are to be allowed, any changes or exceptions to existing policies should be adopted in a transparent and publicly accountable manner.

Challenges to procurement proceedings

It is important for the Authority to have a proper process in place whereby potential contractors and suppliers who participated in the procurement proceedings may challenge the process, bring to its attention any alleged non-compliance with applicable laws, policies and procedures, or apply for reconsideration of a procurement decision made.

Source: The United Nations Convention against Corruption: A Strategy for Safeguarding against Corruption in Major Public Events. http://www.unodc.org/documents/corruption/Publications/2013/13-84527_Ebook.pdf

Box 24. Initiatives for Safeguarding against Corruption in procurement in Olympic and Paralympic Games, London, UK and Beijing, China

2012 Olympic and Paralympic Games-London, UK

For the 2012 Olympic and Paralympic Games, the United Kingdom Olympic Delivery Authority (ODA) was formed to take on the job of building the venues and infrastructure and procuring the services required for the Games. As a non-departmental public body within the United Kingdom Government's Department of Culture, Media and Sport, the ODA was required to comply with the country's public sector procurement regulations and the principles of fairness, transparency and non-discrimination. At the outset of the procurement activity, ODA engaged in a process of developing its own procurement policy after extensive consultation and having it endorsed at the highest level. The establishment of policy objectives in advance of the procurement process made it possible to assess bid compliance against these objectives. Key elements of the policy were then combined with procurement guidance to create a standard procurement code which provided detailed guidance to the procurement team. This code, as well as the process by which it was developed, may serve as a useful example for other countries in relation to procurement and legacy issues.

The United Kingdom Olympic Delivery Authority ensured that it met its obligations under the law, particularly around risk, brand protection and stakeholders' rights by ensuring that its suite of contracts also included collateral warranties for key interested parties, restrictions of ownership of tier one contractors, enhanced conflict of interest provisions, fraud prevention and whistle-blowing requirements, and enhanced intellectual property rights

2008 Olympic and Paralympic Games-

For the Beijing 2008 Olympics, the organizing committee established a department for the management and supervision of contracts, the Legal Affairs Department. The Committee formulated a directive on *Methods Regarding Contract Management for BOCOG* with supporting rules and regulations. Management measures were instituted with respect to contract approval, liability prevention, and execution of work under supervision. Prior to the signing of any major contract by the organizing committee, the Audit and Supervision Department was required to review and approve its terms and, when necessary, recommend revisions or changes. The execution of all contracts was subject to supervision and audit by the National Audit Office.

Source: The United Nations Convention against Corruption: A Strategy for Safeguarding against Corruption in Major Public Events. http://www.unodc.org/documents/corruption/Publications/2013/13-84527_Ebook.pdf

Box 25. Efforts to enhance integrity for the Brazil's 2014 World Cup and 2016 Olympic Games

Brazil is host of the 2014 FIFA World Cup and the 2016 Olympic Games. Both events involve significant amounts of public and private resources. It has been estimated that the federal government will spend BRL 10.4 billion (USD 6.2 billion; EUR 4.5 billion) on the World Cup, along with BRL 5.5 billion (USD 3.3 billion; EUR 2.4 billion) by state and municipal governments. This will be followed by BRL 12.5 billion (USD 7.5 billion; EUR 5.4 billion) in investments for the 2016 Olympic Games.

As a result transparency, control and accountability are being reinforced by:

- The federal government of Brazil has set up governance structures for both mega-sporting events. In January 2010, a steering committee was established to define, approve and supervise the Strategic Plan of Actions for the 2014 FIFA World Cup (see Federal Decree no. 14/2010). It includes representatives from 21 federal public organisations and is headed by an Executive Group comprising of the Civil House of the Office of the President of the Republic and the Federal Ministries of Sport, Finance, Planning, Budget and Management and Tourism.
- Similarly, in May 2010, the federal government, and the state and governments of Rio de Janeiro created the Olympic Public Authority (*Autoridade Pública Olímpica*) to co-ordinate all actions and works required for the 2016 Olympic Games. The head of the authority is appointed by the President of the Republic with confirmation by the Federal Senate.
- In May 2010, the Federal Minister for Transparency and Control established obligations for federal public organisations to provide detailed information on their activities relating to the two mega-sporting events.
- Through dedicated transparency portals for 2014 World Cup and 2016 Olympic Games (see www.portaldatransparencia.gov.br/copa2014 and www.portaldatransparencia.gov.br/rio2016, respectively) expenditures estimates real-time information on expenditure disbursements is published.
- In May 2010, the Federal Court of Accounts presented its audit model to oversee expenditures related to the 2014 FIFA World Cup. It has also signed a protocol with state and municipal courts of audit in areas that will host cup matches defining their respective roles and provides for information sharing. To promote transparency and accountability, the Federal Court of Accounts has created a website to monitor the preparations for this international event as well as to publish the Federal Court of Accounts audits of the different projects involved (www.fiscalizacopa2014.gov.br). These activities are closely co-ordinated with the National Congress Permanent Subcommittee on Monitoring of Federal Public Funding for the 2014 FIFA World Cup.

Source: OECD (2012), *OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service*, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264119321-en>