Handbook

Curbing Corruption in Public Procurement

TRANSPARENCY INTERNATIONAL
the global coalition against corruption

Handbook for Curbing Corruption in Public Procurement

ACKNOWLEDGMENTS

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Published by Transparency International
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This publication has been produced with the financial assistance of the European Union and the UK Foreign and Commonwealth Office. The contents of this publication are the sole responsibility of Transparency International and can under no circumstances be regarded as reflecting the position of the European Union or the UK Foreign and Commonwealth Office. TI Malaysia received financial assistance from the Canadian High Commission for its work on the Handbook.

ISBN: 3-935711-23-9

ABOUT TRANSPARENCY INTERNATIONAL

Transparency International (TI) is the civil society organisation leading the global fight against corruption. Through close to 100 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption, and works with partners in government, business, and civil society to develop and implement effective measures to tackle it.

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Currently TI Indonesia serves not only in the Indonesian capital of Jakarta, but also in regional and field offices in 17 region. Our success has included the first ever district Integrity Pact in Solok District, Sumatra as well Aceh, Banten, part of East Java, part of South of Kalimantan, and part of South Celebes. TI Indonesia has published many books including guidebooks: Countering Bribery for Business Sectors and Corruption Perception Index in 21 cities of 2004, which periodically surveys Indonesia (due for release in 2006 Corruption Perception Index in 32 Indonesian cities), Political Party Finance, Campaign Expenditure Monitoring of 2004 Election, etc. and relevant studies: Tax Reform, Extracted Industry Initiative, National Integrity System has successfully on Political Finance Bill and General Election Bill advocacy.

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The vision of TI Malaysia is committed to the achievement of a socially just society within a sustainable, plural democracy that is free of corruption. TI Malaysia engages with the public sector, private sector and civil society through various programmes for advocacy, education, information, and research to combat corruption.

The five year strategy plan of TI Malaysia from 2006 to 2010 focuses on organisational development, advocacy, education and training, surveys, media relations, publications, and regional networking. Policy advocacy is aimed at improving the institutional pillars of the National Integrity systems, reviewing anti-corruption policies and laws and promoting greater transparency and accountability in public contracting and procurement.

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ABOUT TRANSPARENCY INTERNATIONAL PAKISTAN

Transparency International Pakistan (TI Pakistan) is the Pakistani chapter of Transparency International, established in 2002 with main aim is to strengthen the global value system by making transparency and accountability more relevant public norms. Transparency International Pakistan realises that presently public procurement in all departments of Pakistan is treated as a downstream, clerical, buying and selling function and, therefore does not attract professionalism and competent staff to deal with the meagre resources with integrity and transparency. One of the main reforms TI Pakistan has been working on since 2002 is to professionalised the organisations and individuals responsible for procurement through targeted capacity building activities. This is the core element of the initiative, addressing not only capacity building efforts at the level of agencies and individuals, but also to strengthen systems, transparency, and to tackle corruption.

Working in collaboration with other stakeholders, departments, TI Pakistan regularly published research papers, reforms, and reform manuals with aim to disseminate information for all stakeholders, and also conducts capacity building workshops in public procurements. These publications are available online on the website.

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INTRODUCTION

This Handbook for Curbing Corruption in Public Procurement is meant to be a basic introduction for all stakeholders to the challenge of overcoming corruption in the field of public procurement. Our intention is to provide the readers with real world examples of successful actions that have been taken against corruption in a variety of Asian countries. The hope is that these experiences can be "translated" and "exported" to other situations and countries with similar success. This Handbook is the report resulting from the European Union – Asia Urbs Programme, which provided funds for cross-sectoral workshops on improving public procurement in the three Asian countries described in this Handbook.

In almost all countries, public procurement through government contracting represents a large if not the largest percentage of the economy. This translates into a vast amount of money, which provides seemingly endless opportunity and temptation for corruption. The situation regarding public procurement differs widely throughout the world, and in all countries involves a complicated set of regulations and practices. This makes the area more opaque and the challenge for anti-corruption advocates even greater.

This challenge demands very aggressive and very intelligent tools, and Transparency International has accepted the task of developing such tools. Several of these are described in the following pages. It is extremely important to note that the very diverse world of public procurement leads to diverse corruption and requires diverse responses. There is not a "one size fits all" response, and even the most effective mechanism will not necessarily work immediately or all the time. We encourage you to read the following historical and legal stories, and to think how they are similar or different to the story in your own country. Then read about how civil society and governments have worked together in Indonesia, Malaysia, and Pakistan to improve the public procurement agencies and processes. Perhaps similar techniques can be applied in your own situation, but very likely many details will need to be altered. In doing so you

will become involved in the evolving dynamic that is the struggle for better and cleaner governments and businesses and in turn less corrupt societies.

This Handbook is broken down into Part I, which is meant to be a "global introduction" to procurement. Part II is further subdivided into three country chapters: Indonesia, Malaysia, and Pakistan. Each of these chapters includes descriptions of the legal and historical context of corruption in public contracting in their country as well as the various steps that have been taken to work against it.

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TRANSPARENCY INTERNATIONAL

INTRODUCTION

Procurement of goods, works and other services by public bodies alone amounts on average to between 15% and 30% of Gross Domestic Product (GDP), in some countries even more. Few activities create greater temptations or offer more opportunities for corruption than public sector procurement. Damage from corruption is estimated at normally between 10% and 25%, and in some cases as high as 40 to 50%, of the contract value.

Public procurement procedures often are complex. Transparency of the processes is limited, and manipulation is hard to detect. Few people becoming aware of corruption complain publicly, since it is not their own, but government money, which is being wasted.

The purpose of Part I of this *Handbook for Curbing Corruption in Public Procurement* is to provide an overview of the problem of corruption in public contracting (Section 1) and to offer suggestions and experiences of how this problem can be addressed (Sections 2 and 3). It addresses public authorities as well as private sector actors, such as bidders, suppliers, contractors and consultants.

SECTION 1 THE PROBLEM OF CORRUPTION IN PUBLIC PROCUREMENT – AN ANALYSIS

1.1. THE TERM PROCUREMENT

"Procurement" refers to the acquisition of consumption or investment goods or services, from pencils, bed sheets and aspirin for hospitals, gasoline for government cars, the acquisition of car and truck fleets, equipment for schools and hospitals, machinery for force account use by government departments, other light or heavy equipment or real estate, to construction, advisory and other services (from the construction of a hydroelectric power station or expressway to the hiring of consultants for engineering, financial, legal or other advisory functions).

"Procurement" for the purposes of this Handbook is defined broadly as the preparation, award and implementation/administration of contracts for goods, works and other services and thus covers not just the narrow selection of a contract partner by a purchasing body and the actual entering of a contract between the two, but the entire process from needs assessment through preparation, award and implementation/ administration of contracts for goods, works and other services such as consultant services of a technical, financial, legal or other nature.

The proposals developed in this Handbook for the purpose of cleaning up procurement processes can be applied *mutatis mutandis* for processes for the issuance of licenses (e.g. to operate certain public or quasi-public services), permits (building, restaurant, alcohol or residence or other permits), concessions (for the extraction of natural or other resources), and equally in the selection of purchasers of public assets in state-operated privatisation processes.

"Public procurement" refers to all contracts between a government (government department, publicly owned corporation and other types of agencies) and companies (public or private) or individuals.

Finally, while the Handbook deals primarily with *public* procurement, the issues are very similar with regard to private-to-private contractual relationships.

1.2. DEFINITION OF CORRUPTION

Transparency International (TI) defines corruption as "the misuse of entrusted power for private gain". "Private gain" must be interpreted widely, including gains accruing i.e. to an economic actor's close family members, political party and in some cases to an independent organisation or charitable institution in which the economic actor has a financial or social interest. This is the definition used for the purposes of this Handbook.

There rarely are criminal code definitions of corruption. Instead

criminal (penal) codes normally contain a mix of crimes that all together are considered as corruption, e.g. bribery (the giving as well as the receiving) of local or foreign government officials and private companies, facilitation payments, fraud, bid submission fraud, embezzlement, theft, collusion among bidders, bribery of parliamentarians etc. Activities that are considered illegal in one country may not fall under the criminal code provisions of another country; they may still be considered "corruption" in both countries.

Political corruption is often associated with the electoral cycle and relates primarily to election funding, or with the direct effort to buy a politician's vote or decision, either in a parliamentary vote or outside of it (such as in a parliamentary committee). Political corruption often manifests itself as lobbying or as extortion, but also through "revolving-door" moves of senior politicians directly into high business positions, often in companies whose activities were previously regulated or controlled by the same politician. In the context of this Handbook, "political corruption" refers to the involvement of politicians (rather than officials) in the procurement processes.

Corruption often is called a "control crime": Since both the bribe giver and the taker are criminals, both try to keep the crime covered up, and only control efforts by the authorities will lead to disclosure of the facts and eventual prosecution.

1.3. FORMS OF CORRUPTION

Corruption in public procurement can happen in many different ways. These range from the most common form of upfront bribery and facilitation payments to more subtle forms of political corruption.

Bribes vs. Facilitation Payments

Bribes are usually larger amounts given to senior officials (decision makers) to obtain a favourable decision where no right or claim to such decision exists, whereas "facilitation payments" usually are relatively smaller amounts paid to usually lower level officials to accelerate/facilitate

a decision to which the payer often has a legal claim (customs clearance of luggage or machinery) but which may be unduly delayed or withheld pending some payment. Both are forms of corruption and constitute illegal behaviour in most countries.

Supply vs. Demand

The initiative for bribing can originate with the bribe giver or the bribe taker; the latter case (also called extortion) often is referred to as "passive corruption", but this term is misleading since the extortionist often enough is everything but "passive".

Cartel or Collusion

Bidders often form a cartel, which then tries to manipulate the award decision in favour of one of their members, with or without the involvement of a corrupt inside official. Collusion agreements can include, for example, assigning "turns" among the cartel members for winning public bids, or agreeing to internal compensation payments for submitting high or other "failed" bids.

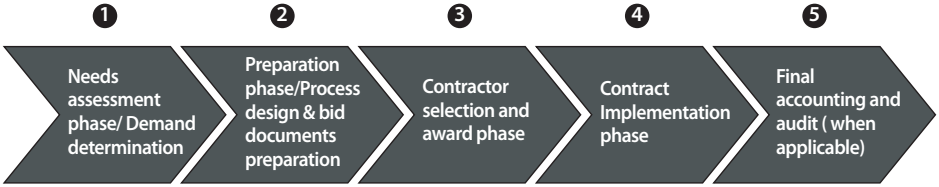
Structural vs. Situational

Corruption in a business context usually is "structural", meaning it is well planned and prepared and carried out systematically. Occasions for "situational" corruption are unplanned, e.g. when a person driving a car under the influence of alcohol is caught by the police and offers the policeman a bribe so as to induce him not to write a ticket.

1.4. MANIFESTATIONS OF CORRUPTION IN PUBLIC PROCUREMENT

1.4.1. CORRUPTION RISKS AND MANIFESTATIONS ACROSS THE PROCUREMENT CYCLE

Corruption and corruption risks can take place along the entire cycle of public procurement. The cycle includes the following most common phases:



Risks and manifestations of corruption may be different in each phase. A wise strategy to prevent or control corruption in this field will recognise the differences in these stages and will be attentive to red flags as triggers for corrective action (or due diligence) as will be indicated later in this Handbook.

A very important aspect to consider when analysing corruption risks, is to differentiate problems related to inefficiency or to basic lack of capacity (error) from pure corruption. While a "bad" outcome may originate in any of the three, the approach taken against it needs to consider more precisely the reasons why it happened, in particular if there can be criminal actions involved. Not all efficiency problems are related to corruption, and vice versa; and what can look as corrupt, may also be simple error. This distinction is also important as some efficiency-driven reforms may, however, undermine transparency-building efforts. For example, if the goal of a particular reform is speeding up procurement processes, and due attention is not given to transparency issues, a recommendation to reduce publication and evaluation time may backfire. It also works the other way around. Advocating for transparency measures that will render the process inefficient will not achieve their purpose either.

The following are some examples of the most usual manifestations of corruption and corruption risks at each stage:

❶

Needs assessment phase/ Demand determination

- The investment or purchase is unnecessary. Demand is induced so that a particular company can make a deal but is of little or no value to the society.
- Instead of systematic leak detection or grid loss reduction (both of which offer little reward), new capacity is installed (which offers bribe potential).
- The investment is economically unjustified or environmentally damaging.
- Goods or services that are needed are overestimated to favour a particular provider.
- Old political favours or kickbacks are paid by including in the budget a "tagged" contract (budget for a contract with a "certain", pre arranged contractor).
- Conflicts of interest (revolving doors) are left unmanaged and decision makers decide on the need for contracts that impact their old employers.

❷

Preparation phase/Process design & bid documents preparation

- Bidding documents or terms of reference are designed to favour a particular provider so that in fact, competition is not possible (or restricted).
- Goods or services needed are over- or underestimated to favour a particular bidder.
- Unnecessary complexity of bidding documents or terms of reference is used to create confusion to hide corrupt behaviour and make monitoring difficult.
- Design consultants prepare a design that favours a particular bidder.
- Grounds for direct contracting are abused.

- Decision makers are biased (bribes, kickbacks, or conflicts of interest are involved).
- Selection criteria are subjective in ways that allow biases to play a role and remain unattended.
- An advantage to a particular bidder is granted through the exchange of confidential information before bid submission or during the clarification period. Clarifications are not shared with all the bidders.
- Confidentiality is abused and extended beyond legally protected information making monitoring and control difficult.
- The grounds for the selection of the winner are not made public (transparency of bid evaluation).
- Excessive (unnecessarily high) price as a result of limited or non-existent competition.

❸

Contractor selection and award phase

- Winning bidders/contractors compensate bribes and other extra payments with poor quality, defective or different specifications than those contracted. Faulty or sub-specification work execution, requiring early repairs or expensive correction.
- Contract renegotiation or "change orders" introduce substantial changes to the contract, often in small increments that can be decided by site engineer.
- Price increases during execution through "change orders" reflecting changes in specifications or cost increases, facilitated often by collusion between corrupt contractor and corrupt control official.
- False or inexistent claims are filed.
- Contract supervisors or monitors are "bought" or are not independent and willing to justify false or inexistent claims.
- Contract renegotiation is allowed or performed introducing substantial changes that render the bidding process useless.

❹

Contract Implementation phase

5

Needs assessment phase/ Demand determination

- Accountants doing final accounts and Auditors are biased or "bought" and willing to support false certificates.

In TI's experience and research, the early and late stages of the procurement cycle are increasingly exposed to corruption.

Among the most important areas of increased risk are[1]:

- Limited or restricted access to information;
- Abuse of exceptions to open public bidding;
- Limited or ineffective control and monitoring within the contracting process and particularly during the contract implementation phase; and
- Deficiencies and lack of transparency during the budget phase.

1.4.2. SPECIAL RISK FACTORS

In addition to the inherent corruption risks and manifestations within the procurement cycle, there are particular factors and circumstances that have the potential to increase such risk. Below, a description of the most salient ones:

"Urgent Purchases" at End of Fiscal Year

Urgent purchases made at the end of a fiscal year often are subject to corrupt practices, most likely due to the fact that transactions in this period are less strictly controlled. In many public sector agencies the unspent portions of the public budget are lost at the end of the fiscal year. This creates pressure to spend unspent monies before this happens. Sometimes this is called an "emergency" situation in order to be able to use direct contracting procedures when otherwise only open bidding would be possible.

"Emergency" Responses to Natural Disasters and Other Such Events[2]

There is a widespread perception that procurement and logistics in disaster cases is particularly at risk from corruption because of the large sums of money usually involved, particularly in the case of capital intensive sectors such as the provision of shelter and water and sanitation. This perception has led to considerable investment by humanitarian organisations in measures to mitigate the risk through the strengthening of logistics systems, in the recruitment of professional logisticians and staff training[3].

Procurement activities in emergency situations often takes place in difficult environments, including war zone in which aid may be caught up in the dynamics of the conflict, and with enormous pressure to deliver relief quickly, potentially increasing the risks of corruption.

The issue of corruption in emergency situation must be seen in the context of other competing management priorities and there may well be a need for considered, documented trade-offs, such as between efficiency and economy. However, one should address these corruption risks essentially through good management and greater levels of accountability and transparency to disaster affected populations.[4]

Inadequate Access to Information

Corruption thrives in obscurity. Wherever a government has neither a dynamic pro-active information policy nor a proper

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[1] Detailed results of the application of the Public Contracting Monitoring System, a methodology developed by Transparency International to measure corruption risk in public procurement systems, can be found at: http://www.transparency.org/regional_pages/americas/contrataciones_publicas/diagnostico_y_medicion .

[2] For more detailed recommendations on strategies to address and prevent corruption in Disaster relief and other emergency situations consult, as well as http://www.u4.no/themes/ces/main.cfm ("Corruption and public procurement in aid-funded emergency relief).

[3] Thomas & Rock Kopczak, 2005.

[4] Ewins, Pete, Harvey, Paul, Savage, Kevin & Jacobs, Alex; 2006. For additional information on this subject, please see the References at the end of this Chapter.

freedom-of-access-to-information law that is actually implemented and operational, the lack of information about government activity and decision-making can easily hide corrupt manipulation of such decisions. Therefore transparency and access to information are considered essential ingredients of any effort to reduce corruption in a society. Access to information can actually be provided efficiently and in many cases at moderate cost by using Internet websites but also at the local level using traditional means like billboards, radio announcements etc.

Use of Standard Bidding Documents

Standardised bidding documents and other procurement documentation provide for predictability and systematic treatment. If non-standard bidding documents are used instead, it opens the door to manipulation and leads to opaque decision-making.

Preferences to Selected Bidders

Granting preferences of any kind to certain groups of bidders always risks undermining the fairness of the procurement process, and certainly adds costs to the purchaser. If preferences are to be provided, it is essential that they are clearly regulated and transparently administered strictly in accordance with clear enacted rules. For example, when countries or organisations give "buy local" preferences, such as are allowed by the World Bank for suppliers and contractors in developing countries, they should be fully transparent to all bidders from the outset as to amount/percentage and who qualifies for the preference.

Participation of Official-Owned Companies

The participation of bidders owned fully or partly by government officials can introduce additional risks if appropriate systems for transparency and accountability are not ensured. Especially problematic is that sometimes the public ownership of a company is not disclosed. Special due diligence is required to make sure that such bidders are treated exactly like every other bidder; if it is possible that the publicly owned bidder had inside information available while preparing the bid, the company should be excluded. Some red

flags that should trigger additional due diligence for official-owned companies include the following[5]:

- Opaque company ownership structure for companies winning sizable and recurrent
  government contracts;
- Family members of senior government officials holding ownership and management
  roles in a company;
- Civil Society knowledge of government or government official ownership of business
  entities; and
- Recurrent appearances of government officials at company headquarters.

Participation of Front/Shell Companies

Front or shell companies are corporate structures that are not really operational and are created basically to help mask or hide true ownership. They provide disguise for government officials, their families, sub-contractors or collusion agreements by bidders. According to the World Bank, some of the "red flags" that indicate the existence of a front or shell company include[6]:

- Previously unknown entities serving as subcontractors on a large project;
- The company is registered in a jurisdiction that allows secrecy regarding ownership, management etc;
- The company requires payment of invoices in a jurisdiction which protects secrecy;
- There exists no visible performance history of the company;
- Opaque ownership structure;
- Owners listed are law firms or incorporation agents;
- Lack of visible corporate facilities;

[5] These red flags have been directly quoted or inspired from "Corruption in Public Procurement: A perennial Challenge." by Ed. Campos et al, in "The Many Faces of Corruption" World Bank. Forthcoming 2007. The article contains further detail on red flags and corrupt practices and the publication is a good reference for corruption and anti-corruption in different sectors

[6] Ibid.

- The point of contact for a company is a personal residence or a telephone answering service; and
- No creditable performance record can be found through routine database review.

1.4.3. ROLE OF LENDERS, FUNDERS AND GUARANTORS

International Financial Institutions (IFIs)

IFIs such as the World Bank, the Asian Development Bank, the African Development Bank, the Inter-American Development Bank, the European Bank for Reconstruction and Development and national development banks (like the Kreditanstalt für Wiederaufbau in Germany) have developed over the years their own rules for procurement of goods and services with resources provided by them. The World Bank's Guidelines for Procurement (including the Guidelines for the selection of Consultants) provide the most complex and thorough binding system, which has to some extent been adopted by the other IFIs as well. These guidelines establish a system, which succeeds in reducing corruption, but of course the system is operated by people (in governments, by bidders and by the staff of the IFIs) and thus is vulnerable. Occasionally IFI staff is involved in bribery schemes, acting on behalf of one or more of the bidders or on their own behalf. More often, such financiers contribute (unwillingly?) to corruption by their reluctance to allow full transparency of their own contributions to the procurement processes. Although there are several aspects of the World Bank Guidelines that can still be improved, they currently are the best international standard.

Export Credit and Export Credit Guarantee Agencies (ECAs)

Most governments promote the exports and international investments of domestic businesses by providing them with financial support in the form of credit or insurance for export or investment activities. ECAs provide backing for many infrastructure projects and key sales and purchases around the world. In the past only ECAs in OECD member states have made some effort to identify corrupt

deals and deny cover to them. These efforts have been strengthened through the April 2006 Action Statement issued under the auspices of the OECD Export Credit Working Group. . While its homogenous application across the globe still remains a challenge, the Action Statement 2006 provides important tools to prevent and control corruption in international business transactions including:

- The requirement that ECAs inform exporters of the legal consequences of bribery;
- The requirement that companies submit with the application for cover a declaration to the effect that the contract to be funded or guaranteed has not been obtained through bribery or corruption;
- The possibility for ECAs to implement effective sanctions and other appropriate measures in case of violations;
- The possibility for ECAs to request from exporters information on agents, their fees and mandates; and
- The possibility that ECAs publicise the applications for cover and the actually approved cover.

Commercial Banks

Commercial banks can, but rarely do play an important role in the prevention and control of corruption in business transactions. Commercial banks are often in possession of relevant information that can provide accurate signals of corrupt-to-be deals like the engagement of agents overseas at absurd fees and under unclear contracts, money flows to tax havens and uncommon ownership structures. Commercial banks are well equipped to pursue due diligence on their clients and should be encouraged to be more interested in reducing the financial risk associated with corruption risk.

Official Donors

Donors have a key role in promoting transparency and accountability both in the overseas activities they fund and also within their own operations. All governmental donor agencies have their own procurement regulations but considerable lack of

transparency exists further down the supply chain of donor-funded projects. Difficulties arise when lack of harmonisation between donors introduces difficulties on the ground by subjecting projects to multiple and diverse regulations, and at the expense of local institutional development. These and related issues have been discussed in depth under the rubric of 'increasing aid effectiveness' and the way forward is found in the 2005 Paris Declaration on Increasing Aid Effectiveness which was signed by the vast majority of donors and aid receiving countries.

The Paris Declaration (accompanied by measurable indicators of progress) includes commitments by developing countries to use mutually agreed standards and processes to carry out diagnostics and medium and long-term procurement reform. Donors have committed to progressively rely on partner country systems for procurement when the country has implemented mutually agreed standards and processes and to adopt harmonised approaches when national systems do not meet mutually agreed levels of performance.

The OECD-DAC Joint Venture on Procurement, working collaboratively with the World Bank and key procurement counterparts in developing country governments, is to provide a four point scale rating (A to D) of all country procurement systems. Existing data are being retrofitted to create a baseline for 2006, and the baseline indicators have been agreed in version four of the OECD Benchmark and Assessment Tool for Public Procurement Systems.

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1.4.4. ACTORS IN CORRUPT DEALS

Corrupt deals require the involvement of different actors depending on the form of corruption used. Bribery and facilitation payments require a giver and a taker, often a "facilitator" and, depending on the amount, someone providing a safe haven for the money or to facilitate a money laundering scheme. Below are a few notes on corrupt deals' participants.

Official (representing a public authority, a government department) is usually called the **Employer** or the **Principal**. The Employer either takes the criminal initiative and extorts a bribe from the bidders before making official decisions in their favour, or is the recipient of a bribe initiative originating from one or more of the bidders and accepts a bribe in exchange for such a favourable decision.

Bidders (Suppliers, Contractors, Consultants) and Sub-contractors

Economic operators wishing to do business with the government, supplying goods or services, either take the initiative offering/giving a bribe or any advantage to a government decision maker in order to obtain a favourable decision, or give in to extortion demands from a corrupt official.

Agents, other Middlemen, Consultants, Joint Venture Partners, Subsidiaries

Economic operators wishing to manipulate a government decision-making process often refrain from committing the criminal acts directly themselves but utilise agents, "consultants", "contractors", other local middlemen, or local subsidiaries or joint venture partners for the actual bribe activity. The contract with the agent usually is vague as to purpose, control, disclosure, accountability, success factors etc. and often provides for payment into numbered accounts in tax havens, giving thus a clear indication of the criminal intent of the contract.

High Share of Managers (as distinguished from lower level staff)

Experience in industrial countries shows clearly that - apart from facilitation payments - the majority of corrupt people (both on the private and the government side) are not junior or subordinate staff, but people in the higher echelons, including many senior managers.

Politicians

Politicians (especially at municipal level) often have a double political-administrative function (e.g. City Councillors) that results in a complex legal position as regards corruption (i.e. whether they are regarded as "officials" under the penal code or not).

Financial Safe Havens

Corruption would be much more difficult if opportunities to hide its benefits or to launder corrupt money didn't exist.

Witnesses

All those who have information about corruption have the power to stop it, and keeping silent is close to participating in it. Increasingly, whistleblower motivation and protection mechanisms, anti-corruption hot lines and other systems aim at making it easier for people who want to see things changing.

1.4.5. IMPACT OF AND DAMAGE FROM CORRUPTION IN PUBLIC PROCUREMENT

The ultimate goal of public procurement is to satisfy the public interest. Like any government action should be. In this sense, good procurement should satisfy the needs of the people, should be fair to businesses, should save (and avoid waste!) of public funds. Good public procurement is a good tool to implement public policy in all areas, and should be an instrument for good governance and therefore good government. In this sense, good procurement will contribute to the government's legitimacy and credibility.

On the contrary, corrupt (bad) public procurement will increase poverty and inequality by diverting funds away from the attention of social needs; it will engender bad choices, encouraging competition in bribery rather than in quality or price. For companies, corrupt procurement will provide an unfair, unstable and risky competitive advantage and will create a sort of market-entry cost or non-tariff barrier, at least for those companies who do not wish, or cannot afford to bribe their way in.

There are different aspects in which the impact of corrupt procurement can be identified. Below, the main ones are outlined.

Financial Impact

Financial impact or damage can consist of:

- Unnecessarily high cost of purchases, investments, services, or unnecessarily low income from licenses, permits, concessions etc.;
- Sub-specification quality of supplies or works, not justifying the price actually paid;
- Burdening a government with financial obligations for purchases or investments that are not needed or are not economically justified at all or are oversized; and
- Burdening a government with early repair costs to repair and maintain investments, which are too recent to justify or explain such maintenance costs.

For example, a study performed in 2005 by TI Czech Republic at the national and municipal level[7] indicated that an estimated 32.4 billion CZK (over 1.1 billion EUR) in public funds are lost per year to corruption[8].

Economic Impact

Economic impact can consist in burdening a government with operational, maintenance and debt servicing liability for investments/purchases, which do not contribute positively to the economy of the country. Further economic impact can happen when capital investment levels decrease because of corruption costs and threats to business operators, thus affecting economic growth and employment.

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[7] Sources used were the Supreme Audit Office, the Ministry of Finance and public services at the municipal level.

[8] Additional Information can be found at Transparency International - Czech Republic: Chlumcanskeho 5, 180 21 Prague 8 (David Ondracka or Adriana Krnacova) . Tel: +420 266 790 115; Tel: +420 266 790 117; fax: +420 284 682 872. E-mail: ondracka@transparency.cz. http://www.transparency.cz .

Environmental Impact

Corruption in procurement can engender bad choices, among them projects that have adverse environmental impact. In implementing an investment project which does not comply with the country's (or international) environmental standards, the damage may consist in unnecessary or increased environmental or health risks or actual damage, financial liabilities, or long-term adverse impact on the environment.

Impact on Health and Human Safety[9]

Damage can consist in human health and safety risks due to quality defects, environmentally unacceptable investments or non-compliance with environmental or health standards. Corruption-induced sub-standard construction can lead to building failure and consequent human losses.

Impact on Innovation

Corruption inducted lack of competition leads to the neglect of innovation. Companies relying on corruption will not spend resources on innovation, and even non-corrupt companies will feel less inclined to make the necessary investments in innovation if they cannot access markets due to corruption.

Erosion of Values

When people observe lack of concern for integrity and the common good among senior officials and private sector economic operators, and reckless and corrupt behaviour is not being sanctioned, they easily reduce their own integrity standards, out of need and often out of greed. This applies also to other economic operators who realise that offering a competitive price and quality are not adequate requirements for obtaining contracts.

Erosion of Trust in Government

When people observe that reckless corrupt behaviour among government representatives is not being sanctioned, they conclude quickly that government in general is not to be trusted and that cheating government is morally acceptable and not against common values.

Damage to Honest Competitors

Corruption by corrupt bidders, if successful and not sanctioned, damages and possibly destroys the honest competitor and may well lead to job losses on the part of an economic operator who is better and more innovative than the corrupt bidder who is not willing to rely on quality and price of his product but resorts to corruption to obtain contracts.

Serious Danger to Economic Development

If a government commonly allows corruption in the context of purchases and investments, and often selects investment projects not on the basis of their contribution to economic development of the country but on their ability to generate bribe payments, a country may soon end up squandering investment opportunities and external development assistance and thus seriously retard the country's economic development. The ultimate victims are the poor people in the country.

[9] For further information on the impact of corruption and health and also more details on corruption in health related procurement and the pharmaceutical industry, consult TI's Global Corruption Report 2006.

SECTION 2 WHAT CAN BE DONE ABOUT IT? ANTI-CORRUPTION STRATEGIES AND INITIATIVES IN PUBLIC PROCUREMENT

2.1. CRITICAL STEPS FOR TRANSPARENCY ACROSS THE PROCUREMENT CYCLE

As explained previously, the procurement process typically consists of five separate **phases**. Each of these phases is vulnerable to corruption and needs to be addressed separately. In this section we discuss relevant issues, warning signs (red flags) and actions that can be taken in each stage to address those vulnerabilities.

Needs Assessment Phase / Demand Determination

In this phase, the critical issues are to make sure that the goods and services to be purchased or the investment to be made is socially and economically justified and that the best of the various alternatives is chosen to meet the assessed need.

During this stage, special attention should be placed into the following **questions**:

- Are the goods or the services to be acquired needed at this time?
- For investment projects: Is additional capacity truly needed, or could the demand gap be met by better performance on reducing losses or effecting repairs in the existing system?
- Is the planned capacity or quantity or extent of the service actually needed in the foreseeable future (in order to avoid unneeded or oversized project investments)?
- What are the optimal location, capacity and design for the investment?

Things to Do During the Needs assessment Phase:

- In many cases there are consultants hired for this stage and the next one. The key at this stage is therefore:
  - The transparency of the process by which they are contracted; and
  - The independence with which they operate (possible conflict of interests).
- Enable public (civil society) participation at this stage of the decision making process. One way could be through public hearings but also through other means of open consultation processes. This allows to:
  - Check the need;
  - Enable accountability; and
  - Identify necessary/unnecessary elements of the goods, services or investment to be acquired.

Few governments are equipped to make decisions about needs assessment and magnitude or quantities of investment on major investment (infrastructure) projects with their own staff. Most resort to the employment of consultant engineers or investment bankers to assist the government in the process. The issue here is to make sure that the consultants selected for this job are truly independent and not, for example, (formally or informally) associated with one or more suppliers or contractors, and thus under temptation to recommend solutions which would benefit their associates. Thus only consultants should be allowed to participate in the selection process who can confirm their independence and who are willing to commit themselves to select and design an investment which is not biased in favour of a particular supplier or contractor. In addition a special prohibition can be introduced, by which the consultants who participated at this stage cannot participate during the bidding process (this is if the nature of the market or investment allows).

This phase should be subjected to thorough **transparency**, so as to allow all stakeholders to contribute to the investment selection, location

and design process, and to focus public attention on any economic, financial, environmental, social or civil or human rights concerns. **Public hearings** may be particularly suitable in this phase to assure that public concerns are fully invited and reflected (see 3.3 for more details on Public Hearings). Before the design and preparation phase begins, the results of the needs assessment should be made **public**; for very large investments the results should be publicly debated and commented.

Things to Do:

- Public hearings to discuss the design and the bidding documents. This allows the public to comment on the design and the potential bidders to express in advance their concerns and identify potential problems in the bid design that could favour just one bidder; and
- Pro-active disclosure by government agencies of relevant information via website

Red Flags or indicators of potential manipulation during this stage are the following

- Non transparent procedures and decision-making which cannot be monitored and controlled by the public,
- Inadequate access of the public at large (including in particular the civil society) to information about government programmes, processes and decisions,
- Absence of opportunity for public discussion of government programmes and decision making; and
- In privatisation processes, unclear, possibly intentionally imprecise and vague goals and criteria for the privatisation programme or in-transparent, unexplained, not market-based assessment of the value of the enterprise.

The Preparation Phase Design and Bid Documentation Preparation

Most of what has been said about the previous phase applies equally to this second phase of the process: The consultants need to be scrupulously independent, and the public should have full access to the process.

During the process of preparing the design and the bid documents, advertising the process, possibly pre-qualification and the submission of bids, **red flags or indicators** of potential manipulation could be the following[11]:

- Absence of, or non-compliance with, a procurement plan;
- Contracts for similar goods are not packaged but split;
- Justification for direct contracting not given or a fake one given;
- Deviation from standard bidding documents;
- Technical specifications are weak and do not allow for evaluation of the contractors' quality of performance;
- Bid specifications are narrow or appear tailored; references to work being performed to "National Standard Specifications" in place of more detailed descriptions;
- Global procurement notice not issued;
- Restricted advertising or insufficient notice given;
- Advance release of bid documentation or relevant information to one bidder;
- Vague or unclear pre-qualification requirements;
- Insufficiently advertised;
- Inadequate time given for preparing applications;
- Lack of publicly known standard evaluation procedures;
- Exclusion of experienced applicants on minor technicalities;

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Preparation phase/Process design & bid documents preparation

[11]For more information on these points please refer to the World Bank .

- Requirement to be pre-registered on a government-approved roster;
- Failure to answer requests for clarification in good time;
- Only selected bidders are informed of the employer's contract cost estimate;
- Failure to keep accurate minutes of pre-bid meetings, including questions and answers;
- Clarification sought by bidders is not answered in writing nor circulated to all bidders;
- Delay between deadline for submitting bids and opening them;
- Different location for receiving bids and opening them;
- Bids submitted and accepted after the submission deadline;
- Bids not opened in public;
- Names of attendees, names of bidders and offer prices not recorded at bid opening;
- Failure to provide secure storage of, and restricted access to, bids received; and
- Lack of transparent procedures for handling complaints and determining remedies.

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Contractor selection and award phase

The Contractor Selection and Award Phase:

The selection of the supplier / contractor / consultant / licensee should be on the basis of public competition, for larger investments public international **competition**, as the proven way to obtain the lowest evaluated bid. The "lowest price" is not necessarily the lowest evaluated bid or most economic bid, considering that bidders may bid below their expected cost, in the expectation that once in the job, they will be able to obtain price increase.

Things to Do before the Procurement Process Starts:

- Debarment: Exclude from bidding processes bidders that have been involved in corrupt deals;
- Implement Integrity Pacts before the process has started (ideally starting in phase 1); More information on integrity pacts below;
- Use open competitive bidding whenever possible. Use non-competitive processes (restricted bidding or direct contracting) only where truly justified and fully explained and documented;
- Ensure that during the bidding clarification phase (questions and answers), the questions and the answers given are shared with all the bidders and not just given to a few;
- Restrict or manage contact between bidders and procurement staff or members of the decision committee to avoid unclear situations to both and the other bidders;
- Set up and use a conflict of interests register for officials that allows managing possible conflicts of interests with bidders and officials involved in the selection and decision making processes;
- Develop and use strict **rules regarding civil servants** that ensure they are well selected, trained, paid, supervised and controlled, that they have to provide disclosure of assets and income (their own and their families), and that outside jobs require approval; and
- Develop Red Flags for **staff** such as
  - Expensive lifestyle unexplained by known income;
  - Frequent social contacts with suppliers and contractors and other clients;
  - Unapproved external jobs;
  - Absence of complaints where complaints are to be expected;
  - Frequent award of contracts to the same bidder; and
  - Unexplained and undocumented delays in the process as compared to the time plan.

The **Procurement *Guidelines of the World Bank*** are an example of procurement regulations that have proven their value and quality since they provide the best available assurance that the selection process leads to the best possible result in the circumstances. Under the Bank's Guidelines, bidders today can (and should) be required to provide integrity assurances and to disclose any convictions or investigations relating to corruption violations. If any such convictions or investigations exist, the bidder may be excluded from participation in the bidding process.

Additional safeguards against corruption that governments might consider are provided by the application of the ***Integrity Pact*** concept to the bidding process (see in detail below 3.2.1), as it has been demonstrated quite successfully in a number of country situations. Another good option for governments is to extend civil service obligations to contractors and consultants as well as to private or semi-private companies providing formerly public services.

Occasionally, **limited public competition** or even **negotiated contracting** or **single source contracting** may be justified due to the limited number of potential bidders or if proprietary goods are being sought. Such exceptions, however, should be fully justified and recorded and thus available for review.

Frequently, however, governments put forward the argument of an "emergency" for abandoning competition requirements. Since this argument is often abused, it needs to be documented in detail: Only truly unpredictable natural or political disasters should be accepted as "emergency"; no situation where the "emergency" or "urgency" is self-inflicted or -induced should be allowed to justify the non-use of competitive bidding.

For major civil works contracts, the government may apply **pre-qualification procedures** so as to conduct the actual bidding process among bidders already cleared as to their financial and technical competence. In such cases, the integrity requirements should be applied during the pre-qualification phase, so as to assure that all potential bidders have submitted to appropriate integrity clauses.

Bid Design, Conflict of Interests Management and Integrity Pacts in Argentina. Provision of School Supplies.[12]

One interesting feature of the Integrity Pacts is how they can be implemented in less competitive situations (markets) by introducing transparency measures and even fostering the participation and accountability. This is the case for example of the IP implemented in Argentina in 2003 for the text book supply for the Ministry of Science and Education.

The Ministry of Education Science and Technology in Argentina (we will refer here to it simply as the Ministry) opened a process to buy 3,315,000 school textbooks for high school level. The text books were to be distributed among the provinces in Argentina among 1,815,000 students with scarce resources in public schools. The procurement process took place for a first attempt in 2002. The process was designed to have a competitive pre-qualification stage where the books were to be selected by a committee. During this stage, various publishing companies expressed concerns regarding the evaluation criteria used to select the texts, the qualities of the experts involved in the selection process, as well as the procedure within the provinces.

Based on these concerns, the process was later declared invalid. For the second attempt, the Ministry invited Poder Ciudadano, Transparency International's Chapter in Argentina, (here referred to as TI) with the task to introduce transparency into the process and to guarantee abundant and fair participation from all interested publishing houses.[13] TI introduced three elements into the process: First, an Integrity Pact among all participating publishing companies and the Ministry was implemented. The Pact introduced a level playing field by determining the same rules for all contestants. Its main purpose was to reduce the incentives and opportunities for bribery and corruption in this process.

[12] Transparency International: Stealing the Future – Corruption in the Classroom, 2005. For more detailed information consult http://www.transparency.org/global_priorities/education/corruption_education.

[13] For more details on this case, see Poder Ciudadano (2004).

Second, a public discussion of the text book selection criteria (terms of reference) and of the bidding documents (procurement process design) was arranged. This knowledge was introduced by providing all bidders with access to the draft bidding documents and by facilitating their discussion within a workshop. Although the results of the discussion were not mandatory for the Ministry, all suggestions for changes were accepted and introduced.

Third, rules to manage conflict of interest among the selection committee members were established. This included both a mechanism to identify potential conflicts of interest, and conflict of interest management guidelines. The identification mechanism consisted of a sworn declaration by the committee member that included: research and academic history, teaching experience, positions held in public agencies and private businesses, publications, relationships with publishing companies (work, ownership, etc.) and the sources of copyright royalties. These declarations were made public on TI's website. This allowed any participant to indicate the existence of a conflict of interest in a selection committee member, and the Ministry to implement the rules and exclude members that did not qualify.

In terms of the process design, some important elements stand out from this case:

- The existence of a pre-qualification stage designed to introduce competition into an otherwise non-competitive bid.
- The bidding process, because of the nature of the goods to be procured, does not focus only on prices but mainly on quality determined by the contents of the text and their pedagogical strengths. This was performed during the pre-qualification

process and was undertaken by the award committee.

- The introduction of transparency measures at various levels through:
  - The intervention of a third party and independent actor (TI Argentina) with a specific facilitator role.
  - The agreement on the ground rules included in the Pact and in the guidelines for conflict of interest management.
  - The availability and access to information equally guaranteed for all participants and the public and in all relevant aspects of the process (including conflict of interest situations).
  - The involvement of the participants in the process (workshop, discussion of terms of reference and conflicts of interest situation), ands its ingredients: access to information, participation (open), transparency, process clarity.
  - The enforcement of the agreed rules (for example through the effective exclusion of committee members in conflict of interest situations).
  - The results of the process, as reported by the Chapter in Argentina[14] are as follows:
- 48 publishing companies participated in the process and signed the Integrity Pact.

  Participating bidders presented in total 631 books, from which:
- 52 % were among those recommended by the committee.
- 20 % were not among those recommended by the committee.
- 28 % did not match the conditions established under the terms of reference.

  The contract awards resulted in the following distribution:
- 48 % of the participating bidders had at least one book selected.
- The two publishing houses that had more books awarded each covered 15% of the total selection.

Only two bidders had only one book awarded, and 3 bidders had contract awards for 2 books.

[14] Ibid.

The bid evaluation is one of the most difficult phases to be carried out correctly and fairly, and constitutes one of the most vulnerable steps within the procurement process. It is one of the easiest steps to manipulate if someone wants to tilt an award in the direction of a favoured supplier or contractor: Evaluators can reject unwanted bids on trivial procedural grounds - an erasure, failure to initial a page - or for deviations from specifications that they decide are significant. After bids are examined, if no one prevents them, evaluators may discover/ invent entirely new considerations that should be taken into account in choosing the winner. Or the bid evaluation criteria may be so subjective and so lacking in objective qualitative elements that the evaluators' scoring can produce any result they wish. All of this argues for requiring bid **evaluation criteria** to be spelled out clearly in bid documents and for an impartial review authority to check the reasonableness of the evaluators' actions. The **results of the evaluation** including the major **elements of the evaluation and decision making process** should be publicly disclosed, too. Disclosing the criteria allows bidders to raise objections in advance if they consider the criteria not to be appropriate, and disclosure of the results and the reasons for them provides additional assurance that the evaluation has been conducted properly.

World Bank *"Red Flag"* indicators of potential manipulation/corruption during this stage[15]:

- "Bid evaluation committee members do not have the technical expertise necessary" to properly evaluate bids;
- "The bidding process is controlled by a small number of persons" in the Project Management Unit / Project Implementation Unit (PMU/PIU);
- "Qualified bidders drop out voluntarily as the bidding process progresses such that only one firm is left in the post-qualification stage";
- "Unreasonable delays in evaluating the bids and selecting the winner";
- "High number of complaints about bid process and evaluation received from losing bidders, especially when lower bids are declared non-responsive";

- Information necessary to evaluate the procurement process is missing;
- Only photocopied documents are available for review;
- Incorrect method of procurement noted during review (e.g. single-source instead of Competitive Bidding);
- Evaluation criteria are amended after receipt of bids;
- Same bidders repeatedly participating in similar types of contracts;
- "Same bidder repeatedly winning similar types of contracts";
- A narrow variance between the estimate and the bid amounts received;
- "Similarities between competing bids (e.g. format of bid, identical or nearly identical unit prices, identical (mis)spelling, grammatical and/or arithmetic errors, photocopied documents)";
- Bid bonds are acquired by competing bidders from the same financial institution;
- Bid bonds have similar date and/or have sequential serial numbers;
- "A bidder lists multiple addresses";
- "Unit prices in competing bids vary inconsistently by amounts greater than 100%;
- Unit prices in competing bids are identical";
- "Bidders propose identical items (e.g. the same make and model)";
- Common ownership in the bids of competing bidders;
- "The Bid Evaluation Report has been revised or re-issued";
- The Bid Evaluation Report has been performed in an unrealistically short time;
- "An arithmetic check of the bid(s) is not performed or results in a bidder being favoured inappropriately";
- "An evaluated bidder should have been disqualified based on the information submitted in their bid";
- "The lowest bidder is disqualified and the explanation, if any, provided is weak";

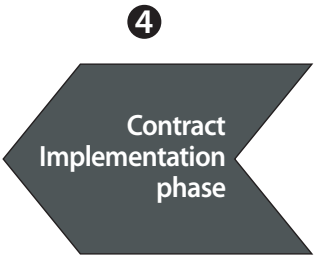
[15] Ibid Inspired by

- Seeking clarification is used as a cloak for financial negotiations:
- Vested interests or conflict of interest are identified among members of bid evaluation committee;
- "Falsification of curricula vitae in consultant services proposals";
- "Unreasonable delays in negotiating and executing the contract";
- "Contract is not in conformity with bid documents (e.g. specification and quantities)";
- "Contractor's name differs between Contract and Bid Evaluation Report";
- Contract amount is different from amount in Bid Evaluation Report;
- "Contract includes allowances for variations which are not part of the bidding documents";
- "Subcontracting requirements are imposed";
- "Rigorous system for handling contract variations and evaluating claims is not defined in the contract";
- "Staff involved in contract award decisions becomes involved in contract supervision".

Things to Do During the Bid Evaluation and Award:

- Bid evaluation criteria should be clear and determined from the outset, and should be made public;
- Ideally, different people should make the bid evaluation and the award decision;
- The award decision should be made by a group of people and not a single individual;
- The evaluation process and the award decision should be publicly available;
- Pro-active disclosure by government agencies of relevant information via website and other means, and openness to requests for information from the public; and
- Regular **staff rotation**, i.e. no officer or staff may remain in a position long enough to develop improper connections with, or dependencies on, potential bribers.

The Contract Implementation Phase



It is important to note that this phase is just as vulnerable to corruption as the previous phases. Typical **examples** can be found in the engineering and construction sector: A bidder may have come to an understanding with a corrupt government official that the physical/technical controls on project execution would "not notice (disregard) sub-specification execution", meaning that the use of low-quality cement or the use of less reinforcement steel or the construction of a wall of 5 or 7cm rather than the specified 10 cm thickness would go through unchallenged. (Since this obviously saves significant amounts of money, the agreement might have even enabled the contractor to bid a very low price and thereby win the award.)

Another example is that the corrupt official would approve frequent price increases, usually in small incremental steps, each of which small enough not to require higher level approval. Or the corrupt official would approve other variation (change) orders under which the corrupt contractor would obtain additional work contracts at high, uncompetitive prices. Such wrongdoing can be avoided by stricter, more frequent and unannounced **controls** or, for example, by **external monitoring** by civil society (see below 3.4.. for CS monitoring as a tool). Another proven safeguard is the rule that, once the cumulative variation orders exceed a certain threshold, e.g. of 15% of the original contract value, for any additional price or other variation orders, no matter how small, **approval** must be sought from senior level managers.

World Bank "Red Flags"
or potential manipulation indicators during contract implementation phase[16]:

- Contract specifications or scope of work altered after contract awarded;
- Site inspection indicates that work performed was not in

[16] Material directly quoted from or inspired by World Bank. See above.

accordance with the technical specifications (below-specification civil works, goods and services are accepted);

- Technical specifications of materials provided do not correspond to the specifications agreed upon in the contract;
- Site inspection indicates that project completion is less than that certified or that a completed project is not operational;
- Goods or services not being used, or being used for purposes inconsistent with intended purposes;
- Wrong quantities of goods and materials being delivered;
- Delays in the delivery of goods or services in any part of the project implementation process;
- Replacement of nominated consultant staff by less qualified and inexperienced personnel;
- Frequent changes in key staff of PMU/PIU;
- Changes in PIU/PMU and Bank staff responsible for post-procurement verifications;
- Lack, or low level, of oversight of the physical works;
- Absence of or insufficient post-procurement verification of scope of work and physical inspections;
- Site diaries and meeting minutes are not maintained;
- Instructions are not given in writing to contractors;
- Incomplete records in PIU/PMU – significant number of missing documents
- High frequency of Change Orders to the contract";
- As-built' drawings are photocopies of technical specifications in the bidding documents;
- The detailed drawings, 'as-built' drawings, back-up data sheets contain errors or repetitive entries;
- Failure to pay progress payments and invoices on a timely basis;
- Excessive number of signatures required to approve progress payments;
- Evaluation of contractors' performance not recorded;
- Cost overruns are inadequately explained or justified;
- Customer/Client dissatisfaction with completed facilities.

Things to Do During the Contract Implementation:

- Set up an independent monitoring system that will check contract implementation as for compliance with agreed specifications including quality. Random on-site checks prove to be an effective tool; and
- Have clear and pre-established limits for contract change orders. Many procurement laws have them incorporated and they can also be incorporated in the contract without the need of a law.

5

Final accounting and audit (when applicable)

The Final Accounting and Final Audit Phase

It is most important that the final **accounting** of a project be carried out by staff who has not been involved in any of the previous phases, so as to avoid any collusion or cover-up of previous wrongdoing during the final accounting phase.

An important safeguard, existing in most countries, is the final external **audit** of an investment. But unlike the usual procedure, under which the audit simply reviews and checks whether the numbers add up, the government should - at least for major investment projects - conduct performance audits which will also review the original cost estimate and benefit projections, compare them with the actual final cost of the project and the actual benefits (e.g. projected vs. actual traffic counts etc.), and assess whether the original justification of the project proposal still holds. If major discrepancies are discovered in the process, the reasons and the responsible officials should be investigated and held accountable.

Whenever controls or audits demonstrate or suggest that a contractor, supplier or consultant has possibly committed any acts of corruption, the case should be fully **investigated** by the prosecution authorities. If a crime is confirmed, the contractor / supplier / consultant should be held **accountable** – by claiming an adequate amount of damages and by debarring the person or company from participation in future bidding processes.

Red Flags or indicators of potential manipulation are the following:[17]

- No control system in place, inadequate or unreliable controls;
- No or inadequate parliamentary control and oversight in force;
- No follow-up to indications, suspicion or accusations of corruption;
- Lack of state or public interest in identifiable or anonymous accusations of corruption and no follow-up;
- Denying the public or legitimate civil society representatives access to documents and information held by the control and audit institutions, and to their proceedings;
- Lack of encouragement for whistleblowers;
- Lack of whistleblower protection system and procedure;
- Lack of audit requirements and system, much delayed audit or superficial/inconsequential audit;
- Inadequate or delayed publication of the audit report; and
- Lack of impact of a critical audit report (absence of (re-)action e.g. by the legislature, the country's Court of Audit, the judicial authorities and/or the administration).

2.2. ANTI-CORRUPTION STRATEGIES AND INITIATIVES OF PUBLIC AUTHORITIES

2.2.1. GOOD PROCUREMENT PRINCIPLES

The application of the principles of integrity, transparency, accountability, fairness and efficiency to all decision making on public investments and purchases will minimise corruption and maximise the economic, financial, social, environmental and political benefits of public procurement.

Integrity

Integrity means that the procurement processes are honest and in compliance with the respective laws, that the best available, most suitable technical expertise is employed in a non-discriminatory manner, that fair and open competition leads to a quality product at a fair price (value for money), and that the product takes into account the legitimate aspirations and concerns of all the stakeholders.

Transparency

Transparency means that laws, regulations, institutions, processes, plans and decisions are made **accessible to the public** at large or at least to "representatives" of the public so that processes and decisions can be monitored, reviewed, commented upon and influenced by the stakeholders, and decision makers can be held accountable for them. Corruption thrives in the dark and manipulation for personal benefit is facilitated by opacity. It is essential that transparency be created from the very beginning so that potentially every step in the long decision-making process can be viewed and influenced in a timely manner. Transparency needs to pervade all steps in the procurement cycle, from the earliest decision making by the respective authority about a new purchase or investment throughout the entire process of preparing the "project" economically and technically, the selection of the consultants, suppliers or contractors, the awarding and execution of the contracts and the final accounting and auditing phase.

Transparency in this context is not achieved by grudgingly allowing access to some internal documents to selected people. Transparency requires that the government or project agency (the "principal") voluntarily and proactively provide full public information through the print and electronic **media** about the potential options, plans, designs and programmes. Transparency also means that all the **stakeholders** of a major investment are fully informed and consulted about all aspects of the project. For example, on large dam projects it is essential that the affected population (those affected by potential resettlement as well as by upstream and downstream changes in the water flow regime) at large be allowed and indeed encouraged to participate in the process. It may be necessary to reach out directly to them through visiting teams. Experience of a few countries demonstrates that a series of well-publicised open public hearings (see below Section 3.3) is a particularly effective means to spread information and to obtain the stakeholders' commitment, contributions and support for a large project, and to avoid misguided

[17] Wiehen; Michael. Avoiding Corruption in Privatisation - A Practical Guide.

decisions. The transparent process may appear time-consuming and costly at the outset, but it is irreplaceable and will, in fact, **save time as well as costs** in the longer run. Projects which were prepared in secrecy, or with severely limited information for the stakeholders, often eventually run into public resistance or turn out to be tainted by corruption and are then sometimes held up for years.

Some people argue that transparency is counterproductive as it facilitates collusion among firms and reduces competition by putting sensitive information out in the public domain. This view falls into the paradox of advocating for obscurity for a lesser good. Collusion agreements will take place, and even more so in situations where they can be hidden thanks to obscurity and lack of monitoring. It also overlooks that the necessary transparency and disclosure of information does not include proprietary or legally protected information, but information that can and should be accessible. Ultimately, transparency increases the likelihood that a corrupt agreement will be discovered and thus will play a deterring effect.

Another powerful instrument for achieving transparency is the **internet**. Despite some – unsubstantiated - claims that openness of certain procurement process information could undermine and erode the quality of the process, could put confidential business information at risk and could endanger the entire project, several countries (Chile, Colombia to some extent, Mexico and New Zealand among others) and major municipalities (e.g. Seoul, South Korea) have recently placed their entire procurement system - including procurement opportunities, bid documents, relevant laws and procedures, and results of the tenders - on the Internet and allow free access to everyone to that information. In Pakistan, the World Bank has recently decided to put bid evaluation reports and contract information on the Internet, as soon as the contract has been awarded. Increasingly, all interaction between the government administration and companies doing business with it as well as citizens in general will be handled through this medium. If everybody can check on a real-time basis which contracts are offered by the principal at a given time, under what conditions, who the competitors are and

what prices they offered, the opportunity for manipulation and thus the temptation to bribe is greatly reduced. Different kinds of such systems as well as their typical features are summarised in further detail below (see Section 2.8.).

Accountability

Accountability means that governments, public (government-owned or –controlled) institutions or corporations and individual officials, on the one hand, and companies, company executives and agents or other individuals acting on behalf of companies, on the other hand, must be accountable for the correct and complete execution of their tasks and duties and for the decisions and actions being made in their area of responsibility. Procedures enabling full accountability should be systematic and dependable.

Records explaining and justifying all decisions and actions should be created and maintained. Wherever violations of legal or contractual obligations occur, the perpetrator must be taken to task - by disciplinary, contractual, civil and/or criminal sanctions, as appropriate. Laxness in enforcing accountability will quickly erode integrity. The parties called to action in this context include governments, public institutions and officials, national or international financial institutions, "contractors" in the widest sense (i.e. private companies or individuals, governments or public institutions acting as contractors offering the supply of goods, contracting, consultancy or other services), stakeholders and also Civil Society organisations.

Fairness, Economy, and Efficiency

Contract award decisions should be **fair and impartial**. Public funds should not be used to provide favours to specific individuals or companies; standards and specifications must be non-discriminatory; suppliers and contractors should be selected on the basis of their qualifications and the merit of their offers; there should be equal treatment of all in terms of deadlines, confidentiality, and so on. Procurement should be **economical**. It should result in the best quality of goods and services for the price paid, or the lowest price for the acceptable, stipulated quality of goods and services; not

necessarily the lowest priced goods available; and not necessarily the absolutely best quality available, but the best combination to meet the particular needs, and the published specifications. The procurement process should be **efficient**. The procurement rules should reflect the value and complexity of the items to be procured: Procedures for small value purchases should be simple and fast - though not at the expense of integrity, fairness or transparency - but as contract values and complexity increase, more time and more complex rules will be required to ensure that principles are observed. Decision-making for larger contracts may require complex committee and review processes. However, bureaucratic interventions should be kept to a minimum.

2.2.2. GOOD PROCUREMENT LAW

The best procurement law is the one that is effectively applied. Due to globalisation, trade agreements, conditionality and other forces, increasingly procurement laws across the globe are becoming more similar. For example, many of these laws establish open bidding as the norm and restricted bidding, short listing or direct contracting as the exception. In many jurisdictions, however, open bidding is in fact not the norm, and exceptions to open bidding are often abused.

In fact, a study performed by TI on procurement systems in nine countries[18] revealed that corruption risk associated with the laws (bad quality, lack of appropriate transparency mechanisms, etc) was significantly lower (close to 35%) than the risk associated with how the laws actually are implemented (the risk was close to 65%).

It is therefore of little use to seek a universal model to adopt for a particular country. In looking for international standards, however, often the World Bank Procurement Guidelines and the UNCITRAL model law are cited. TI has also set out a recommendation of what should be minimum standards for transparency in procurement.

UNCITRAL and/or GPA as a Model?

The United Nations Commission on International Trade Law (UNCITRAL) in 1995 issued a Model Law on Procurement of Goods, Construction and Services. This Model Law contains most of the World Bank's procurement principles up to 1995 and intends to serve countries to evaluate and modernise their procurement laws and practices. Unfortunately, it suffers from the effort to reflect all eventualities and even includes options (e.g. competitive negotiation) that, in fact, conflict with accepted basic rules. But of course countries need not make use of this variety of options. Apart from that, the Model Law is a good start, but it should be modified by including the many changes of the World Bank Procurement Guidelines since its introduction in 1995.

The General Procurement Agreement of the WTO (GPA) of 1996 is a pluri-lateral agreement and is therefore only applicable between countries that have accepted and ratified the Agreement. It contains basic principles of procurement and rests on the principle of non-discrimination between companies from a given country and companies from foreign countries as well as between companies from different countries. The Agreement also requires "transparency" of procurement processes (which under the terms of the Agreement primarily means that tenders have to be publicised), objective and fair criteria and effective legal remedies. Since 1996 and the WTO summit in Seattle in 1999, the extent of the transparency requirements as well as potential limitations of preference rules are under discussion.

[18] For more detailed information on results and the methodology used, consult http://www.transparency.org/global_priorities/public_contracting/projects_public_contracting/pcms.

TI'S MINIMUM STANDARDS FOR PUBLIC CONTRACTING

The standards focus on the public sector and cover the entire project cycle including:

- Needs assessment;
- Design, preparation and budgeting activities prior to the contracting process;
- The contracting process itself; and
- Contract implementation.

The standards extend to all types of government contracts including:

- Procurement of goods and services;
- Supply, construction and service contracts (including engineering, financial, economic, legal and other consultancies);
- Privatisations, concessions and licensing; and
- Subcontracting processes and the involvement of agents and joint-venture partners.

Public procurement authorities should:

1. Implement a code of conduct that commits the contracting authority and its employees to a strict anti-corruption policy. The policy should take into account possible conflicts of interest, provide mechanisms for reporting corruption and protecting whistleblowers.
2. Allow a company to tender only if it has implemented a code of conduct that commits the company and its employees to a strict anti-corruption policy.
3. Maintain a blacklist of companies for which there is sufficient evidence of their involvement in corrupt activities; alternatively, adopt a blacklist prepared by an appropriate international institution. Debar blacklisted companies from tendering for the authority's projects for a specified period of time.
4. Ensure that all contracts between the authority and its contractors, suppliers and service providers require the parties to comply with strict anti-corruption policies. This may best

be achieved by requiring the use of a project integrity pact during both tender and project execution, committing the authority and bidding companies to refrain from bribery.

5. Ensure that public contracts above a low threshold are subject to open competitive bidding. Exceptions must be limited and clear justification given.
6. Provide all bidders, and preferably also the general public, with easy access to information about:

- Activities carried out prior to initiating the contracting process;
- Tender opportunities;
- Selection criteria;
- The evaluation process;
- The award decision and its justification;
- The terms and conditions of the contract and any amendments;
- The implementation of the contract;
- The role of intermediaries and agents; and
- Dispute-settlement mechanisms and procedures.

Confidentiality should be limited to legally protected information.

Equivalent information on direct contracting or limited bidding processes should also be made available to the public.

7. Ensure that no bidder is given access to privileged information at any stage of the contracting process, especially information relating to the selection process.
8. Allow bidders sufficient time for bid preparation and for pre-qualification requirements when these apply. Allow a reasonable amount of time between publication of the contract award decision and the signing of the contract, in order to give an aggrieved competitor the opportunity to challenge the award decision.
9. Ensure that contract 'change' orders that alter the price or description of work beyond a cumulative threshold (for example, 15 per cent of contract value) are monitored at a high level, preferably by the decision-making body that

awarded the contract.

10. Ensure that internal and external control and auditing bodies are independent and functioning effectively, and that their reports are accessible to the public. Any unreasonable delays in project execution should trigger additional control activities.
11. Separate key functions to ensure that responsibility for demand assessment, preparation, selection, contracting, supervision and control of a project is assigned to separate bodies.
12. Apply standard office safeguards, such as the use of committees at decision-making points and rotation of staff in sensitive positions. Staff responsible for procurement processes should be well trained and adequately remunerated.
13. Promote the participation of civil society organisations as independent monitors of both the tender and execution of projects.

2.2.3. LAW ENFORCEMENT

Criminal Punishment in General - National Legal Structures

Most countries outlaw bribery and other forms of corruption and impose criminal sanctions. At issue are the evidential requirements/ hurdles, the level of sanctions, the statute of limitations and the societal and legal impact of convictions.

Criminal Liability of Legal Persons / Corporations vs. Administrative Fines

When individuals commit criminal acts, they frequently act in the interest of, or even at the direct behest of, companies. Experience shows that only if companies themselves can be held liable and accountable for such criminal acts, they will undertake measures to curb corruption and manage their staff accordingly. While in principle administrative fines could be made to have significant impact, they often are insignificant (primarily due to a fairly low ceiling on fines

and the limited moral impact of an administrative fine vs. a criminal conviction) and thus are not respected as effective sanctions. Accordingly, the OECD Convention and UNCAC call on their signatory states to impose "effective, proportionate and dissuasive criminal or non-criminal sanctions". Many of the major industrial countries have established the concept of criminal liability of legal persons or corporations. Other countries should be challenged to adopt the concept of criminal liability of legal persons or at least to make their administrative fines system so as to allow truly "effective, proportionate and dissuasive" sanctions. One means to come close to this is to allow the fine to be set at a level that exceeds the economic benefit to the corrupt company.

Liability for Damages

Corruption during the procurement process can cause damage to the principal as well as to the other bidders who incurred significant costs in preparing their bids, and it is only fair that corrupt individuals and companies be held liable for that damage. Since the quantification of the level of damages is often difficult, a practice has developed to pre–determine damages by stipulating in contract documents that if ever damages were to be paid, the amount would be, for example, ten or fifteen percent of the contract value, unless either of the parties can provide evidence that the actual damage was higher or lower ("liquidated" or pre-determined damages).

Forfeiture / Confiscation / Seizure of Illegal Gains / Profits

A very effective sanction is the forfeiture or confiscation of illegal gains or profit. Operators having obtained contracts through bribery or other forms of corruption can in this manner be made to return not only the actual "profit" portion of the contract payment, but the entire payment for the contract.

Civil Liability and Disciplinary Sanctions

In most countries, civil servants and administrative employees in the public or private sectors can be subjected to civil liability claims (liability for damages etc) and/or to disciplinary actions.

Debarment ("Blacklisting") of Corrupt Economic Operators

Debarring economic operators (individuals and companies) that have been found to be corrupt, from the participation in the competition for future public contracts has been proven to be a very effective sanction against corrupt business people. Operators registered on the debarment list are then sometimes published through the internet (e.g. in the case of the World Bank's debarment register). Consulting the Register and respecting the debarment decisions of other government offices should be mandatory and binding on all public offices awarding contracts. Many governments and institutions (like the European Commission) are experimenting with debarment. Several issues arise in this context:

- What is **the evidentiary requirement** for putting an operator in the register? A final conviction ("res judicata") clearly is the safest condition. However, in most jurisdictions there are very few criminal corruption cases and convictions often take many years before becoming "final", at which point registration clearly would have little or no impact any more. At the other extreme, it is evident that registration cannot be justified if there is mere suspicion but no adequate evidence. Operators of registers have been experimenting with the level of evidentiary evidence. The World Bank, the manager of the only truly effective debarment register, lists an economic operator if "it is more likely than not" that the crime was committed. A confession of one of the actors of corruption would be a strong piece of evidence, but so would be irrefutable evidence that is not convincingly denied by the company or person under suspicion;
- The register should be fully public or at least fully accessible to the **public**.
- The list should be **binding** on all public offices of a country about to let a contract.
- The debarment should be effective for a **specified period of time** reflecting the severity of the violation.
- The law establishing the register should also clearly establish the **conditions** under which the economic operator

would be **removed** from the register prior to the lapse of the established period. Such conditions could include termination of employment of the individuals responsible for the corrupt acts, paying damages to the government office that was bribed, and possibly to the competitor bidders, introducing company anti-corruption guidelines and policies and convincingly implementing such new system, etc.

- It needs to be established to what extent subsidiaries, parent companies or joint venture **partners** of the debarred company should and could be covered by the debarment.
- Debarment needs to be scrupulously **implemented** – until the debarred operator takes convincing action to demonstrate that new procedures are effectively in place.

Control of Procurement Processes

It is essential that governments/contracting authorities establish adequate internal and external control mechanisms, including monitoring by civil society, to reduce corruption to the maximum extent. "Adequate" means sufficiently funded and staffed and equipped with sufficient powers and rights to control, check and investigate records, documents etc. both of government and the private bidders who participate in a public bidding process. Any suspicion of wrongdoing must be followed up immediately in the appropriate form so that corrupt operators or officials understand that their activities are likely to be discovered and that they will be sanctioned

2.2.4. INTERNATIONAL ANTI-CORRUPTION CONVENTIONS

OECD and UN Anti-Corruption Conventions

While domestic bribery and extortion in procurement has been outlawed in practically all countries, the bribery of foreign public officials to obtain or retain a contract was a criminal act only in the United States (under the Foreign Corrupt Practices Act of 1977) until the OECD "Convention on Combating Bribery of Foreign

Public Officials in International Business Transactions", signed by all 29 member states of the OECD and five additional states[19] in December 1997, came into effect on February 15, 1999. Under the **OECD Anti-Corruption Convention** the signatory states undertook to modify their national legislation so as to provide for (more or less) uniform criminal and administrative sanctions against people and companies committing certain acts of bribery against foreign officials in the context of international business transactions. The process of translating the Convention into national laws has been satisfactorily completed, under monitoring by a peer review system, and the process of monitoring the implementation of those laws by the signatory states, again under a peer review system, is underway. Some major OECD and EU member states (e.g. Germany) have extended their national criminal structures to include the bribery of private business partners in other countries, and some to include facilitation payments (as distinguished from bribes proper). In parallel with the Convention processing, many states also finally abolished the tax deductibility of bribe payments. The OECD Convention still contains several gaps (e.g. the private-to-private connection, the toleration of facilitation payments, and the bribery through subsidiaries). International efforts to modify the OECD Convention in those regards are being prepared.

The only global convention is the UN Convention against Corruption (**UNCAC**) that was opened for signature on 9 December 2003 in Merida/Mexico and came into force in December 2005, when the required number of signatory states (30) had ratified or acceded to it. The UN Convention contains provisions at the preventative-organisational and the repressive-penal level as well as concerning international cooperation. Some of the most significant provisions are, for example, the requirement to adopt broad penal provisions against political corruption (Art.15 and Art.2 UNCAC), recommendations with regard to liability of legal persons such as companies (Art.26 UNCAC), provisions for whistleblower protection (Art.32, 33 UNCAC) and a provision on compensation for damages (Art.35 UNCAC). In this respect, UNCAC covers a broader range of corrupt activities than the OECD Convention. On the other hand,

UNCAC does not yet contain a monitoring mechanism such as that of the OECD Convention. At the time of writing, many of the major industrial countries have not yet ratified UNCAC.

Regional Conventions

In **Europe**, the most important regional anti-corruption conventions are the **Council of Europe** Criminal Law Convention on Corruption[20] and the Civil Law Convention on Corruption[21] that entered into force in 2002 and 2003 respectively. They cover broadly the same ground as the OECD and UN Conventions. Neither has so far been ratified by most major industrialised European countries. There is also the **EU-Anti-Corruption Law** of 1998 and the **EU-Frame Agreement** (2003/568/JI) dated July 22, 2003 of the Council of the European Union concerning the fight against corruption in the private sector.

The first regional convention aimed at combating corruption was the **Inter-American Convention against Corruption** (IACAC)[22], which was adopted in 1996 in Caracas, Venezuela. It criminalises active, passive and trans-national bribery, illicit enrichment, the improper use of classified or confidential information, the improper use of state property, using influence on public authorities for illicit personal gain and the diversion of property or assets. Signatory states are obliged to incorporate those provisions into their own judicial system.

The **African Union** adopted a Convention on Combating Corruption[23] on July 11, 2003 in Maputo, Mozambique. It covers a

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[19] Argentina, Brazil, Bulgaria, Chile, and Slovakia.

[20]For a full text of the Convention see the following link: http://conventions.coe.int/Treaty/EN/Treaties/Html/173.htm .

[21]For a full text of the Convention see the following link: http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm .

[22]For a full text of the Convention see the following link: http://www.oas.org/juridico/english/Treaties/b-58.html . See also TI's Civil Society advocacy guide for conventions: http://www.transparency.org/global_priorities/international_conventions/projects_conventions/americas

[23]For full Convention text see following link: http://www.africa-union.org/root/AU/Documents/Treaties/Text/Convention%20on%20Combating%20Corruption.pdf .

range of criminal offences including bribery (domestic or foreign), diversion of property by public officials, trading in influence, illicit enrichment, money laundering and concealment of property. It calls for measures on prevention, criminalisation, regional cooperation, mutual legal assistance and recovery of assets. It covers both public sector and private sector corruption, both supply and demand side. It is unique in containing mandatory provisions with respect to private-to-private corruption and on transparency in political party funding. It has not yet attained the number of ratifications required for entry into force.

For Asia, the **ADB OECD Anti-Corruption Initiative for Asia-Pacific**[24] led, in December 2000, to the adoption, by the 27 countries of the Region, of the non-binding Anti-Corruption Action Plan for Asia and the Pacific. The Action Plan refers to three "pillars" of action, namely "developing effective and transparent systems for public service", "strengthening anti-bribery actions and promoting integrity in business operations" and "supporting active public involvement". The Action Plan builds on cooperation among governments, international financial institutions, civil society and the business community. It is notable that the Action Plan refers to the protection of whistleblowers and to the monitoring role of NGOs.

2.2.5. PREVENTION

Efforts to prevent corruption in public procurement ought to be seen as the responsibility of both governments (employers) and bidders/contractors, as an essential element of risk management. Those efforts should comprise clear and transparent process rules as well as clear behavioural rules for those involved:

Clear and Transparent Process Rules

- On the principal's side there should be clear procurement rules, based on the primacy of selection based on a competitive procedure, principally open competition; any other procedures should be an exception and require justification

(that is documented for later review);

- The "four-eyes-principle" and regular rotation of officials in sensitive jobs are just two of many proven preventive administrative measures. They should be widely applied;
- Administrative processes and decisions should be characterised by **compliance with rules**, not by broad discretion of officials; wherever officials have discretion, corruption is invited;
- Important decisions should be made by **more than one official**, such as by committee; and
- **Functions** should be **separated** so as to assure that decisions about investment needs, preparation, contracting, implementation and final accounting are handled by different officials. Whenever people perform double or multiple functions, natural checks and balances are foreclosed.

Clear Behavioural Rules

- Governments, government departments and government-owned corporations as well as private companies need **Codes of Conduct** which are prepared involving the entire staff, promoted and "lived" by top level staff, and explained to and accepted by staff at large;
- The Code of Conduct should be based on a commitment to integrity and ethical behaviour. Corruption must be a clear theme. There should be a clear prohibition of giving or accepting bribes and facilitation payments;
- Specific **Guidelines** need to address the giving and acceptance of gifts, entertainment and other favours, and should establish zero tolerance (preferably) or low thresholds, in the latter case also addressing the frequency allowed;
- Company Codes should address the issue of political donations, donations for charitable purposes and sponsoring of government functions;
- Nepotism (the favouring of relatives or friends in appointments or promotions) should be addressed and specifically prohibited;

[24] For further information see: http://www1.oecd.org/daf/ASIAcom/ActionPlan.htm#actionplan.

- Regular sensitisation / training / refresher **training** for all staff, against written acknowledgment and commitment, needs to be assured;
- There should be clear rules and processes for **sanctions** in case of violations; prompt investigation upon suspicion and sanctioning is essential;
- There should also be a **commitment** to transparent and comprehensive book-keeping and a prohibition of "off-the-books" accounts, both domestically and internationally;
- Governments and companies should carry out an analysis of **potential entry points** of corruption and develop adequate protective systems for the weak points; and
- Governments and companies should develop **corruption indicators** ("Red Flags") such as expensive lifestyle of an official not explained by official or known legitimate income, no vacations, indebtedness, avoidance of controls, absence of complaints where complaints would normally be expected, etc..

There exists a variety of proven tools to put corruption prevention strategies in place. Model Codes are available to businesses, such as TI/SAI's Business Principles or the International Chamber of Commerce's Guidelines "Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations" (see below Section 3). It is the responsibility of business associations to assist individual businesses in developing such codes of their own.

2.2.6. CONTROLS AND CONTROL STRUCTURES (INTERNAL AND EXTERNAL)

Apart from prevention strategies, controls and control structures need to be in place on both sides, the principal and the bidder, in order to curb corruption in public procurement. Such control structures should ensure:

- Effective and reliable internal and external **controls**;
- Internal and external **audit** structures, adequately staffed and resourced;

- **Monitoring** by Civil Society (see Section 3.2.4. for CS monitoring as a tool); and
- Any suspicion of wrongdoing needs to be promptly **followed-up**.

2.2.7. INFORMATION GATHERING - WHISTLEBLOWING

One of the main characteristics of corruption is that it happens in secrecy. Both giver and taker of bribes are criminals and have no interest to share their information with others. The people most likely to observe or know about corruption are office colleagues of the corrupt official or competing bidders. Most of them are reluctant for various reasons to approach the authorities inside or outside to lodge charges. Considering that whistleblowers are the most important source of information about corruption crimes, governments and companies should establish clear **whistleblower encouragement** and whistleblower **protection rules**. Principals and companies should also take seriously and consider anonymous information – taking into account the fact, that in many jurisdictions the whistleblower is in danger of being reprimanded or criticised by colleagues and superiors alike. In other words, unless effective whistleblower protection rules are in place, the authorities need to be prepared to act on anonymous information – which very often turns out to be reliable and solid.

Possible means for information gathering are:

- Appointing decentralised **Anti-Corruption** or **Ethics Officers** - available to insiders and outsiders;
- Establishing a **Central Anti-Corruption Office**;
- Establishing a **Hotline** telephone connection - also for anonymous information;
- Appointing an external **Ombudsman** – if the ombudsman is an attorney, information provided to him is privileged and thus protected, and whistleblowers are more likely to offer information; and
- Establishing an **Electronic Information Gathering System**

- German authorities, for example, have developed and are using an electronic system that allows and accepts anonymous reports but enables authorities to approach and communicate with the whistleblower - without being able to breach his anonymity - for follow-up questions which often make the difference between useless and useful information.

2.2.8. E-PROCUREMENT

In recent years, government authorities have more and more made use of the internet for public procurement processes. The main objective here is "better value for money" by fostering access, competition, impartiality and transparency and by allowing control by civil society. Some of the main features of effective e-procurement systems are summarised here:

There are different **kinds of systems** in place, e.g. offering:

- Information only (in Latin America: 13 of 17 studied systems);
- Information and Transaction (in Latin America: Mexico, Brazil, Chile; in the Philippines, the Government e-Procurement System GEPS);
- Comprehensive coverage federal / state / municipal; or
- Partial coverage;
- Obligatory use (in Latin America: Brazil, Chile, Mexico, Peru, Venezuela); or
- Optional use.

E-procurement systems can **provide**:

- General procurement information on all government departments;
- Tender notices (goods sought, detailed specifications, etc.);
- Bidding documents;
- Minutes/records of bidders' conferences;
- Submission of bids;
- Bids received;
- Reports of award proceedings, e.g. who won and at what price;

in Chile even details on economic and technical evaluations and in Singapore details on the conditions of the winning bid are provided;
- Contract details;
- Comparison of prices paid by other buyers for same goods or services; and
- The payment process, i.e. electronic payment is possible.

Some systems also contain **reports** on:
- Statistics on buyers;
- Statistics on suppliers;
- Statistics on purchases by buyer and supplier; and
- Consolidated reports on all transactions (by region, by purchaser, by supplier or by other criteria, e.g. by official approving the award).

Among the **benefits** that have been observed with these systems are:
- Increased efficiency;
- Enhanced transparency;
- Pubic access (in Mexico universities, chambers of commerce, business; associations and NGOs are under contract to observe and monitor the processes);
- Better risk management;
- Higher levels of integrity and ethics;
- Significantly better access to government procurement for Small and Medium Size Enterprises (SMEs);
- Better access for non-local (provincial) bidders;
- Corruption avoidance;
- Cost savings (average 20%) compared to traditional procurement;
- In addition to federal government, other regional and municipal buyers join the system on a voluntary basis; and
- In Mexico the World Bank allows COMPRANET to supersede World Bank Procurement Guidelines.

Complaints and Appeals Systems are important for effective e-procurement.

Some **factors for success** that have been identified are:

- Unequivocal political will and support;
- Incremental introduction; and
- Extensive training for operators and suppliers.

Some typical **constraints** that have been identified are:

- Cultural barriers, e.g. getting SMEs to work with the Internet; and
- Resource constraints (financial and personnel).

2.3. ANTI-CORRUPTION INITIATIVES IN THE PRIVATE SECTOR

All stakeholders have a role to play in curbing corruption in public contracting. Together with efforts focused on improving government's performance and tools, work needs to be done together with the private sector in introducing practices that will help towards this aim. The main effort clearly focuses on what each company can do on its own, within its main area of responsibility and within its own industry. In addition, there are international and sector-wide private sector initiatives that we briefly outline here, without the intention of being exhaustive. While many of them do not relate exclusively to corruption in procurement, they present relevant initiatives with an impact in the field of procurement.

2.3.1. OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES[25]

The OECD Guidelines for Multinational Enterprises contain recommendations for responsible corporate behaviour and standards of conduct that are based on voluntary commitment. Their aim is to increase the positive contribution of investments to the common welfare and to create an atmosphere of trust among

companies, employees, governments and the society as a whole. In this sense, these Guidelines are a comprehensive code of conduct for multinational enterprises to which the participating governments[26] have committed.

The Guidelines:

- Apply to business operations worldwide; they cover multinational enterprises in member countries irrespective of where those enterprises pursue their activities;
- Were developed by involving representatives of corporations, employees, and non-governmental organisations; and
- Are provided with an implementation mechanism (National Contact Points in each country as well as the OECD investment committee CIME).

The Guidelines comprise 10 chapters and address the following topics: disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation. They go back to 1976 and their most recent revision took place in 2000, resulting in the following alterations:

- Integration of human rights and condemnation of child and forced labour;
- Integration of the principle of sustainability and strengthening of the chapter on environment;
- Introduction of a new chapter on consumer protection;
- Strengthening the fight against bribery and corruption;
- Acknowledgement of the particular role and needs of small and medium enterprises; and
- Improved implementation through revaluation of the National Contact Points established in all participating countries.

[26] See also on http://www.oecd.org/dataoecd/15/43/33914891.pdf .

[27] This includes the 30 OECD member countries and nine other countries, known as signatory countries: Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania, and Slovenia.

For the implementation of the Guidelines, a National Contact Point has been established in each participating country. Their tasks comprise the publication and promotion of the guidelines, the handling of enquiries and the dealing with individual cases, usually on the basis of complaints by one of the involved. Among the involved are ministries, representatives of the industry, of trade unions and of selected non-governmental organisations such as Transparency International. All National Contact Points come together annually for an exchange of ideas.

2.3.2. UN GLOBAL COMPACT[27]

The initiative of the UN Secretary General Kofi Annan of a "Global Compact" between the United Nations and the corporate sector was first presented at the World Economic Forum in Davos in 1999. Its aim is to strengthen the cooperation between the UN, the corporate sector and other groups in society and to utilise this for the implementation of some of the UN's key targets. The Secretary General calls on corporations to adopt ten principles related to human rights protection, social and environmental standards, and anti-corruption that are derived from key UN targets, and to respect them on a voluntary basis in the management of their businesses. They derive from the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the World Summit for Social Development in Copenhagen 1995, the Rio Declaration on Environment and Development of 1992 and the United Nations Convention Against Corruption. The 10th Principle "Anti-Corruption" was integrated after long debates in 2004.

The participating companies are expected to publish evidence of their commitment to the "Global Compact" from their business activities on the Global Compact's Internet website. This is meant, on the one hand, to provide other companies with inspiring examples and, on the other hand, to give non-governmental organisations and the wider public the opportunity to comment. Currently, more than

1,700 internationally operating companies take part in the Global Compact.

The Global Compact Principles Are:

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;

Principle 2: Make sure that they are not complicit in human rights abuses;

Labour Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: The elimination of all forms of forced and compulsory labour;

Principle 5: The effective abolition of child labour;

Principle 6: The elimination of discrimination in respect of employment and occupation;

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: Undertake initiatives to promote greater environmental responsibility;

Principle 9: Encourage the development and diffusion of environmentally friendly technologies; and

Anti-Corruption

Principle 10: Businesses should work against all forms of corruption, including extortion and bribery.

[27] See also the official Global Compact website: http://www.unglobalcompact.org/ .

2.3.3. FIDIC "POLICY STATEMENT ON BUSINESS INTEGRITY" OF CONSULTANTS

While in the past most efforts at cleaning up procurement processes have been directed at contractors and suppliers, it has more recently emerged that some consultants have contributed their share to the poisoning of the markets. Consultants may bribe in order to obtain a contract (they will give a bribe to obtain information from government officials, a larger bribe to be placed on the "short list" and a yet larger bribe to be selected), they may (with or without the connivance of the authority) introduce a bias into the design, the specifications and bidding documents in favour of a "close" contractor or supplier, and they may carry out their monitoring and supervisory tasks during project implementation with a bias, either in favour of a corrupt official or of a "close" contractor or supplier. The "closeness" to a particular contractor or supplier may be based on legal (contractual) relationships or on past business associations. Systematic efforts are therefore necessary to select an able, independent and incorruptible consultant.

FIDIC (Federation Internationale des Ingenieurs Conseils), the largest association of consultant engineers globally, therefore introduced, as early as 1996, an Ethics Statement and a specific Policy Statement on Corruption ("Policy Statement on Business Integrity"). It states, for example:

- Corrupt practices can potentially happen at all stages[28];
- The Consulting Firm must not accept remuneration from suppliers which are under consideration for incorporation into the design, and must avoid references to brand names;
- Qualification-based selection procedures and competitive tendering, respectively, should be used;
- Member firms should be aware of local laws regarding corruption and should promptly report criminal behaviour to the proper law enforcement authorities; and
- FIDIC Member Associations should take prompt disciplinary actions against any member firms found to have violated the FIDIC Code of Ethics[29].

In 2001, FIDIC launched an Integrity Programme, which is a welcome private sector initiative to prevent corruption in public procurement funded by International Financial Institutions (IFIs) such as the World Bank or the Regional Development Banks: FIDIC recommends to its members the development of a Code of Ethics as well as the participation in a new initiative of "commitment to integrity" by applying the FIDIC "Business Integrity Management System (BIMS)".[30]

2.3.4. CODES OF ETHICS IN BUSINESS

International Chamber of Commerce – Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations[31]

The International Chamber of Commerce first published its Rules of Conduct in 1977 and revised them in 1996 and most recently in 2005. They address the main manifestations of corruption and provide companies with hands-on recommendations on how to prevent corruption:

- Nobody should, directly or indirectly, demand or accept bribes;
- No company should, directly or indirectly, give or offer bribes;
- Enterprises should not (i) kick back any portion of a contract payment to government officials or to employees of the other

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[28] "Corrupt practices can occur at all stages of the procurement process: in the marketing of engineering services, during the design; in preparing tender documents (including specifications); in pre-qualifying bidders; in evaluating tenders; in supervising the performance of those carrying out the construction; issuing of payment certifications to contractors; and making decisions on contractors' claims." FIDIC Policy Statement on Corruption 1996.

[29] FIDIC Policy Statement 1996, Recommendation 5.

[30] The FIDIC policy statement can be found at: http://www1.fidic.org/about/statement16.asp
It contains links to the FIDIC "Business Integrity Management System (BIMS)" and the FIDIC Code of Ethics.

[31] http://www.iccwbo.org/policy/anticorruption/id870/index.html.

contracting party, or (ii) utilise intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to government officials, or to employees of the other contracting party, their relatives, friends or business associates;

- Any payment made to any agent should be no more than an appropriate remuneration for legitimate services rendered by such agent;
- No part of any such payment should be passed on by the agent as a bribe or otherwise in contravention of these Rules of Conduct;
- Companies should maintain a record of the names, terms of employment and payments to all agents who are retained by them in connection with transactions with public bodies, state or private enterprises;
- All financial transactions must be properly and fairly recorded in appropriate books of account available for inspection by boards of directors, if applicable, or a corresponding body, as well as auditors;
- There must be no "off the books" or secret accounts, nor may any documents be issued which do not properly and fairly record the transactions to which they relate;
- The Board of Directors' ultimate responsibility for an enterprise is confirmed; and
- Enterprises should implement comprehensive policies or codes reflecting the ICC Rules of Conduct.

In the 2005 revision several particularly crucial points were strengthened on the basis of recent experiences:

- Facilitation Payments (as opposed to bribes) are now also clearly stated as improper;
- Companies should offer confidential channels to raise concerns, seek advice or report violations without having to fear retaliation;
- "Bribery and extortion" have been defined even more broadly than previously, particularly with regard to permissions, licences, taxation and customs duties as well as judicial and legislative procedures;
- The precautionary recommendations regarding the use

of agents and other intermediaries are strengthened by the prohibition of bribes through foreign subsidiaries, joint venture partners and outsourcing agreements;

- Political and charitable contributions and sponsorships should not be used as a subterfuge for bribery; and
- The (very limited) allowance of gifts, hospitality or expenses has been limited and defined more clearly.

The TI/SAI Business Principles for Countering Bribery (BPCB)

Transparency International, in co-operation with Social Accountability International, spearheaded the development of the Business Principles for Countering Bribery (BPCB), introduced in December 2002.

The Business Principles are the product of a cooperative effort of a Steering Committee drawn from companies, academia, trade unions and non-governmental bodies. The Business Principles provide a model for companies seeking to adopt a comprehensive anti-bribery programme. TI encourages companies to consider using the Business Principles as a starting point for developing their own anti-bribery programmes or as a benchmark for existing ones.

To support the users of the Business Principles, TI has produced a suite of tools, including a comprehensive Guidance Document which provides additional background and practical information for those wishing to implement the Business Principles or review their own anti-bribery processes. The TI Six Step Implementation Process is a how-to guide for companies that are early on in the process of devising and implementing an anti-bribery programme. TI is also developing a Self-Evaluation Module to assist companies wishing to assess their anti-bribery performance.[32]

[32] The Business Principles as well as the Guidance Document and a document outlining the Six Step Implementation Process can be downloaded for free from TI's homepage at: http://www.transparency.org/global_priorities/private_sector/business_principles .

2.3.5. AGENT'S CONTRACTS

Agents (or consultants, middlemen, contractors etc) often are providing perfectly legitimate services, but perhaps just as often they are used by businesses to carry out corrupt acts which the businesses themselves are reluctant to perform; this is especially true for agents etc in foreign countries. In order to prevent such corrupt practices, the company selecting such an agent etc should do the following:

- Carry out **due diligence** on the agent regarding the agent's integrity history;
- Execute a **written contract** in which the tasks to be performed are specified in detail;
- The **compensation** to be agreed should not exceed fair compensation for legitimate services actually performed;
- The compensation should be paid into a **named account** in the agent's country of residence and/or work; and
- The agent should be asked to sign a commitment that he would comply with the principal's **integrity** programme.

2.3.6. TI'S INITIATIVES WITH SPECIFIC SECTORS

Transparency International has started working with different sectors where corruption in public contracting is a particular problem. Among them are the construction and engineering sector, the water industry and the defence industry.

Construction and Engineering Industry

TI has an international initiative aimed at preventing corruption on construction projects which has been running for four years. This initiative involves:

- the development of reports advising on different aspects of corruption in the industry;
- the development of anti-corruption actions and tools specifically designed for the industry, and

- working with the industry, governments and civil society to try to address problems associated with corruption.

The reports that have been produced relate primarily to the risks of corruption for project owners, funders, and construction and engineering organisations, and to actions that may be taken by those parties to avoid corruption. There is also a report which provides detailed examples of corruption in the industry.

A number of anti-corruption tools, designed specifically for use in the construction and engineering sector, have been or are being developed. These tools include anti-corruption agreements, agreements for the appointment of independent assessors to monitor projects, anti-corruption rules for individuals, due diligence procedures and transparency requirements.

TI has been working closely with government, industry and civil society to develop anti-corruption measures. TI (UK) has been instrumental in the setting up and co-ordination of the UK Anti-Corruption Forum which is an alliance between business associations, professional institutions, organisations and companies with interests in the infrastructure, construction and engineering sectors. The UK Forum has issued an Anti-Corruption Action Statement which sets out the actions which need to be taken by the various participants in these sectors to prevent corruption. TI is promoting the development of similar forums in other countries.

Further information on this initiative, and copies of the anti-corruption reports, actions, and tools, can be obtained from the TI website: http://www.transparency.org/tools/contracting/construction_projects

Water Industry

The pervasiveness of corruption in the water sector spurred TI and seven leading water organisations (International Water and Sanitation Centre (IRC) of the Netherlands, IBON, an NGO located in the Philippines, the Stockholm International Water Institute (SIWI),

the Swedish Water House (SWH), the Water and Sanitation Program-Africa (WSP-Africa) of the World Bank, AquaFed (an International Federation of Private Water Operators) and UNICEF to found the Water Integrity Network (WIN) in early 2006.

With corruption estimated to be draining 20-40% of the water sector's financing, a successful anti-corruption strategy can be a significant factor in attacking some of the major problems in the water sector, including the lack of a sustainable supply of clean drinking water by a billion of the world's population; the lack of adequate sanitation by approximately 3 billion people; and the estimated 900 million people that suffer from hunger.

The WIN promotes solutions-oriented action and coalition-building among civil society, the public and private sectors, media and governments. The network's core work will include diagnosing the sources of problems in the water sector, proposing solutions, building capacity and monitoring progress. A fund for civil society activities in developing countries is also envisioned to help develop effective local anti-corruption coalitions.

One of the first tasks of the WIN will be to collaborate with TI in preparing the 2008 Global Corruption Report (GCR), which will focus on the water sector. This document will present the results of the latest research in identifying the causes of corruption in all aspects of the water sector including water supply and sanitation, irrigation and the hydropower sectors. In addition, it will present the best practice on how all the major actors (including Government, the private sector and civil society) can increase their effectiveness in combating corruption in the water sector. It is expected that the report will focus on corruption in northern and southern countries and will draw extensively on the experience of the TI chapters and other stakeholders in addressing corruption issues in the water sector.[33]

Defence Industry

TI is also, through its National Chapter in the UK, leading a global project in the defence and security sector, working with the major

stakeholders – exporting governments, importing governments, companies and other organisations (NATO, EU, World Bank, and others) – to reduce corruption in the defence sector, and particularly in defence procurement. TI's global research shows that the arms and defence sector is one of the most corrupt private sectors.

Work with this sector consists of four main activities:

1. Working with defence companies to encourage the development of an industry consortium against corruption in international tenders;
2. Testing the use of a procurement anti-corruption tool, Defence Integrity Pacts (DIP), in major defence tenders. Integrity Pacts (IPs) are enforceable anti-bribery pledges overseen by an empowered independent monitor. DIPs lend added credibility to the procurement process through enhanced transparency and accountability and are being implemented already in several countries like India, South Korea, and Colombia;
3. Working to improve anti-corruption capability in defence ministries and in their procurement practices, aiming to develop good practices in this area; and
4. Working to strengthen laws and international instruments against bribery in defence related activities. This includes engagement in discussions on a EU Code of Conduct on arms export controls, engaging with the World Bank and other multilateral lenders to discuss ways to influence government defence reform, as well as being in touch with national Export Control organisations to discuss ways to strengthen anti-corruption measures in arms exports.[34]

[33] Please visit http://www.waterintegritynetwork.net/ for further information.

[34] More information can be found on TI's website: http://www.transparency.org/news_room/in_focus/2006/defence_sector .

SECTION 3 COLLABORATIVE TOOLS (INVOLVING GOVERNMENTS, COMPANIES AND CIVIL SOCIETY) TO PREVENT OR REDUCE CORRUPTION.

There are tools, some of them developed by TI, that are based on a collaborative approach involving committed contracting agencies, companies and civil society. Below is an outline description of some of them[35].

It is now widely recognised that Civil Society can have a crucial role in contributing to the transparency and integrity of public procurement processes. There are a number of roles Civil Society can play in bringing transparency to procurement processes. Civil Society can play a key role in monitoring procurement processes, in being a source of expertise and an independent voice to raise issues and difficult questions, to manage conflict and balance powers and bring together groups of people.

3.1. THE TI INTEGRITY PACT

In order to assist countries, which are prepared to introduce transparency and integrity into their procurement and implementation process overall and wish to set a public precedent of their commitment, TI has developed the Integrity Pact (IP).

TI developed in the mid-1990's the concept of the Integrity Pact (IP), originally called the "Islands of Integrity" concept. The IP contains rights and obligations to the effect that neither side will pay, offer, demand or accept bribes of any sort, or collude with competitors to obtain the contract, or while carrying it out. Also, that bidders will disclose all commissions and similar expenses paid by them to anybody in connection with the contract; and that sanctions will apply when violations occur. These sanctions range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to debarment for future contracts on the side of the bidders, and criminal or disciplinary action against employees of the government.

Many companies and government officials would rather not get involved in corruption. The IP allows companies to refrain from bribing in the knowledge that their competitors are bound by the same rules and the assurance that the government agency will not request them either. The IP allows governments to reduce the high cost of corruption on procurement, privatisation and licensing. The IP has shown itself to be adaptable to many legal settings and flexible in its application. Since its original conception, the TI-developed tool of the Integrity Pact has now been used in more than 14 countries worldwide and has benefited from the feedback of a variety of individuals and organisations.

The IP has been conceived to be applied to individual and specific contracting processes, therefore their goals remain initially restricted to provide transparency and prevent corruption in that particular contracting process. In some circumstances, however, IPs have contributed to changes beyond those specific instances or have triggered wider change processes. Beyond the individual impact on the contracting process in question, the IP and its consequences within contracting systems are also intended to create confidence and trust in the public decision-making, a more hospitable investment climate and public support for the government's own procurement, privatisation and licensing programmes.

The main elements of this concept are:

- A pact (**contract**) among a government office (inviting contractors or suppliers to submit tenders for a public sector project – the „principal") and those companies submitting a tender for this specific project (the „bidders");
- An undertaking by the principal that its officials will **not demand or accept any bribes**, gifts or payments of any kind etc, with appropriate disciplinary, civil or criminal sanctions in case of violation;
- A statement by each bidder that he has **not paid, and will not pay, any bribes** "in order to obtain or retain this contract" (thus

[35] More detailed information is available on the TI website: http://www.transparency.org . The TI website also has new materials regarding Integrity Pacts and anti-corruption in public contracting.

excluding facilitation payments; although TI makes it clear, that it recommends to all to forego facilitation payments as well);

- An undertaking by each bidder to **disclose all payments** made in connection with the contract in question to anybody (including agents and other middle men as well as family members etc of officials);
- The explicit acceptance by each bidder that the no-bribery commitment and the disclosure obligation as well as the attendant sanctions remain in force, for the winning bidder, **until the contract has been fully executed**;
- Undertakings **on behalf** of a bidding company will be made "in the name and on behalf of the company's Chief Executive Officer";
- Bidders are advised to have a company **Code of Conduct** (that clearly rejects the use of bribes and other unethical behaviour) and a Compliance Programme for the implementation of the Code of Conduct throughout the company;
- A pre-announced **set of sanctions** for any violation, by a bidder, of its statements or undertakings, including (some or all)
  - Denial or loss of contract,
  - Forfeiture of the bid or performance bond/security,
  - Liability for damages to the principal and the competing bidders (preferably through pre-determined or "liquidated" damages),
  - Debarment of the violator by the principal for an appropriate period of time; and
- Adjudication of any conflict between the parties to the IP can be by arbitration, if the IP so stipulates; the applicable law and the process of selecting the arbitrators would also be stipulated in advance.

The IP establishes contractual rights and obligations of all the parties to a procurement process and thus **eliminates uncertainties** as to the quality, applicability and enforcement of criminal and civil legal provisions in a given country. This means that applying the IP concept can be done **anywhere** without the normally lengthy process of changing the local laws. Where local laws adequately regulate some aspects of the IP, the IP

may refer to those laws.

The IP is intended to accomplish **two primary objectives**:

1. to enable companies to abstain from bribing by providing assurances to them that
   - their competitors will also refrain from bribing,
   - government procurement agencies will undertake to prevent corruption, including extortion, by their officials and to follow transparent procedures; and
2. to enable governments to reduce the high cost and the "distortionary" impact of corruption on public procurement.

Beyond the individual contract in question, the IP is also intended to create **confidence and trust** in the public decision making process in general, a **more hospitable investment climate** and public support – in-country – for the government's procurement, licensing and privatisation programmes.

From the outset it has been expected that Civil Society in the respective country would play a key role in overseeing and monitoring the correct and full implementation of the IP. This monitoring function can be carried out by a civil society organization (provided it has the required capacity) or by a competent individual(s) selected by civil society.

The IP concept is **suitable** not just for construction, supply and other procurement contracts, but equally for other contracting processes such as:

- selection of (engineering, architectural or other) **consultants**,
- Selection of the buyer/recipient of state property as part of a government's state asset **privatisation** programme, or
- Selection of the beneficiary of a state **permit, license, or concession** (such as for oil or gas exploration or production, mining, fishing, logging or other extraction rights), or for government-regulated services (such as telecommunications, water supply or garbage collection services).

Since an IP includes a sanctions mechanism, the question – just as with regard to the requirements for debarment/blacklisting (see above

Section 2.2.) – very often asked is "what kind of **evidence** is required to be certain of a violation by a bidder" so as to trigger sanctions? Just as with the requirements for debarment, the practice is emerging of considering it as adequate evidence of a violation if "on the basis of the facts available (admission of guilt, witness statements or documents) there are no material doubts" or "it is more likely than not" that the violation has occurred. The judgment would be made by the office triggering the sanctions in collaboration with the prosecution or judicial authorities or by the arbitrator when such mechanism has been agreed for conflict resolution and enforcement of the Pact.

The Integrity Pact is being applied or tested in a growing number of countries. The concept of a contractual arrangement appeals to many governments, but also to corporations acting globally.

Integrity Pact in Colombia.
Telecommunications Sector.

The Colombian Chapter of Transparency International (Transparencia por Colombia) has implemented more than 60 Integrity Pacts in a wide variety of sectors. Here we will focus on one of the cases in the Telecommunications sector.

An Integrity Pact was implemented within a bidding process called "Compartel", a rural communications project that aimed at providing access to telephone services in poor and distant rural areas.[36] In particular, we focus on one specific instance within this project called Compartel I. This bid took place in 1999 to contract the operators and suppliers of 6500 public telephone access points.

The telecommunications market in Colombia was opened for private investment in 1993, allowing foreign investors to have equal treatment as the national investors. Telecom, the then state-owned monopolist provider of long distance telecommunications service and the project Compartel sought specifically to open competition and investment opportunities to the rural and distant area's market.

The goals of the IP as spelled out by the Chapter were:

- To increase the transparency of public bids, generating trust

and credibility on all stakeholders;

- To create a voluntary cultural change among participants, aimed at facilitating that their behaviour be close to ethical standards and the legal standards spelled out in Colombian law;
- To agree on rules of the game contributing to levelling the playing field between the contractor and the public agency; and
- To produce information on the corruption risks map identifying vulnerabilities, common and special elements among different bidding processes.
- The Ministry of Communications invited TI Colombia to implement an Integrity Pact in the Compartel project when the terms of reference were ready for the Compartel I process. Therefore in this case the process could not start with a participatory discussion of the terms of reference. However, the Chapter with the support of experts revised and commented upon those terms as a precondition to participate in the process.

The process included: 1) the discussion and signature of a voluntary Integrity Pact. The Pact included the disclosure by the winner, under a confidentiality agreement, of all payments made to third parties on the occasion of the contracting process. 2) The implementation of an ethics declaration signed by the officials and advisors from the Ministry involved in the process. This declaration included a range of prohibitions that public officials should follow, regulating possible current and future conflicts of interest.

In the case of Compartel I, all bidders signed the Pact. In terms of the process design three aspects especially stand out:

1. The intervention of a third independent party (TI Colombia) playing a role of facilitator of the introduction of transparency measures in the process, including experts to provide input on

[36] For a complete report, consult: http://www.transparenciacolombia.org.co. We have selected here one of those cases and therefore this does not reflect the whole of the experience.

substantial aspects of it.;

2. The discussion promoted by TI around the Integrity Pact, its process and consequences. This enabled the participants to talk about the risks in the process and take explicit steps against them. For example, the ethics declaration signed by the officials contained explicit measures that guarded them from situations that would concern how they handle the information on the process; and[37]
3. The role played by the Colombian Chapter in introducing transparency to the process of clarification of bid requirements, requesting and supporting their publication.

In all other aspects the process continued as foreseen and originally designed. Once the contract was awarded there were no allegations from any of the participants on violations of the Pact or any acts of corruption. The then monopolist participated competitively in the bids and in one case was disqualified for presenting a bid without matching the bid terms.

When interviewing bidders who lost[38] they underscored the role that the IP process played in encouraging them to participate in the bids. In one case the bidder specifically expressed that to be their first time to participate in a public contracting bid and that the IP helped them ease some of the concerns they had to enter the market.

In the telecommunications sector there are only few competitors (even at the international level); therefore the inclination to collude may be higher than in other sectors. This also makes corruption prevention efforts more difficult as the costs and risks of whistle blowing are higher. This means that other measures to prevent corruption need to be in place. The Integrity Pact itself provides mechanisms to enforce sanctions in case of breach, and the disclosure of payments made by the winner of the contract to agents and others also increases the hurdle of corruption. In this specific case, however, there have been no signs of collusion or allegations of it.

Social Witness as Monitoring Tools.
The Integrity Pact as Applied in Mexico.

Transparencia Mexicana, TI's National Chapter in Mexico, has implemented more than 45 Integrity Pacts introducing a "social witness" as the monitoring system. The case of "El Cajón" hydroelectric plant can help illustrate its operation.

El Cajón

The use of the Integrity Pact encompassed the bidding process for various engineering works on the 1,228 GWh hydroelectricity plant, known as "El Cajón". The project was billed as Mexico's most important infrastructure project of the decade. It was the first time the federal government, via the Federal Electricity Commission, had accepted independent monitoring by a civil society organisation of a bidding process in the energy sector. The case had particularly high expectations, given the size of the project and the sector's reputation as being tainted by high levels of corruption.

The particular elements of this IP were the following:

- Designation of a "Social Witness" (Testigo Social) as an independent and technically competent monitor;
- Unilateral Integrity Declarations by the bidders;
- Integrity Declarations by public officials;
- Meeting of TI Mexico with each of the bidders;
- Monitoring of the bid evaluation; and
- Final report produced by the Social Witness.

The Social Witness represented Transparencia Mexicana. He acted as a spokesperson and monitored all stages of the procurement process. The bidders were required to submit Unilateral Declarations, signed

[37] This meant both confidential information and information that legitimately would concern other bidders.
[38] Interviews performed by Juanita Olaya during 2001 for TI.

by the highest-level officials of the bidding consortia, to Transparencia Mexicana as a condition for competing for the contract. Declarations were also submitted by CFE officials and by all government officials involved directly in the contracting process.

Transparencia Mexicana met each of the bidders to ask them which parts of the process they considered might be most at risk of irregularities. Respondents said they were most worried about the fair evaluation of their proposals. Companies were evaluated on technical and economic grounds. The technical test was whether they complied with the qualifying criteria; the economic test was to determine the lowest bid. The Social Witness produced a final report that was made public.

In all, 31 companies bought the guidelines for the contracting process. Of these, 21 did not submit proposals, and the remaining 10 split into three consortia that submitted bids. The contract was offered to the consortium that had requested US $748 million for it, which was below the government's allocated budget for the project.

The Social Witness

The Social Witness must fulfil the following requisites: 1) High reputation and public trust, 2) Expertise on the particular area subject to its monitoring, 3) Must be absolutely independent from any of the parties participating to the Integrity Pact and the contracting process he or she will monitor, in order to avoid any possible conflict of interest.

A specially designated team provides support to the Social Witness in performing his/her duties. He or she should have full access to all process information and perform at a minimum the following activities:

- Reviews the terms of reference and other basic bidding documents, including the invitation to participate;
- Takes part in all meetings that take place with the potential or current bidders;
- Receives the unilateral integrity declaration from the bidders;
- Serves as witness to the presentation of bids and also during the

session in which the award decision is communicated;

- Prepares a final report that is publicly available; and
- Is entitled to communicate, through the media, the development of the process, including both negative and positive aspects.

The Social Witness is "integrated" into the contracting process via a collaboration agreement signed by the contracting agency (the principal). The costs of operation of the monitoring system are covered (i) 50% by all participating bidders and (ii) the remaining 50% by the selected winner.[39]

3.2. THE INTEGRITY CLAUSE

Short of applying the full Integrity Pact, principals may insert so-called Integrity Clauses in their contracts with suppliers, contractors and consultants. Such clauses normally stipulate that the supplier etc (i) **has not** been convicted, and has not been formally investigated, of a corruption crime and (ii) has not and **will not** resort to bribery or any other form of corruption in the context of the respective contract. Misinformation by the supplier under such clause would give the principal the right to cancel the contract unconditionally. Some major public institutions that enter into many purchase, construction and consultancy contracts, elect to insert such a clause into their General Purchasing Rules that are then incorporated into individual contracts by reference. A setback of the Integrity Clause is that it normally contains no direct sanction. Another limitation is that the Clause in the absence of an independent monitoring system might be ineffective.

[39] For additional information, please contact:Transparencia Mexicana. Mónica Gabriela Ramírez. Dulce Olivia 73, Colonia Villa Coyoacán, México, DF, 04000. México Phone/Fax: +52-55-5659 4714 E-mail: transparencia99@Prodigy.net.mx, or see: http://www.transparenciamexicana.org.mx/pactosdeintegridad/#pactos .

3.3. PUBLIC HEARINGS

Experience of a few countries demonstrates that a series of well-publicised open public hearings is a particularly effective means to spread information and to obtain the stakeholders' **commitment, contributions and support** for a large investment project, and to avoid misguided decisions possibly reflecting manipulative influence of corrupt politicians, consultants, suppliers or contractors. For the construction of a new subway line in Buenos Aires, for example, three large public hearings were held at which the Mayor of Buenos Aires himself laid out the plans and invited comments and suggestions e.g. on the situation of the line, the location and design of the stations, the process for selecting the construction companies etc. The hearings were broadcast live on local TV and were video-recorded for later reference, and were a huge success.

Waste Collection Services in the Municipality of Moron, Argentina. Public Hearings for Contract Renegotiation

In March 2000, the municipal government of Morón and Poder Ciudadano (Transparency International's Chapter in Argentina) had signed an agreement of co-operation to implement the "Programme for Transparent Contracting", for the municipal waste collection services. Morón is a municipality of 355,000 inhabitants, located in the centre of Buenos Aires Metropolitan Area, one of the main urban centres of the region. One of the most important management issues in Morón was the contracting of a waste collection service for the city. The waste collection contract had a value of US$ 32 million per annum, or 10% of the city's budget, and was to last a minimum of four years. It was awarded in the year 2000 to a Spanish company. In 2003, three years after the contract was awarded, the cost structure of the contract had to be renegotiated. Poder Ciudadano designed a process to introduce transparency to this renegotiation by using public hearings.

The approach included participation of Poder Ciudadano in the Public Hearings as independent observer, facilitator and monitor. It also included the disclosure of the renegotiation deliberations by presenting publicly a report on the outcome of the Public Hearings.

Around 150 people consisting of neighbours, public officials, members of trade unions, representatives of Professional Associations and universities and Chambers of Commerce, attended the public hearing. They made a considerable contribution to the issues related to the contract adjustment. The company executing the contract demanded to raise the price of the contract by 65%. The only institution presenting other calculations was the University of Morón, whose numbers varied between 45% and 54%. The hearing resulted in an adjustment of the contract value by 40.8 % from its original value. The decision was approved by the Decision Committee (Consejo Deliberante) with 21 votes in favour and three against.

The adjusted contract value was still lower than the other bids made by the loosing companies in the original bidding process in the year 2000. As a result, the Municipality of Morón had to spend less on waste collection than any other municipality of Buenos Aires province. The contract adjustment was performed transparently without deviating from the legal mandate to perform open bidding, and the process enabled the parties to protect public funds.[40]

3.4. EXTERNAL MONITORING OF THE CONTRACTING PROCESS

It is now widely recognised that Civil Society can have a crucial role in contributing to the transparency of public procurement processes, through a number of roles, including by being a source of expertise and an independent voice to raise issues or bring groups of people together.

[40] For additional information, please contact: Poder Ciudadano, Pilar Arcidiacono. Piedras 547 (C1070AAK), Ciudad de Buenos Aires, Argentina. Tel./Fax: +54-11-4331 4925. E-mail: pilar@poderciudadano.org, or see http://www.poderciudadano.org/.

There are different schemes whereby a civil society monitoring mechanism can be implemented. It can be a group of monitors, or an individual with some organisational backing. In any case, special efforts should be put in place in order to assure the independence of the monitor. These include 1) objective selection criteria, 2) a transparent method of payment, 3) unhindered access to information and liberal disclosure of information and 4) a system for the management of conflicts of interests. When designing the monitoring role for Civil Society, one should look at the following criteria:

- Monitors should be highly respected people of unquestioned **integrity**;
- Monitors should possess (or have easy access to) the required professional **expertise**;
- Where the local members of Civil Society do not possess the required expertise, they should promptly **contract such expertise** from outside, including where necessary from overseas. Non-availability of expertise means that problems may not be discovered, convincing professional corrective proposals could not be submitted, and the monitors would not gain the respect of the officials;
- Individual Monitors should not be subject to a veto by government;
- Monitors should have free and **unlimited access** to all relevant government documents, to all relevant meetings and to all relevant officials;
- It can be agreed that Monitors **raise issues** and complaints first with the authorities, and only when no corrective action is taken within a reasonable period of time, they would be free to go public or transmit the relevant information to the judicial authorities;
- Monitors should be prepared to offer a limited **Pledge of Confidentiality** regarding certain business type (proprietary) information; and
- Monitors should have **full access** to and review the tender documents, the evaluation reports, the award selection decision and the implementation supervision reports, technical as well as financial; they should participate in meetings and they should have the right to ask questions.

Where no suitable Civil Society organisation exists as yet, or where the government has insurmountable objections to the direct involvement of Civil Society, it may instead employ what in some US cases has been called an "**Independent Private Sector Inspector General**" (or IPSIG). The IPSIG, a private sector company or group of individuals, would normally come with the necessary expertise and it would have all the rights listed above for Civil Society organisations; such an arrangement can be acceptable provided the IPSIG is given not only full access but also has the contractual right to seek correction of any procedural problems or improprieties and, if no correction takes place, to inform the public or the judicial authorities of the impropriety.

Ecuador. Independent Monitoring of Telecommunications Band and Sub-Band Auction Processes.

Between 2001 and 2003, CLD, TI's National Chapter in Ecuador, introduced Integrity Pacts and performed independent monitoring in two different processes: 1) Auctions for the use of bands and sub-bands associated with the provision of the Wireless Local Loop (WLL): and 2) Auctions for the use of telecommunications bands and sub-bands associated with the provision of Mobile services (PCS or SMA). The goal of the Chapter was to improve transparency and accountability in the auction processes.

Both cases had the same approach and activities, which included:

- Signature of a **Cooperative Agreement** between CLD and CONATEL /NST establishing their mutual responsibilities. The Agreement included the implementation of the following items:
  - **Code of Conduct**, to be signed by all public officials and employees involved in the process;
  - **Guidelines for Transparency** in the Auction Procedure, outlining the process to be followed;

- **Integrity Pact**, to be signed by all bidders and the President of CONATEL; and
- Independent monitoring of the whole process by CLD.

- In the Code of Conduct, the public officials pledged to follow specific procedures on information handling and communications with bidding companies and not to accept to be hired by the company awarded the contract for a period of one year after it was signed. A Covenant of Confidentiality was signed by the members of the Bidding Commission as they were not required to sign the Code of Conduct. The Bidding Commission was composed of the President of CONATEL, representatives of SNT, the Telecommunications Superintendence and the Federation of Production Chambers, the Armed Forces Chief of Command, and the National Council of Modernisation.
  - The **Guidelines** included: access to information, careful management of privileged and confidential information and the elimination of discretionary selection criteria. The majority of the suggestions made by CLD were accepted by CONATEL and introduced into the documents,
  - The **IP** was voluntary in the case of the WLL auction, because the bidding documents were already drafted and sold to the possible bidders when CLD entered the process. It was agreed that it would only be implemented if all bidders agreed to it. A public signing took place where all bidders accepted to sign the IP. Those who qualified were permitted to take part in the financial bidding, which took place in the form of a public hearing. In the case of the PCS it was mandatory for all bidders as a requirement for pre-qualification. A public signing ceremony took place where all bidders agreed.
- CLD independently **monitored and contributed** recommendations at each stage and on every aspect of the auctioning processes. This included the following activities:
  - Adapted the IP methodology to the specific conditions of this auctioning process;

- Evaluated the content of the auction documents; these were published on
- CONATEL's homepage;
- Disseminated information on the process to all participants;
- Evaluated the content of the concession contract;
- Ensured that the process complied with the Cooperative Agreement;
- Advised CONATEL/SNT in the preparation and the subscription of the Code of Conduct;
- Convened meetings (carried out jointly with CONATEL) and attended all Meetings held by the Bidding Commission;
- Monitored the fulfilment of the conditions established in the IP; and
- Prepared periodic press releases for the general public regarding the development of the implementation process of the IP.

In the WLL process, seven companies purchased the bidding documents. Only two of the three band blocks available were awarded, but these for a price greater than the estimate for all three blocks (US$ 5.2 million). The whole project turned out very cost efficient as the monitoring costs were less than US$ 15,000. In the PCS process three companies technically pre-qualified, but only one of these presented a financial offer. The contract awarded by way of the auction was valued at approximately US$ 35 million.

Once the auction process was finalised, CLD issued a report describing how the process was conducted and the lessons learned.This procedure has been successfully implemented in Ecuador in twelve strategic procurement processes to this date, in the areas of telecommunication, electricity distribution, and hydro-electrical power generation.[41]

[41] For additional information, please contact:Corporación Latinoamericana para el Desarrollo (CLD). Andres Tobar, Juan Ramírez N35-10 y Germán Alemán, Quito-Ecuador. Tel: (593-22) 468-212/227 E-mail: atobar@cld.org.ec; also see http://www.cld.org.ec/ .

3.5. PRICE COMPARISONS

A successful process of reducing price gouging and bringing corrupt practices into light has been the collection and publication of price information. This can be performed by public agencies and by civil society as well. It can consist for example of a comparison of itemised prices for comparable goods or services across government agencies, and even better, a comparison between them and the market prices. For example, an initiative implemented by Transparencia Brazil includes an On-line interactive tool (http://www.licitassist.org.br/desempenho) aimed at providing comparative information on the public markets involving all 293 municipalities of the state of Santa Catarina in Brazil since the 1990s The tool provides market shares, distribution of contracts among firms and municipalities, quantities and unit price comparisons among a selected set of commodities (fuels and cement). Sets of social and economic indicators (the municipal Human Development Indicator and its three components, municipal automotive fleets) can be selected by the visitor to perform regression analyses. Overall, the database includes data from 72,000 different private providers, 120,064 public procurement events and 2,033,520 purchased items.[42]

3.6. RISK ANALYSIS (RISK MAPS) OF A GOVERNMENT OFFICE OR COMPANY

In the experience of many TI Chapters, Risk Maps are tools that serve multiple purposes. On one hand they are good diagnostic tools and on the other are awareness raising and political will building tools. Using a reference framework and a participatory methodology, different stakeholders to a procurement system (within a specific agency or for a particular contracting process) identify and qualify together particular areas of vulnerability and sources of corruption risks. This allows them to design mechanisms to address the risks.

Peru. Risk Mapping in Fuel and Lubricant Procurement.

Proética, the Peruvian National Chapter of TI, in 2004 signed a Memorandum of Understanding with the Regional Government of Lambayeque to monitor the centralised procurement process of fuel and lubricants for the Government's vehicles through the implementation of an Integrity Pact. This was the first time that a public bid was called to supply these products. The total cost of the procurement amounted to around US$ 308,000. It aimed at making regional government contracting less corrupt by establishing greater transparency and instituting civil society oversight of the procurement process.

The approach included three elements within the process leading to an Integrity Pact:

1. A participatory discussion within the Government of Lambayeque that comprised the elaboration of a corruption risk map and a declaration of commitment from the officials to fight those risks;
2. Expert support from Proética in analysing the bidding documents; and
3. Creating opportunities for public participation in discussing the bidding documents.

Risk Mapping: Proética facilitated a workshop where a Corruption Risk Map concerning the fuel procurement process of the Government was elaborated by the participants. It closed with the signature of an ethical declaration by participants where the parties committed to fight against those risks. Among the risks identified where the common practice of fuel adulteration and the participation of only a few bidders, giving indications of cartelisation.

Expert Advice: Proética commissioned experts in the area of fuel and its distribution in Perú to revise the tender documents. Various

[42] Further information on the project might be sought by writing to the address tbrasil@transparencia.org.br .

legal and technical suggestions were crucial to address a series of deficiencies were accepted by the Government and incorporated into the bidding documents.

Pre-publication And Public Discussion Of The Tender Documents: The final version of the tender documents was posted on the Government's and Proética's internet portals for public comments and questions. At the beginning, there were no dissenting opinions after the pre-publication of the bidding documents and feedback was limited. During the consultation process the interested parties addressed the President of a Special Committee in charge of conducting the bidding process with their observations, doubts, clarifications and suggestions on the bidding documents.

Integrity Pact: An Integrity Pact was signed between all Government officials involved in the procurement process.

Evaluation of offers: The evaluation took place in two stages. First, a technical evaluation was made to assess the quality of the offers. Then the offers were qualified according to economic and financial criteria.

The process and in particular the risk maps methodology allowed to identify particular corruption risks and other sources of inefficiencies.[43]

3.7. GLOSSARY OF TERMS

Arbitration

Arbitration is the process toward settlement of a dispute by a person or persons chosen to hear both sides to a dispute and come to a recommendation/decision. Although less formal than a civil case in a court, the setting and procedures in arbitration are similar to those used in court. The parties to the arbitration usually appoint their own representatives, and those two together appoint the third arbitrator. The parties to the dispute also decide the other terms: Whether the recommendation of the arbitrators is binding or not, which law and language to apply, the process to be used and the handling of the costs. Arbitration in theory is faster and less costly than formal court proceedings. But in international cases, involving parties from different jurisdictions, costs and processing times often escalate. Still, arbitration is most often used in international commercial cases, reflecting the reluctance of parties to submit to a national system other than their own. "Arbitration Tribunals", which can be selected by the parties, exist at national and international levels. The best known is the Tribunal of the International Chamber of Commerce (ICC) in Paris.

Arbitration clause: The clause in a contract by which the parties agree on arbitration as their chosen instrument of dispute resolution.

Concession

Concession is the legal instrument by which a public authority (usually the government or a government department) confers to a private individual or company the right to exploit certain resources within the territory of the concession-giver. The concession contract defines the resources to be exploited (forestry/logging, fishing, mineral or oil resources), the manner in which this may take place, the concession payments due to the concession-giver, the time of validity and any other terms. See also Franchise, License, Permit.

[43] For additional information, please contact: Proética. Consejo Nacional para la Etica Pública. Manco Cápac 826, Miraflores. Lima 18, Peru. Tel: + 511- 446-8589, Fax:+511-446-8581, http://www.proetica.org.pe.

Consultant

Consultants are individuals or companies who offer their advice and expertise to "employers" such as governments, government departments, public or private corporations. The expertise can be in the technical, financial, economic or legal domain. Contracts with consultants are either for long-term advisory or short-term ad-hoc assignments. Many public authorities rely on consultants to carry out technical tasks that are complex and are not required frequently enough to justify the employment of permanent staff.

In the selection of consultants the employer should be careful to ascertain that the consultant is truly independent and not in some form linked to a supplier of goods or services who might be interested in tendering for a contract being prepared by the consultant.

Contract

An agreement between two or more parties creating obligations that are enforceable or otherwise recognisable at law, a binding contract. The written instrument that sets forth such agreement.

Corruption

The misuse of entrusted power for private gain.

Debarment

Debarment is the act of precluding someone from having access to, or doing something; it is an exclusion or a hindrance. Debarment in procurement usually refers to the decision of an "employer" to block the access of an individual or a company to the process of selecting a supplier, contractor or consultant for a government contract. Debarred individuals and companies will normally be entered in a Debarment Register (on national, regional or municipal basis), which should be publicly accessible and should be binding on public procurement decisions within the respective jurisdiction. Debarment will normally be determined and declared to sanction an individual or company for specific violations of legal, ethical or contractual obligations. Debarment will normally be declared for a period of time reflecting the severity of the violation. The debarment process should follow due process of law requirements, including clear rules about removal of a debarred individual or company

from the Register prior to the expiration of the set debarment period.

e-Procurement

Electronic procurement through the Internet. The Internet can cover any or all of the provision of information, the actual contracting and the payment

Export Credit or Export Credit Insurance Agency (ECA)

State owned, public-private or publicly-mandated private financial companies with the mandate to promote export and foreign investment by their national companies through subsidized credit or insurance.

Franchise

A legal instrument under which an individual or company is authorized to operate an enterprise under the name and with the public image of another company (the franchise giver).

Integrity Pact

The Integrity Pact (IP) is a tool developed during the 1990s by TI to help governments, businesses and civil society fight corruption in the field of public contracting. The IP is an agreement between a government or government department and all bidders for a (public sector) contract. It contains mutual rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, or collude with competitors to obtain the contract, or while carrying it out. The IP also requires that bidders disclose all commissions and similar expenses paid by them to anybody in connection with the contract; and bidders agree that sanctions will apply when violations occur. The sanctions normally would include loss or denial of contract, forfeiture of the bid or performance bond, liability for damages (possibly liquidated damages) vis-à-vis the employer and the competitors, and debarment for future contracts against the bidders, and criminal, civil or disciplinary action against employees of the government.

License

A license is a legal instrument by which a public authority (a government or public corporation) allows an individual or company to operate specific

public-interest services such as telephone services, bus operations, water supply and treatment operations., concessions or franchises such as mining, logging, bus operating or telephone licenses, or building or commercial activity permits, such as for restaurants.
It could also be a driving license.

Mediation

Mediation, as distinguished from arbitration, is a non-binding process under which the parties to a dispute call in an independent third person who will mediate the dispute in the effort to reach a voluntary agreement between the two parties without the involvement of a court or arbitration.

Monitoring

The act of observing or checking. In public procurement this refers to the objective external follow up and observation of a procurement process or a contract execution, preferably by a third independent expert party (civil society).

Ombudsman

Originating in Scandinavia, the Ombudsman has been introduced in many other countries, for a variety of functions, mostly complaints by the public about the quality of public services. In the area of corruption avoidance and fighting, the Ombudsman is a person (or office) appointed by a public authority or a private company to be available to receive confidential or otherwise privileged information regarding potential corruption activities within the appointing authority or company. When the Ombudsman is an attorney, the confidentiality of the information provided to him, and especially of the informant, is assured. The Ombudsman will convey the relevant facts to the afflicted authority or company so as to facilitate action to stop the violation, but will reveal the identity of the informant only with the latter's consent.

Permit

A permit is a legal instrument by which a public authority (a government or public corporation) authorizes an individual or company to undertake specific activities such as constructing or expanding a building, or the

operation of a restaurant or health installation. There is also the residence permit for non-nationals.

Preferences

Many authorities (in industrial as in developing countries) offer preferences to selected groups of tenderers: In developing countries, domestic tenderers often are offered a specific (small) quantified preference over tenderers from abroad; for a limited period of time this may make economic sense. In industrial countries, especially municipality procurement, regional tenderers are given a preference to support "local industry"; this interferes with the objective of obtaining the most economic price.

Privatisation

The transfer (normally through sale) of ownership of property, or of the power and control over property, from the public to the private sector in a manner that the recipient obtains substantial, independent control (which normally, but not necessarily, means majority of ownership). Many countries in the 1980's undertook this kind of reduction of the public sector to achieve a variety of aims: to improve industry performance by freeing it from bureaucratic state control, to augment public revenue, to widen share ownership, and to increase competition to benefit consumers. Privatisation has also taken the form of the sale of state and local authority housing.

Procurement

"Procurement" refers to the acquisition of consumption or investment goods or services, from pencils, bed sheets and aspirin for hospitals, gasoline for government cars, the acquisition of car and truck fleets, equipment for schools and hospitals, machinery for force account use by government departments, other light or heavy equipment or real estate, to construction, advisory and other services (from the construction of a hydroelectric power station or expressway to the hiring of consultants for engineering, financial, legal or other advisory functions).

"Procurement" for the purposes of this Handbook is defined broadly as the preparation, award and implementation/administration of contracts

for goods, works and other services and thus covers not just the narrow selection of a contract partner by a purchasing body and the actual entering of a contract between the two, but the entire process from needs assessment through preparation, award and implementation/ administration of contracts for goods, works and other services such as consultant services of a technical, financial, legal or other nature.

"Contracting" is used at once as a broader and a narrower concept. Broader in the sense, that it includes not only the acquisition of goods and services (procurement) but also other actual contracting activities of a public authority such as the selling of goods and services, privatisations, the issuance of licenses, concessions, franchises or permits for the exploitation of public goods by private individuals or companies. Narrower in the sense that in the area of procurement, the actual "contracting" is the selection of a contract party and the execution of a contract with it. The meaning in the specific case will be clear from the circumstances.

Public Procurement/ Public Contracting

"Public procurement" is procurement , "public contracting" is contracting conducted by a public authority.

Public Expenditure

The expenditure of public funds by central, regional or local governmental authorities for goods or services for the public benefit.

Regulatory Processes

The government activity of regulating private operators in public service fields such as waste disposal, electric power supply, water supply, bus operations etc.

Sanction

The penalty for non-compliance (with obligations) specified in a law, decree or contract.

Sub-Contracting

When an individual or company (the contractor) contracts with another individual or company (the sub-contractor) for the latter to execute totally

or partially the obligations the contractor has entered into with a third employer. Often the "contractor" is a "general contractor" who is capable to carry out its contractual obligations only through the employment of sub-contractors.

Tender/Bid

Tender or bid is the offer submitted by an individual or company in a procurement process conducted by a public authority or private employer/purchaser/investor.

Tendering/Bidding Process

The process by which a public authority or a public or private company selects a supplier, contractor or consultant, normally by way of competition. There are various levels of potential restriction in the process: "Open public tendering" means that anybody can submit a tender. "Competitive international bidding (CIB)" is the most unrestricted form. In some jurisdictions the exclusion of non-national tenderers is practiced. Competition may be restricted to domestic bidders, or to pre-qualified or even to arbitrarily selected bidders. The most restricted form of tendering is the sole-source contracting (without any competition). Any process short of open public tendering risks manipulation and less economic pricing.

REFERENCES

OECD: *Guidelines for Multinational Enterprises report;*
http://www.oecd.org/dataoecd/15/43/33914891.pdf .

Wiehen; Michael: *Avoiding Corruption in Privatisation - A Practical Guide;* GTZ; 2004; Published by U4 - Utstein Anti-Corruption Resource Centre.
Transparency International: *Curbing Corruption in Tsunami Relief Operations; Tsunami: In the wake of the disaster: Preventing corruption in tsunami relief and reconstruction is key to ensuring effective and equitable assistance to those in greatest need;*
http://ww1.transparency.org/in_focus_archive/tsunami/in_focus_tsunami.html ,
http://www.transparency.org/regional_pages/asia_pacific/newsroom .

Transparency International: *Global priorities- Aid and Corruption;*
http://www.transparency.org/global_priorities/aid_corruption .

Transparency International: *Mapping the Risks of Corruption in Humanitarian Action;*
http://www.transparency.org/news_room/in_focus/2006/humanitarian_relief .

Transparency International: *Working Paper #03/2006: Humanitarian Aid and Corruption;*
http://www.transparency.org/policy_research/policy_working_paper/corruption_in_h

Handbook for
Curbing Corruption
in Public Procurement

PART II
How to Reduce Corruption in Public Procurement:

Experiences from Asia
The Indonesian Chapter

TRANSPARENCY INTERNATIONAL
the global coalition against corruption

SECTION 1 BACKGROUND

1.1. THE INDONESIAN GOVERNMENT'S EFFORTS AGAINST CORRUPTION

In 2005 Indonesia improved its ranking in the Corruption Perception Index (CPI), from fifth to sixth most corrupt country in the world. Despite this improvement Indonesia's CPI ranking reveals an urgent need for transparent, accountable, and corruption and collusion-free procurement processes for public goods and services. Although its efforts have been inadequate, the Indonesian government appears to be concerned about preventing corruption. Evidence for this can be found in the recent endorsement of several relevant bills and laws. The government of Indonesia is now preparing the Public Services Law, State Administrations Law, and Administrative and Citizenship Law. The Susilo Bambang Yudhoyono (SBY) presidency has pursued several encouraging steps in the effort to prevent and curb corruption, such as Presidential Instruction No. 5/2004 to accelerate eradication of corruption and the National Action Plan (RAN) to combat corruption.

The creation of the KPK44 (Corruption Eradication Commission) can, in part, explain the improvement in the CPI ranking. This relatively recent body has considerable authority and responsibility to fight and prevent corruption in Indonesia.45 For example, it is responsible for supervising how the police and the prosecutor's office handle corruption prosecution. KPK also has legal authority to prosecute public officials, such as ministers and governors, without the president's permission. In addition, it can request the Central Bank of Indonesia (Bank of Indonesia) to disclose information regarding personal accounts in Indonesia.

Another of the Indonesian Government's efforts to prevent and curb corruption has been the creation of Timtas Tipikor (the Corruption Criminal Eradication Team). This executive level body is intended to accelerate

[44] TI Indonesia and other civil society organisations were involved in selecting the KPK chairpersons in 2003, and former executive board chair of TI Indonesia, Erry Riyana Hardjapamekas now serves as KPK Vice-Chair.
[45] See Law No. 30 of 2002.

elimination of corruption. Its leading achievement has been investigation and prosecution in the Mandiri Bank, the largest state-owned bank in Indonesia. The Government formed a team to search for fraud suspects who had fled overseas, and repatriate the state assets siphoned off by the public official from BLBI (Bank Indonesia Liquidity Support). The government investigation team detained David Nusa Widjaja, the public official from BLBI suspected of corruption. The government investigation team is still searching for seven other public officials of BLBI suspected of corruption.

PPATK (the Indonesian Financial Transaction Report and Analysis Centre) is another institution that supports corruption eradication and prevention. This centre is responsible for preventing and investigating criminal acts, particularly those concerning money laundering. In cooperation with the police, under General Sutanto, PPATK successfully tracked several irregular bank accounts. This action led to the arrest of two senior police officers, now standing for trial in a large-scale corruption case.

The police also have shown themselves to be strongly committed to the anti-corruption effort: The special ethical police court fired Brigadier General Samuel Ismoko due to misconduct and bribery on BNI Bank bribery cases. Finally the South Jakarta Court sentenced Brigadier General Samuel Ismoko to 20 months of punishment and Commissioner General Suyitno Landung to 18 months of punishment in bribery cases.

Between 2004 and 2006, hundreds of fraud and corruption cases have been revealed. This occurred across all levels of government and in many sectors. Cases have involved many high-ranking parties, such as governors, legislators in both central and local governments, and regents. Analysis shows most corruption cases have occurred in the area of public procurement. Corruption in public procurement remains high despite the fact that, since 1999, several bills and regulations on public procurement have been passed.46

1.2. PUBLIC PROCUREMENT IN INDONESIA

Public expenditures are 30% to 40% of total national spending (or IDR 90 trillion). In some government departments, such as the Public Works Department and the National Education Department, public procurement expenditures is 60% and 70% of total annual budgets, respectively. Public procurement expenditure, therefore, is important, as are the sound processes and proper management that must accompany it. Measures must be thoroughly implemented to reduce and minimise the potential for irregularities and misconduct.

Perhaps because of its importance, public procurement remains very vulnerable to corruption. The Indonesian Minister for State-Owned Enterprises, Soegiharto, estimates that 80% of corruption and fraud in state-owned companies has occurred in the area of public procurement. According to TI's Bribe Payers Index 2002, the business sectors where the largest bribes are perceived to be paid are: Public works/construction (46%); arms and defence (38%); oil and gas (21%); finance (15%); and real estate (11%).[47]

Examples of the many ways to commit fraud in public procurement[48]:

- "Closed auction"
  While appearing to be an open bid, a process might actually be "closed", with tender requirements already "targeting" a particular vendor;

- Price mark-ups
  Prices are supposed to be the vendor's/bidder's estimate, based on the details of the technical project. Prices can be manipulated, however, by both the vendor and public official to increase the bidder's profits;

[46] Such as Law No. 18 of 1999, Presidential Decree No. 18 of 2000, and Presidential Decree No. 80 of 2003.
[47] Bribe Payers Index, TI, 2002, see: http://www.transparency.org/policy_research/surveys_indices/bpi/complete_report_bpi_2002#size.
[48] Indicators for these and other potential manipulations during the public procurement process are described in detail in Section 2.1.

- Inefficiency due to bad planning
  In some cases, project planning may be carried out so as to be conducive to a project's early failure. This is done in the hope that a new tender, which would lead to the spending of further public funds;
- Bribery
  Usually occurs before the tender is won by one of the bidders. It can take the form, for instance, of an illegal payment, gift or "success fees".

Factors that may play a role in triggering public procurement corruption:[49]

- Public officials' income remains low;
- There is not yet an established system of eradication of corruption, collusion and nepotism[50];
- Law enforcement is not properly functioning;
- Punishments are too light;
- Cultural aspect: Civil servants are not afraid to act corrupt; and
- Society is not concerned about law enforcement or lack of trust in law enforcement.

Table 1: Problem Mapping of Corruption in Public Procurement[51]

Causes	Service Users	Procurement Committee	Vendors
Related to the individual	Salary / remuneration insufficient for the cost of living. Donation request must be met Greed caused by lifestyle Chance to interfere through weak system and procedure	Salary / remuneration insufficient for the cost of living. Donation request must be met Greed caused by lifestyle Chance to interfere through weak system and procedure Under strong control Insufficient knowledge of procurement	Salary / remuneration insufficient for the cost of living. Donation request must be met Greed caused by lifestyle Chance to interfere through weak system and procedure Need to fund institution Desire to earn money by any means
Related to system and procedure	Opaque (not transparent);Insufficient access to information; Stipulation on procurement is unclear and contains rules causing multiple interpretations and excessive requirements; Allows related stakeholders to interfere with each other; Is not clear on evaluating offers; and Allows an incapable vendor to accomplish a project.		
Related to achievement of procurement goals	Opaque (not transparent);Insufficient access to information; Stipulation on procurement is unclear and contains rules causing multiple interpretations and excessive requirements; Allows related stakeholders to interfere with each other; Is not clear on evaluating offers; and Allows an incapable vendor to accomplish a project.		

1.3. LEGAL CONTEXT OF PUBLIC PROCUREMENT

The effort to reform the public procurement system was initiated at the beginning of President Soeharto's regime, New Order regime I. In 1999, legislators passed Law No. 18 on Construction Services and Law No. 5 on the Ban of Monopoly Practices and Unfair Competition Practices. These laws were then clarified with Presidential Decree No. 18 of 2000 on Public Procurement. The underlying principle of this presidential decree was to facilitate effective and efficient budget spending, and to encourage fair competition and transparent, accountable and non-discriminatory public procurement.

On a practical level, however, Presidential Decree No. 18 of 2000 contained several weaknesses:

- Inconsistencies and contradictions with other laws and regulations;
- Opportunities for ambiguous interpretation. This creates conflicts when local governments implement rules in their province, regency, or district, since the law requires further explanation. This "fuzzy" situation facilitates unfair competition and rampant corruption, collusion, and nepotism;
- License requirement. Before bidding on tender, a bidder must obtain a license from a senior public official. This rule creates an opportunity to extort money from the bidder; and
- Designation of the bidding committee based on nepotism and collusion. This can result in incompetent parties' winning bids.

The issue of corruption in public procurement caught the attention of the Consultative Group on Indonesia (CGI) during their regular meetings

[49] According to the former Solok regent Gamawan Fauzi, now governor of West Sumatra. See References at end of this Chapter.
[50] Before KPK was established.
[51] Source: Agus Rahardjo, Chief of Procurement Development Policy, National Planning and Development Agency, Government of Indonesia presentation at Seminar, "Integrity Pact Implementation to Prevent Corruption on Public Procurement", TI Indonesia and GTZ, Support for Good Governance, August 25, 2005, Mahakam Hotel, Jakarta.

for loan discussion with the Indonesian government. The Memorandum of Understanding noted that more transparent, accountable, participatory, and non-discriminatory public procurement processes were required for a loan covenant. President Megawati then issued Presidential Decree No. 80 of 2003 on Public Procurement. This decree aims to regulate public procurement procedures, and encourages liberalisation and opening up of the public procurement system in Indonesia.

Presidential Decree No. 80/2003 stipulates important rules on corruption prevention:[52]

- Defines the local government budget user as a "goods and service" user (Article 1);
- Requires government (including local governments) to announce and publish an annual public procurement plan at the beginning of the year. Also mentions sanctions or punishment for the offending public official and vendor;
- Requires government (including local governments) to assign an officer in charge of procurement in all procurement processes worth over IDR 50 million (Article 1, point 9);
- Requires procurement user and committee to have necessary skill certificates;
- Consulting services must be awarded before a tender is called for development of a project;
- Categorises vendors on the basis of their size, to make the tender process fairer;
- Eliminate license requirement for bidder (as previously required under Presidential Decree No. 18 of 1999);
- Allows the multiplication of auction documents, to maximise disclosure policy;
- Opens bidding processes and tenders to all parties;
- Reduces conflicts of interest by forbidding supervisory officials and project officers to be committee members, and forbids public servants/officials from being vendors;
- Promotes post-qualification rather than pre-qualification;
- Prevents procurement committee from adding qualification requirements, such as area limitations or association certificates;
- Require procurement process committee if contract value

exceeds IDR 50 million, and committee must consist of at least three members or another odd number of members;

- Facilitates the pre/post qualification process by encouraging qualification and the use of statement letters to minimise the practice of delivering documents directly. This process aims to deter bribery. Before, the bidder and committee could meet directly before a tender was organised; andRequire parties to enter into an Integrity Pact.[53]

Presidential Instruction No. 5 of 2004 concerning the Acceleration of Corruption Eradication, in particular the sixth addendum, is a further development. This additional text requires all government institutions to implement Presidential Decree No. 80/2003.

The government has actively reformed the stipulations of Presidential Decree No. 80/2003. In 2005, the Indonesian government issued Governmental Regulation No. 70/2005, which was intended to simplify and accelerate the public procurement processes during the Aceh reconstruction. Another change came in the form of Presidential Regulation No. 8/2006.

According to Chief of Procurement Development Policy National Planning and Development Agency, Agus Rahardjo, application of Presidential Decree No. 80/2003 contributed to more efficient state spending. It has also helped reduce the amount of unaccountable funds in the state budget and has significantly lowered costs in some provinces and regencies (by up to 50% in some places).[54] Furthermore, an interesting phenomenon is that many vendors have left business associations. Before the government applied the Decree, these associations were often used as a means to lobby public officials to win a project.

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[52] Budihardjo, Executive Director of Indonesian Procurement Watch, Gap Analysis between Presidential Decree No. 80 of 2003 and Government Decree No. 18 of 1999 See References at end of this Chapter.

[53] It fails to explain Integrity Pacts, however, and gives no detail on how the government could implement them. TI Indonesia played a key role in pushing for Presidential Decree No. 80/2003 to include the Integrity Pact requirement.

[54] Ibid.

Several obstacles, nevertheless, remain. First, the Decree has not been comprehensively implemented in certain provinces and regencies and, second, some local regulations are not consistent with the Decree. Thus, as Agus Rahardjo concludes, state spending will be more efficient if Indonesia can create an atmosphere of fair competition. He suggests the following measures: Reforming information mechanisms; allowing the public more access to information; abolishing limitation of operational areas; and simplifying market segments for service-providing companies/ vendors.

Promoting fairness of competition also means having many companies participate in the bidding process (over 15 bidders). Also, e-procurement needs to be introduced and promoted. In Surabaya, e-procurement for small contracts has meant a 50% savings in the state budget, and for big contracts 23%. The current e-procurement mechanism, however, is not an ideal model, as manual processes are still involved.

SECTION 2 ROLE OF TRANSPARENCY INTERNATIONAL INDONESIA IN PROMOTING PUBLIC PROCUREMENT REFORM

2.1. A KEY TOOL: THE INTEGRITY PACT

Since its beginning, Transparency International (TI) Indonesia has been advocating for the government to use the Integrity Pact (IP) concept to regulate public procurement. It has not been an easy task. As a first step in 2002 TI Indonesia promoted use of IPs through two pilot projects, one involving the KPU (General Elections Commission) and another the Solok Regency in West Sumatra. The first project did not yield adoption of the IP tool in KPU procurement programmes. After an initial commitment and publication of a manual on procurement that called for Integrity Pact obligations for all parties, KPU refused to implement the Tool. The second project, however, did yield adoption of the IP tool, and Solok became the first regency to implement Integrity Pacts.

One of the Solok Regency's major achievements has been to reduce its local budget expenses, while at the same time creating incentives. As a result, other parties have become interested in adopting Integrity Pacts. Several entities, both from the private and government sectors, are interested in developing Integrity Pacts. Examples include the State Apparatus Empowering Ministry, the State Ministry of Agriculture, the Indonesian National Chambers of Commerce, as well as some regencies, cities, and parliamentarians.

The following sections provide detailed and comprehensive background on TI Indonesia's experience in promoting the Integrity Pact. It lays out the findings of TI Indonesia's recent assessment of five local districts and highlights various aspects of public procurement at the local government level in Indonesia.

Integrity Pact

2.2. PUBLIC PROCUREMENT ASSESSMENT

TI Indonesia assessed the public procurement processes of five regencies and municipalities: Solok, Tanah Datar, Wonosobo, Tangerang, and Kotabaru. These were part of TI's recent Asia Urbs project. These assessments reveal that the five local governments have relatively similar perceptions with regard to corruption prevention in the procurement sector. The Solok Regency, however, differs markedly from other regencies and municipalities in terms of budget efficiency. This could be related to the fact that the Solok Regency has been implementing Integrity Pacts since January 2004.

The table below lists the findings of TI Indonesia's assessment, grouped according to the different sectors involved in public procurement processes. One overall conclusion from the assessment is that the integration of the Integrity Pact concept into the Presidential Decree No.80/ 2003 on public procurement requires further concrete steps to implement Integrity Pacts practically and consistently.

Table 2: Results of TI Indonesia's Assessment of Public Procurement Processes in Five Regencies and Municipalities, According to Sector

Executive sector	
Public Works Bureau	- The Public Works Bureau spends most of the allocated local budget on procurement due to its duties related to infrastructure-related projects. - Some local government officials perceive existent regulations to be legal references for public procurement. This seems due to lack of technical knowledge of public procurement processes. - Most local government officials fail to perceive an Integrity Pact as legally binding. They believe that by merely signing the "letter" they have implemented the Integrity Pact. They fail to realise that the implementation of an IP applies throughout all phases of a public procurement process, including putting in place a strong monitoring mechanism. - The Solok Regency and other institutions within the District have gained good understanding of IP concept as means to prevent corruption. However, they still require support to increase their capacity and to ensure the sustainability of initial efforts.
Sekda/Dalbang (Secretary of the Local Government Office)	- Most of the local budget is spent on stationery and logistics. - Most of the staff is aware and understands that public procurement must comply with Presidential Decree No.80/ 2003. - Some local secretariats have complied with the public procurement mechanism.
Bupati/Wakil Bupati (Local/Vice Regent)	- The four regents assessed understand procurement processes must comply with Presidential Decree No.80/2003 and the laws on construction. - Local governments often have a policy to protect local vendors due to their limited capability to compete with large companies from large cities: Solok Regency Government has issued Local Regulation No. 4 of 2002 on the contribution of vendors from other cities to protect local vendors; Wonosobo Regency Government has an "unwritten" policy to protect local vendors against bigger competitors from other large cities. - The Solok Regency has issued a local regulation on IP implementation, Regency Decree No. 456/ BUP- 2003, and a special regulation concerning complaint mechanisms, Regency Decree No 245/ NUP- 2004. One of the main benefits of these regulations is they enable the public to provide more feedback to the local government.
Legislative sector	
- Most legislators who cooperated with TI Indonesia in this assessment were actively involved in the preparation of budgets and in the monitoring of budget implementation. However, they did not have sufficient knowledge of public procurement. - Most local legislatures proposed to integrate "lowest price" clauses into public procurement regulations: Under such clauses selection committees are not allowed to accept bidders whose prices are lower than 10% compared to the owner's estimate. To do otherwise, they perceive, would affect the quality of the project. - The majority of the local legislators suggested the need for "capacity building", given the educational background of the project inspectors. - The need for regular consultations amongst stakeholders was also suggested. Such communication would create better understanding of a project's goals and aims.	
Police and local judiciary sector	
- Legal institutions are aware that bad practices enable corruption, but these institutions often seem to have limited knowledge of public procurement and its procedures. - Wonosobo Police Districts have established a new anti-corruption division this year. It is hoped that, it will facilitate learning more about public procurement issues. Although they have discovered and collected sufficient data and evidence, they still need to increase their knowledge of specific public procurement regulations.	
Business Sector/ National Chambers of Commerce	
- In their role as providers of goods and services, business associations and the business community in general seem to realise they must comply with Presidential Decree No. 80/2003 and with the Law on Construction. - The boards of many associations are put in place to benefit from collective tender practices. - The business community and business associations are aware of the existence of Integrity Pacts as a tool to prevent corruption in public procurement. However, they view them simply as a demonstration of their commitment to avoid corrupt practices. They do not realise the comprehensive character of Integrity Pacts—involving legal sanctions and a strong monitoring mechanism. - The local business community and business associations are weary of vendors from big cities. They perceive them as putting local vendors at risk. To prevent this outcome, they promote firm stipulations in their policies. They are also active in their own capacity building in technical engineering.	

Media
- Media professionals were very aware that procurement is vulnerable to corruption. They often carry out investigations and uncover irregularities in public procurement processes. As a result, the general public in Solok Regency has come to witness the terrible impact of corruption in public procurement, as in the cases of the collapse of Kapalo Banda Bridge, the water supply leak, and the stagnation of the Lolo Nagari Project. - The Solok Regency has provided an example of good practice in relation to media reporting. The Regent has been very responsive. He has joined the local press in placing pressure on those allegedly involved in irregularities in public procurement.
Civil Society
- Some non-governmental organisations (NGOs) do not appreciate the complexity of public procurement processes. In Solok, however, civil society is very concerned with the problem. The TI Indonesia Solok Field Office has organised a series of trainings on public procurement monitoring for figures in many nagaris (villages). - Civil society actors in Solok have also established an NGO, called Aliansi Pendorong Pakta Integritas or APPI (the Integrity Pact Independent Monitoring Alliance). APPI, in a joint effort with some individual community figures, monitored nine projects in Solok Regency, and received a good and productive response on their findings from the Solok Regency. - NGOs in Solok, especially APPI, understand the need to monitor the procurement process, but due to their inadequate knowledge of construction engineering, feel they cannot monitor optimally.

2.3. INTEGRITY PACT IMPLEMENTATION IN SOLOK DISTRICT, WEST SUMATRA

2.3.1. BACKGROUND

Facilitated by TI Indonesia, the Bupati (Regent) of Solok, Gamawan Fauzi, participated in the International Anti Corruption Conference (IACC) in Korea in mid 2003. After this event, he expressed interest in promoting and working towards good governance in his district, including bureaucratic reform at the local level. After some technical preparation, as well as a series of discussions and workshops, the Solok Regency was encouraged to embark on a bureaucratic reform, particularly on an administrative reform through the implementation of Integrity Pacts in the Solok Regency. On 10th November 2003, all relevant institutions and local public staff of the Solok Regency signed an Integrity Pact. This is explained in further detail below.

2.3.2. CREATING THE ENVIRONMENT FOR INTEGRITY PACT IMPLEMENTATION

The initial activities involved in the implementation of an Integrity Pact in Solok:

- Workshop for Integrity Pact Introduction and Strategic Planning (Solok, July 21- 24, 2003);
- Training on Integrity Pact (September 5–7, 2003) in Public

Procurement for Public Officials, Business Agents and NGO Representative;
- Arrangement and Finalisation of the Integrity Pact Manuscript (September – October 2003); and
- Signing of the Integrity Pact by the Regent and all local public officials (November 10, 2003), and subsequently by the Chief of the Public Work Unit.

For all public institutions in the district and all its public officials, the signing of the IP in November 2003 has bound them to their commitments as stipulated in the IP document for all future procurement processes. It is hoped this will serve as encouragement for other public officials to sign IPs. The bidders in individual tenders sign the IP as part of the tender process (as described in Table 2 below).

Realising the work required to implement administrative reform, Regent Gamawan Fauzi started by reforming the District's administrative system through several regulations:

- Regent Announcement No. 180/304/Huk/2003 concerning public officials' main duties and functions to provide better public services to prevent corruption, nepotism and collusion;
- Regent Decree No. 456/BUP/2003 concerning implementation of Integrity Pacts;
- Anti-Bribery Sticker Campaign in government services office areas;
- Regent Decree No. 29 / BUP/2004 on special rewards other than salary (regional allowance) for all public officials in Solok Regency;
- Regent Decree No. 32/Bup/2004 on a single cashier mechanism with a non-cash policy by relying merely on the banking system;
- Regent Decree No. 244/BUP/ 2004 on Access to Public Information;
- Regent Decree No. 245/BUP/2004 concerning a complaint

mechanism through post box 2004;

- Regent Decree No. 246/BUP/2004 concerning Public Services Monitoring and Evaluation (related to Integrity Pact Implementation);
- Circulation Letter of Regent No. 100/667/TP/2004, concerning Implementation of Integrity Pacts in the Private Sector as a main condition to follow bidding process; and
- Local Regulation No. 5/2004, on Transparency and Public Participation of Governance. One article also relates to the set-up of a Complaints Management Board, Independent Monitoring Board and Commission of Transparency and Participation.

The following table gives an overview of the main features of the Integrity Pact that TI Indonesia developed for application in the District of Solok.[55]

Table 3: Main features of the Integrity Pact as used in the District of Solok

IP Regulations	IP Implementation
Commitment from political leaders and public officials not to accept any kind of bribe, gift, etc.	Stated through joint commitment by signing an IP.
Commitment from tender participants/contractors not to offer any kind of bribe, gift, etc.	- Arranged in Presidential Decree No. 80/2003. - Confirmed by Regent Decree No. 456/BUP/2003. - Implementation of Integrity Pact since 1 January 2004. - Regent decree No. 100/667/TP/2004: All vendors must add to their bidding documents a signed and sealed copy of the IP following the bidding process.
Commitment from the executive of the individual public institution as well as the contractor towards community participation.	For the public institution: joint commitment by signing IP on 10th November 2003. For the contractor: When the awarding decision is announced, the winning bidder is required to sign the IP again.
Commitment from the executive of the individual public institution towards an independent supervision.	APPI, social community group along with the community of Solok gain independent supervisory status.
Commitment for transparency and accountability.	Stipulated in Local Regulation for Transparency and Participation, No 5 / 2004—binds the public institutions that have signed the IP.
The IP contains an agreement to minimise secrecy.	- Detailed information about the construction process and in the project is classified until the winner of the tender is determined. - The amount of owner-estimated price is not a secret.
The IP contains an agreement on sanctions, incentive system and disincentive	- Sanction for government staff is based on PP 30. - Sanctions for contractors include blacklisting.

2.3.3. INDEPENDENT MONITORING OF THE IMPLEMENTATION OF INTEGRITY PACTS

As the main beneficiary of all development activities, the general public holds the lead role in monitoring the implementation of Integrity Pacts to ensure the quality of the output. As mentioned in Table 2 above, an Independent Monitoring Board was established by local NGOs in Solok, together with TI Indonesia, called Aliansi Pendorong Pakta Integritas or APPI (the Alliance of Integrity Pact Independent Monitor). APPI is now working to monitor every development project funded by the state or local budgets.

APPI holds public hearings with the local government and the legislature to suggest recommendations for transparent public procurement as well as community-based participatory monitoring. APPI has now successfully monitored various projects within the Solok regency, for example, by contributing to the identification of some problematic projects. Last year, APPI was in charge of monitoring nine of the largest procurement projects in the Solok district. Three out of nine projects were pointed out and finally declared as 'troubled' (the Convention Hall Project in Alahan Panjang, the Pipe Water Channel project in Muaro Paneh and the Kapalo Banda Bridge). These cases have now been investigated by legal authorities and are waiting to be dealt with by the local court.

Important steps for TI Indonesia in establishing an Independent Monitoring Board:

- Sensitising local communities to the idea of Integrity Pact implementation and to complaint and witness protection mechanisms, for example, through public meetings in each sub-district Nagari and public campaigns using mass media;
- Influence of cultural or religious community figures to raise awareness about the issue of corruption in public procurement;

[55] As described earlier, there is not a single template for Integrity Pacts. Integrity Pacts need to be carefully adapted to local needs and conditions without compromising the main principles. See the specific example of the use of the concept by TI Indonesia in the District of Solok.

- Empowering community-based monitoring with several training on monitoring practices and how to using the simple monitoring tools guideline;
- Regular public meetings on implementation of IPs; and
- Promoting the adoption of legal instruments regarding public participation in public procurement monitoring.

Building on their experience in the District of Solok, TI Indonesia has now also started to monitor the construction efforts in the province of Aceh. There, TI Indonesia is developing "Citizen Report Cards" as a tool. Although the results of applying this tool are not yet being fed back into policy processes, the effort ties in well with the concern of public institutions and aid agencies concern to encourage the participation of citizens in the monitoring of the reconstruction process. TI Indonesia's local NGO partner has started investigating where reports indicated corruption. The results of these investigations will be used to lobby for changes in public policy by holding public hearings at sub-district level. It is planned to invite all stakeholders to join these public hearings, the aim of which is to make authorities aware of concrete complaints by directly listening to citizens' voices.

The Kapalo Banda Project

2.3.4. PROCUREMENT IN SOLOK REGENCY,

BEFORE AND AFTER INTEGRITY PACT IMPLEMENTATION

The assessment conducted at the beginning of Transparency International's Asia Urbs project[56] indicated the Integrity Pact implementation in Solok Regency at the end of 2004 appeared to have had an impact on business competition in Solok. Bidders felt more confident after the local authority and local legislators had clarified the applicability of Local Regulation No. 4/2002 on Retribution Fee of Construction Service Licenses. Under this regulation, bidders from outside Solok are required to pay some retribution to enter the tender.

Within the biding process itself, it seems the Integrity Pact implementation, and the administrative changes accompanying it, increase efficiency, particularly with regard to the number of required bureaucratic steps. Nowadays, bidders only need three approvals to participate in a tender, as opposed to the 13 approvals previously required. Project transactions used to be very inefficient and involved a long administrative procedure that sometimes led to losses in the bidding documentation. The disbursement of project funds now requires no more than a day, and transaction security is heightened through use of bank accounts.

Integrity Pacts also seem to be an effective way to reduce illegal payments. According to some, most bidders in Solok are now reluctant and even refuse to pay if they are asked for illegal payments. Previously, bidders were constantly victims of extortion. Even though companies are the actors providing bribes, they often saw this as a necessity if they wanted to win a contract for a public project. It was also viewed as necessary for many contractors to bribe the project supervisor if they wanted a project report to be accepted, which was necessary for the disbursement of project funds. This often led to project reports' being prepared and approved without seriously and thoroughly considering the real progress of the project.

The results of one year of Integrity Pact implementation in the District of Solok are presented below in Table 4. They are based on the information TI Indonesia has been able to gather from the field from interviews with several bidders and public officials.

Table 4: Results after One-year IP Implementation in Solok District

Element	Before IP	After IP
Bureaucratic steps in the preparation of bidding documents	13 signatures required before bidders could submit bids.	Three signatures required.
Process of finance clearance for the project funding	The Local Finances Department gives a cheque to the company's finance department, and the contractor's treasurer cashes the cheque himself at the appointed bank.	The check clearance process for the project funding takes one day. - Cheque clearance is done through a bank transaction.
"Rolling" Bidding	Had become a common practice, not only in Solok Regency, but also in other places	This practice may still exist, but it happens much less. The Presidential Decree No. 80/2003 minimises the opportunity for this.
Letter of communication with administration	Letter of communication related to the tender is slow, and administration is unorganised.	Letter of communication with the administration related to the tender much better.
Demand for "extra money" (e.g. facilitation payments)	Frequent demands for unrelated payments from irresponsible officials, the police etc.	The practice is still happening although it seems now more hidden This demand can be more easily rejected by the contractors due to the Integrity Pact
Report of project execution	The report is drafted by the contractor but often gets rejected. If the report is submitted with a bribe it is more likely to be accepted	The report is drafted by the contractor. The supervisor matches the field conditions with the content of the report. If it matches, the supervisor will sign it
Supervision	Project funds obtainable although the work had not been completed.	Funds are not easy to get if the project is not running. The corruption practice is decreasing, but still exist
Company conditions and business competition	- Small companies in the regency can operate and win a project through bribery. - There are many small companies.	- Small companies find it difficult to win a contract, due to their inability to compete with larger companies.[57]

Picture of Integrity Pact signing by Solok Regent

[56] See detailed findings presented above.

[57] Former managers of small companies increasingly become executives of larger companies leading a branch of that company in the regency.

SECTION 3 LESSONS LEARNED AND RECOMMENDATIONS

3.1. LESSONS LEARNED

- There is increasing public awareness about the importance of better public procurement systems. Due to intense efforts from civil society and wide media coverage, corruption cases have been successfully uncovered. For instance, in a corruption case where helicopters were being procured, the Governor of Aceh, Abdullah Puteh, was eventually given a jail sentence. These cases, when brought in the open, show two distinct features of corruption in Indonesia today: First, corruption is more systematically carried out by a bureaucracy or individuals in power; and second, there is now less effort by the Government to protect staff involved in corruption.

- Intense efforts from civil society and mass media coverage led to the uncovering of the General Election Commission's corruption scandal, although this institution was successful in holding democratic elections in Indonesia. This case shows that, even though the potential of corruption can be reduced by a Presidential Decree on public procurement, other forms of more systematic corruption can be identified by individuals, e.g., through wedding gifts, direction bidding, and other illegal payments. Failed decision-making by the individuals such as the above-mentioned commissioners often stems from a lack of experience and knowledge of public procurement processes. In addition to not knowing about how to deal with "gratifications", as stated in the Gratification Law, there is also often a lack of knowledge of relevant criminal law.

- There is an increased effort to combat corruption through a reform agenda by the Government of Indonesia, as well as international pressure by the International Monetary Fund (IMF). The new regulations on public procurement have been clarified, such as through Presidential Decree No. 18/2001 and Presidential Decree No. 80/2003, which intend to increase transparency and

accountability in public procurement processes.

- Under Law No.20/2001, both the recipient (public official) and the briber are definitely in violation of anti-corruption law. There seems to be a shift in how corrupt actors are defined. Previously the corrupt individual would have been defined as the bureaucrat only. Today, the Indonesian Anti Corruption Act stipulates clearly that both of the parties who committed the bribery are in violation of corruption criminal law. As a result, the KPK, or Indonesian Corruption Eradication Commission, has now already arrested many businesspersons allegedly involved in corruption.

- KPK should also pursue cases related to state-owned companies, and properties owned by public officials (who should be reporting regularly to KPK) cannot be used as a basis for investigation before it has been proven that these properties were collected from corruption. This factor can be a barrier to combating corruption.

- Extortion cases implicating attorneys, judges and police officers are a sign of how the weakness of law enforcement reduces the chances of successfully combating corruption. Corruption cases frequently reveal two facilitating factors for corruption: Conditions and opportunity provide an entry point for corruption, while weak internal and external supervision facilitates corruption further.

- Where military institutions are concerned, there is usually no disclosure of procurement processes, and public access to information is limited. Procurement processes in military institutions therefore often seem to be less fair, less accountable and less transparent.

- Perceptions on the costs and benefits of corruption have changed, with corruption now being viewed as providing little benefit in exchange for considerable risk.

- Public officials beyond the level of the Regency have not yet taken up the Integrity Pact approach. Integrity Pacts, as a tool to reduce

corruption are subject to resistance from public officials, such as those on bidding committees. And it is beyond the Regent's political influence and mandate to influence law enforcement and state company executives outside the Regency.

- Improvements in bureaucracy within the bidding committees are favourable to local budget efficiency, project fund liquidation reform, and for development of a "one-stop" service policy.

3.2. RECOMMENDATIONS

Many cases show us how procurement should be handled through a transparent, accountable, and participatory approach. Integrity Pact implementation in Solok has been successful in curbing corruption in public procurement. It should be maintained, therefore, and further pursued to maximise impact.

TI Indonesia finds that the knowledge of public officials on the content of the Integrity Pact needs to be "refreshed" regularly. At the same time, a certain level of patience is required from local communities towards the monitoring process and the commitment of businesses. There is thus a need for an effective re-training/"refresher" strategy. Such a strategy could serve as a role model and could be developed for use at other levels, such as the province level. The sensitisation of all those involved, including police and prosecutors, to good public procurement processes aimed at reducing corruption needs to be sustainable.

The commitment to reduce corruption should be improved through community participation, so that there is no discrimination in front of the law for public officials. Otherwise, we need to increase the level of procurement regulation from Presidential Decree to a procurement law which would affect everyone. Furthermore, in keeping with the need to broaden the reach of regulation in public procurement, procurement regulations need to apply to the military as well.

REFERENCES

Budihardjo: Presentation "Seminar on Integrity Pact Implementation to Prevent Corruption on Public Procurement; Mahakam Hotel; Jakarta, Indonesia; August 25, 2004.

Gamawan Fauzi: Presentation at the "International Seminar on Asian Good Practice to Fight Corruption"; December 16-17, 2003; Jakarta, Indonesia; Published in "Manuscript Book of Integrity Pact Implementation in Regency of Solok"; TI Indonesia, Indonesian Procurement Watch and GTZ Support for Good Governance; Jakarta, Indonesia; 2003.

ANNEX1
PUBLIC PROCUREMENT SITUATION & INTEGRITY PACT IMPLEMENTATION IN INDONESIA

Situation of the Public Procurement

- Public Procurement is the biggest state expenditure budget with IDR 90 Trillion and added US$ 5 Billion from Extractive Industry Sector; and
- Public procurement is the highest level of bribery, specially public work and construction sector (Bribery Payment Index TI, 2002).

Bribery Payment Index 2002

- Public Work and Construction 46%
- Arm Force and Defense 36%
- Oil and Gas 21%
- Banking and Finance 15%
- Real Estate and Property 11%

The Problem of Public Procurement in Indonesia

- Price Mark Up;
- Double Receipt, Fictions Receipt, Blank Receipt;
- Bad Quality within high price;
- Arranged Bidding;
- Not Transparent and Unaccountable;
- Lower Ethics by apparatus;
- Bribery; and
- High Leakage (10-50%).

SOLUTION : IMPLEMENTATION OF INTEGRITY PACT

What is Integrity Pact?

- Integrity Pact is an agreement to bring fairness in business transaction between business agents which are involved in the bidding of governmental projects and ensure bidding process transparent and accountable; and
- This "Tool" is developed by Transparency International since 1990s.

Integrity Pact Advantage

- Preserve government credibility;
- Increasing public belief of public procurement process;
- Reduction of bribery and others illegal payment;
- Budget efficiency;
- Bureaucratic Reform;
- Increasing professionalism and capacity of public services; and
- Increasing public satisfaction as beneficiaries.

Integrity Pact Background

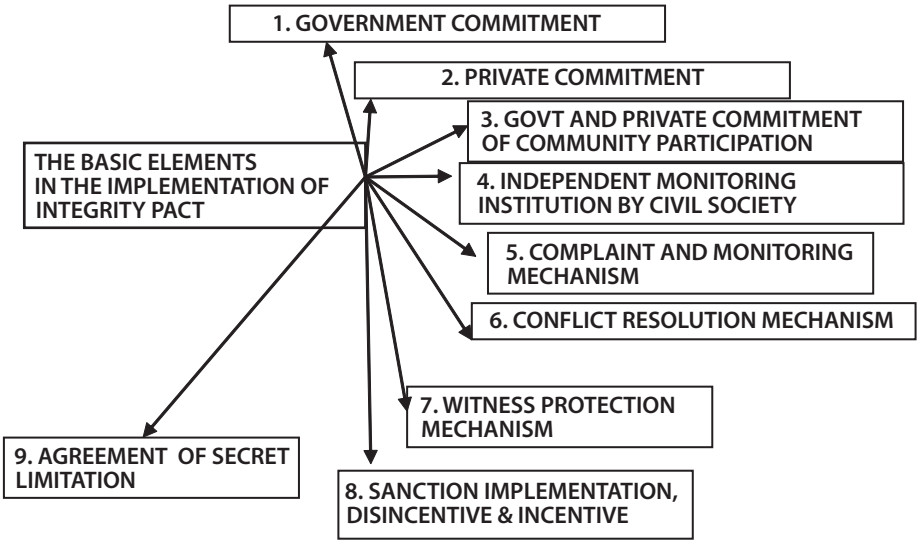
- Generally: implemented on Public procurement which involved government. as a user, and contractors;

- Objective: Free of bribery on bidding process to reduce high cost economy;
- IP brings rights and obligations, without altering the local law/ regulation.

Legal Foundation of Integrity Pact Implementation in Indonesia

- Anti Corruption Act (Law No. 20/2001);
- Corruption Eradication Commission (Anti -Corruption Agency) Law no.30/2002;
- Presidential Decree no. 80/2003; and
- Presidential Instruction no. 5/2005 (Acceleration of Corruption Eradication).

Basic Element of Integrity Pact Implementation



The Stages of IP Implementation in Solok District (West Sumatra)

- Workshop for Integrity Pact introduction and Strategic Planning in Solok (July 21– 24, 2003);
- Integrity Pact training on Public Procurement for local government officials, business agents and representative from NGOs (September 5-7, 2003);
- The Arrangement and Finalization of Integrity Pact Manuscript (September – October 2003); and
- The signing of Integrity Pact by local government of Solok and its entire officials (November 10, 2003).

The Journey of Integrity Pact Implementation in Solok

No.	IP Regulations	IP Implementation in Solok
1	Commitment from leaders, public officials for rejecting any kind of bribery, gift etc.	Stated through Joint commitment by signing IP in 10 Nov 2003 by all staff level
2	Commitment from Auction participants/ contractor for not giving/offering any kind of bribery, gift, etc	• Has been arranged in Presidential Decree No. 80/2003 • Confirmed by Regent Decree No. 456/BUP – 2003, about the implementation of Integrity Pact since 1 January 2004. • Regent decree No. 100/667/TP – 2004: all business agents must equipped their documents with IP which had been signed on a sealed letter to follow bidding process
3	Commitment from Public Institution executive and contractor toward the Community Participation	Joint commitment by signing IP in 10 November 2003. When the decision is going to be announced, the winner of the bidding sign IP again
4	Commitment from the executive toward an independent supervision	APPI, social community group along with the community of Solok becomes an independent supervisor
5	Commitment for transparency and accountability	Stipulated in Local Regulation for Transparency and Participation, No 5 / 2004

6	Agreement for limitation of secret	• Detail information about construction and numeric numbers of the project is classified, until the winner of bidding is determined • The amount of HPS is not a secret
7	Agreement for sanction, incentive system and disincentive	• Sanction for government staff is based on PP 30 • Sanction for troubled enterprise, for example by black listing
8	Agreement for conflict resolution mechanism	Conflict resolution is solved by Complaint Executive Team (TPP) and Commission for Transparency and Participation (KTP)
9	Agreement in the witness protection system	Head of Regency, as the highest Official in the local government becomes the person who is responsible for witness protection system

RESULT OF IP's IMPLEMENTATION

Assessment After 1 years IP's Implementation in Solok, December 2004

No.	Aspect	Before IP	After IP
1	The chain of bureaucracy in the settlement of auction documents	It took 13 times of signing process to settle the auction document	The auction documents can be settled by only 3 times of signing process
2	The process of finance clearance for the project funding	• Inefficient and low accountability • The Local Finances Department gives the check to the contractor treasury • the contractor treasury cash the fund itself to pointed bank	• the check clearance process for the project funding only takes one day • the finance transaction is much safer, because it's done for clearing to clearing
3	"Rolling" Bidding	It has become a common thing, not only in Solok Regency, but also in other place	This practice may still exist, but often quite small. The Presidential Decree No. 80/2003 minimizes this opportunity

4	Corresponding administration	Corresponding which is related to auction is very slow and often occur. The administration is very unarranged	Corresponding administration which is related to the auction runs faster. The administration is getting better
5	Demand for "extra money" (expense for tactic fund outside formal cost)	• there is always demand for unexpected expense from irresponsible official, the police etc • the demand for tactic fund happen several times	• practice is still happening although seems to be obscure • this demand is easily rejected by the contractors due to the Integrity Pact
6	The report of project execution	• the report is initially made by contractor, but it's always rejected • If the report is given by giving bribery, would the supervisor accept the report • finally the contractor decides to hand over the entire report to the supervisor	The report is directly finished by the contractor The supervisor only matches the field condition, to what is written in the report. If it matches, the supervisor will sign it
7	Supervision	• weak Supervision • project fund is much easier to get, although the work hasn't been done, the corruption practice is quite strong	• Supervision is still weak, yet black-mailing is decrease • The fund is not easy to get, moreover if the project isn't run. The corruption practice is decreasing, but still exist
8	The company condition and business competition (Presidential Decree No. 80/2003 →manage the free and open competition among entrepreneurs)	• small company in the regency can still operate, by using bribery they could get a project • many individual who become the manager for such company	• Small company finds difficulty in getting a project, they can't compete with a larger company • Sooner or later many of the small company will go out of their business • The bribe money can't be given recklessly. The manager has turned in to an executive for larger

			company which opens a branch in the regency
9	The case of deceit in the project execution	• the deceit in the project execution often happens • the bidding process is spoiled with corruption action	• The deceit is decreased and rarely found
10	Information access, definition of public documents and the ease for the public in accessing this information	• all government documents is classified • local budget, bidding documents, auction documents can't be accessed by public	• The document which is regarded confidential is kept as classified. • Local budget, bidding documents, auction documents are considered public documents, they can be accessed, even though not all official ready for this
11	Monitoring the implementation of Public Procurement System	The bidding process is running without supervision from the community, because the community don't understand about their rights in the project supervision	• The community is active in supervising bidding process and during the project runs • There are quite a lot of problems in the project which are reported to the government, Judicative, and published through the media

Current Situation in Solok District

- One Gate Policy for Public Services;
- Bureaucratic Reform;
- Better Remuneration Package for Public Servant;
- Law Enforcement; and
- Budget Efficiency (almost 30 percent).

Other On-Going Projects of Integrity Pact Implementation in Indonesia

- Province of Aceh (Province level) and 6 Regencies: Banda Aceh, Pidie, Bireun, Nagan Raya, West Aceh, Aceh Jaya;
- Municipality of Tangerang;
- Municipality of Bekasi; and
- Province of West Sumatera include Regency of Tanah Datar and Bukit Tinggi.

ANNEX2
LESSONS LEARNED INTEGRITY PACT IMPLEMENTATION IN SOLOK DISTRICT

Community-based Monitoring & Case Study of Kapalo Banda Bridge

Key Points of Integrity Pact Implementation in Solok District

- Commitment of Head of Regency;
- Integrity of Civil Society;
- Integrity of Mass Media;
- Witness Protection Mechanism; and
- Public Awareness.

Public Participation on IP's Implementation

- Confession of Independent Monitoring Institution;
- Access to Information; and
- Complaint Mechanism.

Legal Basis of Public Participation on Procurement Process in Solok

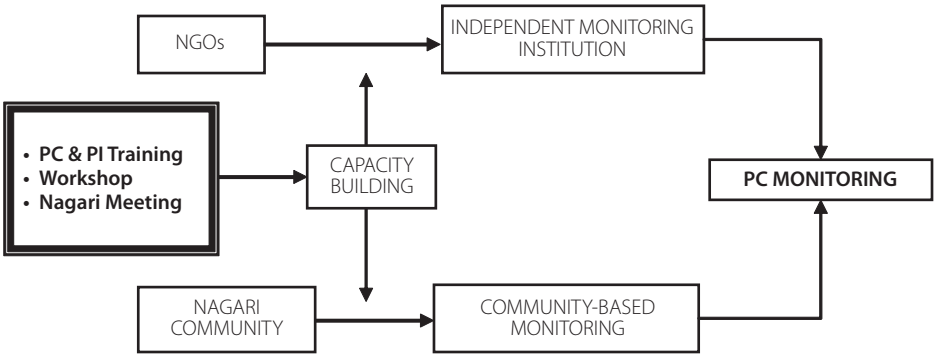
- Anti-Corruption Act No. 20/2001;
- Corruption Eradication Commission Act No. 22/2002;
- Presidential Decree No. 80/2003;

- Government Law No. 71/2000; and
- Head of District Law No 48/2004.

Step to Establish Community-based Monitoring in Solok

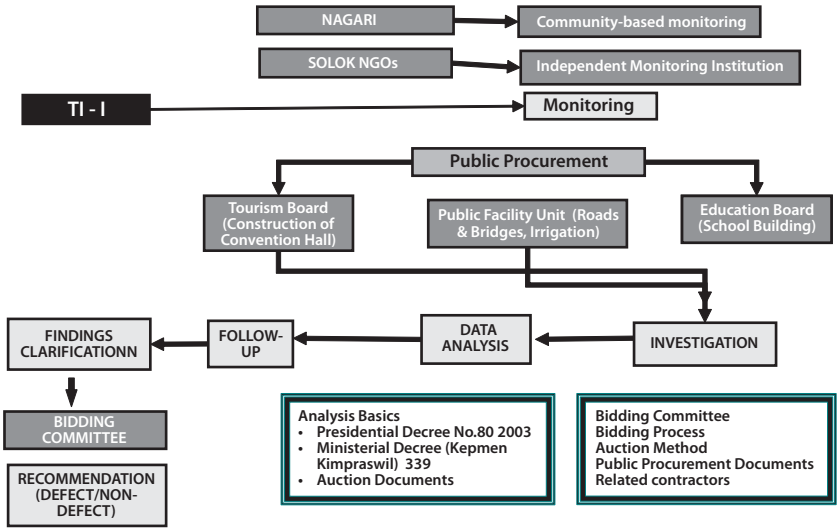
- Socialization of Integrity Pact implementation, complaint and witness protection mechanism to potential community by organize public meeting in each Nagari (sub-district) as well as public campaign in mass media;
- Influence the cultural or religion figure to aware about problematic of corruption on procurement process and implementation;
- Empowering Community-based monitoring;
- Regularly public Meeting; and
- Legal basis of public participation on public procurement.

Empowering of Civil Society

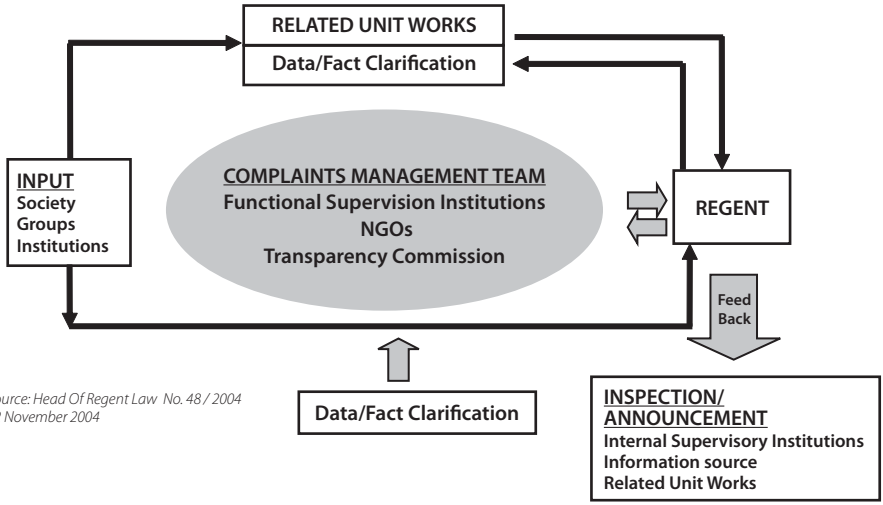


Capacity Building for Community-based Monitoring

Monitoring Process



Flow of complaint Mechanism & Monitoring and Evaluation Implementation of Integrity Pact in Solok

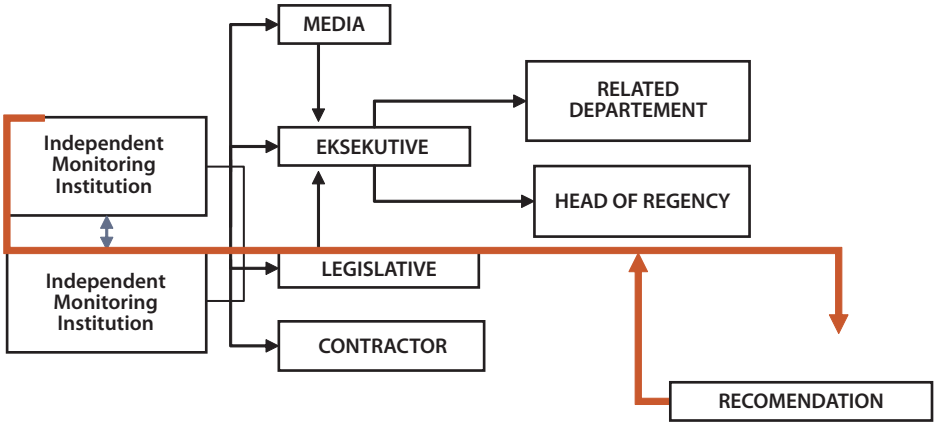


Source: Head Of Regent Law No. 48 / 2004
22 November 2004

Community-based Monitoring Against Kapalo Banda Bridge

Case Study

Phase of Cases

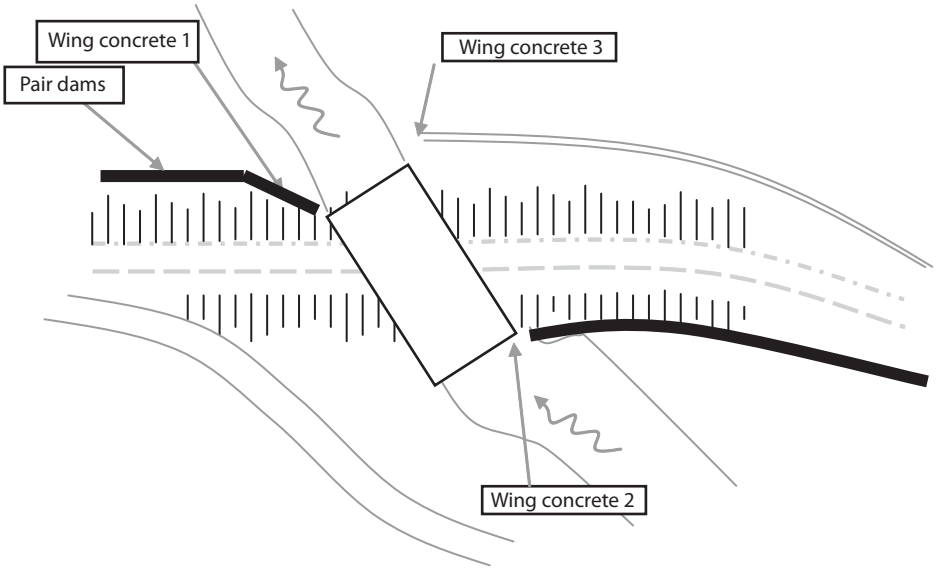


Project Information

Community Complaint

Dated from 23 October 2004: Via short message service, the member of the community reported there has been a landslide from the pile of Kapalo Banda Bridge.

Construction Description



Cases Follow-Up

by Independent Monitoring Institution

- Field Observation I (October 26, 2004);
- Confirmation to related departments (October 30, 2004);
- Confirmation with related departments (November 8, 2004);
- Field Observation II (November 24, 2004);
- Field Observation III (input from local community) (November 29, 2004);
- Field Observation (November 30, 2004); and
- Conformation with the contractor.

Cases Follow-Up

1. Contract was terminated without notification;
2. Contractor has been blacklisting as Local Government partner;
3. Personal Guarantee Custody by User;
4. Cases on the Civil Judiciary Process; and
5. Related department and contractor has investigate by District Attorney.

THE JAKARTA POST – National News
http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20060708.H10

Pact to promote clean lawmakers

Saturday, July 08, 2006

JAKARTA: A coalition of anticorruption watchdogs kicked off a campaign Friday to improve integrity among members of the House of Representatives.

Transparency International Indonesia, the International Transparency Society and Indonesia Procurement Watch have begun inviting lawmakers sign a pact in which they promise not to commit graft and act ethically.

"Today (Friday) we have asked the chairman of the House disciplinary council Slamet Effendi Yusuf and woman legislator Nursyahbani Katjasungkana to sign the pact," said Ai Mulyadi Mamoer of TI Indonesia. -- *JP*

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Senin, 10 Juli 2006 00:00 WIB
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EDITORIAL

INTEGRITY PACT

Translated from Media Indonesia Daily Newspaper

A commitment more to prevent corruption started to be campaigned to national legislators. It is by signing integrity pact

It contains elevated morals. Legislators who sign the pact are committed to keeping and upholding their integrity to prevent corruption and bribery practices in the legislative institution.

So legislators who signed the pact are bound with at least three morals – public official oath, the ethic codes of Indonesian House Representatives, and integrity pact. Those are much enough moral bind to encourage them to be clean public officials.

We will be waiting and expecting other national legislators who interested in signing the pact. It is optional and personal choice, not institutional choice so we can see and know how many national legislators having personal commitment and integrity to eradicate corruption.

Other public institutions had better sign the pact as well as all public officials. It is hoped that the multiple moral bind can prevent corruption more effectively.

Corruption is related to moral and law indeed. RI Government has made many efforts to catch, take them into court and put them in jail. But these have been done after corruption had occurred and state money had been stolen. Unfortunately these law enforcement efforts do not make corruptors scared. Even these have not been able to eliminate public image that those efforts only reach "small fish".

Preventing corruption is much better then eradicating corruption so obeying the law, moral commitment, and firm integrity are all needed.

Integrity pact can be written document and signed voluntarily by any party so it is perceived that it has excellence based on awareness and individual enlightenment – a basis which can make public officials clean.

Heru Suyanto

(L to R) Josie Fernandez, Board Member TI Malaysia, Dato' Hjh. Azizah Mohd. Din, Deputy Minister of Housing and Local Government Malaysia, Tan Sri Ramon Navaratnam, Chair TI Malaysia.

Handbook for
Curbing Corruption
in Public Procurement

PART II
How to Reduce Corruption in Public Procurement:

Experiences from Asia
The Malaysian Chapter

PART II
Experiences from Asia
The Malaysian Chapter

TRANSPARENCY INTERNATIONAL
the global coalition against corruption

SECTION 1 INTRODUCTION – E.U. ASIA URBS PROJECT

Corruption plunders economies. It also distorts and stunts them. Corruption hijacks resources that could be spent on worthy causes such as poverty eradication, education, health care, and protection of the environment. Corruption in public procurement is a major concern as governments purchase goods and services worth billions for their ministries and agencies, and build large infrastructure projects.

Government procurement of goods and services is very big business. It amounts to 10-15% of Gross Domestic Product (GDP) of developed countries, and more for developing countries. In Malaysia, in 2003, it is estimated that government procurement was approximately RM 38 billion.

On April 26, 2006, Malaysian Prime Minister Dato' Seri Abdullah Ahmad Badawi, who has expressed a commitment to a better procurement process and procedure, launched the Red Book to improve the procurement process of Government-Linked Companies (GLCs). According to the Prime Minister, the top 15 GLCs can potentially save RM 15 billion if they adopt best practices, better governance, and transparency and accountability in their procurement policies. The launch of the Red Book signals the government's commitment to achieving the vision of the National Integrity Plan with. zero corruption.

Local governments form the third tier of government in Malaysia's federal structure. Citizens engage with their local governments daily through the provision of its services to enhance the quality of life of all. Increasingly citizens through their organisations or as individuals are expressing their right to more information on the decisions taken by local governments that impact the quality of life of communities and residents. In order for local government and civil society to engage effectively, Transparency International (TI) recognises that capacity building is central to effective engagement. TI is undertaking a two-year project to reduce corruption in public procurement in local government. The project, funded by the European Union (EU), focuses on capacity building for local governments and civil society.

As part of the project, TI Malaysia together with the Integrity Institute of Malaysia (IIM) organised a landmark National Workshop on Preventing Corruption in Public Procurement: Capacity Building and Networking for Civil Society and Local Government on May 22-23, 2006 for local government officials and civil society, senior government officials and a team of international speakers with expertise on procurement issues.

An outcome of the National Workshop, which was supported by Asia Urbs Project is this Handbook, the purpose of which is to enable local government officials and members of civil society to understand each other's role and operations in the fight against corruption, particularly in the area of procurement. A major component of capacity building is information and communication. This Handbook is a practical tool providing information on local government, explains the Integrity Pact (IP) and discusses the advocacy role of civil society. Furthermore, the Handbook is intended to enhance communication between local government and civil society.

Malaysia's national goals can best be achieved through better governance and transparency and accountability in all government transactions. A more transparent procurement policy will bring benefits through open, fair, and ethical competition and will attract foreign investors.

SECTION 2 MALAYSIA: BACKGROUND AND CONTEXT [58]

2.1. INTRODUCTION: MILESTONES IN MALAYSIA'S ANTI-CORRUPTION EFFORTS

The history of Malaysia's fight against corruption is an evolving story from independence in 1957 until today. The Malaysian Government has taken various significant measures to combat corruption:

- In 1957 Prime Minister, Tunku Abdul Rahman Putra appointed an expert to study corruption in newly independent Malaya. It resulted in a report "The Problem of Corruption in the Federation of Malaya";
- This report was instrumental in the establishment of a special force to investigate corruption. The government passed the Prevention of Corruption Act 1961. This was followed by the establishment of the Anti-Corruption Agency (ACA). Today, the agency has headquarters in Putrajaya, and one branch in each state of the federation;
- In 1997, the Prevention of Corruption Act was amended to make it more comprehensive and to enhance the ACA's powers. It enables the ACA to examine the procurement system and procedures of any government department and make necessary recommendations to rectify shortcomings;
- In 1998, Prime Minister Tun Dr Mahathir Mohamad, initiated new measures to continue the fight against corruption. He directed Integrity Management Committees (IMCs) to be established in all federal and state government departments and agencies. The function of these committees is to investigate matters relating to good governance, abuse of power and mismanagement;
- When Dato' Seri Abdullah Badawi became prime minister in November 2003 the level of corruption in the country was aptly described in certain quarters as pandemic. Even the former Prime Minister Tun Mahathir Mohamad, was reported to have said that corruption may have become part of Malaysian culture;

[58] Source: TI Malaysia's Newsletter Vol. 7 No. 1, April 2006.

- The Barisan Nasional, the ruling coalition, gave top priority to eradicating corruption in its party manifesto at the last general election in 2004;
- Following widespread concern about corruption in the police a Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police was established in December 2003. The seventeen-member Commission delivered its final 607-page report on May 16, 2005 with 125 recommendations for improvements to the police including sweeping reforms to eliminate corruption and human rights abuses – on the same day the prime minister announced that he would head a task force to implement the recommendations;
- In 2004, the Malaysian media carried a front-page story on defective buildings and roads that had cost the taxpayer an estimated RM 2 billion (approximately US$ 500 million). The public works minister denied responsibility for the fiasco, and blamed a group of contractors known as Project Management Consultants (PMC), established in the 1990s and registered with the Treasury. Following this fiasco, the government abolished the PMC in March 2005;
- In April 2004 soon after the formation of the cabinet, the prime minister directed all the Barisan Nasional members of parliament to declare their assets to him and thereafter to do so every two years;
- In February the Central Bank established the website, LINK, to facilitate rapid response to the public, as well as small and medium enterprises, on matters related to the financial sector. LINK also has the potential to encourage internal and external whistleblowers to disclose corruption in the financial sector;
- The Anti-Corruption Academy, first announced in December 2003, became operational in September 2005. Its main role is to train officials of the national Anti-Corruption Agency and function as a regional centre for anti-corruption capacity building, promoting best practices in investigation, monitoring and enforcement, as well as forensic accounting and engineering.

2.2. MALAYSIA'S NATIONAL INTEGRITY PLAN (NIP) AND INTEGRITY INSTITUTE MALAYSIA (IIM)

The establishment of the Integrity Institute of Malaysia (IIM) is a key element in the overall campaign against corruption. In April 2004 the prime minister launched the National Integrity Plan (NIP) or Pelan Integriti Nasional (PIN) "to develop a society which is morally and ethically strong, with its members possessing religious and spiritual values that are strong and steadfast, and is supported with good values".

An important milestone of the NIP is to achieve progress in five priority areas by 2008:

1. Reduce incidences of corruption, malpractices and abuse of power;
2. Increase efficiency of public delivery system and overcome bureaucracy;
3. Enhance corporate governance and business ethics;
4. Strengthen the family institution; and
5. Improve quality of life and the people's well being.

The Integrity Institute of Malaysia (IIM) was established as a company limited by guarantee. Its aims are, among others, to ensure all planning, implementation, coordination, and monitoring and evaluation related to the implementation of NIP are carried out. The core business of IIM includes integrity related research, reporting, communication, and training.

IIM attempts to create space for citizens who want to learn about the spread of corruption as well as give those interested in the promotion of transparency and integrity in the country an opportunity to voice their concerns. In pursuit of this end, the Institute has organised seminars and workshops for citizens to get involved. Examples are the recent World Ethics and Integrity Forum (April 2005) and the Forum on the Construction Industry (September 2005).

2.3. ANTI-CORRUPTION INITIATIVES AND ACTIONS

There has been a positive change in administrative performance over the last five years, both in the public and private sectors. This has been associated largely with improved transparency and willingness to discuss issues of corruption, poor delivery systems, and governance. Without the recognition of existing problems, there is little chance solutions can be achieved.

2.4. INITIATIVES AND ACTIONS BY THE GOVERNMENT

Historically, despite the institutionalising of open dialogue through forums such as the Malaysian Incorporated Officials Committee (MIOC) and National Economic Action Council (MTEN) the degree of public sector improvement has been relatively small. This has occurred largely through enabling more transparent and constructive dialogue to permeate downwards below senior officer levels to the working levels particularly within state and district administrations.

Only recently is a serious effort being made to introduce higher levels of accountability to the public sector and the formulation of the National Integrity Plan (PIN). This slow progress has resulted in a continuing negative perception of the Malaysian public sector and poor performance in international competition and corruption indices.

According to the Malaysian government[59], in order to ensure integrity in public service:

- The **salary system** for public officials is constantly reviewed;
- A new **remuneration system** for public officials has been introduced;
- New **recruitment and promotion** will be handled by the Public Services Department;
- There are provisions for **job rotation** for public officials;
- Risks of conflicts of interest dealt with by **Code of Ethics** in the workplace and Section 15 of the Anti-Corruption Act 1997;

- **Declaration of assets** required from all public officers every five years;
- Administrative systems constantly reviewed by the agency concerned and Anti-Corruption Agency (ACA) and **government procurement** is done by way of e-commerce and e-procurement;
- **Training** and retraining of officers to strengthen accountability, integrity and responsibilities (to be undertaken by PSD and Malaysian Public Administrative Institute, INTAN);
- The Anti-Corruption Act 1997 states the **obligation of officials to report** acts of corruption with failure to report corrupt acts being an offence under this act (to be implemented by Anti-Corruption Agency, Police and Attorney General's Office);
- Treasury Instructions and directives on government procurement to promote **fiscal transparency**;
- Standards adopted by Malaysia for **regulation and supervision of financial institutions** in accordance with international norms and domestic laws and regulations;
- Yearly **auditing** carried out and reported by Auditor General's Office to Parliament;
- System of **public reporting** adopted and government agencies hold open days with their clients monthly;
- **Public procurement** procedures established to promote fair competition and deter corruption under Treasury Instructions. Section 15 of Anti-Corruption Act 1997 prohibits the officers dealing with the procurement to have conflict of interest (to be monitored by Treasury Department and ACA).

In order to **strengthen anti-bribery measures and promote integrity in business operations**:

- The Anti-Corruption Act 1997 provides for **offences and penalties** for corruption. An integrity management committee established to ensure public officers attain standard of integrity. This is meant to supplement Anti-Corruption Act 1997 (to be implemented by ACA);

[59] As stated in their self assessment report for the ADB / OECD Anti-Corruption Initiative for Asia and the Pacific: http://www1.oecd.org/daf/asiacom/stocktaking.htm .

- **Anti-money laundering legislation** (Anti-Money Laundering Act 2001) authorises central bank as competent authority that receives reports of suspicious transactions from commercial banks and channels these to enforcement agencies such as the police and ACA for investigation and prosecution (to be monitored by central bank, ACA, Police and Customs); also intended to curb the transfer of clandestine wealth overseas;
- Steps taken to enhance bilateral and multilateral **cooperation with other Asian anti-corruption agencies** such as the Anti-Corruption Bureau Brunei, ICAC Hong Kong, ICAC Korea and d NCCC Thailand';
- Bribery criminalised under Anti-Corruption Act 1997 and an offence under various other acts; no tax relief allowed for the payment of bribes;

In order to support **active public involvement**

- **National survey on Malaysian public perception of corruption** conducted by Universiti Kebangsaan Malaysia. (UKM);
- National University of Malaysia and other universities offer **talks / lectures and seminars** to non-governmental organisations;
- Strengthening **campaign** at grass root level, school curriculum;
- Establishment of Public Complaints Bureau, freedom of the press, Convention on Integrity Management Committee, Clients charter, and a day with clients;
- **Civil society groups** invited to seminars, talks, conference and conventions relating to integrity and corruption and sign memoranda of understanding (MoU) with other agencies and organisations; and
- **Protection of whistleblowers** regulated in the Anti-Corruption Act 1997.

2.5. PRIVATE SECTOR INITIATIVES TO CURB CORRUPTION[60]

There have been improvements in governance in the private sector. The Malaysian Stock Exchange (Bursa Malaysia) has established the Mandatory Accreditation Programme (MAP) and the Continuing Education Programme (CEP) which have contributed to higher awareness of governance issues and the general raising of standards despite some concerns over the schemes' implementation at times. On the part of the multi-national corporations (MNCs), the failures in governance previously experienced in the U.S.A. and Europe have resulted in many stringent governance policies being implemented such as the Sarbanes-Oxley Act. [61]

These policies have global impact at corporate level and affect organisations support action to enhance governance and integrity within the Malaysian business environment. The Malaysian International Chamber of Commerce and Industry represents a large number of companies both local and foreign covering the full spectrum of business types and sizes ranging from SMEs to MNCs. The Chamber has established a Standing Committee for Improving Business Ethics (SCIBE) in 2003, with the purpose of providing ongoing education and support for members seeking to enhance their governance. During the Ninth Malaysia Plan[62], therefore, various groups will be required to continue to deliver improved performance in terms of anti-corruption activities, good governance, accountability and delivery.

[60] Abridged from the submission by the Malaysian International Chamber of Commerce and Industry for the Ninth Malaysia Plan.
[61] http://www.soxlaw.com .
[62] http://www.epu.jpm.my/rm9/html/english.htm.

2.6 PUBLIC PROCUREMENT REGULATIONS

Malaysia Aims For Best Practices

Although the government is usually seen as a provider of services, procurement by the government and its agencies is also an important function. The ability to provide good public services is dependent on good practices in public procurement. Procurement in the public sector is big business. It is estimated that procurement of goods and services accounts for about 10-20% of government expenditure.

With such large sums of monies involved, there are opportunities and temptations for corruption. The Malaysian government has been aware of this and as early as 1957 introduced the Financial Procedure that laid out the guidelines for the collection and payment of public funds as well as procedures for purchase and disposal of public property.

All procurements in Malaysia, be they from the federal, state, local government are required to follow guidelines and procedures established by the Ministry of Finance. Specific instructions are contained in Treasury Circular Letters which are issued from time to time.

There has been a clear trend towards better practices. For example, in January 2004, Prime Minister Dato' Seri Abdullah Ahmad Badawi announced government contracts and procurement will be carried out through open tenders to limit opportunities for corruption. Open tendering will be the norm and direct negotiations limited to special cases. The prime minister said efficient and transparent processes will reduce uncertainty as well as limit opportunities for corruption.

In December 2004, the Malaysian Treasury issued new guidelines for public procurement on infrastructure maintenance projects. These new guidelines outline the selection of contractors, the use of open tenders, and the participation of a broader group of public officials to ensure transparency. Although the guidelines cover one area of public procurement only, they apply to all departments of government.

The prime minister stated in his 2006 Budget Speech: "The Government Procurement System will be improved through the introduction of new modalities in efforts to reduce cost, enhance transparency and ensure value for money".[63]

Government procurement was improved concretely when the prime minister launched the GLC Transformation Manual in 2005 to improve the effectiveness of government-linked companies (GLC). This has been followed by the launching of a guide book, popularly known as the "Red Book" (because of its red cover), to promote best practices in procurement processes and procedures by government-linked companies.

According to the prime minister, the Red Book potentially will save 4 to 9 billion Malaysian Ringgit of the estimated 50 billion Malaysian Ringgits in procurement of the GLCs. This would be a saving of 8-18%.

This drive for better delivery systems and better procurement systems in the GLCs is not happening in a vacuum. It is part of the prime minister's push for more transparency and integrity in his overall campaign to make Malaysia a first class or first world country with first class mentality.

2.7. LOCAL GOVERNMENT: PROCUREMENT PRINCIPLES AND POLICIES

Local Government in Malaysia – an Introduction

Malaysia, like many countries, has three levels of government: central, state and local government.

There are 146 local authorities or local councils in Malaysia, made up of city councils, municipal councils, district councils and special authorities created by specific enactments. These are semi-sovereign bodies, meaning that they are not sovereign states, but creations of the

[63] Budget Strategy 2006, item 28: http://webevents.bernama.com/events/budget2006/speech.php.

respective state governments with approval from the federal government. As they can be created, they can also be changed or abolished.

Almost all the local authorities derive their power from the Local Government Act of 1976. The notable exceptions are Kuala Lumpur City Hall, the Kota Kinabalu City Hall, Putrajaya and Pasir Gudang. Their existence is under special enactments.

The Local Government Act only provides for municipal councils and district councils, the former for localities that are more urban in nature. City councils are municipal councils that have been given the status of city by the king on the recommendation of the cabinet upon fulfilment of specific criteria (although political considerations are also important).

The major responsibilities of the local authorities are provided under the Local Government Act. They include: control of public places; control of pollution of streams; control of the preparation and sale of food, operations of markets, sanitation and nuisance; and burial places and crematoria.

The Act also empowers the local authorities to pass by-laws to enact the detailed and specific powers to carry out their responsibilities. Among the notable by-laws are those that regulate the disposal of waste, hawkers' food preparation, and parking of vehicles. Besides the responsibility of implementing the Local Government Act, the local authorities are also entrusted with the implementation of several acts of the national parliament. These include the Town and Country Planning Act and the Street, Building and Drainage Act including the Uniform Building By-laws. These allow the local authorities to control and regulate land development. All development projects, including buildings, roads and drains must have the prior approval of local authorities.

It is important to note that the local authorities only have jurisdiction over activities that they are specifically empowered to undertake. This is in contrast with, for example, Scandinavian countries where the local councils are allowed to do everything accept those activities that they are specifically told not to. In other words, the powers of the local authorities in Malaysia are limited to those given under the law.

In the public perception, corruption is an issue at the local government level in Malaysia. A study conducted by TI Malaysia in 2001 in Selayang showed that 60% of the respondents viewed corruption in government agencies to be serious (see TI Malaysia Public Opinion Survey, 2001[64]). More specifically, the study found that municipal councils ranked behind the police and road transport department in the perception of corrupt government agencies. They were seen to be more corrupt than the land office, judicial office, environment department and health department.

Despite the common perception of corruption in the local government, the number of cases of arrest and prosecution for corruption has been relatively small. According to Malaysia's Anti-Corruption Act of 1997 any person who solicits or receives or agrees to receive for himself or for any other person any gratification as an inducement or a reward is guilty of an offence under this Act. In 2005, out of 252 cases of arrests for corruption in the public sector, only 13 cases or 5.4% were local council officers. In 2003 to 2004, local government officers accounted for between 3.7% to 5.9% of public officials arrested for corruption.[65]

From interviews with local government officers and those interested in local government, there has been no proven case of corrupt practice in procurements by local authorities in recent years. There have also been very few reports of specific allegations of improper procurements by the local authorities. This is not surprising because the processes and procedures are so opaque that those not involved in procurement have no idea of what is going on. Lack of information leads to lack of interest and this in turn leads to lack of requests for inquiries.

Nevertheless, there are signs that something is wrong with the processes and procedures in projects that have been undertaken by local authorities, particularly in the area of public procurement: At the very least, the projects and purchases have raised questions as to the wisdom of the decision-makers, if not their integrity. These include procurements that are obviously wasteful, shoddy workmanship, and delays in

[64] Copies of the study are available at TI Malaysia office.

[65] Sutinah Sutan, 2006. Speech given at the National Workshop on Preventing Corruption in Public Contracting. The full speech can be found in the Proceedings. Please refer to TI Malaysia website, http://www.transparency.org.my.

completion. More transparent procurement processes and procedures would certainly reduce, if not eliminate such flaws.

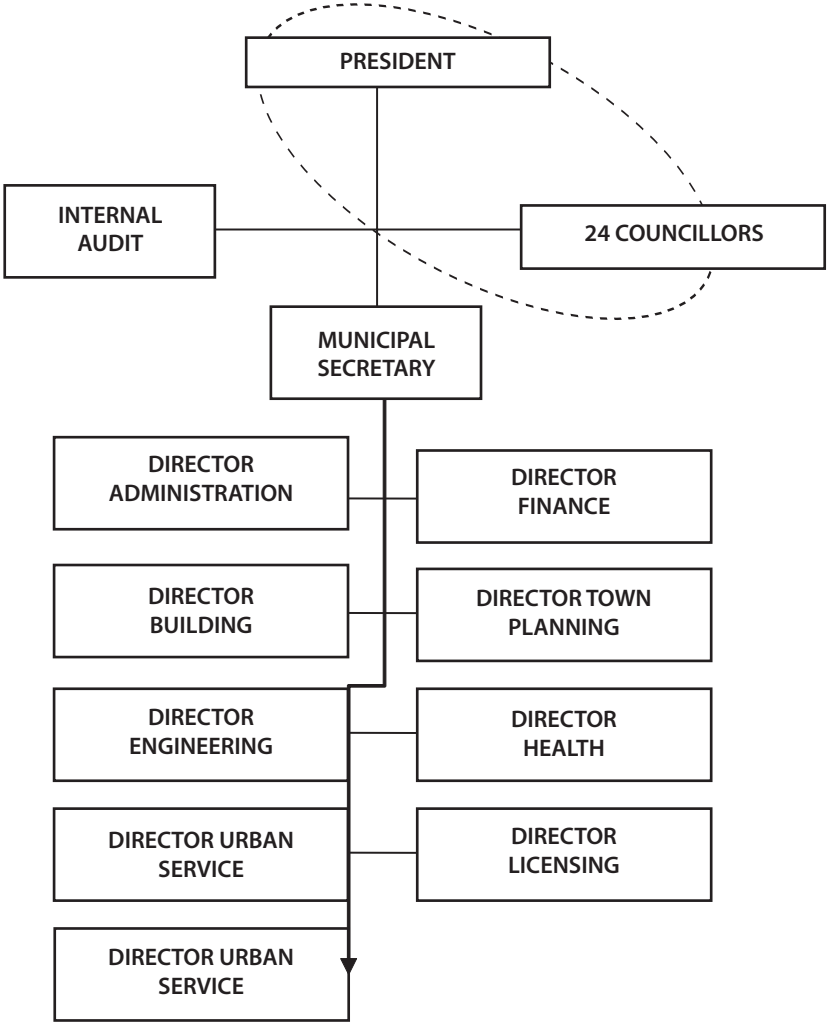
Citizens' Representation at Local Level

The main decision-making body of a local authority is the Full Council, which consists of the president or mayor and 24 councillors. All major decisions, such as passing annual budgets, enacting by-laws and approving planning permits are decided in the Full Council meeting. The president or mayor, chairs full council meetings and is the chief executive officer of the council. He or she is responsible for the overall workings of the council. A council secretary assists the president or mayor in this and heads of departments (Chart 1).

The councillors play the role of the rate-payers representatives. Besides representing the views and aspirations of the people during council meetings, they have legislative and executive roles as well. They pass by-laws and policies. They also have the executive role of approving planning permission and hearing appeals for the reduction of assessment rates[66].

There are no local government elections held in Malaysia. The presidents or mayors and councillors are appointed by the respective state governments. In these appointments, the decisions of the state executive councils are absolute, which means that they do not need to consult the federal government or the minister in charge of local government in this matter.

Chart 1 - Structure of a Typical Local Authority



[66] For further explanation on assessment rates, a property tax in Malaysia, see below under Finance.

The Local Government Act stipulates that councillors "shall be appointed from amongst persons the majority of whom shall be persons ordinarily resident in the local authority area who in the opinion of the State Authority have wide experience in local government affairs or who have achieved distinction in any profession, commerce or industry or are otherwise capable of representing the interests of their communities in the local authority areas (Section 10 (2)). In practice, almost all are members or supporters of the political parties in control of the state governments. Most are appointed for tenure of one to two years. Some have been reappointed as councillors for more than 20 years.

Almost all the presidents or mayors of the local authorities are senior federal government officers. As such, the state governments need the permission of the Public Services Department to second these officers to these posts.

Since the suspension of local government elections in the mid 1960s and their abolition when the Local Government Act was passed in 1976, many quarters, particularly non-governmental organisations, opposition political parties and individual Malaysian citizens, have been calling for the return of the elected local government. The government has largely ignored these calls, and on the few occasions it addressed the question, the answers were negative.

Centralisation and Privatisation

As in all developing countries, Malaysian local authorities have experienced heavier workloads resulting from rapid urbanisation. At the beginning of the 20th century, the urban population of Peninsular Malaysia was about 10% of the total population. By 1957 when Malaya achieved Independence, it was 27%. By 2000, the urban population of Malaysia was about 60% and today it is about 63%. Not only has the population under the local authorities increased, the residents also have higher expectations of their local government as a result of better education and a broader world-view.

Unlike in most developing countries, however, there has been a trend towards the centralisation of Malaysian government functions.

As a result, some of the more important functions of local governments have been taken over by federal government departments or agencies or even incorporated bodies. For instance, the City Council of George Town used to run a public bus service, provide electricity and water, and run women and children's clinics. No local authority today provides any of these services.

One further example of this centralisation which can coincide with privatisation is local authorities losing control of one of their most basic services: management of solid waste. In most local authorities in states like Selangor, Pahang, Malacca and Johore, solid waste management has been privatised by concessions appointed by the federal government.

If the present concept of privatisation of solid waste management continues and when the solid waste management bill is passed, the local authorities will be relieved of one of their most problematic functions. Whether this will lead to more effective management of solid waste remains a question, however, especially if the cost to rate-payers is considered.

The privatisation of projects and services by local councils raises several issues: It gives procurement officers added responsibilities and there is more room for mistakes and temptation. Unfortunately, many local councils have not been well prepared. Many do not have added officers to handle heavier load. Many officers have not been given further training to handle heavier responsibilities. Furthermore, as some of the privatised services involve large sums of money, the temptation to make poor decisions can be enormous.

Local Public Finance and Public Procurement

The annual budgets of the local authorities range from tens of millions to hundreds of millions. Kuala Lumpur City Hall, the biggest local authority in the country, has an annual budget of more than RM1 billion. The bigger municipalities have annual budgets of RM150 to RM300 million while most have less than RM100 million. The district councils generally have annual budgets of less than RM80 million.

A common problem facing the local authorities (with the possible exceptions of Kuala Lumpur and Putrajaya) is the lack of money. Some even find it difficult to meet administrative expenditures. As such, the amount of funds allocated for development is usually very small. The bulk of income for local authorities comes from assessment rates, locally known as cukai pintu, literally translated as "door tax". In fact, in most local authorities, they account for between 60% and 80% of their total incomes. Failure to pay will result in fining the property owners and in more serious cases having their belongings, such as television sets, seized. Serious defaults can result in the properties being sealed and auctioned by the local councils to recover the amount due. Such drastic steps, however, are almost never taken.

Unfortunately, many local councils find it difficult to raise assessment rates. Some have not carried a revaluation exercise for more than 20 years. Sometimes they are not allowed to do so by their respective state governments as all increases in rates have to be approved by the latter.

The other sources of income are plan processing fees, parking charges, licensing fees, fines, and rental of properties. The federal government does provide grants, but the amounts given out annually are a pittance. It also provides grants in lieu of rates. But these are not really grants because the federal government does not pay rates for its properties unlike everyone else.

The Malaysian federal government does provide funds to local authorities for projects, but the amount is dependent of the ability of local authorities to propose projects. Many smaller local authorities just do not have time or expertise to build good cases for federally funded projects. Some state governments also provide grants to their local authorities. Others, like Penang, do not. But even those that do, only give very small amounts as many have financial problems. Indeed, many state governments owe the federal government millions of Malaysian Ringgit. As most local authorities are having financial problems, prudence in spending is important. For most councils, basic administrative expenses such as salaries, however, cannot be reduced as the pay-scales of officers are determined by the federal government.

It is believed there can be savings from good procurement practice. No comprehensive studies of potential savings are available. According to Prime Minister Datuk Seri Abdullah Ahmad Badawi (2006), however, better procurement processes by government-linked companies could save from RM4 billion to RM9 billion out of an expenditure of RM50 billion. This is a savings of 8% to 18%. That may be a conservative estimate and there are grounds to believe the savings from proper procurement could be much higher.

Equally importantly, good procurement systems and procedures will ensure that the goods purchased or services provided would not be of shoddy quality and delivered in good time.

There are three basic types of procurement:

1. Procurement of supplies;
2. Procurement of works; and
3. Procurement of services.

The specific types of procurements of local authorities are rather varied:

- Building and repairing of infrastructure such as roads, drains, and market complexes;
- Beautification and landscaping projects;
- Purchase of stationery and books, uniforms for enforcement workers, computers and other office machines;
- Purchase of services such as cleaning and maintaining municipal facilities, cutting grass cutting, collecting and transporting waste, dumping and professional consultancy services.

Procurement Principles, Policies and Procedures

The procurement processes and procedures of Malaysian local authorities are established by the Treasury of the Ministry of Finance in the form of Treasury Circular Letters. After a major review of these documents in 1994, there are about 35 Treasury Circular Letters regulating procurements in public agencies, including the local authorities[67]. The Ministry of Finance has published a "Buku Panduan Perolehan Kerajaan" or Guidebook on Government Procurement in 1997.

According to Guidebook on Government Procurement, all public procurements must follow **five principles**:

1. Public Accountability;
2. Transparency;
3. Best Value for money;
4. Open competition; and
5. Fair dealing

In addition to these principles, the Guidebook on Government Procurement establishes that public procurement has certain **objectives**:

- To ensure continuous supply of materials and quality services;
- To achieve best value for money;
- To stimulate and encourage the growth and development of local industries;
- To assist in achieving national objectives; and
- To transfer technology and experience.

The Guidebook on Government Procurement establishes for all government agencies, including the local authorities, a set of **policies**:

- To support development of local industry and local products;
- To promote involvement of Bumiputra[68] entrepreneurs and firms;
- To promote local industry;
- To promote local service sector;
- To assist the achievement of government policies.

In order to support the development of local industry and control imported goods, procurements by government agencies, including local authorities, must abide by certain rules:

- All procurement of supplies and services must be sourced locally;
- All procured goods must be produced or manufactured locally;
- Agencies wishing to purchase imported goods need to get prior approval from the Ministry of International Trade and Industry (MITI); and
- Alls works must be locally procured.

There are policies to promote involvement of entrepreneurs and firms from Bumiputra:

- Procurement of supplies and services up to RM 10,000 per type of item can be sourced from any supplier;
- Procurement of supplies and services between RM 10,001 and RM 100,000 for each type of item must be made from Bumiputran firms;
- Procurement of supplies above RM 100,000 to RM15 million must give priority to Bumiputran firms based on a sliding scale of 10% to 2.5% margin over a reference price; and
- Procurement of works contracts up to RM 100,000 are reserved for Bumiputra firms.

There are basically **three methods of procurement** depending on the amount.

1. Direct Purchase
   Heads of departments in Local councils are allowed to source procurement from anyone subject to the Bumiputra preference policy for goods and services up to RM 20,000. In practice, however, the need for, for example, office stationery is satisfied

[67] These circulars can be found at http://www.treasury.gov.my/index.php.

[68] An official definition widely used in Malaysia embracing ethnic Malays as well as other indigenous ethnic groups such as the Orang Asli in Peninsular Malaysia and the tribal peoples in Sabah and Sarawak.

by requisitions from the Secretariat or General Office which undertakes bulk purchases. Heads of departments, therefore, seldom make direct purchases of goods or services.

2. Quotation
   For any procurement between RM 20,000 to RM 200,000, the department that needs to make the purchase must get quotations from at least five suppliers. The decision to pick a particular supplier is made by a Quotation Committee of the government department or agency or local authority.
   In the case of a local authority, the committee is made up of the Secretary of the Council, Director of Finance and a senior officer in the Secretariat. The head of the department that requests the purchase prepares the documentation.

3. Tender
   Procurements above RM 200,000 must be made through tenders. The decision-making authority is the Tender Board which is made up of the president or mayor, the city or municipal or district council secretary, the district officer who is usually a councillor and the State Financial Officer.

As a rule, development projects of local authorities such as markets, roads and parks, funded by the federal government are awarded by Federal Tender Boards in the states headed by State Development Officers. However, they are only allowed to approve works contracts up to RM 5 million. They are not empowered to decide on supplies contracts of any value or works contracts where decisions are non-unanimous.

The procedures to invite tenders and the tendering processes are established by Treasury Circular Letters and other guidelines.[69]

There are provisions for direct negotiations with potential contractors. However, these are for exceptional circumstances.

According to Auditor General Tan Sri Dato' Setia Hj. Ambrin Buang[70], many local councils have not complied with the Treasury procurement

rules. There have been cases, for example, where local councils split work on maintenance of buildings and landscaping works to circumvent the need to call for tenders. For instance, a contract for repainting and repairing bus stands and kiosks amounting to RM 200,000, which would require tendering process, was broken and awarded to five different contractors. There was even a local council that awarded a contractor 45 work orders amounting to RM 400,000.

Auditing and Financial Accountability

To ensure that the local authorities' expenditure including procurements are done according to established Treasury instructions, they are required to prepare financial statements five months after the closing of accounts in December every year.

The Audit Act of 1957 empowers the Auditor General to investigate "whether issues and payment of moneys subject to audit were made in accordance with proper authority and payments were properly chargeable and were supported by sufficient vouchers or proof.

Not all local authorities, however, routinely submit their annual financial statements. As stated by Auditor General Datuk Dr Hadenan Abd. Jalil (2002), "as of 31 December 2000, a total of 78 annual financial statements from the years 1995 to 1999 have yet to be submitted for auditing".

Even when these statements were submitted, many were found to be inadequate or contained fundamental errors. As a result, about 59% of annual financial statements were given Disclaimer Certificates by the Auditor General.

As stated by Hadenan, "Such form of certification is viewed with serious concern as it implies inefficient or irresponsible financial management" (2002). According to the Auditor General further, the

[69] http://www.treasury.gov.my/index.php?tpl_id=73&lang=eng .

[70] Speech given at the 2006 National Workshop on Preventing Corruption in Public Contracting. The full speech can be found in the Proceedings. Please refer to TI Malaysia website: http://www.transparency.org.my .

following weaknesses continuously occur in the implementation of projects and activities by local authorities.

- Poor management of tenders/quotations including non-compliance with regulations;
- Purchase of equipment and inventory that had not been used;
- Use of facilities delayed after the construction had been completed;
- Problematic public-private joint venture projects; and
- Delayed or abandoned projects due to poor planning, inappropriate contractor choice, land acquisition problems, changes in scope/cost of projects, and unsatisfactory project supervision.

However, not all local authorities are audited every year because there are too many for the capacity of the existing staff of the Auditor-General Office. Only selected local authorities are audited.

The annual Auditor-General's Reports are public documents and interested and concerned residents should read them and urge their councillors and state assemblymen to ask questions in the council meetings and state assemblies.

As noted by Hadenan, "the weaknesses that occur in local authorities in the preparation of accounts and in the management of financial affairs is of a recurrent nature … and … could adversely affect the good image of Local Government" (2002: p 5). The Auditor General was too kind. The image of local authorities is already poor, if not bad.

Examples of Wasteful Procurement

Some cases of suspected wasteful procurement are described below. These have been discussed publicly in Malaysia over the past few years. Building on the outline of typical phases in a public procurement process from the first part of this Handbook the cases have been grouped along those phases here.

It is important to stress, however, that this is only for the purpose of highlighting at which one of those phases undue influence could have taken place. It is neither to say that it definitely has taken place nor that it has taken place in this phase and not in another. This lack of certainty is due to the lack of information: Although most of the mentioned cases have been investigated by Malaysia's Anti-Corruption Agency, the results of the investigations have not been made public.

Demand determination / needs assessment phase

- In 2004, it was discovered that the Seberang Perai Municipal Council entered into an agreement with a florist in Kuala Lumpur to supply fresh-cut flowers to the council for RM 1.5 million for five years since 2000. More than one thousand flowers were to be delivered every week. Questions were raised as to the need to have fresh-cut flowers in the president's office and the stairway into the municipal building. Even if fresh flowers were needed, did they need to cost RM 300,000 a year or RM 5,750 a week and why a company in Kuala Lumpur was appointed? The issue only came to the public's attention because the Assemblyman for Sungei Puyu, Phee Boon Poh, raised it in the Penang State Assembly[71]. In fact, such an issue should not have been raised in the state assembly as it was a local government matter, although the councillors and president were appointed by the state government. The persons to raise the issue should have been the Seberang Perai councillors. They either did not care or thought that it was normal. They could not plead ignorance of the flowers as they passed them every time they visited the building or the president's office. However, they might not have known about the cost.

- In July 2003, the Klang Municipal Council spent RM 250,000 to purchase 10 thoroughbred horses from Australia and Britain to form an equestrian enforcement squad to fight petty crime. This was to allow its enforcement officers to patrol narrow alleys. Some

[69] The Sun: May 20, 2004; June 14, 2004; June 15, 2004.

of the money also was to be used to build a covered paddock and a stable. But as pointed out by a political party, crime prevention was not a responsibility of the municipal council. As such, there was no need to have a horse squad[72]. A five to six year old horse would be worth about RM 1,000. However, flying one from Australia or Britain would cost between RM 6,000 and RM 8,000. The decision to buy horses from these two countries, therefore, did not make sense. Even if there was a need for a squad to patrol narrow backstreets, it would be cheaper to buy and maintain a fleet of motorcycles.

- In 2003, the Klang Municipal Council was also criticised for spending approximately RM 200,000 to purchase a mace and a set of ceremonial robes for its councillors. Although it was clarified that each set of the ceremonial robes for a male councillor would amount to RM 540, the purchase became useless as 10 out of the 24 councillors refused to wear it. Unfortunately, there have been no follow-up reports regarding what happened to the robes. The question is, why did the council procure the robes in the first place?[73]

- In Subang Jaya, the municipal council, one of the few that is reputed to be well-managed and rather accessible to the rate-payers, spent RM 3 million to build a Millennium Park in 2001. Dubbed by a newspaper as the most expensive park in the Klang Valley, it was also a "white elephant". There were very few visitors. Even before it was completed, local residents were reportedly not in favour of it. Since its completion, it has been rendered unusable due to neglect. According to a report, "Manholes were found left uncovered. The leaves of the decorative palms were withering. The pond, filled with 'sickly-looking' water lilies, was also a pathetic sight"[74]

The Design and Bid Documentation Preparation Phase

- Before the above mentioned controversy regarding the flowers subsided, it was discovered that the same council spent RM 4

million in consultancy fees in a 2004 revaluation exercise. Again, the firm appointed was from Kuala Lumpur. It was generally believed that the amount was much too high. To make matters worse, there were many mistakes in the revaluation exercise. In response to the criticisms, the council president stated that outsourcing for professional services in revaluation exercises is a normal practice among local councils in Malaysia. (He was not involved in the procurement exercise as it was done during the term of his predecessor.) He also noted that the award was done following a tendering exercise and the amount was not out of the ordinary[75]. It was reported that an inquiry was carried out by both the Anti-Corruption Agency and by the state government. As usual, nothing has been made public despite the inquiries.

Contract Execution / Implementation Phase

- In Penang Island, the RM 7.6 million "beautification project" in "Little India" was delayed, causing additional problems to the existing traders and shop-owners. The project, which started on October 2002 was supposed to have been completed by February 2003. Following appeals by the contractors, the Penang Island Municipal Council allowed them to complete the work by the beginning of May 2003, or an extension of slightly more than two months for a project that should have been completed in five. The contractor was warned that failing to deliver by the new deadline would make it liable to a daily fine of RM 1,000. Even though the project was not completed in time, the council decided to waive the fines because, "The contractor is now left with general clean-up and some beautification work". A check by a reporter showed that even the wiring for the street lamps was not ready[76]. It should be noted the local traders were against the project in the first place. Delays in completion only provided them more reasons to be frustrated and angry. As the funds for the project were from the federal government, the decision to appoint the contractor was not made by the tender board of the

[75] The Star: November 27, 2004; The Sun February 6, 2005.
[76] The New Straits Times: May 6, 2004.

municipal council. It was decided by the tender board of the state government. The question is, why build a park when there was no provision for maintenance? In May 2005, it was reported that upgrading works would be undertaken and a food court would be built, to be rented to a private contractor.

The above examples of signs of poor procurements do not mean that only these local authorities are performing poorly. They became public knowledge largely because of better coverage by news media in these localities. The presence of active and vocal non-governmental organisations also played a part. This amount of waste is relatively small compared to the huge federal government projects that have received bad publicity. These include the MRR 2 Highway in Klang Valley, Sultan Ismail Hospital in Johore Bahru, prison complex in Kuching, the Royal Navy Training Centre in Johore and Matrade building in Kuala Lumpur.

Obstacles to Good Governance in Local Public Procurement in Malaysia

It generally, is acknowledged that Malaysia, and by extension its local authorities, has a good legal and regulatory framework for procurements[77]. Although procurements by local authorities are tightly regulated by procedures formulated by the Federal Treasury, there are still weaknesses.

Transparency

The key word is transparency, or rather the lack of it. For instance, in a tender process, why a bidder is successful and why its competitors fail are not explained.

Promotion of National Policies

This lack of transparency is complicated by using government procurement as part of the strategy to address inequalities among the ethnic groups. While it has been generally accepted that the government must help Bumiputra entrepreneurs and professionals to share in the economic growth of the country, lack of transparency has given rise to the perception that good procurement practices might have been compromised.

Media

This is compounded by a compliant press. Investigative journalism is not strong in the Malaysian media. It is possible that the need to have a yearly renewal of publishing licence is an important factor. It is also noteworthy that major newspapers are owned and controlled by political parties in the government.

The emergence and growth of the internet, however, and the guarantee by the government that it will not interfere with or restrict internet-based communications has led to the development of electronic news sites. Furthermore, the proliferation of bloggers has allowed even individuals and politicians from the opposition and political parties to get their message through.

Access to Information

Another major obstacle to transparency is lack of information. Too many things are classified as official secrets and Malaysia has a very restrictive official secrets law. There have been calls for a "Freedom of Information" law including an independent ombudsman[78].

Political Representation and Accountability

This lack of transparency in procurement is particularly disturbing in the local authorities as local residents do not have the right to choose their representatives in the councils. As such, the raising of assessment rates has often been met with protests since there is a suspicion that the councillors are not really championing the rights and interests of the rate-payers as they are not accountable to them.

The result of the obstacles described above is that, for the individual citizen, there is a huge question about how local authorities spend their revenues. As a reaction to this, leaders of residents associations, for example, in Petaling Jaya, are demanding that the municipal council to make public the accounts, especially the expenditures of the past few years. So far, the council is reluctant to be transparent. Ratepayers,

[77] Nambiar, Shankaren (2005) Making Government Procurement Transparent on http://www.mier.org.my/mierscan.

[78] Cumaraswamy, 2005.

even those who are familiar with the workings of local authorities, are in the dark about how their tax dollar is spent. Even the councillors are in the dark about the procurement exercises. Although they debate and approve the annual budgets, they have no idea how procurements are made.

Increasingly, questions have been raised regarding how local authorities spend the tax payer's money. For instance, why are there delays in projects carried out by local authorities, such as roads, drains and markets complexes? Why are many projects poorly constructed and maintained? What is the rationale for undertaking of certain beautification and landscaping projects? Why are the towns still not clean despite the high cost of solid waste management? Why are projects awarded to the same contractors, which have histories of poor workmanship or delays in delivery?

There is much the citizens can do to improve procurement by the local authorities. There is no need to reinvent the wheel. Transparency International has developed the Integrity Pact, which is presented and discussed in this Handbook. Many local authorities throughout the world have found it very useful and effective in reducing waste in procurement. Civil society organisations should push the Ministry of Housing and Local Government and the state government to adopt the Integrity Pact with suitable modifications. The following Section will focus on the role of civil society in making the local authority more transparent with the tools to accomplish their objectives.

SECTION 3 ADVOCACY
A MEANS TO PUSH FOR A HEALTHY PUBLIC PROCUREMENT PROCESS

Prudent public policy development and efficient administration is central to good governance. Conversely, the absence of sound public policy development entails huge costs in national resources and public welfare. This becomes particularly apparent in the area of public procurement where dysfunction and misuse of power can drain considerable resources from a society.

Advocacy is one tool to enhance policy development. Advocacy is about influencing, convincing, communicating change, acting to effect change, informing, raising awareness, sensitising, and networking. For many, advocacy is therefore synonymous with contributing to justice, equity, and participation.

Advocacy is directed at the government, including government committees for various purposes including bringing about policy reforms. It is directed at the public to create awareness.

Advocacy to prevent corruption in public procurement can be directed at government agencies, the private sector, the public, specific civil society organisations and the media.

Advocacy requires a clear vision, strategy, and organisation. This Section outlines the notion of advocacy, provides some basic knowledge for the management of advocacy, and explains the importance of capacity building for advocacy.

For TI Malaysia, their own capacity building in advocacy is very closely related to their efforts in promoting anti-corruption strategies in public contracting in Malaysia. Wherever possible, possibilities and examples of how to use advocacy for the promotion of transparent and accountable public contracting are therefore highlighted.

In order to be effective in advocacy campaigns it is useful to establish

benchmarks for the subject of the campaign. For example, the existence of clear benchmarks in good governance will assist in building the capacity of Civil Society Organisations (CSOs) in engaging effectively with local government.

Indicators of Good Governance

(as identified by CSOs from six Asian countries)[79]:

- Transparency and accountability;
- People's participation and recognition of NGOs as partners in governance institutions and structures;
- Improved quality of life;
- Effective delivery of services;
- Strategic public management and shared development agenda;
- Responsiveness and flexibility;
- Compliance, consistency and rule of law;
- Relevance; and
- Equity.

3.1. THE NOTION OF ADVOCACY

Forms of Advocacy

Advocacy is often difficult. This becomes particularly apparent in anti-corruption advocacy: It challenges government, industry, employees, institutions, and communities. The following definitions[80] of certain concepts are helpful.

Advocacy refers to "a set of skills - including grassroots organising, lobbying, fund-raising and effective engagement with the media – to create a shift in public opinion and mobilise the necessary resources and forces to support an issue, policy, or constituency."

[79] Source: Governance, Organisational Effectiveness and the Non Profit Sector, Asia Pacific Philanthropy Sector, Manila, Philippines 2003.

[80] Source: Towards and Effective Policy Advocacy Management (Philippines) Author Unknown.

Advocacy refers to an active support, a call, and a plea for a cause, belief, an agenda, issue(s), principle(s). Advocacy also advances a particular school of thought. Advocacy also means "using all our faculties, our voices included, to make a difference".

- **Policy Advocacy** is advocacy to change certain policy matters or government programme of action. Policy advocacy is aimed at influencing legislators, government policymakers and non-governmental and private agencies to amend and reform their policies and programmes. Policy advocacy is concerned with ensuring that institutions work the way they should.
- **Public Advocacy** is advocacy to support and propagate issues through influencing public opinion and generating public support. Through public advocacy, policy advocacy is disseminated into the mainstream of society. This may involve public relations such as advertising and information campaigns. In Malaysia the USJ (UEP Subang Jaya) Residents Association website provides a good model for information on the concerns involving local government and local situations[81].
- **Legislative Advocacy** is advocacy in the form of a lobbying within the legislature. It is a tool that can be used for people to exercise their rights within the democratic framework, their legislative and collective interests and aspirations. It is important to stress that this is much more than lobbying for or against a certain piece of legislation.
- **Global Advocacy** is advocacy to address the threats of globalisation, liberalisation, and the implementation of international agreements and conventions.
- **Media Advocacy** refers to public information campaigns, social marketing approaches or "the use of media to amplify our voices and be heard in our efforts for change".

For the purpose of advocacy in public procurement, policy advocacy by Civil Society organisations like residents organisations, Transparency International Malaysia, consumer and women's groups seems most useful in order to promote greater transparency and accountability in public procurement and to engage with local government officials, councillors,

presidents, mayors and the Ministry of Housing and Local Government. TI Pakistan, for example, successfully engaged with the Karachi Water & Sewage Board, and TI Indonesia with the District of Solok, in order to apply TI's Integrity Pact in their projects.

Purpose of Advocacy

Civil society organisations should determine the objectives/purposes of their advocacy programmes before embarking on them. Objectives can include the following (where possible examples are given from the area of public procurement):

- To reform existing polices (e.g. to introduce best practices in public procurement and Integrity Pacts);
- To remedy social problems (e.g. in Malaysia, procurement has a socio-economic objective to address income inequalities);
- To introduce new policies;
- To provide information (such as through this Handbook);
- To increase the equity among people and groups and to make institutions more responsive to human needs;
- To change attitudes generally and policies specifically; and
- To promote social justice and shared responsibility rather than on individual change or individual treatment. (One good example is to demonstrate how considerable savings from good procurement practices could be channelled towards achieving development goals through activities to meet basic needs of people and enhance their quality of life.

Characteristics of Advocacy

- Advocacy assumes that people have basic needs, rights, and those rights are enforceable (e.g. right to representation, right to information);

- Advocacy works best when focused on something specific (a clear objective will keep different interest groups on common ground). e.g. procurement by local authorities; and

[81] See http://www.usj.com.my

- Advocacy is primarily concerned with rights and benefits to which someone or some community is already entitled. e.g. citizens living within a local authority jurisdiction.

Fundamental Principles of Advocacy for Good Governance

In order to be most convincing, civil society activities to promote good governance should themselves be guided by a framework that embraces the principles of participatory governance such as:

- Involvement of affected communities;
- Involvement of all stakeholders;
- A participatory approach and dimension; and
- Addressing all stages of the issues.

3.2. LEVELS OF ADVOCACY IN THE AREA OF PUBLIC PROCUREMENT

International agreements such as the UN Convention Against Corruption or (where applicable) the GATT/WTO Agreements on Government Procurement (GPA) require public procurement review, and model laws such as the UNCITRAL enable countries to review their public procurement mechanisms and to make them more transparent. Since this requires change at various levels, CSOs have begun to expand their lobbying to the following levels:

- Local
- National
- Regional
- International
- Multi-level

Through its contents as well as its group of participants, the recent Regional Conference on "Preventing Corruption in Public Contracting: Capacity Building and Networking for Civil Society and Local Governments in Asia", organised by TI as part of the organisation's E.U.-Asia Urbs project, provided valuable insights on the levels of advocacy needed to prevent

corruption in procurement[82].

Capacity Building for Advocacy

Many Civil Society Organisations (CSOs), both from developing and developed countries, are actively involved in building the capacity of their staff to articulate their concerns on trade, environment, and health issues at global meetings.

This can take the form of capacity building in advocacy (see below) or in content issues. A good example of the latter is TI's E.U.-Asia Urbs project on Preventing Corruption in Public Contracting. It's was to build the capacity of government officials and civil society on issues related to procurement principles, transparency, and accountability[83] .

3.3. SPACE FOR ADVOCACY

All societies have a system of rules regulating their members. The state establishes a set of rules that it applies uniformly to all segments of society across internal boundaries. It enforces these rules in the name of safeguarding the "public interest". These rules and laws determine the "political space" and "economic space" for Civil Society Organisations.

The space to promote good public procurement rules and practices is further determined by the particular need to involve all stakeholders: The open, transparent, and fair functioning of public procurement systems depends heavily on the behaviour of all relevant stakeholders: the officials who have responsibilities for procurement, the suppliers and contractors who are interested in competing for contracts, and civil society who can have an important role in monitoring public procurement processes. This is why advocacy programmes to promote transparent and accountable public procurement need to address all those stakeholders, and in doing so, to the public.

[82] See conference report in Annex.

[83] See reports of National Workshops on Preventing Corruption in Procurement from Indonesia, Pakistan, and Malaysia.

Important messages to the different stakeholders can be:

- Governments and governmental agencies have clearly stated rules of good procurement practice which are intended to be enforced rigorously;
- Violators of the rules will be prosecuted under the law;
- Officials who indulge in corrupt practices will be dismissed;
- Possibilities and incentives for corrupt behaviour by public officials should be decreased (e.g. salary adjustments, rotation rules);
- Bidders who break the rules will be fined, possibly jailed and (temporarily) excluded from consideration for future contracts (e.g. by being "blacklisted");
- Bidders and the private sector at-large should be encouraged by the government to improve their internal integrity systems (e.g. through the development, implementation, and monitoring of codes of conduct).

None of the advocacy actions suggested here are sufficient by themselves to curb procurement corruption completely or immediately. A coordinated effort on all fronts, however, will have dramatic effects.

Change will come if anti-corruption laws are strengthened and publicised; if sound and proven procedures as well as documents are adopted; if procurement competence is increased by training and career development; and if everyone knows that the government is serious about enforcing honest and fair practices.

An initial success of advocacy efforts in this area would be if the different stakeholders can be convinced to widely spread the message that corruption in public procurement will not be tolerated, and that guilty parties will be punished. Experience shows that although these various actions may not be able to stop all corruption in procurement, they will certainly curtail the problem.

The cooperative approach for support:

- Partnership with Reform minded officials in government.
- Corr uption not Government is the enemy.
- Systems approach to combating corruption in public pro curement.
- "Witch hunting" is not our business.

3.4. MANAGEMENT OF ADVOCACY

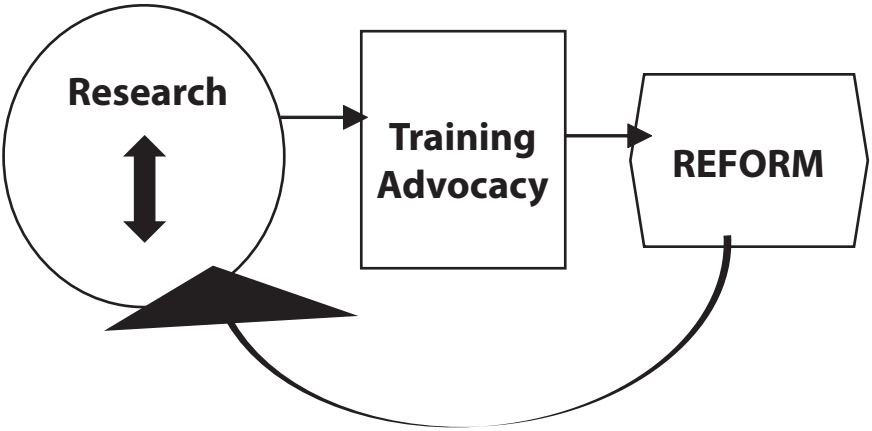
Elements in Planning an Advocacy Campaign Strategy

There are a number of major elements of an advocacy strategy some of which are explained below

1. Research carefully and state the problem;
2. Develop a set of goals and objectives;
3. Identify the target audience(s);
4. Identify stakeholders, i.e. other groups who are affected or could be affected through your advocacy campaign;
5. Formulate the advocacy message and identify the means needed to communicate the message to the target audience;
6. Prepare a plan of action and schedule of activities;
7. Identify resource requirements: human, organisational, and financial;
8. Gather your allies: Enlist support from other key players, other CSOs, the public, the government (see below box for one approach to this);
9. Identify monitoring and evaluation criteria and indicators;
10. Assess success or failure and determine next steps;
11. Identity possible conflict areas (even with allies);

12. Make use of legal and regulatory mechanisms to seek protection, compliance and accountability; and
13. Create channels for public participation.

Defining the Strategy – a Possible Model



source: Procurement Watch Philippines

The Research Process

In the process of researching the problem, answering the following questions can be useful:

- What do you want to find out?
- What is your topic?
- What is the purpose of the research?
- Who are its end users?
- What is your hypothesis?

At the end of the research process, problems to be stated in the area of advocating for transparency and accountability in public procurement could be, for example, "No access to information is available on how contracts are awarded"; "Most tenders are not open but negotiated".

It is essential in the research process to ensure robust data. Information is power and data is often the most important basis for presenting an argument. Advocacy, therefore, should be based on strong and credible data.

It is important to identify the data needed for an advocacy effort and to explore various types of data in the beginning. For example, data on the extent of the problem can be key: to show the size of the problem and how it is distributed across the population; to show how the problem is linked to specific social, political and environmental variables; to justify concern and social action.

Checklist

One method to gather data is to develop a questionnaire or checklist by which the required information can be compiled and recorded. Below is an example of such a checklist for public procurement practices which was developed in Hong Kong and outlines some areas of potential corruption procurement. In the checklist, a "no" answer indicates a potential weakness requiring further investigation:

Policies - Are there written policies and procedures governing procurement? - Have these guidelines been promulgated and clearly explained to all staff? - Are the procurement instructions regularly reviewed and updated?
Requisition - Is there an official requisition for purchases? - Is there a defined approval process for a requisition? - Does all staff concerned know the requisition process? - Is a list of specimen signatures of the approving officers maintained for checking of authenticity?

Approved Suppliers - Is there a list of approved suppliers? - Is there a prescribed system for the inclusion and/or deletion of suppliers from the list? - Is there a performance appraisal for the approved suppliers?
Quotations - Are the circumstances for purchasing goods by quotation clearly specified? - Are there safeguards against order splitting? - Are checks performed to confirm the authenticity of quotations or reasons for non-quotation? - Are random checks performed to ensure the prices obtained for direct purchases are fair and reasonable? - Are security measures in place to prevent mislaid quotations and unauthorised release of information?
Tenders - Is complete information given in the tender documents? - Is the tender box double-locked with the keys held separately by two staff members of appropriate level? - Is the tender information kept confidential before a decision is made? - Are unsuccessful bidders notified of the tender result? - Are conditions and procedures in place for the waiver of competitive tender procedures?
Miscellaneous - Is the organisation's policy on conflict of interest and staff acceptance of advantages made known to all suppliers? - Is there clear segregation of duties to minimise the opportunities for corrupt collusion? - Are staff regularly transferred, both for career development and to minimise the potential for syndicated corruption?

(Note: The terms must be defined in a way that they are unmistakably clear in the context that they are used. There must be operational definitions of more complex concepts).

Research of an issue then requires the clear analysis of the data. This includes connecting the problem with the cause/source (e.g. local policies, practices, etc.) and pinpointing effective solutions (e.g. policy options, changes in practices) - research findings can suggest new options.

Setting Goals and Objectives

- It is critical to develop clear and specific goals and objectives:
- Goal are the overall outcome you want to achieve; and
- Objectives are what must happen in order to accomplish the goal;
- Goals provide a sense of direction, a unifying theme, and a specific endpoint; and
- Objectives establish standards for groups to evaluate progress and gain feedback.

Identification of Target Audiences

Points to help identify target audience for an advocacy effort:

- Establish the positions of power, like in acupuncture – to put pressure where it is most effective;
- Assess who has power (policy makers and other institutionalised interests are often major barriers to advocates);
- Who and what institutions must be targeted to achieve the goal and objectives?
- Ensure who you identify has the power to make the change;
- What are the ways to gain access to them and to influence the process of policy enactment? (e.g. personal contact, media, as a voter or tax payer, etc.); and
- Study the opposition carefully: learn their arguments, develop counter-arguments, carefully analyse their interests. Know your "enemy".

Identification of Stakeholders

The best plans are formulated by those involved or affected by a variety of different backgrounds.

Helpful questions:

- Who is affected by the problem (corruption) that your organisation is concerned with?
- Whose voice is usually heard – and whose voice is usually not heard?
- Who will be on our side – and who will be against us?
- Whose views will we give priority to?

Formulate Advocacy Message and Identify Necessary Communication Means

Advocacy can be carried out by engaging with policy makers themselves, e.g. through memoranda, or through the strategic use of the media to advance a public policy initiative.

Advocacy Strategies:

- Lobbying of policy makers;
- Seeking representation – for example in regulatory boards, company shareholders meetings;
- Identifying effective lobbyists and involve those most affected by the problem;
- Providing practical guidelines for those involved in campaign;
- Letter-Writing Campaigns, e.g. by:
  - Developing a mass letter writing campaign to pressure local, state and national legislators, administrators, and celebrities to take a stand on the issue;
  - Drafting letters which are personal, well-informed, neat and brief;
  - When writing to legislators, identify yourself as a constituent, voter, taxpayer, active citizen, member of X committee, etc.;
  - Organising the mailing of those letters frequently.

To prepare different advocacy strategies:

- Know the legislators' records;
- Know the facts;
- Develop your own arguments; they are the best;
- Organise the arguments clearly;
- Emphasise shared concerns;
- Try to arrange a specific appointment with the policymaker;
- Be prepared with pointed questions; Make them specific but not offensive
- Be specific with your requests;
- Be brief; try to keep your visit short; and
- Do not be discouraged.

Action Plan for an Advocacy Campaign

The Action Plan should include:

- A list of activities with time lines;
- An assessment of the resources needed for the activities; and
- A list of responsibilities.

3.5. ASSESS AND ACCESS RESOURCES

Evaluate your assets: staff, money, facilities, reputation, media contacts, allies, membership, etc. (organisational strengths and community capacity).

Ask yourself: Can we win? Or can our organisation afford to lose? For long-term goals, build a sense of community and community power and team spirit, expand the leadership base, deepen the leadership's experience, and broaden the organisation's membership and contact base.

3.6 . MONITORING AND EVALUATION

The first step in preparing for monitoring and evaluation of one's (advocacy or other) activity is to set up monitoring indicators - before embarking on the activity.

Potential Monitoring Indicators:

- Process indicators – what is happening in the advocacy project;
- Output indicators – cover all the project activities;
- Outcome indicators – what the project has produced; and
- Impact indicators.

3.7. PRINCIPLES OF EVALUATION

Some useful monitoring techniques:

- Document reviews;
- Carry out surveys;
- Hold discussions;
- Make observations;
- Listen to community members;
- Do brainstorming;
- Hold informal conversations; and
- Do scenario mappings.

In order for your monitoring and evaluation results to feed into your future actions:

3.8. ASSESS, REFLECT, AND REVISE

- Assess success or failure and determine next steps; and
- Set time limits on certain tactics and develop an alternative plan if original tactics do not work.

A Step by Step Guide to Advocacy on Transparent and Accountable Procurement Practices
• Decide on a specific policy goal
• Research the background and issues involved in local government procurement
• Establish an expert group on procurement
• Ensure sound methodology for data collection
• Prepare an effective portfolio for legal representation
• Develop competencies in media relations
• Perform a SWOT analysis of the campaigns (strengths, weaknesses, opportunities, and threats)
• Monitor developments in procurement practises locally and internationally
• Use legal and regulatory mechanisms to press for compliance, transparency and accountability in the procurement chain
• Create channels for public participation

3.9. CAPACITY BUILDING FOR ADVOCACY

What is Capacity Building?

- **Capacity** - ability, power, talent, potential, judgement, insight, acuity, function, position and maximum output. Organisational capacity is the ability of the organisation to anticipate change e.g. new procurement laws, ethics in procurement
- **Building** - enhancement, development, growth, intensification, enlarging, strengthening, increasing and making something more attractive and healthy.

Capacity Building in Advocacy for Transparent Public Procurement

Capacity building in advocacy for transparent public procurement is important:

- To make informed decisions;
- To develop programmes e.g. advocacy activities for implementing Integrity Pacts;
- Build partnerships to strengthen the cause for better procurement practices;
- To utilise and manage organisational resources;
  - To assist communities e.g. residents associations, community groups to raise procurement issues related to local councils and which have impact on their daily lives.
  - Target groups for Capacity Building on Advocacy in Public Procurement issues can be the board and staff of TI Chapters and CSOs such as consumer associations, residents groups, policy makers, local government officials

1. Some Key Elements of Capacity Building

- Information
  Information is a critical component of capacity building on complex issues such as procurement. Well-produced, clear, user-friendly tools such as handbooks, manuals on monitoring are valuable tools. Integrity Pacts can be used to build expertise in good governance. Websites are an invaluable resource for capacity building.
- It is critical to have the capacity to manage information with the explosion of information. Information must be timely.

2. Training / Education

- Training and education are the most common means for building capacity.
- The curriculum for workshops on advocacy for reforms in procurement issues should be customised to meet the needs of target groups.
- A training plan / strategy is indispensable. The CBT workshops held in Indonesia, Pakistan, and Malaysia provide vital insights for building effective training programmes[84].)

3. Resource Mobilisation

- To sustain advocacy programmes, such as training, organisations must develop and continuously review institutional resources including funds, personnel and data resources.
- It is wise for advocacy organisations to build relationships with several funders (since it is difficult for CSOs involved in advocacy to be completely self-sustaining).

[84] See Reports on Workshops on the following websites: TI Malaysia (http://www.transparency.org.my), TI Pakistan (http://www.transparency.org.pk/), and TI Indonesia (http://www.ti.or.id/).

SECTION 4 NATIONAL WORKSHOP REPORT

The TI E.U. Asia Urbs National Workshop on PREVENTING CORRUPTION IN PUBLIC PROCUREMENT: CAPACITY BUILDING AND NETWORKING FOR CIVIL SOCIETY AND LOCAL GOVERNMENTS.

Introduction

Two hundred guests and participants attended the opening ceremony of the National Workshop: PREVENTING CORRUPTION IN PUBLIC PROCUREMENT: CAPACITY BUILDING AND NETWORKING FOR CIVIL SOCIETY AND LOCAL GOVERNMENT jointly organised by TI Malaysia and the Institute Integrity of Malaysia on May 22, 2006.

The workshop was divided into two parts:

Part 1

involved the Opening Ceremony by the Deputy Minister of Housing and Local Government, Y.B. Dato' Hjh. Azizah bt. Datuk S.P. Hj. Mohd. Dun followed by a Panel Discussion of International Experiences in Preventing Corruption in Public Procurement.

Part 2

attended by 140 participants including representations of local government agencies, the Auditor General's office, the Anti-Corruption Agency (ACA), civil society organisations, the media, and members of Transparency International Malaysia.

Dato' Hjh. Azizah highlighted the key Malaysian Acts and Laws as well as the procedures and the guidelines that govern procurement processes. These guidelines and laws are in place to curb corruption in procurement.

Four international experts: Mr. Kim Geo Sung from TI South Korea; Mr. Donal O'Leary TI Berlin; Mr. Syed Adil Gilani; TI Pakistan; and Mr. Adhi Ardian Kustiiadi, TI Indonesia, highlighted issues relating to Public Procurement and the use of Integrity Pacts to prevent corruption. Ms Lisa Prevenslik-

Takeda, Senior Programme Officer for East and South East Asia and Asia Pacific, provided invaluable assistance to the workshop.

The Malaysian speakers included, Y. Bhg. Tan Sri Dato' Setia Haji Ambrin bin Buang, Auditor-General Malaysia, Cik Hajah Sutina binti Sutan, Director of Planning and Research of Anti Corruption Agency, En Che Hashmuddin Bin Mohammad, Deputy Secretary Procurement Division, Ministry of Finance.

Other Malaysian speakers were Dr Goh Ban Lee, an expert on local government, Mr. R. Nadeswaran, the Deputy Editor of the Sun, and Ms Josie Fernandez, EXCO member of TI Malaysia.

A total of 20 papers were presented during the two day workshop. An Action Plan was developed from the Breakout Sessions.

H.E. David G. Summers, the Canadian High Commissioner delivered the closing remarks.

The National Workshop received wide media coverage including on television.

Participants in their evaluation of the National Workshop made the following observations:

- The workshop achieved its objectives of building the capacity of the participants in understanding and preventing corruption in procurement in local governments;
- Papers and panel discussions were rated as good by majority of participants;
- 20% of participants rated the following panel discussions as excellent.:
  - International Experiences;
  - The Integrity Pact;
  - Role of Civil Society;
- Among the recommendations for follow up work were:
  - Code of conduct for government officials

- Training for civil society on how to make intervention on procurement issues
- Special campaigns be organised by TI on corruption
- Local government elections
- IP to be introduced in local councils
- Appointment of NGOs and resident associations at local councils meeting

REFERENCES FOR SECTION 3

Abu Kassim Mohamad: *Effective Anti-corruption Enforcement and Compliant-Handling Mechanisms – The Malaysian Experience*. In Curbing Corruption in Tsunami Relief Operations; Asian Development Bank; Manila, Philippines; 2005.

Abdullah Ahmad Badawi (2006) (reference can be obtained in the Red Book for GLCs)

Ali Qadir: *The State of Consumers in Pakistan;* 2001.

Ambrin Buang: *Procurement Issues Of Local Government In Malaysia;* PowerPoint presentation at the Preventing Corruption In Public Procurement: Capacity Building And Networking For Civil Society And Local Government; May 22-23, 2006.

Cumaraswamy, Param: *Evaluation of Government Initiatives for the Past Year*; paper presented at the seminar on government initiatives against corruption; 2005 AIDCOM, KL.

Fernandez, Josie: *Doing Advocacy* (unpublished) Paper for WEMOS Training Programme for Public Private Partnerships; Chennai, India; May 2005

Fernandez, Josie: ***Contested Space? Fomca's Engagement with Government;*** FOMCA 2004.

Goh Ban Lee: *Non-compliance – A Neglected Agenda in Urban Governance;* Institut Sultan Iskandar, Universiti Teknologi Malaysia, Skudai; 2002.

Hadenan Abdul Jalil: *Management and Auditing of Local Authorities Finance*, paper presented at the Seminar on Urban Management: Good Urban Governance, organised by Institut Sultan Iskandar, Cyberjaya; April 15-16, 2002.

Integrity Institute of Malaysia (2004) National Integrity Plan; Government of Malaysia. Kementerian Kewangan Malaysia (1997) Buku Panduan Perolehan Kerajaan. Perbendaharaan Malaysia.

Mehrun Siraj and Sunita Chima: *Malaysia Country Report, in Global Corruption Report* 2006. Transparency International, Pluto Press, London.

Nambiar, Shankaran: *Making Government Procurement Transparent;* In http://www.mier.org.my/mierscan ; 2005.

Olaya, Juanita, et al.: *Assessment Mission Notes*, E.U. Asia Urbs Project; Transparency International; 2005.

Pope, Jeremy: *Confronting Corruption: The Elements of a National Integrity System;* Transparency International; Berlin, Germany; 2000.

Putrajaya Committee on GLC High Performance (2005) Catalysing GLC Transformation to Advance Malaysia's Development – Transformation Manual.

Sutinah Sutan: *Preventing Corruption In PBT'S Public Service Deliveries;* PowerPoint presented in E.U.-Asia Urbs workshop; 2006.

Transparency International (2002) The Integrity Pact – The Concept, the Model and the Present Applications: A Status Report.

Transparency International (Malaysia) (2001) Public Opinion Survey on Local Agencies in the Selayang Baru Township.

Transparency International (Pakistan) (2003) Integrity Pact – A Pakistan Success Story. Karachi Water and Sewerage Board, City District Government, Karachi.

Transparency International (Pakistan) (undated) Preventing Corruption in Public Contracting: Capacity Building and Networking for Civil Society and Local Governments – Public Contracting Handbook – TI Pakistan Section.

Tunku Abdul Aziz: *Local Government and the Fight Against Corruption;* undated.

Handbook for
Curbing Corruption
in Public Procurement

PART II
How to Reduce Corruption in Public Procurement:

Experiences from Asia
The Pakistani Chapter

TRANSPARENCY INTERNATIONAL
the global coalition against corruption

PART II
Experiences from Asia
The Pakistani Chapter

SECTION 1 BACKGROUND

1.1. INTRODUCTION

The main aim of Transparency International (TI) is to strengthen the global value system by making transparency and accountability public norms. Corruption can have many manifestations. In response to this, countries typically develop a complex set of institutions, laws and regulations to combat corruption. TI calls this a country's "National Integrity System"[85].

Few activities offer greater temptation and opportunity or offer more opportunity for corruption than public sector procurement. "Public sector" in this context includes national or provincial governments, city administrations, local government or local communities, as well as other organisations engaged in public functions. Procurement is the public sector most affected by corruption. Indeed every level of government and every type of governmental organisation procures works, goods and services. This is done often in quantities and monetary amounts that defy comprehension.

Transparency International Pakistan realises that presently public procurement in all departments of Pakistan is treated as a clerical, buying and selling function and, therefore does not attract professional and competent staff. TI Pakistan since 2000 is working towards professionalising the organisations and individuals responsible for procurement, through targeted capacity building activities. These activities contribute to strengthening systems, transparency and tackle corruption.

TI Pakistan works to advocate for reforms in the governance system of Pakistan as well as in the private sector. TI Pakistan works closely with NAB in its anti-corruption awareness campaign, and implementation of

[85] TI has developed and promoted the concept of the National Integrity System (NIS) as part of its holistic approach to countering corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the important features of anti-corruption systems that work best.

NACS recommendations. TI Pakistan's campaign on the implementation of Transparent Public Procurement Procedures is also supported by NAB, who in fact endorses the application of TI Model Procurement Manual.

1.2. PAKISTAN'S NATIONAL ANTI-CORRUPTION STRATEGY (NACS)

In 2001, the government of Pakistan, on the advice of TI, initiated preparation of the National Anti-corruption Strategy (NACS). This was based on the idea that a country's National Integrity System (NIS) rests on different "pillars", e.g., key institutions, laws and practices that contribute to integrity, transparency and accountability.[86] The Project was executed by the National Accountability Bureau (NAB), funded by the British Department for International Development (DfID), and is based on the wide range of recommendations from all stakeholders and TI Pakistan.

Pakistan's national integrity system pillars are the executive and public accountability bodies (the Auditor General's Department, Public Accounts Committee and the Ombudsman), the anti-corruption agencies and law enforcement, the legal system and judiciary, the political system and legislature, the private sector, media, and civil society.

The NACS has three phases: The review and assessment phase, the development of an overarching strategic framework, and the implementation plan for all pillars.

Pakistan's National Anti-corruption Strategy (NACS):

- Sets out the results of the *overall review and assessment*, including the nature, extent and impact of corruption (Chapter 2 of the NACS document);
- Outlines the *genesis of corruption, and of anti-corruption initiatives,* setting out many of the key underlying causes of corruption (Chapter 3 of the NACS document);
- Examines *systemic weaknesses within each pillar of the national integrity system*, and how they sustain corruption (Chapter 4 of the

NACS document); and

- Contains the *strategy and strategy implementation plan* for each pillar of the national integrity (Chapter 5 of the NACS document).

After reviewing international procurement procedures (e.g. FIDIC, World Bank, Asian Development Bank, African Development Bank, Pakistan Engineering Council, and WTO), TI Pakistan prepared a proposal for Transparent Procurement Procedures, which was to be circulated to all stakeholders in Pakistan by the National Accountability Bureau, and would eventually be integrated into the Draft Final Report of NACS completed and approved by the government of Pakistan. During a three-day international workshop held in Islamabad on 19-21 July 2003, TI Pakistan's proposal for Transparent Procurement Procedures was deliberated upon and approved by all stakeholders. The participants of the workshop included businessmen, educators, government experts, consulting engineers, contractors, NAB experts, KPMG consultants, TI experts from the United Kingdom, NGOs, and many others.

The proposal focused on eliminating discretionary powers from the process for evaluating and awarding bids. At the time of the development of the aforementioned proposal Pakistan was found to have more than 27 different procurement procedures, leading to using discretion to conduct procurement. Use of discretion provides opportunities for corruption. Under the present tender system, members of Departmental Evaluation Committee have assumed vast discretionary powers.

TI Pakistan's main recommendations for ensuring transparency in the public procurement procedures of works, goods, equipment, IT, and services were the following:

- World Bank or PEC Bylaws should be uniformly implemented in government and semi-government departments until PPRA prepares its own guidelines;
- TI Pakistan's Tool "Integrity Pact" should be made an integral part of all tenders to insure transparency and public participation;

[86] The concept of a National Integrity System was developed by TI (see introduction to this Chapter).

- Public hearings should be made mandatory for every new project to assess the necessity of the project, the environmental impact, and prior to concept clearance approval
- All consultancy contracts (except single source selection of the engineering expert) should be processed on the two envelop system, and should be evaluated on the basis of technical competence with minimum passing marks of 75%. The financial proposals of firms lower than 75% should be returned unopened. The remaining financial proposals should be publicly opened, and the contract awarded to the lowest bidder;
- Clients must declare their evaluation reports ten days prior to actual award of the contract. All objections received from any sector including the competitors shall be examined and a re-evaluation if required is carried out and the contract awarded to the lowest bidder; and
- Valuation committees for pre-qualification and award of contracts must include at least two departmental members, and a minimum of three independent experts (one each from the Pakistan Engineering Council, Institute of Chartered Accountants and FPCCI).

1.3. PAKISTAN'S NATIONAL AGENCY FOR PROCUREMENT

The Pakistani cabinet approved the National Anti-Corruption Strategy on September 20, 2002 and October 5, 2002 and the president approved the implementation mechanism on October 24, 2002. The Implementation Committee under the chairmanship NAB Lt. Gen. Muneer Hafiez was formed for its effective implementation.

Prime minister of Pakistan Mr. Shaukat Aziz, then the Federal Minister for Finance in 2002, invited Transparency International to visit Pakistan to assess the status of the anti-corruption measures taken by the government of Pakistan and to make recommendations as to where additional efforts could be useful. In response to this invitation, TI sent a small mission that held meetings with almost all Pakistani governmental ministries, and representatives of the business and legal communities.

Among many other recommendations, the TI mission recommended to the government of Pakistan to completely overhaul of the country's procurement system, institutions and rules and immediate implement the recommendation of the World Bank, pending approval of the Pakistani governments since 1998, to set up a regulatory Authority Public Procurement Regulatory Authority.

Immediately after the TI missions visit the Public Procurement Regulatory Authority (PPRA) Ordinance, was signed by the president of Pakistan. The PPRA has the basic functions of producing the necessary rules, procedures and guidelines for contracting at all levels in the country as well as monitoring the contracting procedures. The PPRA has also within its scope of action the development of local capacity to undertake procurement, as well as awareness and prevention activities. Its approval had been pending for two years due to bureaucratic processes.

The National Accountability Bureau and TI Pakistan (with support of the then finance minister Mr. Shaukat Aziz) then advocated for one and half years for the PPRA to finalise the Public Procurement Rules based on the NACS Recommendations on Transparent Procurement. Finally, on June 8, 2004, the Ministry of Finance of Pakistan issued the Public Procurement Rules 2004 through S.R.O. 432 (I)/2004. Most of the steps of TI's Integrity Pact have now been incorporated in mandatory rules. Since individual Integrity Pacts can now refer to the law, Integrity Pacts documents have been reduced to one page.[87]

- The most important elements which have been incorporated in the Public Procurement Rules 2004 such as checks and balances for discretion free Procurement Procedures:
- Standardisation of procurement processes and tender documents, advertisement of all pre-qualifications or tenders on the procurement agencies and Public Procurement Regulatory Authority (PPRA) website and in at least one English & one Urdu national daily newspaper, with a minimum submission deadline of 15 working days;

[86] The Public Procurement Rules 2004 can be found online at http://www.transparency.org.pk/documents/Pakistan_Handbook_3_May.doc.

- Provision of prequalification and tender documents to bidders which shall include the detailed evaluation criteria and the bid award method;
- Signing of an Integrity Pact, establishment of the right of bidders to complain on the evaluation report prior to contract award, standard conditions of contract, specifications which shall not favour any single contractor or supplier nor put others at a disadvantage;
- Announcement of the results of bid evaluation in the form of a report justifying for acceptance or rejection of bids at least ten days prior to the award of procurement contract;
- No negotiations with the bidder who submitted the lowest evaluated responsive bid or with any other bidder;
- Finalising of the evaluation report after examining all complaints;
- Award of contracts to consultants, contractors and suppliers only to the responsive lowest evaluated bidder, publication of the evaluation report and contract after it is awarded.

1.4. ANTI-CORRUPTION AGENCIES IN PAKISTAN

Most of the international funding agencies, The UN, and local governmental departments are active in anti-corruption work. The World Bank is one of the international financial institutions which has a detailed Anti-corruption Strategy, including a redress mechanism for complaints against fraud and corrupt practices.

There are four provinces in Pakistan under a federal government.
The institutions of anti-corruption are as follows:

- **Provincial Anticorruption Departments** working in the four provinces under the West Pakistan Anti-Corruption Establishment (ACE) Ordinance of September 1961. The **National Accountability Bureau** (NAB) is the national anticorruption agency under the National Accountability Bureau Ordinance 1999;
- The Auditor General Pakistan is the Federal Government Department, which monitors public expenditure through annual auditing;

- The **Public Accounts Committee** of the National Assembly monitors corruption through examination of the Audit Reports submitted by the Auditor General Pakistan.

SECTION 2 TI PAKISTAN'S TOOLS AND EXPERIENCE IN PUBLIC CONTRACTING

TI Pakistan has in-depth experience and expertise in promoting practical ways of enhancing transparency in public contracting; this is mainly done by working with government institutions. The two main tools TI Pakistan uses this work are: TI's Integrity Pact (IP) and a Memoranda of Understanding (MoUs) with government agencies. TI Pakistan itself developed this.

2.1. PROMOTION OF THE IP FOR THE K-III GREATER KARACHI WATER SUPPLY SCHEME

In February 2000, TI Pakistan suggested to the Managing Director of the Karachi Water and Sewerage Board (KWSB), Government of Sindh, that they should implement TI's "Integrity Pact" in KWSB's public procurement procedures.

The Integrity Pact (IP) was developed by TI as a tool to promote transparent procurement practices. It consists of a pact or agreement with mutual obligations. It needs to be signed by all contractors as well as by the procuring authority itself. The IP has been applied in procurement processes in many countries (e.g., Argentina, Colombia, Italy, Korea, Nepal, Ecuador, and Germany).

Main Features of the Integrity Pacts:

- A commitment by the principal that its officials will not demand or accept any bribes, gifts etc., with appropriate disciplinary, civil or criminal sanctions in case of violation;
- A statement by each bidder that they have not paid, and will not pay, any bribes and a set of sanctions in case of violation, e.g. loss of contract, liability for damages, blacklisting;

- An undertaking by each bidder to disclose all payments made in connection with the contract; and
- Civil society organisations or representatives oversee and monitor the implementation of the IP.

After TI Pakistan's consistent persuasion of more than one year, KWSB agreed to implement an Integrity Pact in its procurement procedures. On April 16, 2001, the managing director of KWSB issued a formal letter accepting the assistance of TI Pakistan for implementation of the Integrity Pact for public procurement procedures within KWSB, and of the application of the Integrity Pact in the Greater Karachi Water Supply Scheme Phase-V, Stage-II, 2nd 100 MGD Project K-III (K-III project).

TI Pakistan closely monitored the application of the IP in the K-III project during the first phase, the tender process for the selection of consultants for design and supervision of the project, until the award of the contract. For the second phase, the tender process for the selection of contractors, TI Pakistan disassociated itself from the project after the prequalification of contractors[88].

First phase: Selection of Consultants

In May 2001, to confirm the establishment of the Integrity Pact a workshop was organised by TI Pakistan for the Karachi Water and Sewerage Board. The workshop introduced the Integrity Pact principle and its benefits in establishing transparency in procurement within the Karachi Water & Sewerage Board. Following this workshop, the Integrity Pact was signed by all consultants and contractors participating bidding for contracts related to the Greater Karachi Water Supply Scheme, Phase-V, Stage-II, 2nd 100 MGD, K-III Project. Signing was made mandatory for all consultants. Until then, the IP had been voluntary in different countries. Currently, many TI chapters have made the IP mandatory for all bidders of a public contracting process.

[88] The MoU was signed for the phase of award of consultant and construction contracts. After a change in the management of KWSB, however, the new management did not continue the MoU which had expired.

TI Pakistan prepared the evaluation criteria for the selection of consultants for design and supervision of the K-III project. After the shortlisting, TI Pakistan provided assistance on developing transparent and discretion-free evaluation criteria for the "Letter of Invitation" (LoI), based on the two-envelope-system (separately sealed envelopes for the technical and financial proposals). Only those technically evaluated proposals which scored 75% were considered for financial evaluation, and the best technical proposal were selected for award of the contract. The contract was awarded to the top ranking technical firm on the lowest price quoted by the top three ranking firms. Furthermore, according to Dr. Michael Wiehen of TI, the LOI produced by KWSB was probably the first of its kind in international bidding and Transparency International would consider recommending the LOI to other TI national chapters.

Finally, in July 2002, KWSB awarded the consultancy contract based on TI Pakistan Integrity Pact to Techno Consult Pakistan Ltd for Rs. 62 Million. This was at a net saving to KWSB of nearly Rs.185.5 million against the Planning Commission Form I (PC-I) estimate of Rs. 249 million. The consultant contract agreement included the TI Pakistan Integrity Pact for its implementation.

Second Phase: Selection of Contractors

After TI Pakistan ceased to directly follow the implementation of the Integrity Pact in the K-III project, Brig. Sardar Javed Ashraf Khan, the managing director of KWSB, supported and continued the process of transparent procurement that had been established by TI Pakistan at the consultancy tendering stage. The managing director regularly sought TI Pakistan's advice on transparency and procedural aspects of the award of tenders. The advice given by TI Pakistan was normally fully implemented.

The tender process for contractors' contracts was completed in September 2003 and all major construction contracts were awarded at a total cost of Rs 4,448 million. This total cost for award meant a net saving of Rs. 8.37 million against the approved PC-I costs of Rs. 5,285 million. TI Pakistan felt that the whole process was overall in accordance with the

spirit of the Integrity Pact. The project was completed ahead of schedule at a total cost of Rs 5,521 million.

Conclusion

The case of the K-III project shows the potential monetary benefits of transparency in government procurement and, more specifically, the success that can be achieved by the application of the Integrity Pact.

One of the findings of TI Pakistan is benchmarks and standards, as well as constant monitoring are important for the credibility of any procurement system. One important step in the K-III project was also the reorganisation of the project into packages; Eighteen tenders were combined and reduced to eight Packages. This arrangement to make eight packages of two to three contracts each was based on the necessity to stagger the implementation of different groups of contracts.

Since the implementation of some contracts would take longer than the implementation of others, the contracts had to start at different times in order for them to be completed simultaneously. Otherwise, there would not only have been a risk of delay, but the completion of some contracts at an earlier stage would have meant that those contracts could not be checked for the required testing of standards. The testing could only occur after the completion of the entire project, before which water could not be released into the system. Therefore it was essential that all the contracts be completed simultaneously.

The K-III project has become a international model of transparent procurement procedures: In a report prepared by the Working Party of the Trade Committee of the OECD on transparency in government procurement[89] the case of the K-III Greater Karachi Water Supply Scheme is, for instance, explicitly highlighted as an example of cost-savings under transparent procurement systems. The total cost of the project can be set as Rs. 5,521 million against an estimated and approved cost of Rs. 6,548 million. This means a net saving of Rs 1,057 million[90].

[89] "Transparency in Government Procurement: The Benefits of Efficient Governance and orientations for achieving it", doc. no.: TD/TC/WP(2002)31/FINAL, available from: http://www.oecd.org/trade.

Integrity Pact Monitoring as Suggested by TI Pakistan

One of the most important parts in the implementation of an Integrity Pact is the monitoring of its implementation. The monitoring mechanism integrated in the Public Procurement Rules 2004 on the basis of TI Pakistan's recommendations has some distinct features which are worth highlighting. Monitoring is an on-going process in which the bidders, civil society and anti-corruption agencies have a important role.

Monitoring during the contract award process

The selection committee prepares an evaluation report of the bids and forwards it to all the bidders 10 days before the contract is awarded. The competitors who are the technically most competent to examine the recommendations and reasons of (not) awarding to them, are thereby enabled to check and comment on the official evaluation. This helps to prevent evaluators from either manipulating the award or committing mistakes in the evaluation process.

Monitoring after the award of contract

the contract documents as well as the evaluation report are to be made public, ideally on the website of the procuring agency. This way, civil society watchdogs have the chance to monitor the contract and its physical implementation and raise questions whenever they find, for example, substandard works. The published contract document also provides an opportunity for bidders to learn about the contract rates, and if they are very high, get them interested in participating in future tenders. The anti-corruption agencies then have ready access to the evaluation report and the contract which enables them to check the process without further delay caused by obtaining documents.

2.2. MEMORANDUM OF UNDERSTANDING (MOU)

One of the most successful tools of TI Pakistan is the Memorandum of Understanding (MoU) it signs with public contracting agencies. An example of a typical MoU is attached in Annex 1. For TI Pakistan the

signing of the MoU is a way of improving public agencies' compliance with the existing national procurement legislation and, through this, a way of generating market competition.

a) Model

The idea of these MoUs is for TI Pakistan to support individual public agencies (e.g. National Bank of Pakistan, City District Governments of Karachi, Central Board of Revenue) to implement Pakistan's Public Procurement Rules 2004, particularly in as much as they require the application of Integrity Pacts in public contracting processes.

By signing the MoU, TI Pakistan commits to:

- Preparing a procurement manual for the procuring agency;
- This contains all the standard bidding documents on procurement of works and goods and services. These are based on international and national standards, and are amended to comply with the Transparent Procurement Procedures, as recommended by NAB in the National Anti-corruption Strategy (NAVS) 2002, in order to fully comply with the Public Procurement Rules 2004; and
- Providing the cost-free service of vetting all tender documents that the procuring agency prepares on the basis of the Procurement Manual for their compliance with the Public Procurement Rules. TI Pakistan advises up to the tender stage and does not get involved in the tendering or evaluation process.

By signing the MoU, The procuring agency commits to:

- Establishing a coordinating committee of the procuring agency officials as well as experts from TI Pakistan to review existing bidding documents, evaluation criteria, and approval systems, etc.;
- Making publicly accessible financial information, such as auditor's reports and sources of income and revenues (periodically);

[90] A detailed report, including these calculations is available on TI Pakistan website: http://www.transparency.org.pk/documents/kw&sb.pdf

- Informing the local public and all interested individuals, institutions, organisations, vendors, etc., about the activities carried out under the agreement; and
- Accepting that in case it fails to carry out the agreed-upon recommendations, TI Pakistan has the right to withdraw from the MoU and to make a public announcement regarding this.

b) Application

TI Pakistan has signed MoUs with a wide range of public agencies and has prepared procurement manuals for eight of them (see Annex 2). One noteworthy example of how support provided by TI Pakistan helps generate market competition is the case of Pakistan Steel, a state-owned company. In 2004 TI Pakistan signed a MoU with Pakistan Steel after preparing the procurement manual, vetting all tender documents for a period of three months, which was later extended. TI Pakistan has vetted and amended over 500 of their tender documents. Pakistan Steel also referred special procurement cases to TI Pakistan for advice on the application of national legislation, the Public Procurement Rules 2004.

In one case, Pakistan Steel needed, for the first time, metallurgical coke to enhance production capacity. Since metallurgical coke is an item rarely used, a market inquiry by Pakistan Steel in June 2005 resulted in the identification of only one supplier who was quoting US$ 400 per ton. The issue was referred to TI Pakistan to be handled in accordance with the Public Procurement Rules 2004. TI Pakistan supported Pakistan Steel by preparing a tender notice and tender documents for them based on the procurement manual. Pakistan Steel was then advised to:

- Advertise the tender internationally, in three lots;
- Send the tender notice to Pakistani embassies abroad to contact suppliers there to bid.

The tender notice was widely advertised in Pakistani newspapers, on the Pakistan Steel and the governmental PPRA websites, and in Pakistani embassies in foreign countries. Fifteen bids were received by August 2005. The bids were opened publicly and a contract for more than 35,000 tons was awarded in September 2005 to the lowest responsive bidder,

M/s Rag Trading GMBH Germany, at US$ 176 per ton for a total of US$ 6,160,000, a much lower price than the single supplier that Pakistan Steel had initially identified was offering.

TI Pakistan found that this active response to the bid was related to the tendering process which included signing of an Integrity Pact. The process assured suppliers that the awarding of the contract would be on the basis of merit and they could also, for example, submit their objections to the bid evaluation report prior to the award of contract. This encouraged numerous bidders to participate in the process.

Later that year, a second tender was floated for 70,000 tons, and 15 bids were received. A contract was awarded to the lowest responsive bidder, M/s Hong Fortune Resources (Energy) China Co. Ltd., at US$ 145 per ton (for a total of US $ 10,150,000). As a result, the total cost for the procurement amounted to approximately US$ 16 million as compared to the cost of US$ 42 million that was initially estimated by Pakistan Steel. The award saved Pakistan Steel 60% of the initial estimated cost and a net sum of US$ 25.7 million. or Rs. 154 million. Pakistan Steel is now procuring a further 250,000 tons of metallurgical coke using the same procedure.

c) Conclusion

In the experience of TI Pakistan, the application of an Integrity Pact allows public procurement to be based on standard biding documents which satisfy international standards. This, in turn, generates healthy market competition and allows the contract to be awarded to the most experienced, competent and lowest responsive evaluated bidder in the shortest amount of time.

In the above example of the Pakistan Steel, a procurement process can be completed very quickly: The tender was advertised, the contract awarded, and the material supplied to Pakistan Steel in three months and 11 days. TI Pakistan believes this was only possible as a result of transparent procurement procedures, which included the signing of the Integrity Pact. The strength of TI Pakistan's Procurement Manual is its providing for the award the of contract to take place within 45 days after the opening of the bids.

2.3. MODEL CHECKLIST OF THE BIDDING PROCESS BY TI PAKISTAN FOR CONFIRMATION OF COMPLIANCE OF PUBLIC PROCUREMENT RULES 8 JUNE 2004 S.R.O. 432 (I)/2004 BY PAKISTANI GOVERNMENT FINANCE DIVISION

TI Pakistan has prepared for a checklist for procuring agencies. This checklist is intended to help the evaluation committee of the procurement agency to comply with the requirements of the Pakistan Procurement Regulatory Authority. The management of the procurement agency or the regulators can, with one glance at the checklist, ascertain whether the rules are being followed. Using the checklist, therefore, can help reduce the possibilities of an evaluation being manipulated in favour of any particular bidder and thus make the process more transparent.

SECTION 3 THE E.U. ASIA URBS PROJECT AND THE WAY FORWARD

3.1. THE E.U. ASIA URBS PROJECT

By the time TI Pakistan was invited to participate in the Asia Urbs Project in 2004, TI Pakistan was in the process of providing its services to authorities and many public agencies for transparent public procurement. In terms of engagement with local governments, TI Pakistan had been working with, for example, the Karachi City District Government, preparing a comprehensive procurement manual for authority in 2004[91] Given this experience, the EU Asia Urbs Project suited TI Pakistan's most important and nationally recognised on-going effort to implement the transparent procurement procedures that it had been promoting over several years.

The EU Asia Urbs project was designed to include a Capacity Building and Training (CBT) Workshop in each project country. In Pakistan, the three-day CBT Workshop was held September 19-21, 2005 in Karachi. Since an initial assessment mission and consultations with various stakeholders had identified the local need to facilitate the implementation of the PPRA law it was decided to conduct the workshop as a "**Train the Trainers**" session for officials from the main agencies where the PPRA laws are or will be implemented. The Workshop was jointly hosted by TI, TI Pakistan, the World Bank, and the National Accountability Bureau.

The National Accountability Bureau (NAB), the Public Procurement Regulator Authority (PPRA) and the Auditor General Pakistan. In Pakistan, the National Accountability Bureau is the highest level of National Anti-corruption Agency, the Public Procurement Regulatory Authority is the government's regulator of Procurement, the Auditor General Pakistan is the watchdog of the government on public expenditure, and the World Bank is the largest IFI with annual development loans of over US$ 15 billion per year.

[91] Further details on all these activities can be found on TI Pakistan's website: http://www.transparency.org.pk.

A total of 35 participants participated in the workshop and were awarded certificates as Certified Trainers and Procurement Specialists upon completion. The participants received the Procurement Manual TI Pakistan has prepared for Pakistan Steel. The training material used by the six organisations in the CBT Worksop is available on TI Pakistan website.

TI Pakistan has asked the participants of the workshop to hold biannual workshops in their organisations for at least three years and to forward the programme and progress report of the workshops to TI Pakistan. A report of the workshop survey can be found in Annex 3.

The most important aspect of the Capacity Building and Training Workshop was the participation of various agencies as trainers, since this provides an excellent example of cooperation, as well as confidence of the agencies in the expertise of TI Pakistan in the field of public procurement. It was also the first time the World Bank cooperated with a TI chapter in a procurement project. As a direct result of the CBT Workshop, the World Bank has now requested TI Pakistan to be involved with its forthcoming development loan of more than US$ 160 million for the Sindh Irrigation Ministry. TI Pakistan's responsibility will be the vetting of all the procurement documents prepared by the Sindh Irrigation Ministry, and to examine and confirm whether the evaluation reports of various procurement contracts under the loan, comply with the requirements of the evaluation criteria in the respective bidding documents.

The media gave good coverage to the CBT Workshop, which raised public awareness of the importance of transparent public procurement and the role of TI Pakistan in the implementation of the new procurement law. Since the CBT workshop, three MoU's on the application of the Integrity Pact have been signed: with National Bank of Pakistan, Port Qasim and the Trading Corporation of Pakistan.

TI Pakistan is continuing its efforts to provide expert services for the implementation of the Public Procurement Rules 2004 in Pakistan. TI Pakistan is also attempting to convince the World Bank and the Asian Development Bank (ADB) to apply these rules in their loan agreements, since they are (in TI Pakistan's view) more transparent than those

institutions' own procurement procedures.

3.2. CURRENT EFFORT: PROMOTE APPLICATION OF ROCUREMENT RULES AT PROVINCIAL LEVEL

Due to the political structure of Pakistan, the government's Public Procurement Rules 2004 applied only to agencies funded by the federal government. TI Pakistan has been attempting to convince the provincial and local governments to adopt the same procurement rules.

In order to promote this idea, the TI Secretariat and TI Pakistan held a workshop on "The Transparent Use of Earthquake Relief Funds" in February 2006. International experts on disaster relief, civil society organisations, NGOs, donor agencies and relevant officials of the government were invited to participate. The workshop was inaugurated by the Pakistani prime minister. Draft recommendations were formulated and circulated among the participants at the conclusion of the workshop. The final recommendations were prepared after receiving all reports and were submitted to the Pakistani prime minister.

The main recommendation was that public procurement for the earthquake relief which fell under the purview of the provincial governments should be carried out according to the Public Procurement Rules 2004. The Prime Minister has now issued instructions to all the provincial governments to adopt the PPR Rules 2004.

The Governor of Sindh has recently issued an ordinance establishing a Provincial Procurement Regulatory Authority. TI Pakistan is in contact with the provincial government, and is continuing its efforts to lobby other provincial governments to adopt the Public Procurement Rules 2004 which are the most transparent.

ANNEX 1

TRANSPARENCY INTERNATIONAL PAKISTAN Strives to build a better country to live in **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is signed on the 10th day of June 2005 between Transparency International Pakistan (TIP) and the Pakistan International Airlines (PIA) for the Implementation of the "Integrity Pact" and Transparency in its Procurement Systems.

Transparency International is a non-governmental organisation, dedicated to government accountability, and curbing the international and national corruption. Through over 98 independent National Chapters, Transparency International bring together people of integrity in civil society, business and government, to work as coalitions for Systemic reforms. Transparency International do not "name names" or attack individuals or investigate, but focus on building systems that combat corruption.

Transparency International national chapter Transparency International Pakistan aims at Building a coherent National Integrity System, to institutionalise efforts to curb corruption. The ultimate goal of this system is to make corruption a "high risk" and "low return" undertaking. It is designed to prevent corruption from occurring in the first phase, rather than resting on punishment after the event. Because corruption tends to be the result of SYSTEMATIC failures. The primary emphasis of Transparency International Pakistan is on reforming the system, rather than blaming the individuals.

The "Integrity Pact" is an Integral Part of the National Accountability Bureau initiative towards Shafaff Pakistan, the National Anti Corruption

Strategy approved by the Cabinet on 20th September 2002 & 5th October 2002, its Implementation mechanism approved by the President 24th October 2002. The Integrity Pact is a tool developed by Transparency International, which ensures that all activities and decisions of public offices are transparent and that the projects/works are implemented, services are provided or taken, and goods/materials are supplied without giving taking or allowing for any kind of benefit, financial or otherwise. Justification of the decisions taken is provided without discrimination to all parties concerned or to any individual or institution/organisation.

Considering that all Companies and Organisations in Pakistan share a responsibility to combat bribery in all forms and manifestations, it is agreed; *That Public Procurement Rules 2004 are applicable in PIA including "Integrity Pact" prescribed by PPRA*.

To sign this Memorandum of Understanding between Transparency International Pakistan (TI Pakistan) and Pakistan International Airlines (PIA) for the Implementation of the "Integrity Pact" and Transparency in its Procurement Systems.

That PIA along with TI-Pakistan will work jointly for the implementation of the PEC & World Bank SBDs which is a recommendation of the NACS, and those recommendations in the NACS involving Transparency in procurement, and Public Procurement Rules 2004 .It is also agreed that the PIA will establish an accountability in all its dealings and try to provide all the necessary Checks and Balances in its effort towards a Transparent Procurement System.

A Coordination Committee of PIA & TIP members will be formed to implement "Integrity Pact" and Transparency in its Procurement Systems.

The Coordinating Committee.

This committee to be set up by PIA, shall consist of a three members comprising Officials of PIA, with responsibilities related to Law, Finance and Technical (Procurement & Contracts) Departments. and two Representative of TI Pakistan. The Secretary General TI Pakistan shall act as its Chairman.

The Coordinating Committee will:

1. Identify and list all issues of transparency and evaluation of tenders criteria in the procurement bidding documents, including the discretionary conditions of exiting in the contract documents and make the necessary changes where necessary.
2. Prepare ways and means to be included in Contract Documents to eliminate/reduce delays to a bare minimum (Time base decisions with predictable milestones) and in approvals by providing mandatory time frames for submittals by consultants/contractors and approvals by client/consultants.
3. Introduce approval systems to process and award contracts, as well as complete the Projects at the most economical cost and within the scheduled time.
4. Incorporate the Directives of the NACS & PPRA with regards to Procurement and Contracting.

Herein after it is agreed that;

- All important decisions be made public.
- Information on all important activities including auditor's report should be made easily accessible to all.
- PIA will periodically make public their sources of income and revenues.
- PIA has the responsibility to inform the local public and all interested individuals /institutions/organisations/vendors and others about the activities carried out under this Agreement.
- In accordance with the proposed Pact, Transparency International Pakistan will provide experts' services for 3 months beginning from June 2005, which may be renewed on mutual understanding.
- Team of Experts of TI Pakistan and PIA will prepare "PIA Procurement Manual'.
- The "PIA Procurement Manual" will comprise of all the Standard Bidding Documents on procurement of Works, Goods & Services, based on International Standards, World Bank, FIDIC and Pakistan Engineering Council, duly amended to comply with the Transparent Procurement Procedures, recommended by the National Accountability Bureau in the National Anticorruption Strategy 2002, and fully compliant to the Public Procurement

Rules 2004.

- TIP agree to vet all tender document of which PIA prepares on the basis of Procurement Manual for three months w.e.f . the date a directive is issued by the President of National Bank.
- PIA will hold a press conference/seminar to declare application of PIA Procurement Manual.
- TIP under its charter will not participate in the PIA tendering process in any capacity, not even as observer.
- Transparency International Pakistan will provide experts' services to PIA without any cost to the PIA.
- That all information relevant to providing Transparency Procurement procedures shall be provided to the Coordination Committee by the PIA and all its related departments. It shall include documents which are in addition to those that are allowed under the Freedom of Information. Ordinance 2002.
- That in case the PIA fails to carry out the above agreed-upon recommendations Transparency International Pakistan has the right to withdraw from this Memorandum of Understanding and declare the same through a public announcement. Such withdrawal shall be effective 30-days after the date of the receipt of a notification given by TI-Pakistan to the PIA to this effect..

Tariq Kirmani
Chairman
Pakistan International Airlines (PIA)

Syed Adil Gilani, Vice Chairman,
Transparency International Pakistan

Saad Rashid
Project Advisor
Transparency International Pakistan

ANNEX 2

Procurement Manuals Prepared for following Public/Local Bodies

1. City District Government of Karachi on March 22, 2003
   http://www.Karachicity.gov.pk
2. Pakistan Telecommunication Company Ltd.
3. Pakistan Steel Mills Limited on June 16, 2004
   http://www.pakistansteel.gov.pk
4. Pakistan International Airlines on June 10, 2005
   http://www.piac.org.pk
5. Port Qasim Authority on April 20, 2006
6. National Bank of Pakistan March 30, 2006
7. Central Board of Revenue on October 11, 2005
8. Trading Corporation of Pakistan on April 25, 2006

ANNEX 3

Activity:
Capacity Building and Training on Procurement: Train the Trainers Workshop, September 19-21, 2005, Karachi, Pakistan

Project:
Preventing Corruption in Public Contracting: Capacity Building and Networking for Civil Society and Local Governments

Evaluation of this Capacity Building and Training Workshop was done through the preparation and distribution of a participants' questionnaire. Of the 35 participants attending, completed questionnaires of 26 participants were collected. The following summarises the responses.

Participation

The workshop met its goal of attracting about 20 participants. About 50% of the participants represented State owned enterprises while the remaining 50% was split between national and local government representatives. TI Pakistan and some journalists also participated. The

participation/target audience was appropriate to the objectives of the Workshop, i.e., to train the trainers.

Gender Balance

There was a significant gender imbalance with only two participants being women. However, the age distribution of participants was good with the majority ranging between 30 and 60.

Purpose of Participation for Attendees

Most participants said they participated to learn more about transparent public procurement procedures and how Pakistan's law in particular the PPRA can be implemented effectively.

Workshop Content

Participants felt the Workshop had adequately covered issues, such as how corruption in public contracting operates and can be prevented. They had the opportunity to see how international and regional norms, guidelines, state obligations, and legal case studies can work to prevent and address corruption. They also had the chance to review the characteristics of corruption in public contracting and the risks of corruption in Pakistan. Overall, participants assessed that "current and future needs for capacity building and training on reforming public procurement practices" were covered best.

Specifically, participants viewed the following discussions useful:

- Tools to promote transparency and prevent corruption in public procurement useful; Information Disclosure;
- Information about existing laws on public procurement in Pakistan such as the PPRA and about international rules and procures presented by the World Bank;
- Integrity Pacts;
- Bid evaluation and evaluation criteria; and
- How to raise public awareness.

Participants also identified some issues for further discussion and follow-up:

- Case studies and sector specific issue;
- Prequalification of Bidders/suppliers;
- Monitoring and ensuring effective implementation - who is the watch dog?;
- How to consolidate/synchronise/work with varying different public procurement rules (PPRA, OECD and World Bank);
- Procurement - IT related rules, software/hardware;
- How local conditions effect corruption in procurement;
- Non-financial corruption;
- How to evaluate bids;
- Resolution of disputes;
- Negotiations and drafting of specifications; and
- How to strengthen grass roots level.

A number of participants felt that further training on the above issues would be welcomed. Some stated that the present workshop should be conducted throughout Pakistan.

Participants unanimously responded that they support the cross-sectoral coalition and partnership building among stakeholders in their country. Factors preventing this include institutional bureaucracy, bureaucratic attitudes, vested interests, and lack of coordination, common interests, confidence and interaction.

Overall Workshop Evaluation

Generally participants agreed that the Workshop had successfully met its objectives in terms of increasing public awareness and deepening understanding of corruption in public contracting and of adapting useful tools to help ensure implementation of Public Procurement Rules. More than 50% of participants responded that workshop interaction and participatory discussions were excellent.

ANNEX 4 EXAMPLE CHECKLIST USED IN PAKISTAN

Item No.	Description of Procurement Process	Compliance	Deviation if any, and reference no. of the prior approval o procuring agency for exemption.
1	Lowest evaluated responsive bidder (proposed for contract award)	a) Name b) Address	
2	Estimated date (date, month, year) of contract signing.		
3	Estimated completion period.		
4	Bid Price(s) (Read-out)		
5	Effect of Corrections for Errors		
6	Effect of Other Adjustments		
7	Proposed Contract Price for Award		
8	Tender/Prequalification Advertisement Publication Date	Date of Publication	
9	Date of tender opening	Min 15 working days for Local tenders and 30 working days for International Tenders	
10	Pakistan Engineering Council Guidelines for Prequalification of Contractors, Invitation of Tender, Short listing of Consultants and Invitation of Proposals amended to comply with Public Procurement Rules 2004 are to be used.		
11	Integrity Pact		
12	The Evaluation Criteria and Sub Criteria is to be disclosed in advance to the Bidders in the Bid Documents.	Reference Page No. of the Evaluation Criteria in the Bid Document	

13	Evaluation of bids. - All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents. No evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents.		
14	Method of Procurements, for Consultancy, Works and Equipment. Lowest Evaluated Bidder is to be Awarded the Contract PPR Definition No. (d) "contractor" means a person, consultant, firm, company or an organization who undertakes to supply goods, services or works;	(a) single stage – one envelope procedure.- (b) single stage – two envelope procedure.- (c) two stage bidding procedure.- (d) two stage - two envelope bidding procedure.-	
15	The Evaluation Report giving reasons for selection to be made public for 10 days before award. All objections shall be acknowledged, examined by the same evaluation committee in 5 days, and the Evaluation Report be Finalised for award. Evaluation Reports declared to Bidders and Final Evaluation Report to be Attached.	1. Date of declaration of Evaluation Report. 2. Nos of objections received, 3. Any change in the original Evaluation Report and reasons.	
16	Rule No. 48. Redress of grievances by the procuring agency.- (1) The procuring agency shall constitute a committee comprising of odd number of persons, with proper powers and authorizations, to address the complaints of bidders that may occur prior to the entry into force of the procurement contract. (2) Any bidder feeling aggrieved by any act of the procuring agency after the submission of his bid may lodge a written complaint concerning his grievances not later than fifteen days after the announcement of the bid evaluation report under rule 35.		

	(3) The committee shall investigate and decide upon the complaint within fifteen days of the receipt of the complaint. (4) Mere fact of lodging of a complaint shall not warrant suspension of the procurement process. Any bidder not satisfied with the decision of the committee of the procuring agency may lodge an appeal in the relevant court of jurisdiction.		
17	Limitation on negotiations.- Save as otherwise provided there shall be no negotiations with the bidder having submitted the lowest evaluated bid or with any other bidder: Provided that the extent of negotiation permissible shall be subject to the regulations issued by the PPRA		
18	Re-bidding.- (1) If the PROCURING AGENCY has rejected all tenders and reinvaded Tenders. Then; (2) PROCURING AGENCY before invitation for re-bidding shall assess the reasons for rejection and may revise specifications, evaluation criteria or any other condition for bidders as it may deem necessary.		