



Fraud and Corruption Awareness Handbook

A HANDBOOK FOR CIVIL SERVANTS
INVOLVED IN PUBLIC PROCUREMENT

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Preface

Every year, vast sums of taxpayers' funds are spent on public goods and services by national and subnational entities. An unknown percentage of these funds, unfortunately, are not used for their intended purposes because funds are illegally diverted. According to a 2013 study commissioned by the European Anti-Fraud Office (OLAF), the direct public loss encountered within five selected sectors of the economy where EU funds are spent in eight member States amounts to 18% of the overall project budgets concerned.¹

Considering the scale of the problem of fraud and corruption in public procurement, pessimists argue that the idea that it can be prevented from happening seems futile. There is, indeed, no fail-proof solution against the hidden schemes, whose organizers always seem to be one step ahead of the corruption hunters. However, public officials and other concerned stakeholders have been successfully improving their ability to detect, prevent, and punish fraud and corruption, where it is uncovered.

The procurement process has proven particularly vulnerable to fraud and corruption, because that is the point in the investment cycle where money changes hands. In order to prevent misconduct, one must have a keen understanding of the inner workings of the many fraud and corruption schemes that occur. This handbook offers some insights about fraud and corruption in public investments in Poland as well as in World Bank-financed projects; how it happens and how it can be detected before it negatively impacts investments. Early detection through paying specific attention to red flags in the procurement process can prevent the corrupt parties from succeeding, as multiple examples over the past years have shown.

Much of what we know about fraud and corruption is the direct result of the reporting of alleged fraud and corruption by public sector employees; they are the first-and best-line of defense when it comes to protecting funds from misuse. Bidders, civil society representatives and other stakeholders as well are an important source of complaints, which underscores the crucial role of effective complaint handling mechanisms to elicit, channel and respond to complaints.

¹ See "*Identifying and Reducing Corruption in Public Procurement in the EU*" http://ec.europa.eu/anti_fraud/documents/anti-fraud-policy/research-and-studies/identifying_reducing_corruption_in_public_procurement_en.pdf

This handbook was written with the intent to raise awareness and encourage public sector employees to be alert to potential malfeasance in the management of public investments. Published in 2011 by the World Bank's Integrity Vice Presidency, this publication builds on the experiences gained by Poland's Anti-Corruption Bureau and the World Bank with a view to share lessons learned from investigative activities of both organizations.

Bringing integrity to our public investments requires a shared commitment. To this end, we continue to work to ensure that the lessons learned today, help us prevent the risks of fraud and corruption tomorrow.



What is the purpose of this handbook?

This handbook is intended for government employees involved in public procurement. It provides some insights into how fraud and corruption schemes work in public investments. The handbook identifies a range of fraud and corruption indicators, or red flags, and relevant schemes that may become apparent during the life of an investment, from design to implementation. The primary focus of this handbook is fraud and corruption in procurement, with some coverage of general governance issues. It is based on the experience of *Poland's Central Anti-Corruption Bureau* and the *World Bank's Integrity Vice Presidency*, and it presents examples referring both to public investments implemented under Polish public procurement law and international competitive bidding.

While carrying out the tasks imposed by the legislature, the Central Anti-Corruption Bureau seeks to draw attention to irregularities that may occur while spending public funds for the purchase of goods and services, and investment projects. Non-observance by the procuring entity of the provisions regulating public spending may have negative economic consequences for the unit finances and may result in disciplinary measures and possible criminal prosecution. This handbook aims to provide support to the managers of procuring entities in conducting public procurement by identifying frequently occurring irregularities and suggesting methods of preventing them.

What are the definitions of fraud and corruption?

In Poland, the national Criminal Code prohibits providing or promising a material or personal benefit to a public official in connection with their office. The law does not require that the benefit or promise thereof is granted with a view to a particular purpose, only that it is granted in connection with the public function of the recipient. Bribery of public officials is punishable by imprisonment for up to 12 years.² If the bribe aims to influence a public official to act contrary to the law, the offender is liable for imprisonment for up to ten years.

² For a more detailed description of the legal regulations on corruption offences, and related penal, civil and disciplinary liability, see *The Anti-Corruption Handbook for Entrepreneurs, Warsaw 2012, Central Anti-Corruption Bureau, pp. 13–52.*

The **Central Anti-Corruption Bureau of Poland** defines corruption as “an act which involves promising, proposing or giving [...] of any undue advantage to a person performing a public function for themselves or any other person, in return for acting or omission to act in performing the person’s function [...]”

Polish law provides other useful definitions of practices that may occur in public procurement by certain persons:

- A *financial advantage* is any benefit satisfying a particular need, the value of which may be expressed in money. It can be an increase in assets but also profitable contracts, e.g., on preferential terms, donation, assignment of receivables, or discharge of debt.
- A *personal advantage* is a non-financial allowance, which improves the situation of the person who obtains the allowance (e.g., a promise of promotion, a job, honoring with a medal, mastering the profession, apprenticeship, a favorable image in media, acceleration of surgery term, sexual favors, etc.).
- A *person performing a public function* is, *inter alia*, the director of a state enterprise within the scope of management and representing the enterprise outside; the chairperson of the Board of Cooperative Housing within the scope of activities associated with the disposal of public funds; or an authorized representative of an energy enterprise, who controls the legality of electricity consumption.
- A *public official* is a person who has been legally elected or appointed to office and who exercises a government function, e.g., president, senator, member of parliament, judge, prosecutor or any person employed by the government, including a person performing a managerial position in a state agency, body responsible for securing public safety, penitentiary or military.

The **Council of Europe Civil Law Convention on Corruption** of 4 November 1999, article 2 stipulates that “corruption means requesting, offering, giving or accepting [...] a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.” The Explanatory Report (paragraph 24) to the Council’s *Criminal Law Convention against Corruption* of 27 January 1999 lays down a provisional definition of corruption as “bribery and any other behavior in relation to persons entrusted with responsibilities in the public and private sector, which violates their duties that follow from their status as a public official, private employee, independent agent or other relationship of that kind and is aimed at obtaining undue advantages of any kind for themselves or for others.”

The **Organisation for Security and Co-operation in Europe (OECD) *Anti-Corruption Action Plan*** describes bribery as “a violation of duties of civil (public) servants or responsible persons in private and public sector as well as the benefiting from such activities, caused directly or indirectly as the result of promise, offered, expected or given reward for yourself or other persons.”³ A *foreign public official*, according to the **OECD Anti-Bribery Convention**, is “any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organization.”⁴ An overview of **International Anti-Corruption Initiatives** can be found in Annex 1.

The **World Bank Group** has adopted four standardized definitions relating to fraud and corruption that are subject to administrative sanction. These are: corrupt practice, fraudulent practice, collusive practice, and coercive practice. In addition, the World Bank may also sanction a firm or individual for having engaged in ‘obstructive practice’ in connection with a Bank investigation. Collectively, the Bank refers to all five as ‘sanctionable practices’.⁵

- A *corrupt practice* is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- A *fraudulent practice* is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- A *coercive practice* is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- A *collusive practice* is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.⁶

³ EULEX, MMA activities p. 5. <http://www.eulex-kosovo.eu/docs/justice/assembly/12th/decisions/Corruption%20definition%20and%20anti-corruption%20strategy%20-%20EDITED.pdf>

⁴ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Article 1.4.a.

⁵ The definitions of these sanctionable practices are contained in the World Bank’s *Guidelines on Preventing and Combating Corruption in Projects financed by IBRD loans and IDA Credits and Grants* (Anti-Corruption Guidelines).

⁶ On February 18, 2006, the leaders of the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank Group, International Monetary Fund, Inter-American Development Bank Group and the World Bank Group agreed to establish a Joint International Financial Institution Anti-Corruption Task Force to work towards a consistent and harmonized approach to combat corruption in the activities and operations of the member institutions. <http://www.afdb.org/fileadmin/uploads/afdb/Documents/General-Documents/30716700-EN-UNIFORM-FRAMEWORK-FOR-COMBATTING-FRAUD-V6.PDF>

Firms and individuals that are found to have engaged in any of these practices in connection with the procurement of goods or services, the selection of consultants, or the execution of any resulting contracts, are subject to one of five possible sanctions, including debarment, *i.e.*, ineligibility to be awarded a Bank Group-financed contract.

Where are public investments most vulnerable to fraud and corruption?

Procurement and contract management under public investments are particularly vulnerable to fraud and corruption. This vulnerability is primarily due to the large amounts of money involved and the difficulties, at times, to effectively supervise a large number of contracts. In addition to procurement, vulnerabilities in contract and financial management are common. The schemes one often encounters occur in the following areas:

- *Procurement:* corrupt payments to government officials and steering of contracts to favored bidders (*see* Chapter 2); collusion among bidders in obtaining contracts (*see* Chapter 3); and submission of fraudulent bids (*see* Chapter 4) intended to circumvent the competitive bidding process.
- *Contract management:* fraudulent implementation including misrepresentation of work, goods and services as having been delivered according to specifications (*see* Chapter 5).
- *Financial management:* embezzlement of project funds through fictitious invoices and the diversion of funds/assets.

Is the prevalence of corruption the same across sectors?

The prevalence of corruption may vary widely across sectors. There may appear indicators of systemic corruption in one agency, while activities in another agency are untainted. The manifestation of corruption may also vary from one investment to another, and component to component, depending on the opportunities and the strength of internal controls and accountability measures. For example, the risk of money marked for the purchase of school books being diverted is low when information concerning direct payment to the school is publicly available to the parents. In contrast, the risk of a government official steering a contract for the construction of an office building for the Ministry of National Education to a friendly contractor may be high if the requirement for transparency of budgets is limited.

Why is it important to fight fraud and corruption?

Recovery of illicit payments often leads to incomplete or unsound public investment outcomes. Since bribe-paying firms must find a way to recover these illicit payments

and, where possible increase profits, they will often resort to defrauding the project, thereby threatening its effectiveness. Audits have uncovered a number of methods that private firms have used for recovering these costs:

- Charges for goods, works, and services are inflated.
- Goods and services are invoiced but never delivered (or quantities greatly reduced).
- Contract specifications are not met, resulting in substandard work or hazardous conditions.
- Products are substituted for inferior, less expensive and lower quality material than specified in contracts. For consulting contracts, the project is billed for the cost of senior consultants, when lower paid employees are actually performing the work, or billing for “ghost employees” is found.

Moreover, competition is reduced in a corruption-prone environment. More competent firms that refuse to make illicit payments have no chance to win contracts, leaving less capable companies to win contracts at higher prices and deliver lower quality.

Which actors most frequently engage in fraudulent or corrupt practices?

Government officials, companies or their agents, and supervision consultants most frequently engage in the corruption schemes. These actors play various roles as illustrated below.

- *Government officials* often play a central role in corruption schemes by being in a position to influence the award of contracts, the processing of invoices for payment, and the signing of licenses and approvals.
- *Local and international companies* (contractors and sub-contractors) organize or participate in illicit arrangements in order to win contracts. They divert project funds to project officials, with the bribes usually disguised as ‘legitimate’ payments for goods, works or services. Frequently, subcontractors—actual or fictitious—are used to channel funds to project officials.
- Contractors’ *independent agents* may play a role in brokering the illicit arrangements and shielding the contractors from legal action.
- *Supervision consultants* may also be corruptly induced or pressured to sign-off on substandard work.
- *Senior government officials* may provide protection or seek their share of the corrupt payments.

What are red flags and how are they used?

A red flag is an indicator of possible fraud or corruption. There are hundreds of red flags that can appear in various types of public investment projects. They can show up as anomalies in bidding documents, such as bids from purportedly different bidders faxed from the same telephone number; in financial records, such as invoices paid in amounts that exceed the contract value; or complaints about agency officials, who, for example, might pressure the Bid Evaluation Committee (BEC) to select a certain company to win a contract. In some cases, deviations from national procurement rules indicate not just non-compliance, but also a heightened probability of fraud or corruption.

Some red flags are more ambiguous than others. Some red flags are quite “bright” and compelling—such as supposedly competing bids sent from the same fax machine, while others are more ambiguous and difficult to interpret, at least in isolation, such as receiving fewer than the expected number of bids in response to a tender.

A red flag is usually a sign that closer scrutiny is needed. This extra scrutiny might involve asking for more documents or information from the bidder or, as is often the case, looking for other related red flags. Receiving fewer than the expected number of bids, for example, could be an indicator of rigged specifications or other measures intended to exclude qualified bidders. If detected, government officials should look for other indicators of such schemes, as listed in this guide. Similarly, a poorly prepared bid from a previously unknown company might prompt one to look in the telephone directory or on the Internet to see if the firm is listed, or call or visit the purported business premises to confirm the company’s existence. Government officials should not, however, undertake an investigation of a possible or suspected wrongdoing. If serious concerns remain after a preliminary review, the matter should be referred to the appropriate agency staff or to the Central Anti-Corruption Bureau of Poland for further investigation.

Corrupt Procurement Practices **2**

How does a corruption scheme in procurement work?

A corruption scheme often involves more than one type of misconduct. A corrupt scheme in procurement often begins with a demand for, or offer of payment, followed by bid rigging and finally fraud to cover up the scheme:

- *Demand for payment.* A government official demands a bribe or kickback from a firm or individual, or a firm or individual offers a bribe, in exchange for a contract award. In most cases, the corrupt official will permit the bribe payer to inflate the price to cover the bribe and preserve its profits.
- *Bid rigging.* To ensure that the contract will be awarded to the bribe-paying firm (whose prices are now inflated to cover the cost of the bribe), government officials manipulate the bidding process to exclude other (presumably cheaper) competitors.
- *Fraud.* To recover the cost of the bribe, and to exploit the corrupt relationship, the firm, usually with the knowledge and complicity of government officials, inflates prices, bills for work not performed, fails to meet contract specifications or delivers substandard product during implementation. This often requires further corrupt payments to inspectors or auditors.

What are the goals of any procurement-related corruption strategy?

The aim of the corrupt party is to steer the contract to the favored bidder without detection. This is done in a number of ways, including:

- *Avoiding competition* through, e.g., unjustified sole sourcing or intimidating bidders.
- *Favoring a certain bidder*, e.g., by tailoring specifications and sharing inside information.
- *Excluding qualified bidders*, e.g., through restricted circulation of advertisements, biased evaluation process, or bid tampering by deliberately losing certain bid documents.

- *Avoiding detection* of the schemes, e.g., by negotiating the removal of audit rights, and using shell companies to disguise the official's economic interest.

What are typical bribes?

The type and value of bribes vary widely depending on circumstances. Not all bribes are monetary, particularly in the early stages of a corrupt relationship. For example, there are cases where a designated international contractor could provide temporary lodging at company-owned villas, free transportation on corporate aircraft and paid weekend vacations. Some international contractors paid for “plant inspections” or “study tours” for project personnel and their spouses early in an investment to attractive destinations that were, in fact, expense-paid vacations and shopping expeditions. In several cases, road construction and construction companies paid for female companionship for inspectors and gave them gifts and small amounts of cash to induce them to approve substandard works. In World Bank–financed projects, different types of corrupt payments that have been identified include:

- *Corrupt payments for contract awards.* Corrupt payments in exchange for contract awards often vary from 5–20 percent of the contract amount. The payments typically were divided among ministry, other government and project personnel, including Bid Evaluation Committee members.
- *Facilitation payments.* These are typically 2–5 percent of the invoice value. Many contractors had to make additional payments to project staff to approve invoices during project implementation. In some instances, auditors demanded bribes from contractors to refrain from reporting corrupt payments or other irregularities they discovered. In one Region, contractors on a road project paid one percent of the contract value to a supervisory Non-Governmental Organizations (NGOs) and an additional one percent to a representative of the local media to suppress reports of corruption.
- *Additional indirect payments.* Government officials may also demand that contractors procure from certain firms or contribute to special funds. For example, in one case, a project director rented “office space” to a contractor, which turned out to be two windowless, empty, dirt floor rooms without electricity in his mother's house. The contractor never occupied the rooms. In other instances, project officials asked contractors, or contractors offered, to pay for the education of project officials' children at foreign universities. It is also not uncommon for government officials to ask bidders to contribute to local “social funds” and “charitable foundations.”

How are bribes paid?

Local contractors usually pay corrupt officials directly. Whereas international contractors tend to pay through a middleman, local contractors usually make their bribe payments

in local currency directly to the corrupt officials. International firms tend to pay by wire transfers through a local subcontractor, agent, or middleman, and record the payments on their books as legitimate expenses or commissions. This makes many such payments more easily detectable through the exercise of audit rights of contractors' records.

Which agency in Poland is responsible for detecting and preventing corruption in the public sector?

The Central Anti-Corruption Bureau (CBA) is responsible for audits of public investment activities. The CBA is the only agency, which apart from analytical, investigation and pre-trial activities, can also carry out proactive reviews. The aim of the audits is to reveal corruption in state and territorial government bodies as well as the abuse of power by public officials. The Bureau examines, *inter alia*, asset declarations submitted by public officials as well as decisions concerning:

- Privatization and commercialization
- Financial support
- Public procurements
- Disposal of state or municipal property
- Concession awards, permits, exemptions and deductions, preferences, quotas, warranties and credit guarantees

The subjects of control can be:

- Persons performing public functions
- Units of the public finance sector
- Units not belonging to the public finance sector but receiving public funds
- Entrepreneurs

Multiple public offices have a distinct role. To prevent or detect corruption, the CBA and other state agencies examine decision processes and their implementation in public procurement. In the course of such controls, each of the competent bodies deals with a different aspect. The *Supreme Audit Office (Najwyższa Izba Kontroli – NIK)* conducts holistic controls of state institutions; the *Public Procurement Office (Urząd Zamówień Publicznych)* examines the compatibility with procedures⁷; the Regional

⁷The English translation of the Act of 29 January 2004 – Public Procurement Law, provided by the Polish Public Procurement Office (PPO), can be found at <http://www.oecd.org/poland/39645964.pdf>

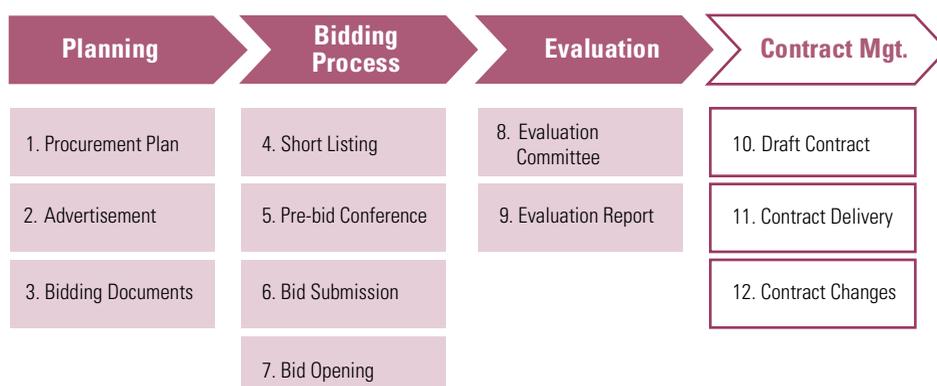
Audit Chambers control public procurement with reference to the infringement of the Public Finance Act; and the *Office of Competition and Consumer Protection (Urządzie Ochrony Konkurencji i Konsumentów – UOKiK)* deals with tender collusion. The CBA focuses on the consequences resulting from any violation of the law, mainly by reviewing the implementation stage and settling public procurement contracts.

The CBA carries out regular and ad-hoc audits. The CBA carries out regular audits on the basis of control schedules approved by the Head of the CBA, and ad-hoc audits initiated in case of circumstances justifying immediate actions. Ad-hoc audits may result from cooperation between different units of the CBA or be triggered by external factors (civil notifications, cooperation with other agencies or state authorities). Audits may be initiated in connection with analytical or operational activities as well as at different stages of investigation activities. The CBA may use its control, analytical, pre-trial and investigative powers alternately, as appropriate.

How can corruption be detected?

While it is difficult to prove that someone has paid a bribe, there are related activities that can be uncovered more easily. Complaints from disgruntled [losing] bidders and the paper trail left by a government official steering a contract to a favored bidder are common starting points. The following section in this handbook deals with indicators, or red flags, which public officials can look for when supervising contract awards. A combination of certain red flags should alert them that a bid rigging scheme may be affecting their investment. Corrupt practices and bid rigging can take place at any stage during the procurement cycle. Sophisticated planning of corrupt activity usually starts at the project design stage when the activities are determined and contracts planned. Officials generally have a level of discretion in drafting specifications or qualification

Figure 1. Phases in a typical procurement cycle where corruption can take place



criteria, which provides the opportunity to steer contracts to the favored bidder. Figure 1 shows the procurement process divided into four phases.

For each procurement action leading up to the contract award, this section highlights the red flags that can be identified as well as related fraud and corruption schemes. The following bid rigging schemes will be presented:

- Unnecessary items (*see page 12*)
- Unjustified sole source awards (*see page 12*)
- Contract splitting (*see page 13*)
- Inappropriate bundling (*see page 14*)
- Restricted circulation, short notice, inadequate information (*see page 16*)
- Unnecessary or inappropriate line items (*see pages 17*)
- Rigged specifications (*see page 17*)
- Biased evaluation criteria (*see page 18*)
- Unbalanced bidding (*see page 19*)
- Leakage of confidential information (*see page 21*)
- Inappropriate contractual terms (*see page 21*)
- Hidden interest in a company (*see page 23*)
- Exclusion of qualified bidders (*see page 24*)
- Late bids, bid tampering and other forms of manipulation (*see page 26*)

For each procurement action, suggestions will be outlined for easier identification of red flags and measures that might strengthen procurement controls. Various contract management issues related to fraudulent implementation are addressed in Chapter 5.

1. Procurement Plan

The Procurement Plan should be scrutinized for the justification of items, procurement methods, review thresholds, and possible contract splitting. The plan should include agreements on the contract packages for procuring the identified goods, works, services and consulting services; and the methods for procuring them. It should also list the respective timetables for the various procurement activities.

Scheme: Unnecessary items. In one case, a road was constructed that only benefitted a local politician’s constituency, reflecting undue political influence. The case illustrates the risk of political pressures adversely impacting sub-components or potentially the entire project.

Red flag indicating unnecessary items

Unnecessary items	The list of contracts for goods, works and services is not consistent with the project requirements
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Scheme: Unjustified sole sourcing or direct contracting. Direct contracting of goods and works and sole sourcing of consultants may be legitimate contracting methods. However, these contracting methods may also be used to steer contracts to favored companies by avoiding competitive bidding. In some instances, the scope of work of a consultancy contract has been expanded significantly after contract award, taking the contract amount from just below to considerably above the threshold for competitive bidding.

Case 1: Unreasonably low quality specifications

For a number of years, Joseph, an entrepreneur running a large IT company, had been participating in public tenders for the supply of computer equipment. He had become close friends with Roman, the deputy head of the IT Department at the local Town Office.

Occasionally, when travelling abroad, Joseph would buy 1,000 computer notebooks hoping to sell these for a quick profit in his home country. However, notebooks of the type he had in stock had become readily available on the market and their price had dropped significantly, leaving him with a large stock of unsold notebooks. Moreover, notebooks with a new operating system were being introduced in the market, which made Joseph’s equipment even less attractive to potential buyers.

Fortunately, for Joseph, when the local authorities announced a tender for the supply of notebooks, the specification of the essential terms of the contract corresponded exactly to the equipment he wanted to offload. Hardware and software requirements as well as the required quantity were described in such a way that, with the price being the only criterion for bid selection, his product had the only chance of winning the tender.

During the course of an audit, Roman, who was responsible for drafting the specifications of the contract tender, admitted that by specifying the requirements he did a favor to his friend, Joseph, allowing him to dispose of the residual equipment without incurring a loss.

Red flags indicating unjustified sole sourcing or direct contracting

Non-compliance	Use of sole sourcing or direct contracting when the procurement plan calls for use of more competitive methods Use of sole sourcing or direct contracting method for new procurement actions (not listed in the Procurement Plan) without obtaining a no-objection
Inadequate justification	Inadequate or misleading justification or documentation as required by procurement guidelines (<i>e.g.</i> , stating that the equipment is proprietary when, in fact, it is not)
Multiple sole source awards	Multiple sole source awards or direct contracting to the same company or within the same procuring unit Certain contract amendments that would benefit from competition or where the items should have been procured separately (<i>e.g.</i> , the additional activities are not a natural continuation of the existing contract)

Scheme: Contract splitting. The packaging of contracts is designed to attract as many qualified bidders as possible in order to secure the best price and quality. Legitimate considerations regarding decisions to package certain contracts include: (i) capacity of potential bidders to deliver the outputs specified; (ii) risks related to the bundling or unbundling of items; (iii) centralized versus decentralized procurement; and (iv) sequencing of procurement actions in line with needs.

Contract splitting is the deliberate attempt to limit or entirely avoid competition. By splitting contracts into smaller packages, the need for a greater degree of review and less competitive procurement methods are made possible. For example, splitting road contracts in unusually short segments, which would allow for the use of direct contracting for minor works rather than a competitive bidding method. Case 2 below illustrates indicators of contract splitting in tenders for a new customer service system in a Polish government agency.

Case 2: Contract splitting

In the course of the computerization of his office, the Director-General of a national agency requested a new customer service software system. The purchase was to be made without public tendering as the amount of the purchase was below the public procurement threshold of €14,000. The agency acquired the system introduced by company A at a cost of €13,500.

One month after the introduction of the new system, company A offered to expand the new customer service system application with an archiving module. The national agency agreed to purchase the module for the amount of €50,000. The agency justified the award of the contract without public tender to the same contractor for technical compatibility reasons and because of the copyright held by company A.

Later, company A presented another offer, this time to incorporate an electronic mail handling services application. Once again, the national agency agreed to purchase the application on a non-competitive basis.

In the following months, the system was further expanded with more functional modules purchased without public tendering for the benefit of company A. In total, beyond any competitive mechanisms, company A was paid over one million euros for a system which, in fact, simply met ordinary office requirements.

Red flags indicating contract splitting

Unusual splits	<p>Issuing two or more contracts for identical items over a short period of time for no apparent reason, resulting in the application of a less competitive procurement method</p> <p>Procuring items by each subunit that should have been procured jointly (<i>e.g.</i>, each territorial office procures its own vehicle rather than the national agency procuring all vehicles)</p> <p>Splitting items that are normally procured together in order to keep individual package values below thresholds (<i>e.g.</i>, procurement of computers and related accessories is split into separate contracts)</p>
Many awards just below thresholds	Awarding an unreasonably large number of contracts just below public procurement thresholds
Excessive use of shopping	<p>Using shopping procedures excessively for the purchase of identical or similar items</p> <p>Two or more related and simultaneous purchases from the same supplier in amounts just under the legal procurement threshold</p>

Scheme: Inappropriate bundling. This scheme is the opposite of contract splitting, yet yields the same result of reduced competition. The public tender bundles a wide variety of goods that have no relation with each other, into one lot (*e.g.*, computer equipment, copper wires, and video equipment) with a particular provision stipulating that incomplete lots are not allowed and would be considered non-responsive. This makes the bidding process biased since not a single manufacturer or authorized dealer is likely to meet the requirements of the entire lot. Typically, the contract will be awarded to a favored bidder at a price well above the estimates.

Case 3: Inappropriate bundling

A local hospital intended to purchase highly specialized oncologic radiotherapy equipment in a national tender. The public procurement specifications stipulated that the equipment needed to be of the same brand as the equipment already in use in the hospital. Due to this restriction, only one supplier was able to meet the specifications. However, in order to install the equipment correctly, the existing facilities needed a significant refurbishing, involving slab reinforcement, the addition of new walls, lining the new walls with protective lead plates, the delivery and installation of new doors and, finally, extensive finishing works.

The entire contract was awarded to the single equipment supplier. In response to a complaint, the audit carried out by the CBA revealed infringements of the rules for the award of public contracts, including an improper combination of supplies and construction works within a single procurement. Moreover, the contractor applied the preferential tax rate for medical equipment to the entire contract, including the construction works. These irregularities were reported to the Office of Fiscal Control.

Red flags indicating inappropriate bundling

Inappropriate bundling	<p>Complaint from one or more bidders about the bundling of goods, works and services</p> <p>Items to be procured within a proposed bundle are not related</p> <p>There is a significant reduction in the number of potential or actual bidders resulting from the bundling</p> <p>The agency cannot justify the bundling on the basis of cost savings or reduced integration costs or risks</p>
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Suggestions

- Compare the procurement plan with the procurement schedule of the investment tender conditions to identify any inconsistencies
- Check whether the procurement method used was in line with the approved plan

2. Advertisement

Advertisements can be manipulated to exclude bidders. To inform as many qualified bidders as possible, national law may require the advertising for all large consultancy and international competitive bidding contracts.⁸ For national competitive bidding, the procurement action should be advertised in a widely circulated national or official gazette or on a free and open access website for a reasonable time. Advertisements can be manipulated by limiting the circulation of the request for expressions of interest.

Red flags in advertisement

Restricted circulation	<p>Not advertising the request for expressions of interest (as required under national procurement rules)</p> <p>Limiting circulation by posting the advertisement in a local rather than national newspaper, when a national newspaper would have resulted in more bids</p>
Short notice	<p>Period between the advertisement and the bid submission deadline is very short</p>
Inadequate information	<p>Providing incomplete contact information so that potential bidders do not know where to submit bids or from whom to request clarification</p> <p>Drafting overly vague descriptions of the work, goods or services required so that bidders cannot determine their interest</p> <p>Drafting overly narrow descriptions of the work, goods or services required to exclude qualified bidders</p>

Suggestions

- Review past advertisements in similar procurements to identify and possibly follow-up on any red flags
- Encourage that the procuring agency consistently keeps a file of actual newspapers showing the advertisements and date of publication

⁸ Article 13 of the Public procurement Act stipulates that for contract amounts exceeding the thresholds defined in the Prime Minister’s Ordinance of 16 December 2011, the procuring authority may advertise the information on public procurements planned for the following 12 months. However, procurement for contracts under World Bank loans must comply with World Bank procedures.

3. Bidding Documents

Bidding documents must be prepared for each proposed procurement action. The bidding documents, issued by the public agency or department, inform potential bidders how bids should be prepared, the evaluation criteria, and the contract requirements. In providing inadequate or erroneous information for the preparation of bids, corrupt officials may effectively exclude qualified bidders.

Scheme: Unnecessary or inappropriate line items. In order to pad the contract, the corrupt official may add unnecessary items that can later be omitted (without reducing the contract amount) or just to boost the revenue for the designated winner. In other cases, items may be added that duplicate existing work, creating a conflict of interest (*e.g.*, requiring a contractor to pay for a supervision consultant).

Other examples of red flags indicating potentially unnecessary and inappropriate line items include: (i) large number of four-wheel drive vehicles to be used by the supervision consultants, though many would be stationed at the same location; (ii) the number of vehicles in the bill of quantities (BOQ) did not vary according to the length of the road or size of the contract; and (iii) training abroad for government officials was included in the scope of the contractor's work.

Case 4: Unnecessary items

The head of the Civil Service Office in a small town prepared a tender procedure for the purchase of five desktop computers. The computers were to be used for the city hall's customer service desk and equipped with software that met the special needs of the office. The tender specified that each computer was to be equipped with the most elaborate professional office program, and each computer was to have its own licensed program which was to be copied on a separate CD.

The auditors checked the requirements in the procurement documents with the actual needs of the awarding authority and discovered that the software programs had never been installed on the office computers. Moreover, two CDs had found their way to the private computers of the head of the Civil Service and his wife.

Red flags indicating unnecessary or inappropriate line items

Unnecessary items	Specific line items in the BOQ are not required to carry out the work and may have a separate utility for officials or later serve as bribes (<i>e.g.</i> , excessive number of vehicles compared to project needs)
Inappropriate items	Items creating a conflict of interest (<i>e.g.</i> , provision for the contractor to pay for government officials and supervision consultant's staff in the works contracts)

Scheme: Rigged specifications. In a competitive market for goods and services, any specifications that seem to be drafted in a way that favors a particular company deserve closer scrutiny. For example, specifications that are too narrow can be used to exclude other qualified bidders or justify improper sole source awards. Unduly vague or broad

specifications can allow an unqualified bidder to compete or justify fraudulent change orders after the contract is awarded. Sometimes, project officials will go so far as to allow the favored bidder to draft the specifications.

Red flags indicating rigged specifications

Tailored specifications	Close similarity between the specifications and the winning bidder's product or services Specifications stipulate the use of a brand name without stating "or equivalent", contrary to national procurement rules Complaints from other bidders that the specifications match too closely those of a single competitor, or that a bidder prepared the contract specifications
Poor specifications	Vague, ambiguous or incomplete specifications Specifications are significantly narrower or broader than in previous similar procurement actions
Few bids	Only a few of the companies that purchase the bidding documents submit bids, especially if more than half drop out Relatively few companies submit bids, compared to prior similar tenders Fewer than the normal or expected number of potential bidders apply for pre-qualification

Scheme: Biased evaluation criteria. Instituting biased evaluation and qualifications criteria is another method used to steer contracts to a favored bidder. For example, in an international competitive bidding contract for the procurement of computers it would be inappropriate to require that the goods be delivered within three weeks of contract effectiveness, as this would exclude many international bidders whose overseas shipments would take longer.

Case 5: Manipulation of bid evaluation criteria

An airport maintenance company decided to invest in the construction of an extra runway. In addition to the price criterion, the advertisement for the tender indicated that the contracting authority would take into account the time it would take to execute the project. Due to the fact that area adjacent to the airport was covered by the Nature 2000 Networking Programme, the application required an environmental impact assessment of the project.

Despite the strict maximum time limit required for project completion (to the extent that the task could be undertaken only by large project studios), the contracting authority gave 20% extra points for shortening the time of execution of the project. The contract was awarded to the only contractor who offered a shorter contract execution time at a price that exceeded the lowest evaluated bidder by \$100,000.

Bid	Price*	Reduction of the Time Limit	Number of Points in the Criterion		Total Of Awarded Points
			Price 80%	Reduction of the Time Limit 20%	
A	1,600,000	0	75.00	0.00	75.00
B	1,500,000	0	80.00	0.00	80.00
C	1,900,000	30	63.16	20.00	83.16

*Prices in PLN (\$1.00 = PLN3.00)

(continued on next page)

The auditors later discovered that what mattered most was the time it took the contractor to obtain an environmental compliance certificate—a specific condition that had to be satisfied prior to starting the works. The specification in the tender stipulated that in the event the certificate was not released within the indicated period, the time limit of the execution of the contract would be extended by the time necessary to obtain the decision. Immediately after signing the contract, the winning contractor withdrew the request for the compliance certificate. The time it took to reapply for and obtain the certificate delayed the project execution by almost three months.

Scheme: Unbalanced bidding. Under this scheme, project officials provide a favored bidder with inside information that is not made available to other bidders, for example, that one of several line items in a request for bids will not be called for after the contract has been awarded or that a certain low-cost solution will be acceptable. This information invariably gives the bidder an unfair advantage by allowing the company to lower its price or otherwise tailor its bid to defeat its uninformed competitors. Project officials can facilitate the scheme by drafting vague specifications to further disadvantage competitors (*see Case below*).

Case 6: Secret arrangement allowed bidder to “low ball” item

A “representative” of an agency promised an international bidder for a multimillion agricultural testing laboratory that it would win the contract provided that it would hire him as a “consultant” to help prepare its bid. The consulting fee would be 20% of the contract value, which he would share with project officials. Intrigued, the bidder wondered how he would be able to pay the bribe and still be the lowest qualified bidder. The representative claimed that the project would remove certain line items that called for expensive humidity and temperature control equipment once the contract had been awarded. The bidder could thus “low ball” this item in its bid, be the lowest bidder, and still have sufficient funds to pay the bribe. Additional contract amendments would be processed as necessary. The bidder agreed to the scheme, but lost the contract after the representative negotiated an even more lucrative deal with another bidder.

Unbalanced bidding is also used to describe the practice of bidders quoting prices significantly below cost for some line items and prices significantly above cost for others, in the expectation that the procuring authority will request many more items for which prices have been inflated. As a result, the lowest responsive bidder as determined at the time of contract award may not constitute the lowest-cost solution.

Case 7: Abuse of inside information

The auditors checked a public procurement for the construction of a school soccer field. While analyzing the tender documents, they noticed specific and repeating dots on the pages of both the investment estimate (drawn up by the contractor’s building inspector) and on the cost estimate enclosed with the winning bid. The two documents were supposed to derive from different sources so the dots aroused the auditors’ interest and therefore were submitted to an expert’s analysis. The expert concluded that it was indisputable that the two documents had been printed on the same device.

Case 8: Unbalanced bidding in a tender for the construction of an administration building

In a tender for the construction of an administration building, the procuring entity received three bids. Company A bid PLN45,000,000 for the contract, thus outbidding Company B and C by 2,000,000 and 1,000,000 respectively (see table).

Specification		Cost according to investment calculation	Costs of submitted bids		
			A	B	C
1.	General costs	5,000,000	10,000,000	5,000,000	6,000,000
2.	Cost of above-ground construction works (5-storey building)	25,000,000	30,000,000	26,000,000	20,000,000
3.	Cost of underground construction works (parking lot with an elevator)	15,000,000	5,000,000	16,000,000	20,000,000
TOTAL		45,000,000	45,000,000	47,000,000	46,000,000

*Prices in PLN (US\$1.00 = PLN3.00)

Company A won the tender because it had been informed by the design firm that, due to technical conditions, the design would be replaced and instead of the expensive car elevator, calculated at PLN15,000,000, a traditional entrance to the parking lot would be built at a cost below PLN5,000,000. Hence, Company A was able to provide a low price for this item and win the tender.

Had all firms had access to the same information, Company C would have won the tender, saving the agency PLN14,000,000.

Specification*		Costs of submitted bids*		
		A	B	C
1.	General costs	10,000,000	5,000,000	6,000,000
2.	Cost of above-ground construction works (a 5-storey building)	30,000,000	26,000,000	20,000,000
3.	Cost of underground construction works (a parking lot with a drive)	5,000,000	5,000,000	5,000,000
TOTAL		45,000,000	36,000,000	31,000,000

Red flags indicating unbalanced bidding

Removal of low priced line item	Particular line items that are unreasonably low compared to market prices are later removed from the list of requirements under the contract
Price disparity	Wide and inexplicable disparity in bid prices considering the type of works, goods or services being procured
Poor response to request for clarification	Inadequate responses or clarifications by project officials to complaints from bidders about vague, ambiguous or incomplete specifications

Scheme: Leakage of confidential information. Information about cost estimates and competing bids may be leaked by government officials to favored bidders to give them an unfair advantage, *e.g.*, enabling them to tailor their bid so as to secure contract award.

Case 9: Leakage of information

Thanks to his position as unit head in a local government, Bogdan reserved an entry in the budget to purchase five new cars. His brother-in-law, Adam, happened to own a car sales dealership of popular brand cars, and he made a deal with Bogdan to sell him the five cars. In order to do this, Bogdan would have to manipulate the procurement process in a way that would prevent other car dealers from submitting competing bids.

The specifications in the tender involved the typical minimum parameters for similar tenders. However, they also contained an uncharacteristic requirement for a specific security system, a feature which was usually offered as an option by car manufacturers. By adding this specification, each bidding car dealer would have no choice but make a special order of the cars in their country of origin. Taking advantage of this insider information, Adam ordered the cars with the added feature well in advance of the tender.

Although the purchase of the cars had been provided for in the budget at the very beginning of the fiscal year, Bogdan launched the tender procedure only late in December. The open invitation to tender specified the minimum time limit for submissions and the commitment to deliver the vehicles not later than 31 December. As a result, only one bid was submitted, namely by the firm of Bogdan's brother-in-law. During the ensuing audit, Bogdan was unable to justify the reason why the tender and award of the contract were delayed until late December.

Red flags indicating leakage of confidential information

- Inadequate bidding procedures, *e.g.*, failure to enforce bidding deadlines, taking breaks during the opening of bids (to provide opportunity to share the content of certain bids and amend others), *etc.*
- A bid closely tracks the project's preferred solutions, budgets, estimates, *etc.*
- The winning bid is just under the next lowest bid
- A questionable "consultant" or "middleman" is involved in the bidding process
- Project officials and the favored bidder communicate (*e.g.*, by email) or socialize during the bidding period

Scheme: Inappropriate contractual terms. There are instances where officials change the standard contract clauses in order to reduce outside scrutiny. For example, they may omit the standard audit clause, make changes to contractual remedies, or remove the requirement for an advance guarantee and performance bond.

Case 10: Inappropriate change to contractual terms

A government agency announced a tender for a donor-funded project aimed at developing and conducting a number of e-learning courses. The objective of the grant was the training of 20,000 participants from small and medium-sized companies. The contract was awarded to company E. The firm offered to train 25,000 participants, which exceeded the target numbers presented by the other bidders.

Because the project was donor-funded, the agency undertook to monitor and verify the outcome by way of regular reports prepared on the basis of data presented by the contractor. The report analysis showed that there appeared to be problems with the reported achievements and indicators, especially those referring to the number of persons trained.

An audit by the Polish Central Anti-Corruption Bureau revealed that the agency had made changes to the grant application requirements with respect to, among others, the criteria for achieving the project indicators and results. The criterion of completing the course by 20,000 trainees was replaced with the requirement for the trainees to commence the course and participate in it. Thus, one single login by a participant was sufficient to be considered as full participation in the training course. As a result, the contractor could execute the procurement and receive the funds. As the reports indicated, the training courses were completed by only 4,000 trainees, while the remaining had only participated in some of the training.

Suggestions

- Review bidding documents for red flags and ensure that audit rights and contractual remedies are included, as appropriate
- Ensure that the specifications, BOQ, and Terms of References (TORs) for large-value and high-risk contracts are reviewed by an independent expert and that they are not altered at a later time without the agency's approval

4. Short-Listing and Prequalification

Short-listing and prequalification process can be used to exclude qualified competitive bidders. For contracts where prequalification is required, prior review by agency staff should be mandatory for all documentation and proposals related to the pre-qualification process. The same holds true for the short-listing of firms for large consultancy contracts. The exclusion of qualified bidders could ensure that only the preferred bidder, in whose bidding a government or project official may have a hidden interest, will submit a bid that fulfills the requirements.

Red flags in short-listing and prequalification

Questionable evaluation	Unusual or unreasonable evaluation criteria
	One or more of the short-listed consultants or prequalified companies does not have the appropriate qualifications for the assignment
	Unreasonable prequalification requirements
	Short-listed firms do not have similar qualifications or there is a wide gap in qualifications
	Highly qualified firms have expressed interest and are not shortlisted

Case 11: Manipulation of bid criteria

A college organized an annual tender for its security services. It was common practice that the college's Administrative Director was appointed as the chairman of the tender committee. Other members of the committee were his departmental subordinates. The Director was a bossy character and, boasting his experience as an army officer, he introduced military discipline among his subordinates, few of whom dared to question his decisions. Thanks to his position, the Director laid down the conditions for participation, the procedure and criteria for the evaluation of the bids.

In the course of a review of the tender procedures, the auditors found that for eight years the same firm had been providing security at the college. Further scrutiny revealed that the owner of the firm had been close friends with the Administrative Director since they had previously served in the same military unit.

The mechanism used to ensure that the security firm won the tenders proved to be quite simple: a gradual increase in the requirements for experience, equipment and human resources. At the very beginning, when the friend's security firm had just been set up, the requirements were set very low allowing him to win the contract, build the business, invest in increasingly sophisticated equipment and employ more people.

As the business was growing, the requirements of the college were increasing as well. Over the years, the qualification requirements for the bidders had become so demanding that local entrepreneurs running similar businesses had no chance of winning a contract. At the same time, the favored firm turned from being the cheapest bidder to becoming a very expensive one, with prices much above the average.

Red flags indicating hidden interest in a company

- Companies with P.O. box addresses and mobile phone numbers (might be shell companies)
- Complaints that a government official owns or is otherwise linked to a supplier or contractor
- A project or government official is linked to a contractor or supplier through company registration information, family relationships, website, or reports in the market place
- A bidder or supplier is not listed on the Internet or in business or telephone directories
- A contractor's or supplier's address is a residence or a non-business location
- A contractor or supplier provides a wide variety of disparate goods and services at high prices

Suggestions

- Ensure the prequalification or expression of interest contains sufficient information for the prospective companies to determine their eligibility
- Assess the qualifications criteria used for short-listing in order to determine whether they are in line with the contract requirements
- Review the prequalification and short list evaluation report to ensure that the short-listed companies or firms have the required expertise
- Review the reasons for the rejection of the submitted expression of interest
- Check whether there are any indicators of hidden interests (use of shell companies)

Scheme: Exclusion of qualified bidders. Officials can facilitate the selection of a favored bidder by improperly excluding other qualified bidders. This can take place at any time from the drafting of the bidding documents to the receipt of bids. The exclusion of qualified bidders often triggers complaints as the potential bidders invest time and money to prepare bids.

Red flags indicating exclusion of qualified bidders

- Unreasonable pre- and post-qualification criteria (*e.g.*, abnormally high annual turnover or liquidity reserves, or years of experience in the country)
- The Bid Evaluation Report (BER) provides no objective or poorly justified reasons for the rejection of certain bids (*e.g.*, the disqualification for trivial or arbitrary reasons)
- Qualified contractors fail to bid indicating that the bidding may be rigged
- Companies complain that officials refuse to make bidding documents available to potential bidders or to accept the submission of bids (*e.g.*, companies are coerced to refrain from bidding through subtle suggestions, firm statements, or intimidation and physical threats)

Suggestions

- Review the pre- and post-qualification criteria carefully to ensure they are in line with the contract requirements
- Review the BER and ensure detailed justifications are presented for rejection of submitted bids, especially the lowest priced bid
- Ensure that the agency has established controls for submission, opening, and evaluation of bids and that compliance is monitored and results reported
- Follow-up on any complaints received during the bidding process

5. Pre-Bid Conference

Pre-bid conferences can be used to facilitate unbalanced bidding. Pre-bid conferences and site visits are often scheduled during the bidding period to clarify any ambiguities or discrepancies in the documents and to give potential bidders information on the bidding process and on the government's expectations. The pre-bid conference is usually followed by a clarification letter or modifications to the issued bidding documents which must then be sent to all the companies that bought the bidding documents. However, government officials may refrain from sharing timely, sufficient or correct information with all the bidders in order to give an unfair advantage to the favored bidder (*see page 19*).

Red flags in pre-bid conference

Timing	The pre-bid conference is scheduled too close to the bid submission date or yields changes to specifications without changes in deadline
Inadequate information	Questions raised during the pre-bid conference are not addressed properly
Inadequate transparency	Clarifications and modifications to the bidding documents resulting from the pre-bid conference are not shared with all the prospective bidders

Suggestions

- Review pre-bid conference documentation for: (i) signed attendance lists in comparison to the list of sold bidding documents or short-listed companies; and (ii) minutes containing a record of questions and responses and verify that answers have been distributed to all companies having purchased the bidding documents
- Verify that changes to the bidding documents have been made following the conference

6. Bid Submission

Corrupt procurement staff may accept late bids, tamper with bids, or exclude valid bids. Bids must be received by the agency prior to the date and time indicated in the bidding documents. Corrupt project staff may: (i) accept late bids submitted by favored bidders with inside information about prices from other bidders; (ii) tamper with the bids received, e.g., by discarding elements of the bid in order to disqualify the bidder; or (iii) exclude bidders by denying access to drop-off points or by failing to open bids.

Red flags in bid submission

Late submission	Not all bids are brought to the bid opening ceremony One or more of the submitted bids lack a time stamp
Tampering	A bid is not in a sealed envelope Bids are not kept in a secure location with limited access
Bid manipulation	The bid due date has been extended after some of the bids have been submitted All bids are voided for “errors”
Exclusion	Complaints from bidders that they were not allowed to submit bids A bid is “forgotten” in the safe

Suggestions

- Ensure that the Borrower’s procurement staff understand the procedures for the bid submission process, and assist in establishing clear and transparent procedures including:
 - Ensuring that the receipt of the bids is handled by staff not otherwise involved in the procurement process
 - Maintaining a secure box where bids can be securely dropped off without opening the box and thus giving access to the other bidders
 - Keeping submitted bids in a safe with limited access and appropriate controls
 - Bringing all bids submitted to the bid opening ceremony at the same time

7. Bid Opening

A key risk in the bid opening phase is the manipulation of bid prices. The bid opening must be conducted in public at the address, date and time specified in the bidding documents. The bids should be opened immediately after the bid submission time. Various tactics may be used to steer contracts to favored bidders, *e.g.*, the price read aloud for the favored bidder does not match the actual bid price or a “new” price is later written into the bid.

Red flags in bid opening

Submission	Bids are not opened in public
Tampering	The original bid form and price schedules or BOQ of all bids are not initialed or signed by all members of the bid opening committee Pages are missing from one or more bids Pages with a different typeset are included in the bid
Price manipulation	Changes to the bid prices and bid security list are handwritten The applicable currency is not stated
Undue influence	Members of the BEC are present or participating ⁹ Lack of original signatures of the company representatives supposedly present at the ceremony

Suggestions

- Ensure the project procurement officer is aware of the appropriate bid opening procedures including:
 - Ensure control of the bid opening and keep minutes of the opening
 - Check attendance sheets for names and signatures of all bidder representatives (including printed names)
 - Verify that each bid was sealed and accompanied by a bid security, if required, utilizing the assistance of a randomly selected representative

⁹In some cases, the national laws require the members of the Bid Evaluation Committee (BEC) to be present, or the implementing agency may be too small to have sufficient manpower to separate these functions. Accordingly, when this red flag is present, other due diligence needs to be carried out to determine the legitimacy of the process.

8. Bid Evaluation Committee

Inadequate technical competency of BEC could pose a corruption risk. Bid Evaluation Committees review and evaluate the submitted bids and recommend to which company the contract should be awarded. The BEC has wide discretion in excluding bidders and can abuse this authority as part of a corrupt scheme. On occasion, government officials purchase a position on the BEC to influence the decision making.

Case 12: BEC rubberstamped the selection of a favorite bidder

The city council of this town conducts a public tender for the procurement of security services every year.

Tomas is always in charge of the tender procedure, which he usually carries out by copying and pasting the specifications and contract terms of the previous year. However, these specifications contain a provision which states that potential contractors, when evaluating the bids, can receive extra scores when they can demonstrate that:

- they possess at least 10 vehicles with intervention crews;
- the distance from their head office to the seat of the city council is less than two kilometres;
- they have a minimum of three years experience in public offices protection, documented by submitted references.

On the basis of the above criteria, the bidders can receive 30 additional scores—10 for each criterion.

After the bids had been reviewed, only company A, which has been providing security services to the city council for many years, received the maximum score. The company owns ten vehicles (purchased from the local police) that are left in the city council’s car parking, at the company’s seat that is rented from the city council.

Although the wording of article. 5 of the Act on Public Procurement Law with regard to security services allows the commission to determine the evaluation criteria based on the properties of the contractor, they effectively eliminated all competing companies from accessing the procurement.

The audit of the contract revealed that because of the smooth execution of the contracts in the past it appeared that the head of the responsible unit failed in his due diligence obligations by ignoring the fact that Tomas was on friendly terms with the head of company A. It also observed that other members of the BEC, recognizing they had no influence on the procedure’s outcome, simply signed the tender documents without properly reviewing the documentation and procedure.

Red flags related to Bid Evaluation Committee

Manipulation of BEC selection process	The BEC members do not have the necessary technical expertise to evaluate the submitted bids
	The project uses a standing BEC regardless of what is being procured
	The committee is too large or dominated by a single individual

Suggestions

- Ensure BEC members are selected in accordance with the established procedures
- Ensure the responsible procurement officer is available to the BEC to answer any procedural questions
- Confirm the BEC has the necessary technical expertise to evaluate the bids
- Verify that BEC members sign an affidavit stating that they do not have a conflict of interest in performing their duty, such as current or past affiliation with any of the bidders

9. Bid Evaluation Report

Questionable evaluation and unusual bid patterns may emerge in the BER. After the completion of the evaluation process, the Bid Evaluation Committee should present to the implementing agency its BER, which describes the results and the process by which the BEC has evaluated the bids received. The BER may include a number of indicators of bid rigging, *e.g.*, questionable disqualifications, and unusual bid patterns.

Case 13: Lack of appropriate due diligence

A procuring entity conducted a tender for the delivery of printer and photocopier paper. The tender was directed to the required number of potential bidders, along with precise parameters regarding the specification and deadline for submitting the bids. Because of the very detailed features of the product, which did not allow any deviations, only two bids were submitted before the deadline.

In the course of the audit, it turned out that the requirements could be met only by producers in two European countries. One of the bidders had requested an extension of the deadline, because he was negotiating with a producer in one of those countries. The request was submitted about six days prior to the deadline, yet the procuring entity did not reply.

The manager of the procuring entity was unable to provide the auditors with a reasonable justification for introducing the strict specification that led to a limited competition, other than that the standards were „the best“. In a subsequent written justification provided to the auditors, the entity noted that the specified paper decreased dusting by 10%, which had a beneficial impact on the maintenance and life-cycle of the printing equipment. The auditors, however, were of the view that this argument could not be taken into consideration as it was not the subject of the evaluation with respect to satisfying the criteria in the course of the bid analysis. As a result, the auditors gave a negative assessment indicating that because of the excessive requirements the procuring entity had purchased paper at a price that was 25% higher than it could have purchased from other suppliers offering competitive products.

Red flags in Bid Evaluation Report

Violation of procurement rules	<ul style="list-style-type: none"> The evaluation criteria differ from those issued in the bidding documents Inconsistencies exist between the BER and supporting documentation Improper or arbitrary evaluation sub-criteria or procedures are developed at the time of evaluation that differ from the issued bidding documents The evaluation committee ignores the evaluation criteria in the issued bidding documents and develops its own method of evaluation The winning bidder is not on the short list or is not one of the prequalified companies
Questionable disqualifications	<ul style="list-style-type: none"> The lowest priced bidder is declared unresponsive (for no apparent reason) A high number of bids is unresponsive Recommendations and disqualifications are poorly justified Bids are rejected because of allegedly missing components, such as catalogs and brochures for the goods offered Changes in the scoring of bids or arbitrary scoring of bids Pressure by project officials on BEC members to select a certain contractor Complaints from bidders about the evaluation process

Winning bid is poorly justified	<p>Technical specifications are copied from the bidding documents or are incomplete</p> <p>The manufacturer's authorization is missing, outdated or inadequate</p> <p>The bid does not match requirements (<i>e.g.</i>, in terms of quantity, quality, qualifications)</p> <p>Pages of a bid are missing or not signed (when required)</p>
Unusual bid patterns	<p>Same or similar telephone or facsimile number or address shared by bidders</p> <p>Unreasonably high bid prices by losing bidders for which there is no legitimate explanation and which cannot be attributed to an error</p> <p>Bid prices differ by a set percentage</p>
Suspicious bidders	<p>Discrepancy between the company address and its telephone number area code</p>

Suggestions

- Review and compare the bids submitted with the BER and each other
- Review the BER for justifications of the rejection of submitted bids and the recommendation for award
- Review the BER with the issued bidding documents for any inconsistencies
- Review the signed copies of all the scoring tables used by the BEC members for any inconsistencies
- Review the timeframe of the evaluation process
- Verify that the number of submitted bids is equal to or less than the number of bidding documents sold
- Compare the BER with the minutes of the bid opening to ensure that the bid values, number of bids, and bid securities are the same

What is collusion?

Collusion can be defined as “an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.” This definition includes collusive bidding schemes in which two or more bidders agree to manipulate the bidding process, *e.g.*, to fix prices. These schemes are designed to undermine competitive bidding, a cornerstone of public procurement. When collusive bidding schemes are able to operate, the result is inevitably higher costs as prices are artificially inflated.

Where are the risks of collusion the highest?

Collusion risks appear to be the highest in the construction sector and sectors where there are few qualified bidders compared to the number of contracts being let. In many countries, the construction sector (*e.g.*, roads) is dominated by a few large companies. Often, domestic preferences price-out international competitors in order to enable a local cartel to operate; or business associations are set-up to coordinate bids or to represent local companies facing debarment action. Other examples are international bidders that collude with local firms offering to represent them locally or serving as subcontractors; politically connected companies using their influence to steer contracts to the cartel and to coerce other firms to join the cartel or to refrain from bidding; small local shop owners colluding for the bidding of office supplies; and site inspections or pre-bidding conferences used to organize an ad-hoc collusive arrangement.

In general, collusion risks appear to be higher when procuring in sub-sectors with few potential bidders (*e.g.*, four or less), compared to the number of contracts being let. This concentration of market share among a few companies in turn may be the result of high barriers to entry and exit or large economies of scale. The risk of collusion has not been found to be limited to any region or country. Rather, it is an often-used strategy for bidders to undermine competition.

What is the impact of collusive schemes?

Collusive bidding schemes can have substantial negative impact on the investment.

The direct impact of collusion is higher prices of goods and services procured. The impact of collusion may span beyond one tender; it could: (i) negatively impact price levels in the entire sector in the country, resulting in inflated market prices; (ii) over time reduce competitiveness of the local industry; and (iii) distort investment decisions through undue influence by politicians and government officials.

Case 14: Unreasonable specifications in favor of one bidder

In a short period of time, company X became a leading company specializing in sports facilities construction for local governments. It always offered a fairly low price for project execution, thus winning all tenders.

An audit of one pool construction project revealed that the owner of company X had an agreement with the head of company Z, a producer of water treatment technology, that for construction projects of public swimming pools he would determine the parameters associated with water treatment technology in such a way that they could only be met by that supplier. In return, company X would receive a commission, specified by a percentage of the contract price, from company Z. Thus, during the tender process competing firms were rejected as they did not satisfy the specifications. Once the contract was signed, company X could inflate its prices, allowing the owner of company Z extra financial benefits.

During the course of the audit, the employees of the public procuring entity could not explain why the parameters for water treatment technology were set at such strict levels. However, the proactive review did not obtain sufficient evidence.

How are collusive schemes organized?

Public investment projects can be vulnerable to various types of collusive schemes.

These schemes can range considerably from simple, ad hoc collusive arrangements among local bidders to well-connected cartels involving high-ranking politicians. To remain in operation, a collusive scheme depends on its ability to eliminate competition, generate high profits for participants, and avoid detection and sanctions.

- *Coordinate and organize the collusive scheme.* A cartel must possess information about upcoming bids, have convening power to coordinate the bids, and often also assist with logistical support to carry out the scheme, e.g., by purchasing bid securities on behalf of the designated losers and drafting large parts of their bids. In addition, business associations may be used as a front by assisting in the coordination of bids, lobbying vis-à-vis government officials on matters related to laws and licenses, or by defending companies facing legal action.
- *Generate and allocate supra-normal profits to retain cartel members.* The livelihood of collusive bidding schemes depends on their ability to achieve supra-normal profits. Such profits are often attained by inflating bid prices and then allocating the profits among the cartel members and corrupt officials. The designated

winning bidder usually pays-off designated losing bidders by employing them as subcontractors, allowing them to win in subsequent bids, or granting them a small share of the bid prices (normally around two percent).

- *Eliminate competition.* The successful execution of a collusive scheme requires the exclusion of competitors that could break the scheme by submitting lower-priced bids. Tactics to eliminate competition can include: (i) enticing or coercing competitors to join the collusive arrangement; (ii) suppressing bids through threats of physical or economic harm; (iii) conspiring with government officials to exclude competitors from shortlists, establish biased qualification criteria or specifications, or to declare their bids non-responsive; and (iv) creating anti-competitive conditions, e.g., by restricting the issuance of licenses and permits.
- *Evade detection.* Cartels evade detection by executing their scheme in a manner that gives the appearance of competition, e.g., by cartel members submitting complementary bids, also known as “protective” or “shadow” bids. Since complementary bids will never be successful, designated winners can use shell companies, fictitious firms, or subsidiaries as designated losing bidders. Alternatively, cartels may bribe government officials to ignore red flags.
- *Avoid sanctions.* Cartels may avoid effective legal and administrative sanctions, because of: (i) inadequate legislation prohibiting collusive practices; (ii) lack of experience or capacity of the national investigative body(ies); (iii) ineffective prosecution; (iv) insufficient severity of the punishment; (v) lack of political will to prosecute, particularly large domestic firms; and (vi) undue political influence on the investigative, prosecutorial, and adjudicative processes.

Players in a collusive bidding scheme

There may be several different kinds of actors playing a role in a collusive scheme. The main actors typically include a designated winning bidder, designated losing bidders and government officials.

- The *ring leader* organizes the scheme and often also determines who will win the bid
- The *designated losers* submit higher cost “protective” bids to give the appearance of competition
- The *designated winner*, which may be a shell company, is awarded the contract and may outsource the work to one or more colluding members, in order to share profits and work
- *Government insider(s)* provide(s) privileged information to prospective bidders about cost estimates, competitive bids, and upcoming contracts
- *Divers* are companies outside the control of the cartel seeking to win the contract by placing a lower and often competitive bid.

What strategies can cartels pursue?

Cartels can pursue various strategies, requiring different levels of coordination. The most common types of collusive bidding schemes include: (i) market division; (ii) bid rotation; and (iii) price fixing:

- *Market division* occurs when cartel members agree to divide their market (e.g., geographical territories and client segments) thereby restricting competition.
- *Bid rotation* refers to an agreement among bidders to take turns in winning contracts.
- *Price fixing* refers to an agreement among competitors to fix prices at which goods and services are sold in a specific market.

How are collusive schemes detected?

Collusive bidding schemes can be detected through a review of procurement actions and interviews with industry representatives. Conversations with industry representatives can help identify the operation of collusive arrangements or cartels in key sub-sectors. In many cases, collusive practices are so entrenched that they are an open secret among contractors, officials and the industry in general.

Besides such conversations, government officials may seek to identify red flags such as those listed and described in more detail in the table on page 37 through the review of procurement documents and the analysis of past contract awards.

Case 15: Bid rigging scheme between three companies

The national market for the supply of medical equipment used in a particular therapy has been dominated by three companies: A, B and C. For many years, it appeared that all subsequent tender procedures organized by medical centers were carried out in compliance with the applicable procedures, providing a guarantee of obtaining the best offers.

However, during an audit, it appeared that, from year to year, the price of the equipment was higher and higher even though nothing justified such rapid growth. Moreover, the winner of the contracts for the most valuable supplies of a certain type of equipment was always company A. The other companies won only minor tenders.

A deeper analysis revealed the existence of a bid-rigging scheme between the three companies whereby the companies used to fix the prices before each tender and agreed who would be the winning bidder before the tender. Regardless of which company won the bid, company A was the dominating partner and exclusive importer of the equipment. Even when they did not win the tender, the two other companies had to purchase the equipment from company A.

Red flags indicating collusive bidding

<p>Bid prices are unusually high</p>	<p>The winning bid price is much higher than cost estimates or industry averages</p> <p>Bidders have submitted prices for line items under past procurements that were significantly above or below current price quotes for no apparent reason</p> <p>Bid prices are much higher than estimates or other comparable bids by the same companies</p> <p>Bid prices drop when a new or infrequent bidder enters the bidding process</p> <p>Persistently high or increasingly high bid prices by all bidders</p>
<p>Bidders lose on purpose</p>	<p>A company withdraws its bid often without explanation, or two or more companies withdrew their bids in one bidding round</p> <p>A company submits incomplete bids too frequently, or two or more companies submitted incomplete bids in one bidding round</p> <p>A company submits a fraudulent bid security (indicating that it knew it was not going to win)</p> <p>A company submits unusually high bid prices (especially if prices are rounded or unnatural numbers occur)</p>
<p>Bids show unusual similarities</p>	<p>Bid prices of all companies are very close (an indicator that the bidders knew each other's prices) for items where some variation is expected (<i>e.g.</i>, civil works, customized goods, and consulting services)</p> <p>Submitted bids include unit prices which were almost identical</p> <p>The bid prices are a fixed percentage apart (<i>e.g.</i>, 3 percent, 4 percent, 5 percent and 6 percent above that of the lowest bidder)</p> <p>Bids contain similar typographical errors, addresses, phone numbers, letterheads, or are printed on similar stationery</p> <p>Sequential bid securities, indicating that the same person picked up the securities at the same bank, same branch, and on the same day</p>
<p>Bidders take turns winning</p>	<p>There are only a few companies in the market that always bid together for public contracts and they take turns winning contracts</p>
<p>Bidders have close ties to one another</p>	<p>The successful bidder subcontracts work to losing bidder(s), which may include those that withdrew their bids</p> <p>Cross-ownership of bidding companies or family ties (similar names of key staff and owners or family members own the bidding companies)</p>
<p>Bidding lacks competition</p>	<p>Well-known qualified companies do not bid, especially if they purchased the bidding documents</p> <p>(More than half) the companies that bought the bidding documents refrain from submitting bids</p> <p>Substantially fewer bids have been received than in previous, similar tenders</p>

Case 16: How a politically connected group of national and international companies colluded in a roads project

Investigators received allegations of suspected collusion among a group of local and foreign companies, as well as allegations regarding the involvement of politicians and government officials in the tender for two road rehabilitation contracts in a developing country. More than a dozen witnesses told investigators that under the collusive arrangement, uncooperative potential bidders were disqualified during the prequalification process, and winners were chosen by their willingness to pay large bribes. Losing bidders were allowed to participate in exchange for small payments. Witnesses said that as a result of the collusive activity, contract prices were routinely inflated by 20 to 30 percent. Furthermore, multiple witnesses stated that the existence of the collusive activity was an “open secret,” in fact being referred to as the “SOP” – Standard Operating Procedure.

The investigation uncovered a pattern of inconsistent prequalification results, suggesting that agency officials may have engaged in bid rigging. Project officials disqualified numerous competitive bidders without reasonable explanation and sometimes for vague reasons such as failure to “fit the contract profile”.

An analysis of bidding documents provided significant indicators of collusive practices. Some bids showed abnormally high unit costs, which is one way to inflate bid prices to levels beyond that of the designated winner. In addition, bid patterns indicated coordination among the bidders. Examples of unusual bidding patterns included: very close bids (bids US\$31 apart on a US\$26 million contract) with widely disparate subtotals; bids with lockstep relations to the engineer’s estimate; and numerous, large bid calculation errors suggesting last-minute revisions. In addition, multiple companies submitted fraudulent bid securities, indicating that they had no intention of winning the contracts. Some of these red flags are illustrated below.

Red flags		Above cost estimate	Total bid prices
Winning bid just below threshold of 30 percent as per the agency’s “internal” guidelines	Firm A	28%	1,235,848,743.38
	Firm B	31%	1,266,666,000.00
Bids with lockstep relations to the cost estimate	Firm C	32%	1,276,000,000.00
Rounded and unnatural numbers	Firm D	33%	1,285,858,585.88
Significant number of disqualified bidders	Firm E	34%	1,296,000,477.64
	Firm F	35%	1,302.573,393.31

As a result of such practices, two contracts were not financed. In addition, eight firms and one individual were sanctioned.

What is a fraudulent bid?

For the purposes of this handbook, fraud is defined as “any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.” As used here, a “fraudulent bid” is a bid or proposal that contains knowingly or recklessly misleading information, submitted in order to gain an unfair advantage in the selection process.

What is the purpose of a fraudulent bid?

The evaluation of written submissions to bid solicitations is the foundation of a fair procurement system. A prominent risk to the procurement system is the undermining of the evaluation process by bidders providing false or misleading information in their bids and supporting documentation. When false information is relied upon to make procurement decisions, the impact is often manifested in poor quality of works, goods and services, and failure to meet developmental objectives.

There are a number of “benefits” firms may seek to obtain by making fraudulent bids. For example, they may want to meet qualification criteria, *e.g.*, by exaggerating financial statements and past performance; they may simply seek to save costs by falsifying rather than buying a bid security; or bids may be submitted from a shell or entirely fictitious firm in order to hide its true ownership, *e.g.*, by government officials. Consequently, frauds are usually made with respect to the ownership of the bidder, its capacity, and the bid security.

- *Ownership.* Concealed or misrepresented ownership of the bidder: bids or proposals are submitted by firms that are secretly owned, in whole or in part, by government or project officials.
- *Financial capacity.* Exaggerated financial resources of the bidder, such as inflated annual turnover or balance sheet amounts. Those bids often are accompanied by false or forged audit reports.
- *Technical capacity.* Falsified or exaggerated information about the firm’s professional credentials or prior project or sales experience. Such bids often

include forged or fraudulent end-user certificates, manufacturer’s authorizations and product certifications.

- *Bid security.* Bidders submit false or forged bid securities in order to save costs. These may include securities without a serial number, or issued on a fake bank’s letterhead, or without the required signatures.

How are fraudulent bids detected?

The following is an overview of the different indicators that should raise suspicions of possible fraud in the submission of bids with regard to ownership, financial capacity, technical capacity and bid security. Typically, additional due diligence through database or Internet searches and document checks would be sufficient to clarify matters.

Ownership

Fictitious companies are by definition fraudulent and may also serve as fronts for government officials. The typical scheme involves corrupt government officials creating a fictitious company that will serve as a “vehicle” to secure contract awards. Often, the fictitious—or ghost—company will subcontract work to lower cost and sometimes unqualified firms. The fictitious company may also utilize designated losers as subcontractors to deliver the work, thus indicating collusion.

Shell companies have no significant assets, staff or operational capacity. They pose a serious red flag as a bidder on public contracts, because they often hide the interests of project or government officials, concealing a conflict of interest and opportunities for money laundering. Also, by definition, they have no experience.

Red flags related to fictitious or shell companies

Fictitious or shell company	<p>Complaints from other bidders that a competitor is a shell company or unknown in the industry</p> <p>The bidder does not appear on the Internet, is not listed in telephone or business directories, or is located in a residence or non-business location</p>
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Financial capacity

The most common form of misrepresentation of bidders’ financial data is the submission of falsified audit reports. The purpose is to make the bidder appear to be a larger well-established company supported by strong financial statements.

Red flags related to financial capacity

False or forged audit reports	Audit reports are not signed or attested The audit company does not exist The audit report is not in line with auditing standards
False or exaggerated financial data	The reported financial information is contradicted by <i>Dun & Bradstreet</i> or other reporting agencies The reported financial information contradicts that provided under prior contracts

Technical capacity

As a part of the pre- and post-qualification process, companies are often required to submit information on their past experience. Misrepresentations commonly relate to the volume of work within a specified period or years in business as indicated in end-user or performance certificates, manufacturer's authorizations, product certifications and personal credentials.

- *End-user certificates.* As a part of the post-qualification process, the client may request bidders to submit end-user certificates as a means of confirming past experience of the firms, and document sales and service claims. Often, companies that cannot meet such requirements resort to falsifying the requested documentation.
- *Manufacturer's authorizations.* Bidders who are not the original manufacturer may be required to submit manufacturer's authorizations for the goods they offer. When these authorizations are falsified, it may increase the risk of product substitution.
- *Product certifications.* Product certifications are used to ensure the goods offered meet the performance requirements as stated in the bidding documents. Some bidders falsify the required certifications, claiming to meet international or country standards, when in fact the product is of a lower quality.
- *Personnel credentials.* Bidders and consultants may be required to provide CVs of the personnel they are proposing to work on the contract. The personnel must have the minimum qualifications as stated in the issued bidding documents. Falsified credentials of key personnel, such as educational degrees, years of experience and language skills, or use of CVs without the individuals' consent, are among the most common approaches.

Red flags related to technical capacity

False or exaggerated experience	Discrepancies between self-reported information and other information on the company's website, in <i>Dun & Bradstreet</i> or from other sources
Fraudulent or forged end-user, performance or manufacturers' certificates	<p>Certificates are not signed or dated</p> <p>Certificates are unprofessional in appearance</p> <p>Certificates appear to be copies rather than originals</p> <p>Multiple certificates on different dates from varying sources appearing to have identical signatures, formatting, <i>etc.</i></p>

Case 17: Contractor misrepresents its technical capacity

In the public procurement for a wastewater treatment plant, the winning company did not comply with the deadlines set out in the schedule. The works were to be completed in mid-September. However, they were delayed till the winter season and then suspended due to severe frost and snowfall. In the end, it took until the spring to complete the project. According to the firm's owner, the initial delays resulted from the fact that the firm's excavators and bulldozers had been out of order, which made timely implementation impossible.

The auditors established that the firm's heavy equipment had been utilized in good working order at other construction sites. In the tender procedure for the construction of the wastewater treatment plant, the company had made a false representation that it had adequate equipment and technical personnel to accomplish the task on time. In reality, all of the firm's equipment and workers were employed on other construction sites that were not related to the wastewater treatment plant

Bid security

Agencies may require the submission of bid securities as part of the bid package to ensure that bidders are serious about their bids. It is not unusual for bidding companies to forge bid securities for two purposes: (i) to meet qualification requirements of the bid solicitation; and (ii) to avoid the cost and inconvenience of purchasing the security (see Case 18).

Red flags related to bid security

Forged or fraudulent bid securities	<p>Securities do not have a serial number</p> <p>Securities are copies rather than originals</p> <p>Securities are not on original letterhead of the issuing bank and lack the required signatures</p>
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Case 18: Bidder scans letterhead of commercial bank to forge bid securities

The procurement agent for an urban development project suspected potential bid fraud by a local company. Due to concerns about widespread forgery of bids, the procurement agent contacted all commercial banks that had issued bid securities, performance bonds, and advance payment guarantees to determine whether the documents presented by bidders were, in fact, legitimate. The agent discovered that a local bidder had not been issued any bid securities from the commercial bank as claimed in its bid.

A review of the bids established that the local company submitted three forged bid securities and two forged advance payment guarantees to secure five contracts. The company had simply scanned the commercial bank's letterhead and produced both sets of false documents to support its bids.

Fraudulent Implementation 5

What is fraudulent implementation?

The term “fraudulent implementation” denotes any fraud taking place after contract award in the physical implementation of works and delivery of goods and services.

During the implementation phase, firms may deliberately fail to deliver the number and quality of goods, works or services stipulated in the contract in order to save costs and increase profits; abuse contract amendments to increase the scope or volume of work or to avoid competition; and claim or bill for additional goods, works or services not carried out or not needed. Such efforts are often facilitated by bribe payments to agency officials for the approval of work completion certificates and the processing of invoices.

What is the difference between poor and fraudulent implementation?

Fraudulent implementation occurs when firms knowingly or recklessly misrepresent their work as being delivered according to specifications. Poor implementation, as judged by substandard quality works, goods and services is an indicator of fraud. However, poor local capacity may result in quality problems as well. Hence, the question arises as to whether the implementation of a given contract is the result of poor capacity or fraud. The implementation is deemed fraudulent when the firm’s acts or omissions mislead or attempt to mislead the agency to obtain a financial or other benefit, or to avoid an obligation. For example, fraud occurs when a contractor represents that it constructed a building according to specifications, when in fact it used thinner reinforcing bars (to anchor and reinforce concrete and masonry in construction) and less cement than required by the contract specifications. By committing the fraud, the contractor obtains full payment while lowering his costs. Another example includes the delivery of old equipment presented as new or no delivery at all.

What can fraudulent implementation lead to?

Implementation frauds may impact service delivery, health, and safety. The impact of false claims is mostly financial. However, failure to meet contractual specifications has a range of impacts, and since such schemes are often not discovered until after project implementation, remedies may be limited. For example, as the option to reconstruct a

civil works project compromised by implementation fraud may be too expensive and not practical, project beneficiaries are forced to accept a product of substandard quality, unlikely to deliver its projected utility. For example:

- *Health.* Health clinics can be unusable due, *inter alia*, to poor sanitary installations and lack of electricity. Faulty equipment may pose a health risk. A leaking roof may result in the destruction of needed medical equipment.
- *Transportation.* A road can disappear after one particularly rainy season due to poor drainage; or it may not wide enough for two vehicles to pass at the same time, thus increasing the risk of traffic accidents. Missing shock absorbers from a bridge could have consequences for its lifespan and public safety.

How is fraudulent implementation detected?

This section discusses the detection of fraud during contract management and more specifically the draft contract, contract delivery and contract changes stages (*see* Figure 2):

Figure 2. Phases in the procurement cycle where corruption can take place



The following fraud schemes will be highlighted:

- Failure to meet contract terms (*see* page 46)
- False statements (*see* page 48)
- False claims and invoices (*see* page 48)
- Abuse of contract amendments and change orders (*see* page 51)

10. Draft Contract

Questionable deviations from the bidding documents may signal fraud to benefit a contractor or government official. Regardless of which procurement schedule is used, the terms and conditions of a contract cannot, without the contracting agency's prior approval, materially differ from those on which bids or proposals were asked.

Red flags in draft contracts

Delays	Long delays in contract award or negotiations
Questionable deviations from the bidding documents and bids/proposals	<p>Any changes to quality, quantity or specification both to goods and services in the contract deviating from the bidding document (technical specs, key personnel, <i>etc.</i>)</p> <p>Price schedules are not the same as the winning bid</p> <p>Changes to contract type</p> <p>Changes to standard contract clauses (<i>e.g.</i>, audit, remedies, damages, <i>etc.</i>)</p> <p>Methodology and Work Plan not attached to contract</p> <p>Appendix lacks information about services/facilities provided by the client or changed substantially from draft contract</p>
Unusual patterns	<p>Page numbers are missing from contract or are not sequential</p> <p>Different typefaces used across clauses</p>

11. Contract Delivery

Scheme: Failure to meet contract terms. Firms may deliberately fail to comply with contract requirements. The contractor will attempt to conceal such actions often by falsifying or forging supporting documentation and bill for the work as if it were done in accordance with specifications. In many cases, the contractors must bribe inspection or project personnel to accept the substandard goods or works, or supervision agents are coerced to approve substandard work. Listed below are common frauds committed by companies failing to meet their contractual obligations.

Red flags indicating failure to meet contract terms

Failures	<p>Discrepancies between inspection findings, test results, or contract specifications and the contractor's claims for payment</p> <p>Failed tests or inspections</p> <p>Complaints about poor quality from users</p> <p>Increased or accelerated product failures or repair costs</p>
Inadequate supporting documentation	<p>Absent, inadequate or altered documentation submitted by the contractor to support billings</p> <p>Indications from the contractor's expenses, payroll, and other records that it did not incur costs necessary to comply with contract specifications. For example, the contractor did not:</p> <ul style="list-style-type: none"> ▪ purchase the quantity or quality of materials required under the contract ▪ own or lease all the required equipment to carry out the work ▪ have the necessary labor with required skills on the job site <p>The contractor resists government inspection of its books and records</p>
Delays	<p>Delayed start of works or the delivery of services beyond normal timeframes</p> <p>Long delays in implementation of the contract</p>
Poor reputation of the firm	<p>The company is known to be a poor performer</p> <p>The company has exaggerated or falsified its prior experience</p>

a) Product substitution. Contractors may substitute inferior and often cheaper products than those specified in the contract.

Case 19: Substitution of methods

In a tender for the renovation of the roof of a public building, the bill of quantity specified the technology and performance criteria of the contract.

To implement the project in a safe manner, scaffolding reaching the third floor of the building would have to be installed as the building was located adjacent to two pedestrian sidewalks. This would also require the relevant authorities to close part of the impacted street and sidewalks. The cost of the scaffolding material and installation was estimated at US\$18,333.

Upon completion of the project an inspection revealed that, rather than erecting scaffolding, the contractor had carried out the renovation works from a truck equipped with an extension arm. However, the auditors found that the contractor had obtained full payment from the contracting authority despite of the fact that the works were not carried out according to the specifications, using cheaper technologies without the necessary permits.

The audit also concluded that the contracting authority had unreasonably restricted the execution of the procurement through the need to erect scaffolding.

b) Deviation from specifications. Companies may seek to deviate from their contractual obligations. In one case, the TOR of a consulting firm required that it analyzes various cost estimation packages and recommends three options. The firm failed to do so, recommending only its own solution. In civil works, contractors may seek to reduce the thickness of a road surface, fail to sufficiently compact the soil, avoid costs by vibrating the cement resulting in air pockets, thereby reducing the load bearing capacity and the width of the road.

Case 20: Review finds discrepancy with contract specification

A city mayor announced a tender for the construction of a municipal road. The road was designed to be 5 meters wide. One of the requirements for the potential contractor was to have a 4.5 meter-wide asphalt paver.

Six bidders participated in the tender, with prices for the overall execution of the contract that were similar. The lowest cost bidder was selected as the winner of the contract. The works were delivered on time.

In the course of a review of the project, the auditors became interested in the discrepancy between the assumed width of the road (5 meters), and the requirement for the contractor of having an asphalt paver with a width of only 4.5 meters.

Their measurements of the new road eventually revealed that the road was, in fact, only 4.5 meters wide. Thus, the audit report concluded that the road works did not comply with the terms of the tender and project assumptions. It also found that a certified appraiser had estimated that by reducing the works, the amount due to the contractor should be lowered by at least US\$133,000. Having taken into account the work actually performed, the bid turned out to be the most expensive of all the submitted offers.

c) Standard work. Failure to exercise key controls, lack of independent oversight, and bribery of the supervision agent are the main elements allowing for this type of scheme.

Case 21: Contractor overcharges

During the implementation of a highway construction project, the contractor’s laboratory determined that three sections of the highway of a total length of 800 meters could be covered with an asphalt substance without having to change the road bed. However, in the report to the representative of the company running the investment supervision, an entry was made stating that the road bed had been replaced along the entire road. The investor paid for the full cost of the works, including for the 800 meters of road bed that had not been treated as stated.

d) Failure to deliver. Contractors sometimes leave project sites without completing the civil works they have committed to. In other cases, the training, equipment and consultant reports are not delivered at all.

Scheme: False Statements. Contractors and consultants can submit a wide variety of false statements, such as false time sheets for a company’s employees (to support inflated invoices); false claims that soil conditions were more difficult than those anticipated at the time of bidding (to justify improper contract amendments); false CVs of staff not on their payrolls; or junior staff substituted for the senior staff presented in their bid proposals.

Red flags indicating false statements

Discrepancies in supporting documentation	Discrepancies between statements and supporting documentation or site visits Inconsistent, missing or apparently altered supporting documentation Discrepancies between statements and the results of background or due diligence checks
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Case 22: Conflict of interest

The procuring entity of this municipality engaged company Z to supervise the construction, contractors and subcontractors at a bridge construction site. The value of the contract amounted to PLN220 million. The compensation to be paid to company Z was determined at the level of 3% of the amount received by the contractors—contract terms which did not motivate the supervisor to adopt an economic approach, *i.e.*, the more expensive the construction, the more company Z would be earning. Thus, company Z requested additional expensive expert opinions, resulting in changes of designs. As a result of the conflict of interest between the supervisor and the procuring entity, the final cost increased two-fold to PLN400 million.

Scheme: False Claims and Invoices. This type of fraud frequently occurs in projects with weak financial control systems whereby the project officials receive kickbacks for approving or processing falsified claims and invoices. Alternatively, the contractor may recognize the weak control environment through its previous interactions with the implementing agency and—acting alone—submit duplicate, inflated invoices or unsubstantiated claims with the intention of defrauding the project.

Case 23: Work not carried out

Peter, a public procurement chief specialist employed in a hospital, had awarded multiple contracts to the same company that provided medical products. An analysis of the latest contract award carried out by the auditors indicated that shortly after the contract had been awarded to the medical products company, Peter received a payment from that company. The payment was made under cover of a contract to conduct training courses on public procurement. The audit concluded, however, that no training course took place at the time and place specified in the agreement between Peter and the company. Instead, an integration meeting had taken place at which Peter was not present.

Red flags indicating false claims and invoices

False invoices	<p>Not receiving any report for invoiced goods or services</p> <p>Invoiced goods or services cannot be located in the inventory or otherwise accounted for</p> <p>No purchase order exists for the invoiced goods or services</p>
Inflated invoices	<p>Invoice prices, amounts, item descriptions or terms exceed or do not match:</p> <ul style="list-style-type: none"> ▪ contract or purchase order terms ▪ receiving records ▪ inventory or usage records ▪ invoice and supporting documents
Duplicate invoices	<p>Multiple payments in the same time period:</p> <ul style="list-style-type: none"> ▪ for the same or similar amount to the same or related vendors ▪ for the same invoice or purchase order ▪ for the same goods, works, or service <p>Multiple invoices with the same:</p> <ul style="list-style-type: none"> ▪ description of goods or services ▪ amount and vendor ▪ invoice number and date ▪ purchase order number <p>Total amount paid to the contractor exceeds invoiced or purchase order amounts</p>
Other	<p>Discrepancies between contract or purchase order, receiving documents and invoices</p> <p>Contractor submits inadequate, copied or apparently altered supporting documents with the invoices</p> <p>Discrepancies between the contractor’s invoices and supporting documents</p> <p>Total payments to a contractor exceed the total purchase order or contract amounts</p>

Suggestions

- Require independent annual technical, financial, and procurement audits for high risk investments
- Expand the audit scope to include transaction testing and fraud detection
- Include unannounced site visits by independent technical experts during the supervision missions

- Institute contract management training for project officials
- Check, as part of a procurement and financial management review, specifically the controls regarding:
 - Contract management – payment listings by contract/contractor
 - Duplicate payment control
 - Certification of goods and services received
- Conduct annual procurement post reviews and ensure follow-up on the findings
- Institute strong complaints handling procedures and publicize the procedures

12. Contract Changes

Scheme: Abuse of contract amendments and change orders. Contract amendments and change orders usually represent legitimate modifications to the signed contracts. However, they can be abused. A common scheme involves collusion between a favored contractor and project officials to award a contract to the contractor at a low price, followed promptly by one or a series of change orders (often just below the change order no-objection threshold of 15% of the original contract value).

Case 24: Abuse of change orders

A company won a tender for the maintenance, development, and modification of an IT system. The contract value amounted to approximately US\$2.7 million. The officials responsible for the contract had been colluding with the winning company in order to increase the contract value. They signed four annexes, which almost doubled the original contract value. When questioned about the annexes, the officials alleged that the increased value was caused by additional modification works, not provided for in the agreement.

This is one of many examples in IT procurement where the contracting authority becomes dependent on the system contractor by not protecting themselves against intellectual property rights or IT system source codes. Thus, each extension or modification is introduced in a non-competitive, unrestricted mode, and allows the contractor to dictate prices. It is recommended to promote procurement for open source IT systems based on standards instead of products that are protected by intellectual property rights.

Red flags indicating contract amendment and change order abuse

Contractor	<p>Change in the name and legal status of the firm</p> <p>Numerous or questionable change orders for a specific contractor that are approved by the same project official</p>
Output	<p>Pattern of change orders just below the threshold for external review</p> <p>Changes in the scope of the contract and required outputs</p> <p>Changes in technical specifications</p> <p>Substantial changes in the TOR</p> <p>Changes to the original design and bill of quantities</p> <p>Increase in contract value (<i>e.g.</i>, unit costs)</p> <p>Reductions in the quantity of items to be delivered without a commensurate reduction in disbursements</p> <p>Substitution of materials and equipment</p>

Suggestions

- Evaluate change order requests, analyze them for legitimacy and request supporting documents, as appropriate, before approval
- Verify physical existence of key goods, works, and services outputs during supervision. Reviews can confirm:

- Consistency between work completion certifications and implementation progress
- Adequacy of supporting documentation
- Legitimacy of officers certifying goods and services received
- Timely asset registration

Development of anti-corruption programs

Anti-corruption programs can provide guidance to officials on the way to conduct business activities. Corruption is a serious crime that undermines social and economic development and weakens the fabric of modern-day society. It hinders social and economic development by diverting national investment away from its intended purposes; it weakens education and health systems, and it undermines government institutions, which can lead to political instability.

In the absence of a level playing field, entrepreneurs or public officials involved in public procurement can never be certain whether or not the contract proposals they have prepared in good faith will have a chance of success because of the potential corrupt or collusive activities of officials and competitors. The intentional distortion of the competitive process caused by a few makes it hard for honest firms to survive and leads to significant losses to the entire national economy.

Taking the above into consideration, it is useful for any public and private organization that is committed to operate according to best business practices to adopt an internal ethics and compliance program (also called anti-corruption program) that provides clear guidance to its employees regarding the way the organization expects them to conduct business activities. The adoption of such program does not suggest that there are any instances of corruption in the organization. On the contrary, such programs can serve as a protection for employees who may be confronted with unscrupulous behaviors of colleagues, superiors, or clients.

When implementing an anti-corruption program, which should be led by the senior leadership of the organization, particular attention should be paid to training and awareness programs covering employees at all levels of the institution. As well, targeted communications should be directed at contractors and business partners to ensure understanding of and compliance with the institution's program.

¹⁰ Based on: Central Anti-Corruption Bureau, *The Anti-Corruption Handbook for Entrepreneurs*, Warszawa 2012. www.pcbc.gov.pl/doc/certyfikacja/systemy/wymagania.pdf.

Anti-corruption program creation and management

The **System of Prevention of Corruption Threats** is a good starting point. When developing an effective anti-corruption program, it is recommended that the organization adopts the requirements of the PNEN ISO 9001:2009 certification norm, supplemented with additional requirements connected with anti-corruption processes. In Poland, this is described by the Polish Centre for Testing and Certification (PCBC) as the **System of Prevention of Corruption Threats**. It is a system developed jointly by the National Chamber of Commerce and the PCBC. The norm aims to support the performance of companies and institutions that want to increase confidence in the fairness of their operating practices, and may be applied in entities which have a certified quality management system.

Thanks to the application of its unique risk analysis, the System of Prevention of Corruption Threats may help to identify and manage the risks of fraud and corruption inside the enterprise, and serve as a basis for developing solutions to ensure that all decisions in the organization are reliable and, as far as possible, impartial.

To ensure that the entire organization buys into the anti-corruption program, the initiative to install the program should be taken at the level of the board of directors. Moreover, the chairman of the board should announce the official launch of the program with a formal communication to all employees explaining why and how every employee, at every level, has an obligation to observe the rules of ethical business practices as outlined in the program. To emphasize the seriousness of the issue, this communication could also refer to the state's latest anti-corruption strategy and overview of its activities undertaken nationwide.

Finally, in order to be effective, the anti-corruption program should also include a procedure for managers to analyze thoroughly the symptoms of corruption in particular areas connected with the company's activity as well as a sanctions system governing infringements of the anti-corruption program rules.

The key to an effective, successful anti-corruption program lies in the hands of the organization's management team. Without an explicit decision, a company will not eliminate improper conduct. Critical success factors include:

- Recognition of the benefits of adopting ethical business practices
- Identification of potential threats
- Presentation of the anti-corruption program to business partners (everyone should operate on the basis of the same good practices/principles)
- Systematic and sustained professional communication and training programs

- Effective problem-solving
- Environment of open and candid discussion of problems
- Effective complaints handling and/or whistle-blower mechanism
- Ongoing analysis of the implemented program in order to increase effectiveness

According to Poland's Transparency International, the motto of an entrepreneur who intends to create an effective system of prevention should be: "Decide, Pass, Register, Train, and Monitor".¹¹ The company's senior management team should be responsible for making the staff aware of and buy into the importance of good corporate and personal ethical behavior.

The fraud and corruption risk analysis should cover all business processes. In order to identify potential sources of threats as well as possible mitigation measures and controls all business processes should be analyzed. The responsibility for this work should be assigned to an expert manager, who would be in charge of the program's implementation, which would include:

1. Familiarization of the employees with the organization's anti-corruption policy standards and procedures; creation of an active system of training, and continuous upgrading of the employees' skills
2. Introduction of a system of internal control for detection and elimination of irregularities;
3. Reporting of incidents and threats of corruption, including enforcement of confidential whistleblower policy
4. Proper handling of ethics cases; analysis of the causes of irregularities and develop lessons learned to prevent similar situations in the future
5. Ensure that any violation of the implemented procedures is sanctioned;
6. Exchange information and experience with employees as well as externally, *e.g.* with the entrepreneurs' organizations (domestic and international)
7. Evaluate and improve the program/procedures

Advantages of having an anti-corruption system¹²

1. Better access to international markets
2. Greater opportunity to obtain a government contract

¹¹ Transparency International Poland, *Zasady zwalczania łapownictwa w biznesie* (The Principles of fighting corruption in business), 2008, p. 28, <www.transparency.pl> (accessed: 12.5.2011).

¹² *Ibid.*

3. Better protection for enterprise and employees against legal penalties, loss of license or being placed on the so-called blacklist
4. Good reputation makes the business more attractive in terms of sale/purchase
5. Ethical business culture fosters positive relationships and better employee morale
6. Business becomes more attractive to financial organizations
7. Money that otherwise would be squandered on bribes and other incentives saved

Principles of anti-corruption policy

1. The policy objective is to eliminate any corruption activities that may occur in connection with the operation of the organization
2. The policy takes into consideration the strategy and operation of state bodies which aim to eliminate corrupt behaviors from all spheres of the economic and social life
3. The implementation of the provisions of the policy should rest on all participants of the business process—all customers and contractors should be familiarized with the policy
4. In corruption cases, the persons who accept and who give the bribe are treated equally
5. Employees are not allowed to participate in any corrupt behavior, including demanding a financial or personal advantage
6. Customers and contractors are not allowed to acquiesce to an unethical proposal or demand put forward by an employee of the organization
7. Hospitality information (*e.g.*, board and transportation) offered by a potential customer or contractor must be explicit and available (communicated) to ensure the transparency of the business process
8. Customers and contractors are not allowed to offer financial or personal advantages to employees
9. The organization should implement separate regulations regarding giving and accepting gifts, participation in sponsored entertainment events and incurring representation expenses
10. If the customer/contractor suspects that a corruption-featured behavior may occur, they should immediately provide relevant information to the organization's management. If such suspicion relates to a company's management team, the information should be passed to the relevant law enforcement agencies

*Central Anti-Corruption Bureau, Poland, **Anti-Corruption Guidebook for Entrepreneurs***

The Guidebook presents the legal context of corruption and its consequences. It describes examples of irregularities which may occur in B2B and B2G contacts and provides advice on how an entrepreneur should behave in a corrupt situation. The Bureau draws the reader's attention to an anti-corruption policy in an enterprise, measures to limit corruption in business and specifies legal and institutional capacities to prosecute this offence.



United Nations General Assembly Hall (New York)

<http://cba.gov.pl/ftp/zdjecia/>

[A5_poradnik_dla_przedzie_ang_21_11_2012.pdf](#)

United Nations Global Compact, *Anti-Corruption*

The UN Global Compact, which is a voluntary initiative, announced ten principles in the areas of human rights, labor, the environment and anti-corruption. Global Compact Principle 10 stipulates that “businesses should work against corruption in all its forms, including extortion and bribery.” The underlying legal tool for this principle is the UN Convention against Corruption. The page will guide the reader through the stages of the implementation of Principle 10, e-learning tools, case stories and examples from different countries as well as a framework for action.

http://www.unglobalcompact.org/AboutTheGC/tools_resources/anti_corruption.html

The World Bank, Integrity Vice Presidency, ***Curbing Fraud, Corruption and Collusion in the Roads Sector***

According to the World Bank, road infrastructure is critical for economic growth and overcoming poverty in developing countries. Therefore, it seeks to safeguard Bank supported roads projects from fraud, collusion and corruption. The handbook describes cases of misconduct in Bank-funded projects and an analysis of the incidence of collusion and its impact. Based on lessons learned from developed and

developing countries, it also presents practical advice about a range of measures in order to stem collusion in tenders for road contracts, and fraud and corruption in contract execution.

http://siteresources.worldbank.org/INTDOII/Resources/Roads_Paper_Final.pdf

The World Bank, ***The Many Faces of Corruption, Tracking Vulnerabilities at the Sector Level***

This book provides a taxonomy of the malfeasance that takes place in various areas of public life, ranging from education to the regulation of natural resources to the management of public finance. It equips practitioners with a roadmap for tracking the vulnerabilities to corruption in various sectors. The road map takes on the value chain approach, which facilitates the identification of specific areas where reforms may have the greatest impact on preventing and reducing corruption.

<https://openknowledge.worldbank.org/bitstream/handle/10986/6848/399850REPLACEMENT101OFFICIAL0USE0ONLY1.pdf?sequence=1>

Transparency International, *Tools*

The page provides practical solutions for tender launching, setting up a business abroad or raising funds to run a company. It offers business principles for countering bribery, tools for corruption researchers, educators and members of civil society. The reader can also get information about Integrity Pacts, which are a tool for preventing corruption in public procurement. The Pacts include a monitoring system led by civil society groups—often the local chapters of Transparency International.

<http://www.transparency.org/whatwedo/tools/>

Transparency International, *Curbing Corruption in Public Procurement*

The handbook describes the legal and historical context of corruption in public contracting in Pakistan, Malaysia and Indonesia. It provides real life examples of successful actions taken against corruption in these countries. Transparency International encourages to try the solutions in other situations and other countries with similar success. The handbook was inspired by the European Union – Asia Urbs Programme, which generated funds for workshops on improving public procurement in the three Asian countries.

http://www.sasnet.org/curriculum_final/downloads/PM/Books%20and%20Articles/01%20Procurement%20Handbook%20-%20Transparency%20International.pdf

Anti-Corruption in Public Procurement: Balancing the Policies

The aim of the portal, created by the Global Advice Network, is to provide business tools to prevent and fight corruption in small and medium enterprises. It delivers, among others, business and corruption profiles of 67 countries, anti-corruption initiatives and information networks, anti-corruption tool inventory and training

courses and training e-programs offered by the Global Advice Network. The page gives guidelines on how to establish and implement procedures for managing corruption risks and comply with international anti-corruption legislation.

<http://www.business-anti-corruption.com/tools/integrity-system>

OECD, ***Integrity in Public Procurement. Good Practice from A to Z***

This publication maps out good practices and measures for enhancing integrity in public procurement procedures. The authors discuss the potential and limitations of transparency, risks to integrity at each stage of the process as well as conflict of interest and accountability. They present a comparative overview of public procurement structures in EU member states. They also discuss whistleblowing cases and whistleblowers protection.

<http://www.oecd.org/development/aideffectiveness/38588964.pdf>

Fighting Corruption in the Public Sector. Integrity in Public Procurement

This page guides the reader through a number of OECD initiatives in support of reform efforts by member governments, with links to policy instruments and resource materials to enhance integrity in public procurement.

<http://www.oecd.org/gov/fightingcorruptioninthepublicsector/integrityinpublicprocurement.htm>

ADB/OECD, ***Fighting Bribery in Public Procurement in Asia and the Pacific***

In addition to regional and international regulations concerning corruption in general, the publication presents new technologies as potential tools for preventing corruption in procurement, focusing on the impact of e-procurement on bribery. It also discusses the role of civil society in curbing corruption and suggests the ways in which civil society can participate in monitoring and safeguarding public procurement.

<http://www.oecd.org/site/adboecdanti-corruptioninitiative/40838411.pdf>

The Official Guidance to the UK Bribery Act

The Guidance provides procedures which commercial organizations use to prevent corruption in workplace. Each organization may be held liable for failing to prevent its employees from bribing, therefore it is important for the employer to have adequate procedures in place to prevent corruption. The main focus is on the principle of free and fair competition. The handbook also offers case study examples illuminating the application of the Act.

<http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

Eric Prier, Clifford P. McCue, ***Public Procurement Analysis of Best Value in Anti-corruption Efforts***

The authors discuss the principles of best value in public procurement and the factors which may influence the concept of value. They touch the issue of quality in

determining best value and conclude with anti-corruption strategies relating to the role of value and quality.

http://www.12iacc.org/archivos/WS_6.2_ERIC_PRIER_CLIFFORD_MCCUE.PDF

Center for the Study of Democracy, ***Anti-Corruption in Public Procurement: Balancing the Policies***

The paper presents the mechanisms of corruption with a special focus on governance risks and failures in procurement. The study is based on experiences of Norway and Bulgaria, countries which differ significantly in terms of the scale of corruption. The authors point out that the new management culture potentially stimulates corruption.

<http://www.csd.bg/artShow.php?id=16013>

International Competition Network - Procurement

The page leads the reader to presentations, reports, guidebooks, leaflets, checklists, posters and booklets (presented in many languages). The main topics of concern are ways of detecting and reducing bid rigging and cartels.

<http://www.internationalcompetitionnetwork.org/working-groups/current/cartel/awareness/procurement.aspx>

UK National Fraud Authority, ***Procurement Fraud in the Public Sector***

The authors discuss fraud in the pre- and post-contract award phase, and present the difficulties in detecting and measuring fraud. Taking into consideration the absence of a procurement fraud strategy, the authors propose immediate interventions and medium term strategies.

<http://www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/our-work/procurement-fraud-public-sector?view=Binary>

International Anti-Corruption Initiatives

UN Convention against Corruption

The United Nations Convention against Corruption (UNCAC) was adopted in 2003 by more than one hundred and sixty (160) State signatories, most of which are Member States of the World Bank Group (*see* Table 1 for States that have not yet ratified or acceded to UNCAC). UNCAC calls for State Parties to adopt preventive and punitive measures against corruption as well as to cooperate with non-State Parties. The key commitments under UNCAC are listed below.

1. **Assign institutional accountability for prevention.** At the national level, each State Party must assign to a body or bodies the responsibility for the prevention of corruption, including: (i) the carrying out of oversight functions and the coordination of preventive policies; (ii) knowledge dissemination; and (iii) training of personnel responsible for preventing and combating corruption (§6(1) and 60). The anti-corruption body(ies) must be independent, and should be free from ‘any undue influence’ (§6(2)).
2. **Review preventive measures.** The State Parties have agreed that there should be periodical reviews in each State to ensure the “adequacy [of legal instruments and measures] to prevent and fight corruption” (§5(3) and 63(1)).
3. **Establish a Code of Conduct and disclosure regime.** State Parties have each committed to promulgate a code of conduct (§8(2)) “for the correct, honorable, and proper performance” for all public officials, and to require officials to disclose outside activities, employment, investments, assets, or gifts that may point to a conflict of interest.
4. **Improve access to information and involve civil society.** Whereas Article 5 of UNCAC (*see* also §13) sets forth a commitment by each State Party to adopt preventive and anti-corruption practices that promote the participation of civil society, Article 10 calls for enhanced transparency in public administration by the adoption of such measures as publishing information and “simplifying administrative procedures” for attaining access to “competent decision making authorities.”

5. **Establish a mechanism for reporting UNCAC violations.** Each State Party has committed to establish measures and systems for reporting acts of corruption and create disciplinary actions against public officials who “violate the codes or standards established” under UNCAC (§8(6)).
6. **Protect whistleblowers.** UNCAC obliges State Parties to take measures in their respective jurisdictions to protect from “unjustified treatment” whistleblowers who report in “good faith” (§32 and §33).
7. **Adopt merit based hiring.** UNCAC requires each State Party to adopt municipal laws for equitable and merit-based hiring and promotion of staff in the public service, relying on established procedures for the selection and training of civil servants, especially for those appointments that are “vulnerable to corruption.” (§7(1)) The same treaty provision also includes a requirement for each State Party to implement education and training programs to “enhance awareness of the risks of corruption.”
8. **Institute legal recourse for procurement violations.** Under UNCAC, each State Party commits to create a public procurement system based on transparency, competition, and objective selection criteria with “legal recourse and remedies” for violations and to allow for public access to procurement information (§9(1)).
9. **Strengthen judicial integrity.** Further, each State Party commits to adopt measures to maintain an independent judiciary, as well as to strengthen the integrity and to prevent opportunities for corruption among members of the judiciary (§11(1)).
10. **Promote private sector integrity.** Also, each State Party to UNCAC commits to: (i) take measures to prevent corruption involving the private sector; (ii) enhance accounting and auditing standards in the private sector; and (iii) implement penalties and prohibit corrupt financial practices (§12).
11. **Deter and detect all forms of money laundering.** UNCAC obliges State Parties to take measures to prevent money laundering in their respective jurisdictions by instituting comprehensive regulatory frameworks for the prevention of money laundering as well as creating financial intelligence units to receive, analyze, and disseminate reports of suspicious transactions (§14).
12. **Criminalize six (optionally eight) practices.** Each State Party to UNCAC commits to criminalize under its municipal law the following six practices: (i) bribery of national public officials (§15); (ii) active bribery of foreign public officials (§16, para. 1); (iii) embezzlement, misappropriation and other diversion of property (§17); (iv) laundering of proceeds of crime (§23); (v) obstruction of justice, including of investigations (§25 and §29); and (vi) participation in the above offences (§27, para. 1). In addition, UNCAC encourages State Parties to consider criminalizing: passive bribery of foreign public officials (§16); trading

in influence (§18); abuse of functions (§19); illicit enrichment (§20); bribery in the private sector (§21); embezzlement of property in the private sector (§22); and concealment (§24 and §27(2)(3)). UNCAC, however, does not define the term ‘illicit enrichment’ other than to elaborate through an illustration (§20).

Table 1. States that have not yet ratified or acceded to UNCAC.

Region	Neither signed nor ratified	Signed but not ratified
AFR	Chad Eritrea The Gambia Somalia South Sudan	Comoros Cote d’Ivoire Guinea Sudan Swaziland
EAP	Barbados	Myanmar
ECA		Czech Republic
LCR	Belize	Suriname
MNA	Oman Saudi Arabia	Syrian Arab Republic
SAR	Bhutan	
Other	Germany Korea, People’s Republic of	Japan New Zealand

Other UN instruments for fighting specific forms of corruption include: the *United Nations Convention Against Transnational Organized Crime*; the *United Nations Declaration Against Corruption and Bribery in International Commercial Transactions*; and the *Action Against Corruption*.

Open Government Partnership

Established pursuant to the *Open Government Declaration* of 2011, the *Open Government Partnership (OGP)* consists of 44 States that have “delivered” their OGP commitments under the said partnership arrangement as well as 12 other States that are in the process of doing so.

The aim of the *Open Government Declaration* is to “increase the availability of information about governmental activities”, “support civic participation”, and “implement the highest standards of profession integrity throughout [its] administrations”.

- 13. Develop an Action Plan.** Participating States in OGP pledge to deliver country action plans that elaborate concrete commitments on open government. The commitments are structured around: improving public services, increasing public integrity, more effectively managing public resources, creating safer communities, and increasing corporate accountability. States report on their progress and cooperate with the independent reporting mechanism. The minimum eligibility criteria for States to join OGP listed below.

14. **Have an access to information law.** The law should guarantee the public's right to information and ensure that access to government data remains essential to the spirit and practice of open government.
15. **Disclose assets and income.** The law should develop rules that require public disclosure of income and assets for elected and senior public officials as an essential element in the country's efforts for anti-corruption and open, accountable government.
16. **Provide access to civil society in policy making.** States must provide openness to citizen participation and engagement in policymaking and governance, including basic protections for civil liberties.
17. **Earn a minimum score.** States can earn a total of 16 points for their performance against the OGP minimum standards of open government. In order to participate in OGP, each State must score at least 75% of the total possible points available to it (e.g. 12 out of 16, or 9 out of 12). Using the 2010 Economist Intelligence Unit (EIU) Democracy Index's Civil Liberties sub-indicator, where 10 is the highest and 0 is the lowest score (with 4 points accorded to States scoring above 7.5, 3 points to States scoring above 5, 2 points to States scoring above 2.5, and 0 points otherwise), an independent group of experts oversees the minimum criteria for each State's participation in OGP to ensure that all OGP participating States remain in good standing and that the performance measures are up to date.

Table 2. States' commitments under the OGP

Region	Delivered commitments	Developing commitments
AFR	Kenya South Africa	Ghana Liberia, Tanzania
EAP	Indonesia Philippines	Mongolia
ECA	Albania Armenia Bulgaria Croatia Czech Republic Estonia Georgia Latvia Lithuania Macedonia Moldova Montenegro Romania Slovak Republic Ukraine	Azerbaijan Hungary Russia Serbia
LCR	Brazil Chile Colombia Dominican Republic El Salvador Guatemala Honduras Mexico Paraguay Peru	Panama Costa Rica Trinidad and Tobago
MNA	Jordan	
SAR		
Other	Canada Denmark Greece Israel Italy Korea, Republic of Malta Netherlands Norway Spain Sweden Turkey United States United Kingdom	Finland

OECD Anti-Bribery Convention

The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* was adopted in 1999, and signed by all OECD countries as well as by five non-OECD countries (see Table 3). Unlike UNCAC, the OECD Anti-Bribery Convention criminalizes bribery of foreign officials and prohibits accounting manipulation (see below). The U.S. *Foreign Corrupt Practices Act (FCPA)* of 1977 and the U.K. *Bribery Act* contain broadly consistent provisions. For the OECD Convention, the *OECD Working Group on Bribery* has established a peer-driven monitoring mechanism.

A. Criminalize and sanction bribery of foreign officials. State Parties commit to criminalize the: (i) bribery of a foreign official, regardless of whether undertaken directly or through an intermediary (§1(1)); (ii) incitement, aiding and abetting, or authorization of bribery (§2); and (iii) attempt and conspiracy to bribe (§1(2)). These crimes are also predicate offenses (i.e. the underlying primary offence) for money laundering (§7). The term ‘Officials’ is defined as persons holding a legislative, administrative or judicial office, as well as persons in a public enterprise and those employed with an international organization (§1(4)). Sanctions to be meted out under the Convention must be comparable to those of domestic bribery (§3(1)), and the municipal laws of State Parties should contain provisions for the seizure, confiscation, or that monetary sanctions should be comparable to the effect of the bribery (§3(3)).

B. Prohibit and penalize accounting manipulation. State Parties also commit to “prohibit the establishment of off-the-books accounts, the making of off-the books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents... for the purpose of bribing of officials or of hiding such bribery.” (§8)

Table 3. State Parties to the OECD convention

Grouping	Signatories
OECD	All 34 Member States
Non-OECD	Argentina, Brazil, Bulgaria, Russia, and South Africa

AU Convention on Corruption

The *African Union (AU) Convention on Preventing and Combating Corruption* entered into force in 2006, and facilitates State co-operation within the African region against corruption. It also aims at harmonizing regional anti-corruption policies and legislation. Like UNCAC, the AU Convention covers both public and private sector corruption, and establishes corruption a predicate offence of money laundering, while prohibiting

the use of bank secrecy laws or practices as a shield against investigations of corruption. A total of 31 of the 53 AU states have *ratified* the AU Convention, while 22 have not (see Table 4). In contrast to UNCAC, the AU Convention adds the following key provisions.

A. Make “illicit enrichment” an offense. First, unlike UNCAC, the AU Convention has a definition of the term ‘illicit enrichment’, postulating that the said term refers to significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income (§1). Secondly, the AU Convention places a treaty obligation on all State Parties to adopt measures—subject to their domestic laws—to establish “an offence of illicit enrichment” (§8(1)), which “shall be considered an act or corruption or a related offense” (§8(2))

B. Declare and monitor asset disclosures. Public officials are required to “declare their assets at the time of assumption of office, during and after their term of office” (§7(1)). In addition, the State Parties commit to “create an internal committee or similar body to monitor its implementation, and sensitize and train public officials on matters of ethics” (§7(2)).

C. Develop investigative procedures. In order to keep up with technology and increase efficiency, the State Parties commit to developing “disciplinary measures and investigation procedures in corruption and related offenses” (§7(3)).

D. Outlaw illegally acquired funds for political financing. Each State Party commits to adopt legislation to “proscribe the use of funds acquired through illegal and corrupt practices to finance political parties” (§10(a)) and to “incorporate “transparency into funding of political parties” (§10(b)).

E. Combat corruption in and by the private sector. The State Parties to the AU Convention commit further to “adopt legislative and other measures to prevent and combat acts of corruption... in the private sector” (§11(1)), in particular to “prevent companies from paying bribes to win tenders” (§11(3)). They also commit to encourage the sector’s participation “in the fight against unfair competition, respect of the tender procedures and property rights” (§11(2)).

F. Enable civil society to hold governments accountable. Closely related to the foregoing, the State Parties undertake to “create an enabling environment that will enable civil society and the media to hold governments ... accountable” (§12(2)) as well as to ensure their participation “in the monitoring of the implementation of this Convention.” (§12(3)) The media will be given “access to information in cases of corruption and related offenses” as long as such access does not “adversely affect investigations and the right to a fair trial.” (§12(4))

Table 4. States that have not ratified or acceded to the AU Convention

Neither signed nor ratified	Signed but not ratified
Botswana	Angola
Central African Republic	Cameroon
Cape Verde	Chad
Egypt	Cote d'Ivoire
Eritrea	Congo, Democratic Republic of
	Djibouti
	Equatorial Guinea
	Guinea
	Guinea-Bissau
	Mauritania
	Mauritius
	Sahrawi Arab Democratic Rep.
	Somalia
	Sao Tome & Principe
	Sudan
	Swaziland
	Tunisia

In addition to the AU Convention, a number of African countries have adopted the *Economic Community of West African States Protocol on the Fight against Corruption* and the *Southern African Development Community Protocol against Corruption*. These conventions largely reiterate the commitments made under UNCAC and the AU Convention.

Inter-American Convention against Corruption

The Organization of American States (OAS) Convention against Corruption entered into force in 1997. The *Convention* represents a *regional consensus* on what State Parties should do in the areas of prevention, criminalization, international cooperation and asset recovery. The Convention has been *ratified* by all OAS members except one (see Table 5).

A. Establish “illicit enrichment” as an offense. Subject to its Constitution, each State Party commits to establish “as an offense a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.” (§IX)

B. Punish and prevent bribery of foreign officials. State Parties agree also to “prohibit and punish” the bribery of foreign officials (§VIII) and to establish “mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect acquisition and disposition

of assets, and have sufficient internal accounting controls to enable their officer to detect corrupt acts.” (§III(10))

C. Define related acts as offenses. State Parties undertake to consider criminalizing: (i) the “improper use” by a governmental official of “classified and confidential information” obtained in the course of his work (§XI(1a)); (ii) “improper use” of “any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest” (§XI(1b)); (iii) obtaining of a decision from a public authority whereby he or she illicitly obtains for himself, herself or another person any benefit or gain” (§XI(1c)); and (iv) diversion of any movable or immovable property, monies or securities belonging to the State (§XI(1d)).

D. Require officials to report corruption. State Parties agree also to consider “requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions” (§III(1)) and to establish “mechanisms to enforce these standards of conduct.” (§III(2))

E. Register officials’ income and assets. State Parties commit to consider adopting “systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public.” (§III(4))

F. Deter corruption in revenue collection. State Parties agree to consider adopting “revenue collection and control systems that deter corruption” (§III(6)) and “deny[ing] favorable tax treatment for any individual or corporate for expenditures made in violations of the anticorruption laws.” (§III(7))

G. Encourage civil society participation. State Parties commit further to consider adopting “mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.” (§III(11))

Table 5. State parties to the OAS Convention

Signed and ratified	Acceded	Signed but not ratified
Argentina	Antigua &	Barbados
Bahamas	Barbuda	
Belize	Dominica	
Colombia	St. Kitts & Nevis	
Bolivia	St. Lucia	
Brazil	St. Vincent &	
Canada	the Grenadines	
Chile		
Costa Rica		
Dominican Republic		
Ecuador		
El Salvador		
Grenada		
Guatemala		
Guyana		
Haiti		
Honduras		
Jamaica		
Mexico		
Nicaragua		
Panama		
Paraguay		
Peru		
Suriname		
Trinidad and Tobago		
United States		
Uruguay		
Venezuela		

ADB and OECD Anti-Corruption Initiative

The Anti-Corruption Action Plan for Asia and the Pacific is the main instrument of the Asian Development Bank (ADB) / OECD Anti-Corruption Initiative. The *Action Plan*, agreed upon in 2001, defines the *participating countries'* objectives in building sustainable legal and institutional frameworks for fighting corruption. The Plan constitutes a non-binding framework, and has been *endorsed* by 29 States (*see* Table 6).

In contrast to UNCAC, the Anti-Corruption Action Plan for Asia and the Pacific is not only a non-binding document, but it also does not cover corruption involving the private sector. The Action Plan focuses mainly on setting forth principles and standards for policy reform in the area of anti-corruption in the Asian-Pacific States.

A. Institute job rotation. Develop “personnel systems that include regular and timely rotation of assignments to reduce insularity that would foster corruption.” (ACAP, Pillar 1)

B. Promote disclosure and monitoring of assets. Establish “systems to promote transparency through disclosure and/or monitoring of, for example, personal assets and liabilities.” (ACAP, Pillar 1)

C. Ensure officials report corruption. Institute “measures which ensure that officials report acts of corruption...” (ACAP, Pillar 1)

D. Conduct public awareness campaigns. Initiate “public awareness campaigns at different levels.” (ACAP, Pillar 3)

E. Prepare education programs. “Prepar[e] and/or implement... education programs aimed at creating an anti-corruption culture.” (ACAP, Pillar 3)

F. Provide access to a variety of information. Establish “measures and systems to provide timely reporting on performance and decision making” as well as “application processing procedures, funding of political parties and electoral campaigns and expenditure.” (ACAP, Pillar 1)

G. Involve NGOs in monitoring. Involve “NGOs in monitoring of public sector programmes and activities.” (ACAP, Pillar 3)

H. Strengthen accountability institutions. “Enhanc[e] institutions for public scrutiny and oversight” (ACAP, Pillar 1) and empower them “to order that bank, financial or commercial records be made available or be seized and that bank secrecy be lifted.” (ACAP, Pillar 2)

I. Reduce “red tape” for businesses. Simplify “the regulatory environment by abolishing overlapping, ambiguous or excessive regulations that burden business.” (ACAP, Pillar 1)

Table 6. States that have endorsed the ADB/OECD Action Plan

EAP	SAR
Cambodia	Australia
China, People’s Republic of	Bangladesh
Fiji Islands	Bhutan
Hong Kong, China	Cook Islands
Indonesia	India
Korea, Republic of	Japan
Macao, China	Kazakhstan, Republic of
Malaysia	Kyrgyz Republic
Mongolia	Nepal
Palau, Republic of	Pakistan
Papua New Guinea	Singapore
Philippines	Sri Lanka
Samoa	
Thailand	
Timor-Leste	
Vanuatu	
Vietnam	

Council of Europe Convention on Corruption

The Council of Europe (CoE) *Criminal Law Convention on Corruption* has been signed by all CoE Member States as well as Belarus, Canada, the Holy See, Japan, Mexico, and the US (see Table 7). This convention entered into force in 2002 and has since been complemented by the *Additional Protocol to the Criminal Law Convention on Corruption* (2003) and the *Civil Law Convention on Corruption* (2003). The ratification of these conventions signals States’ commitment to incorporate the conventions in their respective laws.

A. Institute corporate liability for corruption offences. State Parties must enact domestic legislation for corporate liability regarding corruption offenses committed by officers of a company (legal person) for their benefit, acting either individually or as part of an organ of the company, as long as such individual “has a leading position within the legal person, based on: (i) a power of representation of the legal person; or (ii) an authority to take decisions on behalf of the legal person; or (iii) an authority to exercise control within the legal person.” (CoE Criminal Law Convention §18.2)

B. Enable victims of corruption to sue. State Parties are to provide in municipal law the right to initiate an action in order to obtain full compensation for and by persons who have suffered damage as a result of the alleged corruption. Such compensation can cover material damage, loss of profits and non-pecuniary loss (CoE Civil Law Convention §3).

C. Invalidate corrupted contracts. Also, each State Party is to provide in its municipal law for any contract or clause of a contract providing for corruption to be null and void as well as “for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.” (CoE Civil Law Convention §8)

Table 7. State parties to the CoE Criminal and Civil Law Conventions

Criminal Law Convention	Criminal Law Additional Protocol	Civil Law Convention
CoE Members Belarus Canada Holy See Japan Mexico United States	CoE Members Belarus Mexico United States	CoE Members Belarus Canada Holy See Japan Mexico United States

Like the African region, the European region has several other anti-corruption conventions and protocols. These include:

- **Model Code of Conduct for Public Officials** covering such issues as conflict of interests, outside interests, background checks prior to hiring, duty to complain, treatment of confidential information and addressing improper offers.
- **Agreement Establishing the Group of States against Corruption (GRECO)**, which in effect is a monitoring mechanism for the above conventions.
- **Twenty Guiding Principles for the Fight against Corruption** are quite general, but add new dimensions compared to UNCAC, *e.g.*, a call for a code of conduct for elected representatives, rules on political financing, research on corruption, and the need to take into account ties with money laundering and organized crime.
- **Framework decision on combating corruption in the private sector 2003** aims at ensuring that both active and passive corruption in the private sector as criminal offences incur effective, proportionate and dissuasive penalties.
- **Convention on the Fight against Corruption involving Officials 2005** requires Member States to ensure that any conduct constituting an act of passive or active corruption as well as participating in and instigating these acts is punishable by criminal penalties.
- **Convention on the Protection of the European Communities’ Financial Interests 2002** requires that each State Party takes the necessary measures to tackle fraud affecting the financial interests of the European Communities as

well as ensures that participating in, instigating or attempting such conduct, are punishable by effective, proportionate and dissuasive criminal penalties. The Convention adds that, in cases of serious fraud, the penalties must include custodial sentences that can give rise to extradition.



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