

Public Ethics

Making public procurement transparent at local and regional levels

Congress of Local and Regional Authorities
of the Council of Europe

The Congress



Le Congrès

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Public Ethics

**Making public procurement
transparent at local
and regional levels**

Congress of Local and Regional Authorities
of the Council of Europe

| French edition:

| *Rendre les marchés publics transparents*
| *aux niveaux local et régional*

| Reproduction of the texts in this publication is authorised
| provided that the full title of the source, namely the Council of
| Europe, is cited. If they are intended to be used for commercial
| purposes or translated into one of the non-official languages
| of the Council of Europe, please contact publishing@coe.int.

| Cover and layout: Documents and Publications
| Production Department (SPDP), Council of Europe

| Council of Europe, December 2018

| Printed at the Council of Europe

Contents

FOREWORD	5
MAKING PUBLIC PROCUREMENT TRANSPARENT AT LOCAL AND REGIONAL LEVELS EXPLANATORY MEMORANDUM	7
Introduction	10
Corruption in the procurement process	12
Evidence and measurement	14
Corruption in the procurement of infrastructure	19
Systemic risks	20
Policy recommendations	26
References	33
RESOLUTION 421 (2017)	37
RECOMMENDATION 405 (2017)	45

Foreword

How to make public procurement transparent at local and regional level? This brochure aims to provide answers and raise awareness among local and regional elected representatives, as well as public officials and all those involved in the public procurement process. This is an area particularly exposed to the risks of corruption, as it not only involves large volumes of public expenditure, but also increasingly involves the transfer of public resources to the private sector.

This brochure identifies structural problems that create a risk of corruption and serves as a practical tool to better understand the complex procedure of procurement. Lack of expertise, the revolving door phenomenon, where local authority employees move to jobs in private companies bidding for public contracts, and a lack of transparency are some examples of the difficulties and risks involved in the public procurement process.

The Congress of Local and Regional Authorities of the Council of Europe adopted a report on this issue and proposes a number of concrete measures that local and regional authorities can take to reduce their exposure to this type of corruption. This includes the establishment of internal controls and evaluation mechanisms, increased transparency by publishing public procurement data at all stages of the process, the establishment of national standards and the introduction of online public procurement systems to better control human intervention in these processes.

However, it remains difficult to detect cases of corruption in public procurement, hence the need for the clearest rules and procedures throughout the process. For a corruption prevention strategy to be effective, all aspects of the problem must be addressed. This is what the Congress is proposing in its “Public Ethics” series, which is part of the Congress’ roadmap on activities to prevent corruption and promote public ethics at local and regional levels. The objective is to provide a set of practical responses to the new challenges facing local and regional authorities.

Making public procurement transparent at local and regional levels

Explanatory memorandum

CG33(2017)13final

19 October 2017

**Rapporteur: Amelie TARSHYS INGRE,
Sweden (L, ILDG)**

Summary

As public procurement involves a large proportion of public expenditure and, to an increasing extent, the transfer of public resources to the private sector or to non-profit organisations, it is particularly vulnerable to various types of corruption. This report examines the systemic problems in local and regional government procurement which create corruption risks, such as weak contracting expertise, the “revolving door” phenomenon, or lack of transparency, and suggests practical steps that local and regional authorities can take to reduce their exposure to such corruption.

In its resolution, the Congress invites local and regional authorities to assess the different corruption risks involved in procurement and set up internal controls and evaluation mechanisms. It calls upon them to enhance transparency by publishing data and procurement details at all stages of the process, in order to encourage public scrutiny and involve civil society.

In its recommendation, it also asks the Committee of Ministers to encourage governments and parliaments of member States to establish national public procurement standards and to introduce e-procurement systems to minimise the amount of human discretion involved.

INTRODUCTION

Public procurement accounts for on average 29% of total government expenditure in OECD countries, although the share spent by local and regional authorities – as opposed to central government or state-owned enterprises – varies considerably across states. It includes spending on major projects, such as new infrastructure, as well as day-to-day procurement of ongoing needs, from road maintenance to office supplies.

Corruption is defined as the abuse of entrusted power (Transparency International). Political corruption occurs when a public office holder breaks the rules associated with his or her job in a way that benefits a company or crony and is induced to do so by the promise of personal or partisan gain. The exchange could be initiated by the public officer holder or by the company.

Corruption can be highly opportunistic, i.e., one-off acts for personal or nepotistic gain; or systemic, e.g., organised by a political party or elite as a way of financing political activities and building loyal supporters (as in clientelism), as well as more private gain. Typically, the level of corruption depends on:

- ▶ the *opportunities* available to public office holders, i.e., how much power and discretion they have to control processes; and
- ▶ the level of *accountability* which constrains their power – i.e., the extent to which others have the power to scrutinise their decisions and actions and hold them in check (Mungiu-Pippidi, 2006).

Public procurement is highly vulnerable to political corruption. This reflects the fact that, by its very nature, public procurement involves a transfer of state resources. These resources are transferred to private-sector or non-profit organisations (or, occasionally, other state-owned agencies), which win contracts to deliver goods, works or services. The public policy aim in public procurement is to select the provider best able to deliver high-quality goods, works or services, and to assure value for money for taxpayers. However, the process is an attractive target for individuals and companies seeking to corruptly distort the process to achieve personal – or partisan – gain.

In public procurement, it is assumed that the best outcomes for the public will be achieved if there is open competition for contracts and decisions about how to allocate contracts are made impartially, on the basis of the best value for money. When corruption occurs in public procurement, it usually involves measures that inhibit open competition or award contracts on the basis of particularistic ties – such as nepotistic or clientelist links to family, kin, or political allies. Corruption in public procurement can also involve outright bribery.

Corruption can also be private-to-private, not involving public officeholders. For example, when bidders form a cartel and collude to manipulate the outcome of a tender, this constitutes a form of corruption. Sometimes, colluding suppliers segment the procurement market for a particular range of goods, and allow each supplier exclusive access to a specific segment, e.g., a region or type of equipment. In other cases, tenders are manipulated such that ‘success’ rotates among cartel members. Suppliers take turns to submit bids over a number of years, with the other suppliers at each tender withholding their bids or

submitting bids at inflated prices, so as to push public officials towards selecting a particular offer. Subsequently, cartel members may subcontract one another for part of the work or share the profits, or simply agree to allow another company to win on the next occasion. This form of corruption need not involve a public-sector actor, although often public officials are bribed to overlook the evidence of such activity.

Corruption in public procurement is likely to lead to poor value for money and sub-optimal outcomes. It may also lead to certain political or social groups gaining unfair political advantages, undermining democracy and processes of democratisation.

Corruption in public procurement also distorts the market economy, since the presence of favouritism in the allocation of contracts means that non-corrupt companies find it difficult to compete, deterring new entrants. This causes long-term damage to the market for particular goods, leading to increased prices and poorer value for money.

Corruption in public procurement can also undermine trust in government and this can be particularly damaging in transition or developing countries that are seeking to build state legitimacy. Scandals centred on malpractice in public procurement are relatively frequent, and have sometimes led to governments being ousted from power.

CORRUPTION IN THE PROCUREMENT PROCESS

The procurement 'life cycle' has four stages: (i) needs assessment; (ii) tender design; (iii) award; and (iv) post-award contract implementation. At each stage, the process is vulnerable to manipulation for corrupt ends.

In the needs assessment phase, the contracting authority assesses its need for goods or services, makes a decision on what to purchase and prepares a budget for the planned purchase. Corrupt individuals might manipulate the system by falsely inflating needs, deliberately skewing cost estimates or making excessive provision for errors.

In the design phase, tender documents are prepared, specifying the requirements, including any conditions regarding quality or safety standards. Corruption can occur if requirements are drafted so as to favour or disadvantage particular suppliers, if unclear selection and award criteria are used, or when non-competitive procedures (e.g., exaggerated emergency) are invoked without proper justification.

During the award phase, a procurement notice is published, bidding documents are issued and proposals are requested. Bidders submit their proposals to the procurement officer, who subsequently evaluates all proposals and decides on the award of the contract. Public officials can corruptly influence the process by drafting evaluation criteria to favour – or emphasise the weaknesses of – a particular supplier, failing to give adequate public notice of the tender (benefiting those with insider knowledge or those who have previously won similar contracts), soliciting offers known to be inferior to a favoured supplier, accepting late proposals or rejecting legitimate proposals, or making biased decisions at the evaluation stage. On the companies' side, bidders can engage in collusion such that they decide among themselves which company will 'win' the bid, and then set their prices accordingly to ensure that particular company's success. They then rotate 'success' among themselves according to their agreement, rigging subsequent bids in the same way.

In the contract implementation phase, the winning bidder must provide the agreed goods and services according to the conditions and timing agreed in the contract. However, the contracting authority – a government department or local municipality – maintains a responsibility to monitor the fulfilment of the contract, an aspect of the process that is often much less tightly controlled. Corruption can arise if favoured sub-contractors are not held accountable or the use of sub-standard goods is overlooked, or if a corrupt company and corrupt supervising official collude to agree on price increases or changes in specifications. Although corruption may only become evident during this stage of contract implementation, it might be the result of collusion at an earlier stage between the public officials and the company.

EVIDENCE AND MEASUREMENT

Identifying instances of corruption in public procurement is very difficult. This partly reflects the fact that those who engage in corrupt acts have an interest in covering it up, because it is illicit and they could be punished if caught, while they often also have the power to conceal their actions or even subvert efforts to make their actions transparent. More profoundly though, this difficulty reflects the complex nature of judgements as to whether apparent irregularities constitute corruption rather than incompetence or inefficiency.

There is certainly evidence that public procurement is widely perceived to be corrupt. A special Eurobarometer survey on business attitudes towards corruption (published in 2014, based on research conducted in February-March 2013) asked specific questions about perceptions of corruption in public

procurement from companies that do and do not engage in bidding for government contracts (Eurobarometer, 2014). Of the companies that had taken part in a public procurement procedure in the previous three years, 35% thought that corruption in regional/local procurement was widespread. Corruption in regional/local procurement was not thought to be more widespread than in national-level procurement.

Of those respondents that had not participated in public procurement in the last three years, 64% thought that corruption was widespread in local/regional public procurement. While this group is arguably less well informed, their perceptions are nevertheless highly relevant, as just the perception that corruption is widespread may be enough to deter some companies from bidding, therefore restricting market access and open competition. Across the EU, 11% of companies said they had decided not to take part in at least one tender because “the deal seemed to be done before the call for tender” (ranging from one-third of companies in Portugal to only 1% in Denmark), while 16% of participants did not take part in a tender because “the criteria seemed to be tailor-made for certain participants” (from 36% in Portugal to 7% in Denmark).

There is considerable variation in perceptions of corruption across sectors. Construction and building, and engineering and electronics were most associated with corrupt contracting. In the construction and building sector, 35% of companies said that they had been prevented from winning a contract because of corruption. Financial services, banking and investment were least associated with corruption, although nonetheless, 18% of companies thought that they had been prevented from winning a contract in these areas by corruption.

Smaller companies perceive corruption to be more widespread than larger companies: of companies with annual turnover of less than 100,000 euros, 48% think they have lost a regional/local procurement contract because of corruption; only 11% of companies with turnover of more than 50 million euros think the same. While perceptions are an imperfect indicator of actual corruption levels, it is plausible that larger companies find it easier to avoid paying bribes, because they have considerable leverage and contracting authorities may wish to engage a prestigious firm. Alternatively, larger companies might be asked to pay bribes less often, perhaps because public officials perceive their controls to be stricter, and hence think that their illicit conduct is more likely to be exposed. However, it is also possible that smaller companies fail to win contracts for acceptable reasons, but nonetheless blame their lack of success on corruption.

Perceptions of corruption also vary widely across countries, even within the EU. In Slovakia, 84% of companies surveyed said that the practice of tailor-made specifications for particular companies was widespread, similar to levels in Greece (81%), Spain and Cyprus (both 80%). Danish companies were the least likely to say that the practice of tailor-made bids was widespread (23%), followed by those in the United Kingdom and Estonia (both 35%).

Such detailed perceptions data is not available for other countries. However, the World Economic Forum Global Competitiveness Report asks a question about how common it is for companies to “make undocumented extra payments or bribes in connection with awarding public contracts and licences”. The possible answers range from 1 (very common) to 7 (never

occurs). On this measure, New Zealand, Finland and Singapore are the least corrupt countries, with scores of 6.5, 6.5 and 6.4 respectively. The worst-scoring European countries are Hungary (2.6), Bosnia and Herzegovina (2.6) and Ukraine (2.4). In Africa, the best-scoring is Rwanda at 5.3, but most African countries score below 4, with Nigeria (1.8) the worst performer. In Asia, most countries score in the 3-5 range, although Bangladesh is 139th out of 140 in the ranking with a score of 1.8. Latin America has a wide range, including some of the most corrupt countries, such as Argentina (1.8), ranked 138th out of 140, and Venezuela (1.7), ranked last in the table.

Recent work by the EU-funded ANTICORRP project has developed a range of indicators of favouritism in public procurement by focusing on certain aspects of the process (e.g., excessive use of procedures which restrict competition to sole bidders or unnecessarily tight specification of requirements) as well as outcomes (e.g., winning bidders have strong political connections or win only in combination with certain other bidders)(Mungiu Pippidi, 2015).

This new methodology for measuring corruption in public procurement does not rely on surveys of perceptions but instead takes advantage of 'big data' and high-level computer processing power (Mihály Fazekas & Kocsis, 2015). The method analyses large datasets of contracting information, including information about the bidding process and the winners and losers of tenders. By analysing this data, it is possible to identify certain 'red flags' that might be indicative of corruption. Analysis of a large number of contracts over several years and across authorities allows scholars to identify patterns related to certain contracting authorities or certain

firms (or cartels). This can inform further investigations to establish whether the patterns are the result of corruption or not. Moreover, the analysis is based on objective data, not on perceptions, and thus promises to be more reliable.

Red flags of potential corruption risk in procurement include tenders with very short deadlines (which tends to advantage insiders with access to greater information), use of non-competitive procedures (paving the way for favouritism), sole bidders (suggesting that other companies are deterred from participating), and high prevalence of very young companies among winning bidders. However, there can also be perfectly acceptable reasons for all of these factors, hence careful analysis is required.

This method is being used to analyse contracting in EU countries in a major EU-funded research project known as Digiwhist, the digital whistleblower. The project compiles and evaluates micro-level data using information from individual public procurement transactions and winning bidders' finance and ownership structures. This data can be linked to information on aggregate asset and income declarations data in order to detect potential conflicts of interest in public procurement, and to identify systemic vulnerabilities in the respective legislations and their implementation (see www.digiwhist.eu).

The increased use of outsourcing and public-private partnerships to deliver public services has blurred traditional boundaries between the public and private sector, which may inhibit accountability (OECD, 2011b). This can create conflicts of interest, for example, with public officials or politicians

using their insider knowledge of procurement plans, or their influence over procurement decisions, to advantage friends, relatives or allies bidding for contracts, or gain future employment for themselves (David-Barrett, 2013).

CORRUPTION IN THE PROCUREMENT OF INFRASTRUCTURE

Problems in the contract implementation phase have been documented particularly in the case of large infrastructure procurement. One analysis of infrastructure concessions in Chile over a 25-year period found that contracts were frequently re-negotiated within very short periods after the initial contract award, and that this almost always led to an increase in costs for contracting authorities and/or a reduction in the investment requirements for winning bidders (Guasch & Straub, 2009). Research on estimates of costs and demand associated with major infrastructure projects spanning 258 projects in 20 countries over five continents, finds that nine out of ten projects have a significant cost over-run (averaging 44.7% in the case of rail projects) and that our ability to forecast costs has not improved over a 70-year period (Flyvbjerg & Molloy, 2011). In similar research on forecasts for demand for infrastructure projects over a 30-year period, they find that benefits are consistently over-estimated and yet costs are under-estimated.

These findings raise questions as to whether the post-contract increases in costs were really unforeseeable. Many of these errors are likely to be explained by incompetence, inefficiency, or the cognitive bias associated with the 'planning fallacy':¹

1. Kahneman and Tversky, 1979.

However, Flyvbjerg and Molloy suggest that the extent of mis-forecasting and lack of improvement over time may be indicative of forecasters and political or bureaucratic agents engaging in “strategic deception” to deliberately mis-represent costs and benefits, and then profit from later readjustments (Flyvbjerg & Molloy, 2011). Contractors might bid low to win a tender and then negotiate variations – including increases in the price or the use of cheaper inputs – across the life of the project, to increase their profit margin. There is a risk that the contracting authority’s procurement team could collude in such a strategy. Strategic deception might be used by public officials or elected members with discretionary power over the public procurement process, or by planners and developers seeking to manipulate tender processes for their own private gain.

Strategic deception need not be driven by bribery. Electoral logic may also encourage elected members to rush through infrastructure spending plans without thorough checks, keen to be associated with a flagship project and aware that any burden of increased award costs might fall on their successors after they themselves have left office.

These risks can be addressed to some extent by designing governance systems that require any new contracts, extensions or major changes to contracts to be approved from supervisory bodies or cross-party groups. Moreover, these procedures should be strictly enforced. Often, where corruption scandals occur, it emerges that such rules have been overlooked.

SYSTEMIC RISKS

Research suggests that a number of systemic problems in local and regional government procurement create corruption

risks, and that these tend to arise across a wide range of contexts, even where public procurement is ostensibly heavily regulated. These are listed below.

Regulatory framework and institutions

Analysis of the regulatory environment can help to identify key risk areas where there is weaker oversight. In EU member states, for example, the tender stage is relatively tightly regulated by the EU Directive on Public Procurement, which determines the types of procedure that must be used for contracts of a certain value, sets out the number of quotes that must be solicited, and ensures the competitive nature of the process in other ways. These regulations create a strong framework for government procurement at local, devolved and central government levels. However, they only apply to contracts that are above the EU threshold for scrutiny. For example, public works contracts above 5,186,000 EUR are subject to the EU Directive and must be published in the Official Journal of the EU. Below these thresholds, contracts are subject to much less scrutiny. Moreover, the threshold itself creates an incentive for contracting authorities to avoid scrutiny by splitting up large contracts into several smaller pieces, each of which falls below the threshold.

Weak contracting expertise

Contracting is complex, and companies are often far better resourced than local and regional governments – able to hire expensive lawyers to help them write their contracts. There is a risk that they will include clauses for corrupt purposes, that will not be identified by public officials, elected members, or audit teams.

Even where good contracting expertise is strong, there is often a disconnect between the specialist procurement department that handles the tender and the government 'client' that uses the service e.g., the IT dept. The responsibility for monitoring the contract and checking performance is often transferred to the client upon contract award, but this creates a 'disconnect' that is likely to impede accountability. There is a risk that the supplier will seek to corrupt the IT department so as to re-negotiate the contract without going back through the procedures required by the procurement department.

The need for contracting expertise and the extent of corruption risks differs depending on what is being procured. For the procurement of commodities that are quite standardised, little expertise is needed and centralised or collective procurement might make sense. However, for the procurement of services or public works, significant expert knowledge may be necessary to draft adequate contracts that protect the public interest. Accountability is likely to be harder to guarantee, and may require considerable local knowledge as well as contracting expertise.

This problem is often exacerbated where local and regional governments have weak financial resources or are under pressure to cut budgets. Contracting expertise can be bought by hiring expert lawyers on a temporary or permanent basis. However, this is expensive, and public sector organizations tend to lack funds to do so – or be unwilling to spend them on such back-office functions, for fear that they will be criticized for paying high salaries to staff or consultants. High staff turnover and a lack of project management expertise also lead to weaknesses in personal responsibility and accountability for major projects.

Accountability for outsourced services

It is increasingly common practice for local and regional authorities to outsource the delivery of public services, often motivated by a wish to increase efficiency. This can lead to reduced accountability over the delivery of those services and as such might increase corruption risks.

Outsourcing need not affect accountability or lead to increased corruption risks. In theory, when local government outsources services, it should retain responsibility for monitoring contractors. However, in practice, local government is often ill equipped to fulfil this function. To do so, it would need to retain expertise on the service, but the very pressures that led it to outsource in the first place mean that it is unlikely to maintain in-house expertise.

In addition, the public's ability to hold service providers to account is often greatly reduced once services are outsourced. It can be difficult to access information from private providers, because of commercial confidentiality laws. Even where countries have Freedom of Information laws, they often do not apply to private contractors that provide public services. Transparency requirements may also need to be tailored to specific sectors. There may be good reasons for limiting transparency in a few areas, but these should not be allowed to determine the standard across the range of government procurement.

The “revolving door”

A related problem is the ‘revolving door’, that is, the movement of personnel from jobs in local government to jobs

with private companies that bid for government contracts. Particularly given the increase in outsourcing, it is not unusual for local authority staff to be hired by contractors that bid for government contracts. This creates a risk that civil servants – or, in the case of local authorities, elected members – might abuse their access to insider information or their ability to shape policy or contracts whilst in office, in order to create opportunities for themselves, their friends, or for private-sector companies with which they will later seek employment.

There are several different types of conflict of interest that may arise related to ‘post-public employment’.

An individual might use his or her power while in office to shape a policy or contracting decision (e.g., a policy to outsource delivery of a particular service, or a decision to buy a certain type of goods or use a particular provider) in favour of a certain company, with a view to ingratiating himself or herself with that company and thus opening up a path to future employment. This would almost certainly constitute an abuse of office.

Research in the United States has found that such effects are quite common – that is, whilst in office, some officials allocate contracts on favourable terms to companies that later reward them with jobs. One of the most prominent legal cases against a public employee was also of this type: a US official from the Department for Defense, with responsibility for procurement, favoured Boeing in a contracting decision. The resulting contract was highly favourable to the company, at the expense of the state and the public interest. The official was subsequently hired by the defense contractor, but her misconduct was exposed and she was prosecuted.

A different offence, undue influence, may occur if a former official now employed by a company influences her former associates to make a decision in a way that favours her new employer. In this case, she would be exercising undue influence, and the judgement of her former colleagues would be impaired.

Another type of conflict occurs if an individual profits from public office by drawing on knowledge or stature derived from his or her public role in order to profit financially. This profiteering could occur while an official is still in public office or after they have left it. This is sometimes related to the phenomenon of 'switching sides', whereby an individual leaves public office to take up employment with a private-sector organisation in a role that requires him or her to oppose the government's position on an issue where he or she had previously represented the government. It can be regarded as problematic because the individual may have had access to privileged information in government, which could now be used to frustrate the government's aim.

Movement from public to private roles can be legitimate and can bring many benefits, but there is a need to regulate it carefully to avoid conflicts of interest.

Informal power networks

A considerable body of anecdotal evidence, as well as analysis of scandals that have come to light, suggests that corruption flourishes where an individual or group has excessive informal power over a particular local government organisation. This informal power can derive from formal power. For example, where one political party has dominated a local government

for a number of years, individuals build up patronage powers and connections which allow them to exert informal power over how resources are allocated. Alternatively, informal power may derive from a particular leader's personality traits. Sometimes individuals are able to dominate their colleagues or staff junior to them, so as to persuade them to be complicit in corruption or to overlook irregularities, through charisma or bullying. In such cases, the result is that accountability is weakened, and corruption risks increase.

This issue is difficult to research and to quantify. However, there is some evidence that corruption and mismanagement in public procurement in local authorities may be more prevalent where an incumbent political party is dominant and/or has not been challenged for many years. This relationship between one-party dominance and corruption in procurement warrants more systematic research.

POLICY RECOMMENDATIONS

To reduce their vulnerability to corruption risk, local and regional authorities could take a number of steps.

Institutions and oversight

In some cases, relatively simple reforms of reporting lines have dramatic effects on the structure of procurement. Research in Colombia and Serbia has studied the introduction of a rule whereby contracting authorities had to seek permission from a higher authority before using restricted procedures for contracting. In both cases, this led to a dramatic reduction in the use of restricted procedures.

An important element of a formal institutional oversight framework is an ombudsman or public procurement office, i.e., an independent body to which the public can go to report suspicions or make complaints. Very often, complaints are made by unsuccessful bidders, as these companies may be in a good position to assess whether a tender was awarded fairly or to spot irregularities in the process. On the other hand, complaints by unsuccessful bidders sometimes represent foul play, designed to unfairly block a competitor from winning a contract or making progress on its completion. An independent body to investigate such complaints is key.

Auditors play a critical role in ensuring the integrity of government contracting – both internal audit within contracting authorities, and external audit institutions, which tend to be independent. Arrangements vary considerably across countries, but this tends to be an area where resources are cut at times of financial austerity, exacerbating corruption risks. It is extremely important that an independent audit function is maintained, so that the institutions that check local government are not also dependent on local government for renewal of their contracts. Audit functions should be equipped with relevant expertise, and protected from austerity cuts. They need to have the authority and independence to challenge their colleagues without fear of retribution.

Transparency and open data

Increased transparency over public procurement is essential. With new technology, it is possible to open up and publish contract data to great detail. This not only allows greater scrutiny – by the public but also by other parts of government – but it

also has a preventive effect, because officials think twice about manipulating the contracting process if they know that the details will be revealed. A number of countries have achieved increased competition and reduced prices by introducing open contracting systems, whereby many details of the procurement process are made available openly. The case of Slovakia's success in this regard is particularly well documented (e.g., see Sunlight Foundation, 2013). In addition, research confirms that transparency in the bidding process results in price savings by increasing the number and composition of bidders and the occurrence of non-local bidders (Lewis-Faupel et al, 2014).

Ensuring transparency over public procurement requires contracting authorities to set up apparatus for automatically collecting and publishing data about contracting procedures in machine-readable formats. If the right data is not collected, or data is not published in machine-readable form, it is very difficult to take advantage of new analysis techniques which harness large-scale computing power to process high numbers of contracts. In addition, this requires contracting authorities to cooperate in collecting and publishing accurate data. In some cases, data is made available, but the quality of inputs is weak, such that many values are missing. This frustrates analysis, not least because it is unclear whether data has been omitted on purpose in an effort to avoid scrutiny, or simply reflects a lack of attention to detail. Contracting authorities that are keen to open up their data need to invest time in designing institutions to ensure that data provided is useable (Mihály Fazekas & Dávid-Barrett, 2015).

Transparency requirements should extend to private contractors that provide outsourced services. Companies may object

that such rules compromise commercial confidentiality. However, given that public money is being spent, it is advisable to seek maximum transparency where possible.

One possible perverse consequence of requiring transparent bidding is that it can facilitate collusion among bidders by making it easier for cartel members to monitor the behaviour of their collaborators in collusive agreements. Such collusion may lead to the public paying an inflated price for goods or services just as if a firm had paid a bribe to secure a contract.

Transparency about contracts has also been exploited by fraudsters seeking to impersonate service providers and divert funds to themselves. Overall, the benefits of transparency almost certainly outweigh the additional risks that it creates, but efforts should be made to reduce vulnerability to such risks.

E-procurement

Some contracting authorities have had great success in reducing corruption in public procurement by introducing 'e-procurement' systems, which minimise the amount of human discretion in the process. E-procurement uses standardised and automated procedures for as many of the transactional elements as possible. For example, tender announcements are published on a publicly accessible website, and tender documents are made available for download. Company documents such as proofs of registration or references relating to prior experience can be stored online. In 'e-submission', tenders are officially submitted to contracting authorities through a purpose-built IT system, from which tenders are later opened.

E-procurement makes it easy – and usually cheap – to access documents. Once contractors have learned how to use the system, this can save time and resources, and thus enhance competition. It also helps companies to avoid errors that might disqualify them from a bid. In addition, e-procurement systems collect all of the relevant information in one place, avoiding duplication and facilitating systematic audits. On the other hand, e-procurement can also make for rigid systems which find it difficult to accommodate atypical cases (Mihaly Fazekas & Blum, 2016).

While there is a paucity of evidence on the effectiveness of e-procurement systems in reducing corruption risk, the research that has been conducted indicates that the introduction of e-procurement can lead to an increase in the number of bidders, prevalence of non-local winners and quality of contract implementation (Lewis-Faupel et al 2014) and, in some cases, reduced prices (Singer, Konstantinidis, Roubik, & Beffermann, 2009). Government reports from Brazil, Mexico and Romania claim that e-procurement has achieved cost savings in the order of 20% (Auriol, 2006).

However, it should be noted that effects derived from improving market access only emerge if market actors exist and are able to take advantage of new opportunities. Where corruption in contracting has been systemic, it may be difficult to convince companies to trust in a reformed system and hence benefits may occur only in the medium term. For this reason, procurement reforms should be accompanied by measures to build capacity and confidence among prospective bidders; this has, for example, been a key component of successful procurement reform in Ukraine under the ProZorro programme.

Professional capacity

Local government needs highly trained and empowered professionals who can carry out complex contracting in ways that look out for and protect the public interest. There should be requirements for those involved in contracting to undertake regular training in procedures to augment their expertise. However, such training should be widely accessible; otherwise, there is a risk that access to training or licences to conduct procurement can become a source of corruption itself.

Ensure that contracting professionals continue to monitor contracts even after they are awarded, rather than passing on this role to purchasing departments. Effective post-award implementation may also require specialist expertise in the case of complex works and services.

Public integrity rules and training

Politicians and officials with oversight of procurement should receive training in the ethical risks associated with their conduct (Committee on Standards in Public Life, 2014). Codes of conduct and employee contracts should include sections that outline individual responsibilities on ensuring integrity in contracting. Codes relating to specific risks, such as gifts and rewards, may help to avoid conflicts of interest – e.g., see this example from Sweden (IMM Sweden, 2014). Training in the ethical aspects of this work should be conducted as part of induction programmes and repeated frequently, for research suggests that such training is most effective when it is repeated regularly (Local Government Association, 2014; Deloitte and Kolb, 2008). The provision of a hotline or

similar service for whistleblowers is also important, to allow employees to raise concerns about possible integrity breaches.

Contractors that provide public services should be included in ethics training. Advice on the particular ethical dilemmas faced by this group is available (Beckett, Bukowski, Halliday, & Talebi, 2014).

Local authorities should have clear rules about what constitutes a conflict of interest for officers and elected members involved in procurement in any way, even in oversight roles. Such rules need not ban conflicts, but should at least require disclosure of conflicts and recusal from decision-making processes where appropriate. Such rules should be supported by registers of interests or asset declarations, which officers and elected members should be required to complete. Registers should either be publicly available, or should be submitted to a body that has powers to check them, while asset declarations are most effective if mandatory and monitored for accuracy against other databases, as in Romania (OECD, 2011a).

Regulation of post-public employment (the revolving door) must seek to achieve a balance between reducing the risk of conflicts of interest and allowing sufficient freedom to individuals so as not to damage the appeal of public office roles. Even the appearance of impropriety can damage public confidence in governing authorities (David-Barrett, 2011).

Collective action

An integrity pact is a voluntary agreement between a government agency and the bidders entering into a procurement contract, where both sides agree to refrain from corrupt

practices. If bidders violate the pact, this leads to sanctions – they could be blacklisted, placed under investigation or have their contracts cancelled. Compliance with the pact is monitored by civil society actors, who also arbitrate disputes. The first Integrity Pact was implemented in Ecuador for a refinery project in 1994. Since then, they have been tried in many countries, and are particularly promoted by international anti-corruption NGO Transparency International (TI). TI has collaborated with government agencies to implement IPs in the public contracts of more than 30 countries including Germany and Hungary.

More broadly, governments, companies and civil society organisations sometimes engage in collective action initiatives to prevent corruption in contracting. In Sweden, for example, construction companies have been instrumental in setting up a Joint Initiative to Prevent Bribery and Corruption which governs the manner in which parties in the construction and real estate sector should interact, based on an ethical approach. The initiative provides guidelines on a number of areas that are liable to corruption risks, including business entertainment, sponsorship and partnering. Moreover, the guidance includes a number of hypothetical scenarios to help personnel in contracting authorities think through potential conflicts that might arise (IMM Sweden, 2016).

REFERENCES

Auriol, E. (2006). Corruption in procurement and public purchase. *International Journal of Industrial Organization*, 24(5), 867–885. <https://doi.org/10.1016/j.ijindorg.2005.11.001>

Beckett, A., Bukowski, G., Halliday, R., & Talebi, M. (2014). *Ethical Standards for Providers of Public Services*.

Committee on Standards in Public Life. 2014. Ethics in Practice: Promoting Ethical Standards in Public Life. Available here <https://www.gov.uk/government/publications/ethics-in-practice-promoting-ethical-standards-in-public-life>

David-Barrett, E. (2011). *Cabs for Hire? The Revolving Door Between Government and Business*.

David-Barrett, E. (2013). *Corruption in UK Local Government*. Transparency International UK.

Delois A. Frisque and Judith A. Kolb. 2008. The Effects of an Ethics Training Programme on Attitude, Knowledge, and Training of Office Professionals: A Treatment and Control Group Design. *Human Resource Development Quarterly*, 19

Eurobarometer. (2014). *BUSINESSES ' ATTITUDES TOWARDS CORRUPTION IN THE EU Directorate-General for Home Affairs*.

Fazekas, M., & Blum, J. R. (2016). *Improving public procurement outcomes: review of tools and the state of the evidence base*. Internal World Bank document.

Fazekas, M., & David-Barrett, E. (2015). *Corruption Risks in UK Public Procurement and New Anti- Corruption Tools*.

Fazekas, M., & Kocsis, G. (2015). *Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Government Contracting Data* (GTI Working Papers No. GTI-WP/2015:02). Budapest.

Flyvbjerg, B., & Molloy, E. (2011). Delusion, deception and corruption in major infrastructure projects: Causes, consequences and cures. In S. Rose-Ackerman & T. Soreide (Eds.), *The International Handbook on the Economics of Corruption* (Volume Two, pp. 81–107). Cheltenham, UK: Edward Elgar Publishing.

Guasch, J. L., & Straub, S. (2009). Corruption and concession renegotiations: Evidence from the water and transport sectors in Latin America. *Utilities Policy*, 17(2), 185–190.

IMM Sweden. (2014). *Code on Gifts, Rewards and other Benefits in Business*.

IMM Sweden. (2016). Joint Initiative to Prevent Bribery and Corruption.

Lewis-Faupel, Sean, et al. Can electronic procurement improve infrastructure provision? evidence from public works in india and indonesia. No. w20344. National Bureau of Economic Research, 2014.

Local Government Association. (2014) Councillors' guide: A guide for new councilors, Local Government Association. http://www.local.gov.uk/publications/-/journal_content/56/10180/6202054/PUBLICATION.

Mungiu-Pippidi, A. (2015). *Government Favouritism in Europe*. Barbara Budrich Publishers.

Mungiu, A. (2006). Corruption: Diagnosis and Treatment. *Journal of Democracy*. <https://doi.org/10.1353/jod.2006.0050>

National Fraud Authority. (2011). *Procurement Fraud in the Public Sector*.

OECD. (2011a). Asset Declarations for Public Officials. A Tool to Prevent Corruption.

OECD. (2011b). Government outsourcing. *Government at a Glance 2011*.

Singer, M., Konstantinidis, G., Roubik, E., & Beffermann, E. (2009). Does e-procurement save the state money? *Journal of Public Procurement*, 9(1), 58–78.

Sunlight Foundation. (2013). Transparency Case Study: Public Procurement in the Slovak Republic. <https://sunlightfoundation.com/2013/08/12/case-study-public-procurement-in-the-slovak-republic/>

Resolution 421 (2017)

**Making public procurement transparent
at local and regional levels**

Debated and adopted by the Congress
on 19 October 2017

1. In its many forms, corruption poses a major threat to governance and democracy in Europe and undermines the confidence of citizens in democratic institutions. Its prevalence affects citizens, governments and business alike, increasing unpredictability and impeding new investments. With this in mind, at its 31st session, the Congress of Local and Regional Authorities adopted a Roadmap of activities for preventing corruption and promoting public ethics at local and regional levels. This Roadmap includes the preparation of thematic reports, including on transparency in public procurement.

2. As public procurement is an essential part of public service provision for local and regional authorities, efficient procurement is key to good governance. However, as procurement involves a large proportion of public expenditure and, to an increasing extent, the transfer of public resources to the private sector or non-profit organisations, it is particularly vulnerable to various types of corruption.

3. Corruption in the procurement process takes many forms, including the allocation of government contracts to friends or political cronies at the expense of a transparent and competitive process or the formation of cartels to manipulate the tendering process.

4. The increased use of outsourcing and public-private partnerships to deliver public services can create conflicts of interest in public procurements. Public officials or politicians might use their insider knowledge of procurement plans, or their influence over procurement decisions, to benefit friends, relatives or allies bidding for contracts. Another significant source of corruption is the revolving door phenomenon,

which consists of movements of personnel from jobs in local government to jobs in the private sector, often to companies involved in local government procurement. Civil servants can take advantage from their insider information or shape policy contracts while they are in office in order to benefit from it later when they work for a private contractor, or create other opportunities for themselves or friends.

5. Various risks are involved all along the procurement process: from the needs assessment phase to the implementation phase. In the needs assessment phase, an individual might inflate the needs, hence impacting the whole competition process, or make excessive provision costs for errors. In the design phase the risks are related to the drafting of the requirements or the unclear selection details. In the award phase, the corrupted official could insist on weaknesses of a particular supplier and on the supposed advantages of the others. Finally, in the implementation phase, the risks concerning the monitoring of the contractor could lead to deficient quality or increasing costs, signifying a waste of public funding.

6. As procurement processes become increasingly complex, local authorities can also be at risk from a lack of adequate contracting expertise among their staff. This puts them at a disadvantage compared to companies, which often have more resources to spend on legal expertise. Local and regional government staff are often ill-prepared to carry out complex contracting procedures and to monitor their application.

7. There are a number of practical steps that local and regional authorities can take to reduce their exposure to such corruption, beginning with transparency. Transparency in all

stages of the procurement process is essential to reduce corruption risks and to enhance public trust in local and regional administrations.

8. The move to e-procurement systems has been demonstrated to have had a significant effect on reducing corruption risks in this sphere.

9. The establishment of codes of conduct, such as a prohibition on accepting rewards, gifts and other benefits, connected with integrity training programmes for local and regional elected representatives and appointed officials has also been shown to be useful in avoiding the risks of conflicts of interest in public procurements.

10. Corruption in public procurement is often revealed by reporting by insiders. These whistleblowers can face reprisals and therefore need to be adequately protected.

11. In light of the above, the Congress invites local and regional authorities of the member States of the Council of Europe to:

- a. assess the different corruption risks involved in procurement and set up internal controls and evaluation mechanisms;
- b. enhance transparency by publishing data and procurement details at all stages of the process, in order to encourage public scrutiny and involve civil society;
- c. ensure that transparency requirements apply also to private contractors which provide outsourced services;

- d. simplify the procedures for public procurement in order to make them accessible and clear for all parties concerned;
- e. introduce e-procurement systems for public procurement, whereby tender announcements and tender documents are published on a publicly accessible website and tenders are submitted through purpose-built IT systems;
- f. promote integrity pacts between contracting authorities and bidders, where the two parties agree on refraining from corrupt practices and submit to monitoring by civil society;
- g. encourage the training of local public officers to carry out complex contracting and perform audit functions;
- h. promote the emergence of an anti-fraud culture through education on risks and identification and prevention of fraud;
- i. define reporting procedures which ensure that reports are treated confidentially and that a person cannot be harmed for reporting suspicions of wrong-doing;
- j. introduce safeguards to prevent conflicts of interest in the procurement process, such as codes of conduct for all those involved in the procurement process, to make clear the ethical standards expected of them. These would include, for example, a prohibition on accepting rewards, gifts and other benefits;
- k. design training programmes for the implementation of these codes;

- l.* consider introducing and regularly evaluating existing enforcement mechanisms, such as disciplinary proceedings and sanctions to reinforce the application of these codes.
12. The Congress resolves to take the above considerations and recommendations into account in its revision of the European Code of Conduct for the political integrity of local and regional elected representatives.

Recommendation 405 (2017)

**Making public procurement transparent
at local and regional levels**

Debated and adopted by the Congress
on 19 October 2017

1. In its many forms, corruption poses a major threat to governance and democracy in Europe and undermines the confidence of citizens in democratic institutions. Its prevalence affects citizens, governments and business alike, increasing unpredictability and impeding new investments. With this in mind, at its 31st session, the Congress of Local and Regional Authorities adopted a Roadmap of activities for preventing corruption and promoting public ethics at local and regional levels. This Roadmap includes the preparation of thematic reports, including on transparency in public procurement.
2. Public procurement lies at the heart of public service provision for local and regional governments. At the same time it can be particularly vulnerable to corruption, as it involves the transfer of public resources to the private sector or to non-profit organisations.
3. An essential part of good governance is therefore to ensure clean and efficient procurement, which, as an important area of public expenditure, carries significant risks of corruption.
4. Maximum transparency in all stages of the procurement cycle is the key principle for reducing the risks of corruption in procurement and maintaining public trust in local and regional administrations.
5. Public procurement tends to be vulnerable to corruption, particularly as it involves the transfer of public resources to the private sector or to non-profit organisations.
6. Corruption in the procurement process can take many forms, such as the allocation of government contracts to

friends or political cronies at the expense of a transparent and competitive process, or the revolving door phenomenon, where civil servants benefit from their insider information or shape policy contracts while they are in office in order to benefit from it later when they work for a private contractor, or create other opportunities for themselves or friends.

7. Risks are present at all stages of the procurement process: in the needs assessment phase, an individual might inflate the needs, hence impacting the whole competition process, or make excessive provision costs for errors. In the design phase the risks are related to the drafting of the requirements or the unclear selection details; in the award phase, a corrupt official could insist on weaknesses of a particular supplier and on the supposed advantages of the others; in the implementation phase, the risks concerning the monitoring of the contractor could lead to deficient quality or increasing costs, signifying a waste of public funding.

8. Many local authorities are also at risk on account of the lack of contracting expertise among their staff, which makes the assessment of public procurement difficult. The staff involved in procurement processes sometimes lacks the competence to carry out complex contracting procedures and to monitor their application.

9. An effective tool in fighting corruption in public procurement is the information supplied by those with inside knowledge of the processes. These whistleblowers need to be protected. They face a real risk of reprisals and intimidating pressures which can be particularly daunting at local level.

10. In the light of these considerations, the Congress invites the Committee of Ministers to encourage the governments and parliaments of member States and, where applicable, regions with legislative powers, to:

- a. establish national standards regarding public procurement, in order to make the process more transparent and easier to understand;
- b. introduce e-procurement systems to minimise the amount of human discretion in the process, using standardised norms and procedures for communication and online tools;
- c. ensure maximum transparency at all stages of the procurement cycle by publishing comprehensive and machine-readable data from the beginning of the procurement process;
- d. ensure a common level of training and/or professional qualification for staff responsible for procurement processes;
- e. establish a common set of indicators at national level to facilitate analysis of the risk of favouritism in procurement processes;
- f. establish an independent body to investigate complaints;
- g. regulate and track employment movements from public to private sectors to lower the risk of conflicts of interest through the “revolving door” process;
- h. set up an anonymous whistleblower hotline in order to facilitate the reporting of malpractice and to ensure the protection of those who report such information.

The public procurement process involves significant expenditure and an increasing transfer of public resources to the private sector. The risks of corruption, due to lack of procurement expertise, lack of transparency and the revolving door phenomenon are real.

The Congress of Local and Regional Authorities of the Council of Europe suggests practical steps that local and regional authorities can take to reduce their exposure to such corruption.

The establishment of internal controls, the constant use of evaluation mechanisms, the strengthening of transparency, the introduction of national standards and the systematic use of online public procurement are some of the approaches encouraged by the Congress in this small booklet for local elected officials and citizens.

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. The Congress of Local and Regional Authorities is an institution of the Council of Europe, responsible for strengthening local and regional democracy in its 47 member states. Composed of two chambers – the Chamber of Local Authorities and the Chamber of Regions – and three committees, it brings together 648 elected officials representing more than 200 000 local and regional authorities.