

INTOSAI



Guideline
for the Audit of
Corruption Prevention
in Public Procurement

2022

INTOSAI



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**Quality Assurance Certificate of the Chair of the INTOSAI Working Group
on Fight Against Corruption and Money Laundering (WGFACML)**

This is to certify that the *Guideline for the Audit of Corruption Prevention in Public Procurement* which is placed at level **two (2)** of Quality Assurance as defined in the paper on "Quality Assurance on Public goods developed outside Due Process" approved by the INTOSAI Governing Board in November 2017 has been developed by following the Quality Assurance processes as detailed below:

(i) The project proposal was developed by the WGFACML Subgroup in consultation with INTOSAI WGFACML members;

(ii) The WGFACML Subgroup has consulted with key experts in the field and has sought clarification on key issues as well as consulted with relevant government agencies in the subgroup member countries;

(iii) The best practices established by German, Austrian and Polish SAIs to develop quality written products have been followed and best practices in identifying and reviewing the relevant academic and industry literature have been applied;

(iv) The exposure draft was circulated to all the members of the WGFACML who had enough time to respond;

(v) The WGFACML members' opinions were duly considered while finalizing the Guideline;

(vi) The exposure draft was exposed for 45 days from April 14th, 2022 to May 29th, 2022 for comments of the INTOSAI Community ;

(vii) The comments received were duly considered while finalizing the Guideline.

The product developed is consistent with relevant INTOSAI Principles and Standards. The structure of the product is in line with the drafting convention of non-IFPP documents.

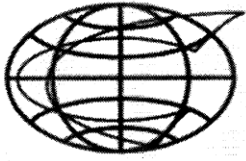
The product is valid till **2027** and if it is not reviewed and updated by **31 December 2027**, it will cease to be a public good of INTOSAI developed outside the Due Process.

Cairo , September 2022.

President of the Accountability State Authority of Egypt

Councillor/ Hesham Badawy

**Chair of the Working Group on Fight Against Corruption and Money Laundering
(WGFACML)**



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**Quality Assurance Certificate of the Chair of the Knowledge Sharing and
Knowledge Services Committee**

Based on the assurance provided by the **INTOSAI Working Group on Fight against Corruption and Money Laundering (WGFACML)** and the assessment by the Goal Chair, it is certified that the **Guideline for the Audit of Corruption Prevention in Public Procurement** which is placed at level **2 (two)** of Quality Assurance as defined in the paper on "Quality Assurance on public goods developed outside Due Process" approved by the INTOSAI Governing Board in November 2017, has been developed by following the Quality Assurance processes as detailed in the Quality Assurance Certificate given by the Working Group Chair.

The product is valid till **31 December 2027** and if it is not reviewed and updated by **31 December 2027**, it will cease to be a public good of INTOSAI developed outside the Due Process.

Girish Chandra Murmu
Chair of Knowledge Sharing and
Knowledge Services Committee

Table of contents

1 Introduction - Scope of the ISSAI	5
1.1 The Fundament – Guideline for the Audit of Corruption Prevention (GUID 5270)	6
1.2 Additional – Guidance	8
2 Corruption in Public Procurement	9
2.1 Definition of corruption	9
2.2 Types of Corruption	10
2.3 Typical Risks, Factors and Impacts of Corruption in public procurement	12
3 Public Procurement	16
3.1 Definition	16
3.2 Principles	16
3.3 Types of Award Procedure	19
3.4 Stages of public procurement	21
3.5 Public procurement in times of crisis	24
4 Organisational Prerequisites/requirements for corruption prevention	26
4.1 Management of the Procurement Function	26
4.2 Supporting instruments and tools	28
5 Corruption Prevention in simplified procurement processes	30
6 Corruption Prevention in Tender Procurement Process	35
6.1 Pre-tendering Phase	35
6.1.1 Needs Assessment	35
6.1.2 Planning and Budgeting	38
6.1.3 Specification and Requirement	39

6.1.4 Choice of Procurement procedure	41
6.2 Tendering Phase	43
6.2.1 Request for proposal	44
6.2.2 Bid submission	46
6.2.3 Bid evaluation	49
6.2.4 Negotiations	52
6.2.5 Contract award	56
6.3 Post-award Phase	59
6.3.1 Contract management stage	60
6.3.2 Order and Payment stage	64
6.3.3 Evaluation	67
7 Conclusion	69
8 Annex	70

1 Introduction - Scope of the ISSAI

This ISSAI Guideline provides supportive guidance in relation to GUID 5270 - *Guideline for the Audit of Corruption Prevention*¹ - based on the fundamental principles of public-sector auditing and does not contain any further requirements for the conducting of audits.

In addition, in the annex of the Guideline there will be a list of the most important international documents, for example INTOSAI GUID 5260 - *Governance of Public Assets*².

Basically the concepts of corruption and governance are linked: where there is poor governance, there are greater incentives and an increased likelihood of corruption. Thus, the promotion of good governance helps combat corruption. Good governance complements efforts that target corruption more directly, such as raising public awareness and strengthening the enforcement of anti-corruption legislation. There is also a reverse link: Corruption undermines governance to the extent that it distorts policy decisions and their implementation and decreases the level of public trust.

This Guideline is intended to support public auditors controlling public procurement contracts or the individual public procurement policy of an entity (e.g. a ministry). As we all recently learned, times of a systemic crisis impacting every sector of public policies need special awareness by public auditors. Urgent and large scale public procurement can lead to lower essential requirements in public procurement. Public auditors must consider how public procurement can avoid a general collapse in the standards of public procurement. At the same time, it must be accepted that the standards of public procurement will be reduced in emergency situations.

One lesson learned from the COVID 19-pandemic, with time pressure, health service shortages and less competition between public buyers, is that we need to better prepare for global challenges. In anticipation of this situation every public entity (and every government) should add in its business continuity plan a special chapter about a "fail soft system" of public procurement. The aim of a "failsoft system" is to warrant minimum

¹ <https://www.issai.org/pronouncements/guid-5270-guideline-for-the-audit-of-corruption-prevention/> [access: 01.12.2021].

² <https://www.issai.org/wp-content/uploads/2019/08/GUID-5260-Governance-of-Public-Assets.pdf> [access: 01.12.2021].

standards and minimum internal controls in public procurement. These minimum standards have to be adapted to the type of crisis - a worldwide pandemic is not comparable to a worldwide strike in transportation or a natural disaster. A special chapter of this Guideline deals with the particular challenges of public procurement in times of crisis (3.5 Public procurement in times of a crisis).

The membership of the Sub Group comprises the representatives from Supreme Audit Institutions (SAIs) of ten countries: Austria, Czech Republic, France, Iraq, Malaysia, Namibia, Oman, Thailand, Pakistan and Poland.

1.1 The Fundament – Guideline for the Audit of Corruption Prevention (GUID 5270)

Corruption is one of the most dangerous threats to stability and peace. Among others, the SAIs have a major responsibility in the fight against this threat. Already at the XVI INCOSAI in Uruguay in 1998, the participating SAIs agreed on the necessity of close cooperation and on an appropriate exchange of information for this task.

To support the SAI auditors in preparing and conducting the audit of anti-corruption policies and procedures in government organizations within the scope of their mandate, the GUID 5270 - Guideline for the Audit of Corruption Prevention – is approved. The Guideline provides general information about the phenomenon of corruption, like costs or causes of corruption and has identified the following seven key components for an effective fight against (and prevention of) corruption, that are described in GUID 5270 in detail:

Table 1: Content of GUID 5270

Key Element	Main Statement	GUID 5270 Chapter
Anti-Corruption Organizational Culture	The “Tone from the Top” or the role model function and full commitment of the management is essential for an effective corruption prevention. The whole organization must demonstrate a commitment to integrity and ethical values.	2.1
Objectives/Strategy	Derived from a mission statement or vision, the management of an organization has to define	2.2

	<p>long-term organizational objectives or priorities. These objectives have to be consistent with the overall strategy of the organization and must fit the legal and budgetary framework.</p>	
Organizational Responsibility for Corruption Prevention	<p>Within an organization the responsibility for the task of corruption prevention has to be clearly defined. The responsible person/unit must have the competence and the resources to fulfil the task according to the strategic objectives.</p>	2.3
Risk Management	<p>In all government organizations, at regular intervals measures shall be carried out to identify areas of activity especially vulnerable to corruption and as warranted by circumstances. This task may either be performed by external or internal organization. The use of risk analyses shall be considered for this purpose.</p>	2.4
Modules of Corruption Prevention (Anti-Corruption Program)	<p>Based on the results of an entity's risk assessment, the organization should develop and document a strategy for fighting corruption; including identifying specific control objectives and developing and implementing appropriate measures and specific control activities to prevent corruption.</p> <p>A comprehensive and reasonable anti-corruption programme has to be integrated into the overall organizational structure. This programme must focus on three elements: Prevention – Detection – Reaction.</p>	2.5
Communication and Reporting	<p>An effective internal and external communication about activities and measures for the prevention of corruption is essential. This includes i. a. reporting to the supervisory body or the parliament or regular information for the employees.</p>	2.6

Monitoring and Modification	Even if the corruption prevention system is adequate and there are no serious corrupt or anti-integrity cases, the entities have to remain alert and establish continuous monitoring activities. The results of monitoring and evaluations should be used to improve the design and implementation of corruption risk management activities.	2.7
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The GUID 5270 may also be used by auditees as guidance for implementing and carrying out their own anti-corruption-activities following this multi-component approach.

By providing information about anti-corruption measures like basic requirements, examples and overall guidance, the anti-corruption endeavours of the auditees should be supported and strengthened by the INTOSAI community. Therefore this Guideline is intended to underline the important educational and preventive role of SAIs in the fight against corruption.

1.2 Additional – Guidance

Already during the drafting of ISSAI 5700 the participating SAIs agreed that besides the general approach of ISSAI 5700, special guidelines are needed dealing with specific vulnerable areas to corruption³. These guidelines should base on the principal elements and seven key components of the relabeled GUID 5270, but should address deeper and more specific information on certain topics for a more effective fight against corruption. This specific guideline is dealing with corruption prevention in the field of public procurement.

For 2000 to 2008, the Economic Commission for Africa estimates illicit financial flows from Africa at 242 US\$⁴. Worldwide, more than US\$ 9,5trillions⁵ are being spent by governments for public procurement every year. In OECD countries, the volume of public procurement

³ E.g. at the XVI INCOSAI in Uruguay in 1998 following areas of government were named as particularly vulnerable to corruption: Collection of taxes and other sources of revenue; administration for procurement and contracts; concession of subsidies, permits, and licenses; customs; and privatization process.

⁴ United Nations Economic Commission for Africa; African Governance Report IV 2016.

⁵ Transparency International, Curbing Corruptions in Public Procurement – A practical guide: <https://www.transparency.org/en/publications/curbing-corruption-in-public-procurement-a-practical-guide> [access: 01.12.2021].

summarized up to 12% of GDP and 29% of general government expenditure in 2013⁶. In the Member States of the European Union, it is calculated, that around €120 billions are lost to corruption every year, nearly the annual budget of the EU. The European Commission identified corruption in public procurement as one major factor in this concern⁷. The process of procurement is often complicated and together with this big stake of money involved, it creates a lot of opportunities and temptation for improper actions.

Large scale transnational corruption relies on sophisticated techniques to disguise the origins and destinations of illicit financial flows. According to Global Financial Integrity, transnational corruption worldwide is valued at an average of €1.3 trillion to €1.8 trillion annually.

A relatively stable political environment makes the EU an attractive destination for laundering the proceeds of crime. Research suggests that illicit activities in the EU generated about €110 billion in 2010 – or around 1% of the EU's GDP. Meanwhile, the EU loses up to €1 trillion each year in tax evasion and tax fraud, according to the European Commission. Not only does this constitute a threat to European financial stability, it also diverts money from the public purse, erodes services and undermines trust in institutions.⁸

The purpose of this Guideline is to present ideas of corruption prevention in the complex process of public procurement. With that support it should support auditors to prepare and conduct audits in that field. Therefore, the Guideline will give a brief survey about the process of public procurement, provide information about typical risks and red flags and in particular, share examples and best practices for corruption prevention.

2 Corruption in Public Procurement

2.1 Definition of corruption

One can state that there is no single, worldwide universally accepted definition of corruption. For example, the United Nations Convention Against Corruption (UNCAC)⁹

⁶ OECD, Preventing Corruption in Public Procurement:

<http://www.oecd.org/governance/ethics/Corruption-in-Public-Procurement-Brochure.pdf> [access: 01.12.2021]

⁷ European Commission, Anti-Corruption Report 2014: https://ec.europa.eu/home-affairs/system/files/2020-09/acr_2014_en.pdf [access: 01.12.2021]

⁸ Transparency International EU, Financial flows & crime, <https://transparency.eu/priority/financial-flows-crime/>, [access: 26.02.2021].

⁹ United Nations Convention against Corruption (UNCAC), adopted by the UN General Assembly on 31 October, 2003 (Resolution 58/4), https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

does not contain a single definition of corruption, but lists several specific types or acts of corruption. There are however several so-called “working definitions” of corruption. For example, the definition used by Transparency International is “the abuse of entrusted power for private gain”. The working definition of corruption adopted by the World Bank Group is more oriented to the public sector. That definition is: “the abuse of public funds and/or office for private or political gain”. Corruption is also defined as the abuse of public trust for private gain, and public trust is defined as the ability of stakeholders to cooperate. Public trust creates social capital, which reduces transaction costs.

The Civil Law Convention on Corruption by the Council of Europe,¹⁰ defines corruption as “requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof”.

2.2 Types of Corruption

In terms of how widespread it is, corruption can be divided into individualized corruption – involving a definite number of people, and collective corruption – extending to entire interest groups. A distinction might be drawn between bureaucratic, political and business corruption. However, it should be kept in mind that business corruption may include some elements of bureaucratic corruption, and political corruption involves business corruption to a certain extent. Bureaucratic corruption “is frequently accompanied by the propensity of administrative procedures to generate and sustain artificial barriers to exercise the rights of the parties, hiding essential fragments of the case management process, and unclear presentation of how some tasks are to be performed”¹¹.

The World Bank has placed emphasis on a distinction between State capture and administrative corruption, which will be discussed now. State capture refers to the actions of individuals, groups, or firms both in the public and private sector to influence the formation of laws, regulations, decrees, and other government policies to their own

¹⁰ Civil Law Convention on Corruption, concluded at Strasbourg on 4 November 1999, Art. 2, https://www.parlament.gv.at/PAKT/VHG/XXII/I/I_01330/imfname_057883.pdf [access: 01.12.2021]

¹¹ H. Egli, *Grundformen der Wirtschaftskriminalität, Fallanalyse aus der Schweiz und der Bundesrepublik Deutschland*, Heidelberg 1985, p. 72 ff.

advantage as a result of the illicit and non-transparent provision of private benefits to public officials¹². According to the World Bank, administrative corruption refers to the intentional bypass or distortion by a public official of the prescribed application of rules to provide advantages to others in exchange for the illicit and non-transparent provision of private gains to the public official¹³.

Large-scale corruption, defined as grand corruption, refers to illegal activity that usually takes place at the highest levels of government by members of the political or administrative elite or people associated with them, and that generally involves substantial amounts of money¹⁴. Small-scale corruption is also defined as petty corruption. This term refers to corruption that usually involves smaller sums of money and that is committed by public servants at lower levels¹⁵. It is worth noting that although the amounts of money that are exchanged in connection with petty corruption may be small, the aggregate costs for society may cause a huge effect. In addition, the economically disadvantaged members of society suffer the most from petty corruption, as they usually are most directly affected by it.¹⁶

A distinction can also be drawn according to the spheres of State and society in which corruption occurs: in the private sector, at the interface of the private and public sectors, or in the public sector. By adopting the actor-centric approach towards giving and accepting corruptive advantages, passive and active corruption can be distinguished. Passive corruption involves the deliberate action by an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties. Active corruption involves the deliberate action of whosoever promises or gives,

¹² *Anticorruption in Transition: A Contribution to the Policy Debate*, World Bank, Washington D.C. 2000, pp. XV-XVII.

¹³ Ibidem.

¹⁴ *Helping Countries Combat Corruption. The Role of World Bank*, World Bank Washington D.C. 1997, pp. 9-10.

¹⁵ UNDP, *Tackling Corruption, transforming lives. Accelerating Human Development in Asia and the Pacific*. Asia and Pacific Human Development Report, 2008. Available at http://hdr.undp.org/sites/default/files/rhdr_full_report_tackling_corruption_transforming_lives.pdf [access: 02.12.2021].

¹⁶ *Helping Countries Combat Corruption. The Role of World Bank*, World Bank Washington D.C. 1997, pp. 10, 19.

directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties.¹⁷ Summing up, the following table shows the various ways corruption can be classified.

Table 2: Types of corruption

Classification criterion	Categories
Type of occurrence	Collective and Individualized
Scale	Small (Petty), Large (Grand) or even State capture (Failed States)
Area	Political, Business, Bureaucratic
Role of actor	Passive or Active
Sectors of State and society	In the private/public sector and the interface between both

2.3 Typical Risks, Factors and Impacts of Corruption in public procurement

There are a variety of different factors that can increase the level of corruption risks in public procurement:¹⁸

- Large contracts: Public procurement projects often have a huge financial dimension. The more money is involved, the higher is the risk or the temptation for corruption, like kickback payments (bribe). Additionally, these projects are harder to monitor or to control.
- Complex technology: If high-level technology is involved, there is the danger that public officials managing the process do not have enough knowledge to detect fraud or corruption.

¹⁷ "Convention against corruption involving public officials", Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union in the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, done in Brussels on 26 May 1997, [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:41997A0625\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:41997A0625(01)&from=EN) [access: 01.12.2021]

¹⁸ List based on: U4 Issue, The basics of integrity in procurement, October 2011, No 10, page 13.

- Discretion: If there is a lack of transparency in the decision-making process, the risk of corruption in public procurement is increased. The same occurs when the discretionary or decision-making power is concentrated on one or less persons.
- Lack of financial and operational controls: Weak systems of internal control or external oversight lead to a higher level of corruption risk in public procurement. Lax enforcement of rules and regulations or the perceived low risk of sanctions have a similar effect.
- Restricted access to information: Lack of transparency concerning executive decisions together with a lack of public demand for information increase the risk of corruption by making it difficult to keep an eye on the public officials managing procurement funds.
- Time pressure: Often public procurement projects are targeted to a certain time limit for completion. This can lead to not enough time for safeguards such as due diligence tests of suppliers and competitive bidding rounds. It can also lead to appoint people who are not civil servants and are not submitted to the same rules (e.g. no statement of interests, accountability).
- Scarcity or shortage in a sector: It may happen that public buyers are themselves in competition and prefer not to comply completely with public procurement rules to be sure to contract the first and obtain the goods (e.g. health supplies).
- Conflict of interest: The risk of corruption increases when the public duties and private interests of an involved actor intersect. The position of a public official could be used to create personal benefits. This must also be observed in the public procurement process.
- Lack of ethics: Proper legal framework adopted in one country may not be enough, if the sufficient standards of ethics are not implemented and followed by all parties involved in the procurement process.
- Failure of good governance: Good governance is a key to avoid corruption. Poor governance arises from low quality public sector management, a lack of accountability, poor relations between the government and citizens, a weak legal framework, a lack transparency regarding public sector processes, and poor dissemination of information. A lack of competence and capacity due to inadequate training also contributes to failure of governance.
- Excessive Trust: Unwarranted and blind trust on a subordinate official may also lead to petty corruption (Failure to comply with the four-eyes principle).

Public procurement contracts which value is below the legal threshold may cause risk of corruption because of lack of transparency, competition and a possible lower level of control. The following table provides an example¹⁹ for corruption risks at various stages of the public procurement process for infrastructure projects:

Table 3: Stages of corruption

Stages	Risks	Main actors
Project appraisal	<p>Political influence or lobbying by private firms that biases selection to suit political or private interests;</p> <p>Promotion of projects in return for party funds;</p> <p>Political influence to favour large projects and new construction over maintenance;</p> <p>Underestimated costs and overestimated benefits to get projects approved without adequate economic justification.</p>	<p>Government Ministers and their offices;</p> <p>Senior civil servants;</p> <p>Procurement officers;</p> <p>Private consultants (e.g. planners, designers, engineers, and surveyors);</p> <p>Private persons (e.g. family members of above mentioned personnel).</p>
Project selection, design, and budgeting	<p>Costly designs that increase consultants' fees and contractors' profits;</p> <p>Designs that favour a specific contractor;</p> <p>Incomplete designs that leave room for later adjustments (which can be manipulated);</p> <p>High cost estimates to provide a cushion for the later diversion of funds;</p> <p>Political influence to get projects into the budget without appraisal.</p>	<p>Government Ministers and their offices;</p> <p>Senior civil servants;</p> <p>Procurement officers;</p> <p>Private consultants (e.g. planners, designers, engineers, and surveyors);</p> <p>Private persons (e.g. family members of above mentioned personnel).</p>

¹⁹ Example is taken from UNODC, Global Corruption Book, Chapter 11, online: <https://track.unodc.org/Academia/Pages/TeachingMaterials/GlobalCorruptionBook.aspx>, based on Jill Wells, "Corruption in the Construction of Public Infrastructure: Critical Issues in Project Preparation", U4 (March 2015, Issue No 8) at 18, <https://www.u4.no/publications/corruption-in-the-construction-of-public-infrastructure-critical-issues-in-project-preparation-1.pdf>

Tender for works and supervision contracts	<p>Bribery to obtain contracts (leaving costs to be recovered at later stages)</p> <p>Collusion among bidders to allocate contracts and/or raise prices (potentially with assistance from procurement officers);</p> <p>Submission of bids by a single firm with different names (fake or real) especially in low budget tenders;</p> <p>Interference by procurement officers to favour specific firms or individuals;</p> <p>Going to tender and signing contracts for projects that are not in the budget.</p>	<p>Procurement officers</p> <p>Private consultants (e.g. supervising engineer);</p> <p>Contractors.</p>
Implementation	<p>Collusion between contractor and the supervising engineer (with or without the client's knowledge) that results in the use of lower quality materials and substandard work;</p> <p>Collusion between contractors and the supervising engineer to increase the contract price or adjust the work required in order to make extra profits, cover potential losses, or recover money spent on bribes;</p>	<p>Procurement officers;</p> <p>Private consultants (e.g. supervising engineer);</p> <p>Contractors and subcontractor.</p>
Operation and maintenance, including evaluation and audit	<p>Agreement by the supervising engineer to accept poor quality work or work below the specification, leading to rapid deterioration of assets;</p> <p>A lack of allocated funds for maintenance, as new construction takes precedence in the project identification stage for future projects.</p>	<p>Procurement officers;</p> <p>Private consultants (e.g. supervising engineer);</p> <p>Contractors and subcontractors.</p>

Besides risk factors also the impact of corruption in public procurement is diverse. Corruption can cause:²⁰

²⁰ Taken from: Transparency International, Curbing Corruption in Public Procurement – A practical guide, page 9f, https://images.transparencycdn.org/images/2014_AntiCorruption_PublicProcurement_Guide_EN.pdf [access: 02.12.2021].

- Financial Impact: e.g. goods will be purchased at a higher price or delivered in poor quality. This could lead to additional costs for repairs.
- Environmental Impact: e.g. failure to meet proper environmental standards or to achieve environmental goals.
- Impact on Health, Human Safety and other Social Goals: e.g. the increase of health and safety risks caused by sub-standard products or constructions.
- Impact on Innovation: e.g. failing to provide for competitive procurement limits access to innovative solutions and products.
- Erosion of Value and Trust in Government: corruption by public officials causes the loss of trust for public institutions, which may undermine the respect for public order and security, and even the functioning of the State, e.g. the tendency of tax evasion.
- Economic Impact: the public funds are invested in unuseful and unfeasible projects, e.g. loss of foreign investment.

3 Public Procurement

3.1 Definition

Public procurement is the acquisition by means of a public contract of works, supplies or services by the contracting authority from the economic operator chosen by the contracting authority. Public procurement procedure is defined broadly as a preparation, administration, award and implementation of contracts for goods, works and services. This procedure is particularly vulnerable to fraud and corruption which can result in a non-transparent allocation of public funds, unequal competition, unjustified increasing costs, unnecessary works or supplies, not provided services etc. Corruption can also cause that the works, goods and services purchased are not in good quality and do not meet the public needs.

3.2 Principles

Risks of corruption can be reduced and benefits of public procurement can be maximized by respecting the principles of public procurement. Principles may also be used as a guide of the contracting authority for its decision-making. Knowledge of the following principles is essential to prevent corruption in public procurement:

➤ Non - discrimination

The principle of non-discrimination prohibits all discrimination based on nationality, region, membership, size of company etc. Requirements which are set by the contracting authority, need to allow access of all candidates²¹ to procurement process. For example, no preference shall be given to a local company simply without a legitimate reason or technical specifications need to avoid an advantage of a particular candidate. This principle is also broken if a candidate is excluded without a legitimate reason or a candidate is not excluded despite the fact that according to set rules he should have been excluded.

➤ Equal treatment

The principle of equal treatment requires that comparable situations are not treated differently and all candidates (tenderers) or suppliers involved in public procurement need to be treated equally. In this respect, award criteria need to be determined and used including weighting or decreasing order of importance equally for all bids. All candidates must be informed about the criteria and arrangements concerning the contract award process and about decisions of the contracting authority.

➤ Transparency

The principle of transparency is a key instrument to prevent corruption. This principle requires the procurement process to be open, predictable, monitored, documented and auditable (reviewable). The principle of transparency also means a visibility of the flow of public funds throughout the public financial management. For example, contract notices, tender documents and criteria must be precise, complete, clear, comprehensible and accessible to all parties including its advertisement in proper time. To provide an appropriate degree of information it is necessary to strike a balance between ensuring accountability and competition, and on the other hand, protecting trade secrets and respecting the confidentiality of information that can be used. The whole process of public procurement and evidence about decisions must be sufficiently documented, available to the public and reviewable. All candidates need to be informed

²¹ The term "candidate" can be understood and used interchangeable with the terms such as a bidder, contractor or tenderer depending on the stage of the procurement process.

about the final decision of procurement procedure in time and they need to have a possibility to serve a notice of appeal. Transparency can also be strengthened if a signed contract is published.

➤ Avoidance of conflict of interest

Conflict of interest is understood as a personal advantage or reducing the property or other benefit of the contracting authority. Conflicts of interest can be found in situations when persons involved in conducting procurement procedure can have influence on the result of the procedure or are not impartial and independent in relation to public procurement. There might be some instances when an official is transferred somewhere where his/her role is switched from auditee to auditor or vice versa, which would inflict a conflict of interest.

➤ Proportionality

Requirements must be appropriate to achieve the objective of procurement and must not go beyond what is necessary to achieve the objective. The principle of proportionality dictates that any qualifications and/or subject matter requirements must not be disproportionate or excessive and must have a natural relation to the goods or services being procured.

➤ Compliance

Public procurement has to be carried out in compliance with the relevant laws and regulations.

➤ Ethical behaviour

People who are involved in public procurement need a sufficient level of ethical standards and behaviour.

➤ Accountability

Persons involved in the public procurement process must be accountable for the execution of their duties and for decisions and actions taken in their area of responsibility.

➤ Professionalism

Public procurement needs to be professionalised, which can be supported with sufficient resources to public procurement and training courses to enhance professionalism. If procurement officials are poorly paid, badly trained or lacking a viable career path the risk of corruption increases.

➤ Fairness

Contract award and implementation decisions need to be fair and impartial. Persons involved in the preparatory stage of procurement should not be involved in the following stages.

➤ Efficiency

The procurement process needs to be efficient. This means, that the procurement rules need to be proportionate to the value and complexity of the items to be procured.

➤ Integrity

Integrity refers to upholding ethical standards and moral values of honesty, professionalism and righteousness. Integrity is a cornerstone for ensuring fairness, non-discrimination and compliance in the public procurement process. Therefore, safeguarding integrity is the basis of any effort to prevent corruption in public procurement. Recognising the importance of integrity for good governance and trust in public institutions, countries should apply national integrity standards for all public officials.

3.3 Types of Award Procedure

By determining the type of award procedure, the contracting authority defines the number of potential contractors participating in the competition. The choice of the type of award procedure is important for purposes of corruption prevention, because restrictions of competition increase the risk of manipulation.

The most competitive procedure is the open procedure. The contracting authority makes known its intention to award a public contract by open procedure to an unlimited number of potential candidates by means of a notice of open procedure. Any interested candidates may submit a tender in response to a call for competition. However, there are cases when open procedure is not suitable or efficient and then contracting authorities can limit the number of candidates in different types of procedure:

➤ Restricted procedure

The contracting authority makes known its intention to award a public contract by restricted procedure to an unlimited number of potential candidates. Only those candidates who meet technical and professional capability and experience are invited by the contracting authority (following its assessment) to submit a tender. Contracting authority can limit the number of candidates.

➤ Negotiated procedure

This procedure is used in specific situations when the contracting authority needs to negotiate the terms of the contract. The contracting authority makes known its intention to award a public contract by this procedure to an unlimited number of potential candidates. Only candidates invited by contracting authority (following its assessment) may submit an initial tender which is the basis for the subsequent negotiations. Procedure may take place in stages in order to reduce the number of tenders to be negotiated. This procedure can be used also without prior advertising, but only in limited (exceptional) cases (extreme urgency, due to special rights when there is only one possible supplier, extension of existing contract etc.). If a public procurement system allows negotiations to be conducted by outsourced agencies and authorities obtain procurement under the framework agreements of these agencies, the agency must also comply with the rules of public procurement.

➤ Competitive dialogue

Contracting authorities use competitive dialogue for complex contracts such as large infrastructure projects where the public authority cannot define the technical specifications at the start. Contracting authorities set out and publish their needs and requirements including award criteria and indicative time frame. Only those candidates invited by the contracting authority may participate in the dialogue. Contracting authorities open a dialogue with the selected participants. The aim of the dialogue is to identify and define the means best suited to satisfying their needs. Competitive dialogue may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage. The contracting authority continues the dialogue until it can identify the solution or solutions which are capable of meeting its needs. Contracting authorities then ask chosen candidates to submit their final

tenders on the basis of the solution or solutions presented and specified during the dialogue.

➤ Innovation partnership

The procedure of the innovation partnership corresponds to competitive dialogue but, the contracting authority uses this procedure in case of the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. The procedure can enable the contracting authorities to run a tender competition for both the development and the purchase of innovative goods, works or services in a single award process.

➤ Simplified procurement

This procedure is reasonable in case of the award of contracts of low monetary value to use a simplified (small - scale) procedure. Rules of this procedure, which can be very simple, are different and depend on each contracting authority (or State). However, the principles of transparency, non- discrimination and equal treatment need to be followed.

3.4 Stages of public procurement

The following stages are vital for public procurement processes, exceeding a specific amount and the simplified procedure is not applicable.

Each individual stage of the procurement process contains risky areas, which can signal a suspicion of corruption. On the other hand, not all problems are related to corruption and what can look like corruption may also be a simple error.

➤ Pre - tendering phase

The procurement process starts with the analysis and assessment of the starting situation, needs and sources with regards to economy, efficiency and effectiveness. All licenses, permits and authorizations must be secured as well. The contracting authority conducts market consultations with experts or with potential candidates with a view to preparing procurement documents and informing economic operators about its plans and requirements. In this context the prior information notice is published. The contracting authority prepares the tender documents which must include all information the candidates need for preparing their tenders. The tender documents are published and include at least the technical specifications, the requirements for the candidates'

qualification and the criteria for selecting the best bid. Nevertheless, it must be an unambiguous and complete description, so that all candidates have a clear understanding of what is required. The contracting authority also determines the type of award which defines the number of potential contractors participating in the competition.

➤ Tendering phase

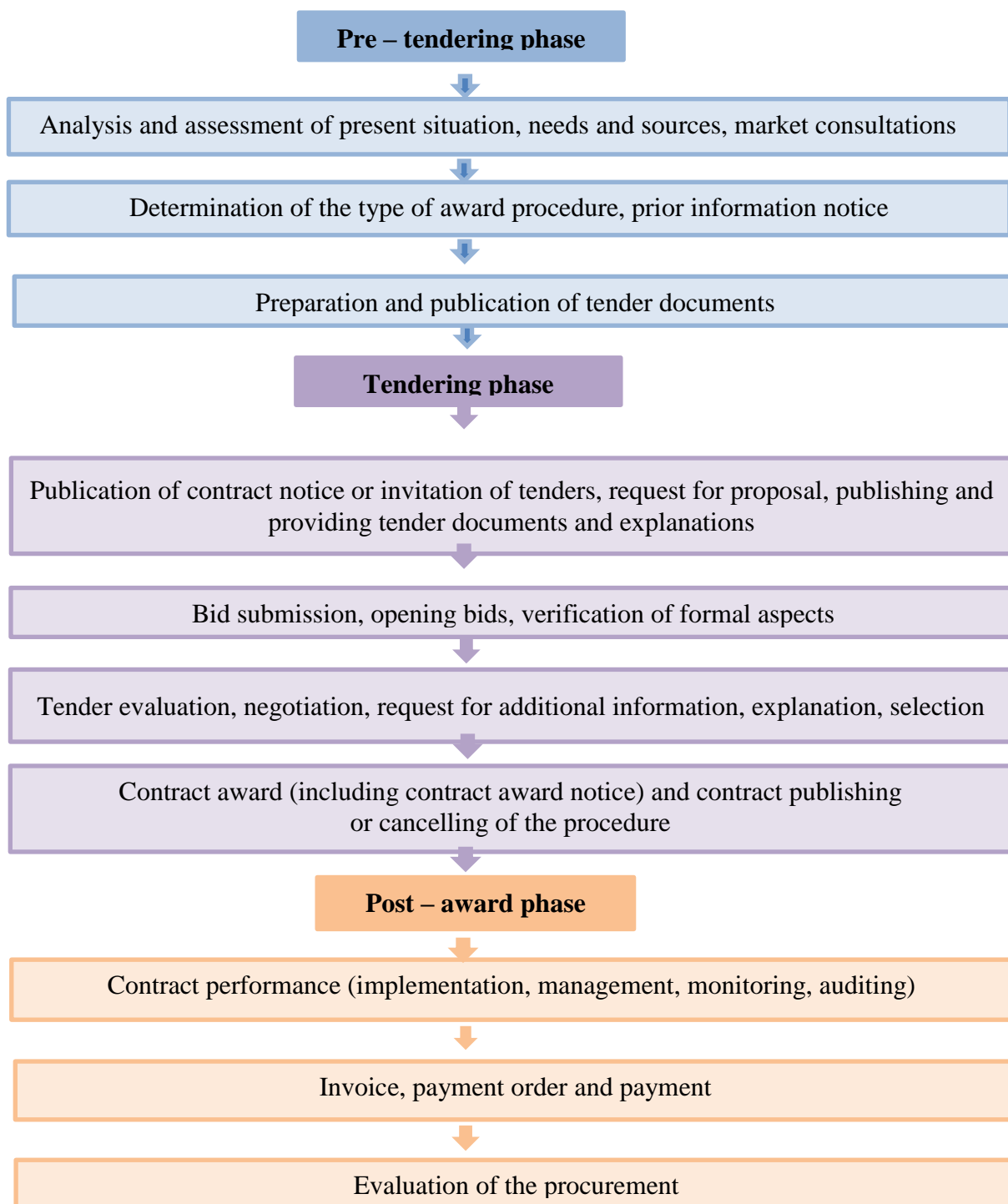
The tendering phase starts with the publication of the contract notice or with the invitation of tenders. Candidates draw up tenders on the basis of the tender documents which they have received. Candidates have been submitting tenders until expiry of the deadline for submission prescribed by the contracting authority. The contracting authority opens the bids and verifies formal necessities, qualification and evaluates the tenders received. The tendering procedure is completed by awarding the contract (including contract award notice) or by cancelling the procedure. All relevant steps and decisions concerning tendering phase must be documented in a transparent way, monitored and examined including taking corrective measures.

➤ Post – award phase

The contract and the project implementation need to be monitored and controlled by professional persons. The important aspects of monitoring and controls are assurance of compliance with contract terms and conditions, effective communication with suppliers and control of suppliers, managing contract changes, quality assurance and delivery requirements, resolving claims and disputes and proper invoicing resulting in timely payment. The contracting authorities very often complement procured and contracted works or deliveries during contract implementation and without a new procurement procedure. It can be a flexible solution and it can lead to savings. On the other hand, it can be a tool for favouring a supplier, avoiding the open or a stricter procedure and increasing the price.

Figure 1: Stages of public procurement²²

²² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, <https://eur-lex.europa.eu/legal->



[content/EN/TXT/HTML/?uri=CELEX:32014L0024&from=EN](https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf); Preventing corruption in public procurement, OECD, 2016, <https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>; ACT 134/2016 Coll., on Public Procurement, Czech Republic, https://sovz.cz/wp-content/uploads/2017/08/act-no.-134_2016-coll.-on-public-procurement.pdf.

3.5 Public procurement in times of crisis

Public procurement rules are usually very detailed and auditors have to audit the overall compliance of all procurement steps according to these rules. The present Guideline aims to help auditors in conducting such checks to enforce the rules.

However, there may be situations where public managers cannot fully respect these procurement rules. In such cases, public auditors have to consider these limits in their audits and subsequently adapt their diligences.

The European Commission already considered the negotiated procurement procedure without publication in case of imperative urgency to be applicable during the 2015 refugee crisis in order to award urgent public contracts to meet the needs of asylum seekers.²³ The emergency situation during a pandemic or natural disaster, which are comparable from the point of view of urgency, justifies such measures and a special procedure for crisis procurement.

With its Guidelines²⁴, the European Commission approves the implementation of negotiated procedures without prior notice for the purpose of procuring urgently needed goods and services in the COVID-19 pandemic.

As an example, since 2020 and the breakout of the COVID-19 pandemic, various international entities (UNODC²⁵, OECD²⁶, EU, INTOSAI and its regional organizations) and NGO (Transparency International²⁷) have warned of the increased risks of fraud, corruption, embezzlement and money laundering in the field of purchasing healthcare products.

With the current pandemic, all countries are under extreme time pressure facing the worldwide competition between purchasers – including public purchasers - because of scarcity

²³Art. 32 (2) c Directive 2014/24/EC of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0024&from=en>

²⁴Guidelines of the European Commission on the use of the framework for the award of public contracts in the emergency situation caused by the COVID-19 crisis (2020 / C 108 I / 01) of 1 April 2020

²⁵UNODC, COVID-19 Vaccines and Corruption Risks: Preventing Corruption in the manufacture, allocation and distribution of vaccines, https://www.unodc.org/documents/corruption/COVID-19/Policy_paper_on_COVID-19_vaccines_and_corruption_risks.pdf

²⁶OECD, Policy measures to avoid corruption and bribery in the COVID-19 response and recovery, https://read.oecd-ilibrary.org/view/?ref=133_133216-hn3bqtlvkw&title=Policy-measures-to-avoid-corruption-and-bribery-in-the-COVID-19-response-and-recovery&gl=1*14igyfk* ga*MTM00TY2NjE1OC4xNTI1Njk5Nzgw* ga_F7KSNTXTRX*MTYzODUzMjIzOC4xLjAuMTYzODUzMjIzOC4w& ga=2.159167673.207606167.1638532239-1349666158.1525699780

²⁷Transparency International, Why fighting corruption matters in times of COVID-19, Corruption Perceptions Index 2020: Research analysis, <https://www.transparency.org/en/news/cpi-2020-research-analysis-why-fighting-corruption-matters-in-times-of-covid-19>

or shortage of healthcare supplies. They may also need to buy goods that do not yet exist (like vaccines in 2020). Moreover, the pandemic can disrupt procurement teams which can less easily coordinate responses and may be themselves stricken by disease. Suppliers in return may have difficulties to bear. Lastly, public authorities have to support employment and therefore help their national suppliers. Such challenges do not provide the best time or opportunity to seek lower prices.

Beside this huge health crisis, further crises can result from massive disturbances such as:

- a complete stop in transportation (so public purchasers can only buy local supplies, with no competition),
- a large-scale internet breakdown which slows or interrupts the e-procurement process,
- a natural disaster with destruction of public buildings and documents,
- a military attack.

Such crises make it more difficult for purchase teams to comply with every procurement rule. However, this should neither lead public services and SAIs to accept a general collapse of fair and efficient purchase requirements nor lead them to forget transparency and accountability as well as minimum standards and internal controls.

Public entities may have continuity and adaptation plans for times of crisis, including the procurement field.

If not, SAIs should urge the governments and relevant authorities to anticipate or cope with such crises by drawing up Guidelines for defining the main procurement requirements and internal controls that should be maintained and the other rules that can be simplified. As a part of an "activity continuation plan ", these Guidelines can:

- announce a "fail soft system" taking into account the kind of crisis, of goods and services needed,
- describe inescapable rules,
- insist on tracking systems and methods to avoid excessive competition between buyers (sourcing, purchasing group).

They may be adopted in specialized documents in all Ministries and public entities according to sector (e.g.: health sector, information systems, defence).

They would be activated only if there is a statement of crisis or emergency issued by government or parliament and several basic requirements and conditions are fulfilled.

Within such a framework, SAIs would be able to adjust their audits according to these Guidelines.

Where no Guidelines yet exist for public procurement during a crisis, decisions may be taken hastily and disorderly to alleviate and accelerate the purchase process while diminishing requirements and shortening steps. In such cases, SAIs have nevertheless to ensure that:

- The decisions to lighten controls or to simplify the rules were taken in a transparent way by an entitled and accountable authority, allowing a democratic control.
- The entity has anticipated a particular situation and endeavours to maintain fair competition: e.g. no supplier available in the country, or high risk of shortage (having a preventive policy of sourcing, joining an international purchasing group), or impossibility for a regular selecting committee to convene (online secured meetings...).
- Every case when a rule was not respected or a control diligence was lightened should be explainable only because of the crisis, and not for other unacceptable reasons, in order to avoid anybody taking advantage of the situation
- Some steps of internal and, if relevant, external control were still enforced.
- A tracking system enables identification and punishment of any abuse by public agents, private consultants or suppliers.

4 Organisational Prerequisites/requirements for corruption prevention

Before auditing a single procurement project (or its parts), it is important to assess the capability of the organization to conduct the project. Besides the general aspects mentioned in GUID 5270, this includes especially:

4.1 Management of the Procurement Function

- An organization should have a strategic approach for procurement. This strategy can help e.g. to optimize the process, to assure the right competences among the staff and to achieve procurement goals. It should also deal with corruption prevention aspects. Functions and responsibilities of the people who are involved in process have to be clearly defined, established and documented. This includes also the responsibility for ensuring proper corruption prevention measures covering the whole process.
- These people need specialized skills regarding procurement and have to be well trained, especially regarding anti-corruption matters, integrity, accountability and transparency.
- The internal control system of an organization should especially consider the specific risks and complexity of public procurement processes.

Table 4: Corruption prevention on organizational level – risks, red flags, examples of non-compliance and preventive actions

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Improper strategic approach	No (anti-corruption-) training needs for public procurement officers defined; Similar goods are purchased by different units to different conditions; No manual for public procurement; No overview of annual spending due to undefined reporting; No supporting tool implemented.	Uncoordinated initiation of processes; Collective buying power is not used. No supervision of the whole public procurement process due to the lack of overview.	Implement procurement strategy and procurement manual. Assuring the right tools to support public procurement process.
Vague definition of responsibilities for corruption prevention	No manual/guideline for public procurement; Public procurement not covered by corruption prevention system.	No analysis of corruption risks; No implementation of control or corruption prevention measures.	Appointing a corruption prevention officer in the procurement department.
Improper documentation	Missing documentation of	Supervision/audit of procurement process is	Definition of clear documentation needs in

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
on of process	important steps.	hampered.	the manual; Use of audit-proof e-procurement tools.
Unqualified personnel	No regular trainings for public procurement officers.	Lack of understanding for corruption prevention needs. Application of wrong procurement procedures.	Mandatory training on a regular base for public procurement officers.
Internal control system not covering public procurement	No risk-control-matrix for public procurement.	Increase of corruption risk Lack of control measures.	Definition of public procurement of a mandatory segment of the Internal Control System.

Typical questions auditors could ask during their fieldwork are:

- Is there an overall strategy or policy on public procurement in place?
- Does this strategy cover corruption prevention aspects?
- Are the functions and responsibilities in the procurement process clearly defined, approved and documented?
- Is a special responsibility for corruption prevention in the public procurement defined?
- Are the people involved in the public procurement process trained regularly, including aspects of corruption prevention?
- Is the public procurement process well organized and are the different stages of the process properly documented?
- Does the Internal Control System of the organization include the special requirements of the public procurement process?
- Is there any influence of external parties on official decisions?

4.2 Supporting instruments and tools

Certain tools can improve the procurement process and therefore curb the opportunities for corruption.

- E-Procurement

E-procurement means that the procurement processes is conducted online. Transparency International²⁸ recommends the use of this tool as a transformative element in public contracting, providing opportunities to reduce corruption during all phases of the procurement process, e.g. by improving opportunities for civil society to monitor procurement processes. By centralising all relevant information in a publicly available web portal the amount of competition and the number of supplier or applicants can be increased. Automated procedures and a reduced amount of discretion exercised by public officials also limit the opportunities for corruption. However, sufficient and effective information technology controls²⁹ (e.g. logical access control or program change) must be in place to assure the system is functioning as planned.

The use of e-procurement is also highly recommended by the OECD³⁰ as it strengthens internal anti-corruption controls and detection of integrity breaches.

- Integrity Pacts

As integrity is a major factor for proper procurement management, integrity pacts can be a tool to create an integrity framework by encouraging participation companies to abstain from bribery. The government commits to preventing corruption (including extortion) by their officials and to following transparent procedures.³¹

- The tender commission (committee/board)³²

The tender commission is a collegiate body established in order to help a contracting authority to select the best contractor and conclude a public procurement contract in line with the formal standards (based on legal or internal requirements). The process of awarding public procurement is based on collaboration of a number of people. A member of the tender

²⁸ Transparency International, Curbing Corruption in Public Procurement – A practical guide, page 28.

²⁹ Working group of IT-Audit – IDI Handbook of IT-Audit for Supreme Audit Institution, 2014.

³⁰ OECD Recommendation of the Council on Public Procurement, recommendation VIII, <https://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf> [access: 03.12.2021].

³¹ Transparency International, Curbing Corruption in Public Procurement – A practical guide, page 27.

³² Depending on the respective legislation in different countries.

commission must be a fair and objective person able to perform the tasks entrusted to him/her, guided only by the applicable regulations, knowledge and past experience. Therefore, it is necessary to define the legal framework and the range of activities of the members of the tender commission during the proceedings.

- Prior information notice

The prior information notice aims to indicate the intention of the contracting authority to initiate proceedings for the public contract award. By using such an instrument, the contracting authority is enabled to resign from conducting the previously planned public procurement procedure due to the various reasons (e.g. financial ones). The prior information notice allows the potential contractors to be better prepared for submitting the offer. Placing the prior information notice about planned purchase increases the transparency of public procurement in the given entity.

- Annual procurement plans

The approval of the budget by the competent authority entitles, and sometimes even obliges, the contracting authority to publicly inform potential contractors about the public procurements to be realized by the entity within the next financial year. The annual public procurement plan increases the transparency of public procurement in the given entity, simultaneously allowing the potential contractor to better prepare for participating in selected proceedings for the award of a public contract.

- Centralization of procurement purchases

The institution of a central purchasing body allows for centralizing the purchasing activities for the needs of various contracting authorities, as opposed to only for one contracting authority. The main objective of procurement purchases centralization is to accumulate savings.

5 Corruption Prevention in simplified procurement processes

Simplified (small - scale) procedure is reasonable to award low monetary value contracts however, rules of this procedure, could be very simple and different, based on the needs of the each contracting authority (or State). Further, the principles of transparency, equal opportunity, equal treatment and freedom of competition need to be strictly adhered.

The simplified procedure can also be reasonable in large – scale procedures for situations of crisis and systemic risk of corruption because of time pressure and scarcity of the supply.

The following table depicts the specific risks of this phase, associated red flags, examples of non-compliance and possible preventive actions.

Table 5: Simplified procurement – risks, red flags, examples of non-compliance and preventive actions

Risk	Red Flags	Examples of Non-Compliance	Preventive Actions
Direct contracting, non-competitive contracts	Unfair practices or favouritism; Beneficiaries within organization.	Direct procurement is likely to result in wasteful spending; Increased corruption risks.	Decrease the volume of contracts awarded without competitive procedure; Audit should monitor and scrutinize directly awarded contracts; Communicating these risks to management and clients.
Inconsistent and non-compliant contracting and procurement practices	Contracting process is not transparent and/or equitable, leading to a damaged reputation and negative publicity.	Favour Award to some tenderer; Complaints from tenderers; Mistrust by bidder; Lack of reputation to organization.	Assessment of contract risk factors that may put a procurement at risk; Recording the risks and identifying the response strategies in the approval documents; Ensuring that risks are re-assessed in the procurement when circumstances dictate, as part of monitoring and continuous improvement.
Incidents of perceived and actual non-compliance.	Awarded to a single supplier instead number of other contractors, as this service is	Unable to submit quotations by some bidders; Sole-source packages in the past without	Use commercially acceptable terms; Improve tender planning; Consult with legal department, as needed;

Risk	Red Flags	Examples of Non-Compliance	Preventive Actions
	commonly available.	justification and increased cost; Misuse of resources; Most suitable product not obtained.	Provide staff with appropriate tender planning and procurement skills Evaluation.
Providing inadequate information	Irregular information to favour some bidders; Inclusion of rare or specific conditions.	Increased procurement costs; Unethical conduct; No equal opportunity for all tenderers; Misinterpretations on need or under or over estimates lead to wrong product or service in quotations and they are not comparable.	Ensure all bidders have same and equal information; Use standard conditions; Review tender documents to ensure evaluation criteria clearly specified.
Non-compliance with regulations and approved policies	Non-compliance	Unethical conduct; Penalties or fines from law monitoring agencies (law enforcement).	Checklist to ensure applicable laws and regulations
Procurement records are not maintained	Adequate and appropriate records are not maintained throughout the procurement process and provide sufficient	Unable to audit or independent review.	Maintain the procurement record and checklist is clearly stated in Standard Operating Procedure (SOP)

Risk	Red Flags	Examples of Non-Compliance	Preventive Actions
	information.		
No SOP on quotation provided	Procurement SOP on planning, preparing documents, inviting and receiving offers, evaluating and accepting quotation is not clearly stated	Misuse of power and possibility of corruptions and conflict of interest risk.	Ensure a proper SOP provided and complied.
Split billing/split procurement	Value of purchase is close below threshold; High number of simplified procurements.	Increase of corruption risk; Spending more money; Lack of control due to non-competitive procedure.	Well defined needs for simplified procurement; Manual with clear definition of simplified procurement process; Auditing and monitoring simplified procurement.
Providing inadequate information	Irregular information to favour some bidders; Inclusion of rare or specific conditions.	Increased procurement costs; Unethical conduct; No equal opportunity for all tenderers; Misinterpretations on need or under or over estimates lead to wrong product or service in quotations and they are not comparable.	Ensure all bidders have same and equal information; Use standard conditions; Review tender documents to ensure evaluation criteria clearly specified.

Typical questions auditors could ask during their fieldwork are:

- Was the advertisement published in a transparent and competitive way through a State Procurement electronic platform?
- Was the bidder described clearly, unambiguously and comprehensively, giving precise characteristics of what was to be supplied, so that all concerned had an equal understanding of requirements and that clarification or amendments are not necessary?
- Were technical requirements set strict enough to guarantee the desired performance without being unnecessarily tight to exclude favourable bids that don't comply with all requirements?
- Did technical specifications (required characteristics of a material, product, supply or service) grant equal access for bidders, containing no feature that directly or indirectly discriminate in favour, or against, any bidder, product, process or source?
- Did technical specifications exclude any reference to a specific make or source, to a particular process, to trade marks, patents, types or to a specific origin or production, thus preventing favouring or eliminating certain undertakings or products?
- Was all information provided reached to all bidders and had all of them equal opportunity?
- When such references were made, was a precise description of the performance not otherwise possible and were those references accompanied by the words "or equivalent". If equivalent mentioned, were the specifications clear?
- Has any checklist been prepared to ensure all processes are approved policies and procedures?
- Does an approval from appropriate authority exist?
- Is a clear description goods or services to be procured?
- Is an integrity pact implemented?
- Has a market survey been undertaken for value for money?
- Does the procurement officer comply with the provided SOP?

To illustrate the danger of corruption in case of simplified procurement an **example** based on the experience of a specific SAI is given:

During fieldwork, auditor investigated that senior purchase manager of had an alleged close relationship with supplier Z. It was established there was an ongoing tender where the specifications were submitted by senior manager and Z was on the list of bidders. Z was identified as receiving favourable treatment from senior manager during the tender scoping. Z had perfect bid paperwork, including insider technical specifications. The senior Manager raised the procurement paperwork for Z only after the work had already started.

6 Corruption Prevention in Tender Procurement Process

6.1 Pre-tendering Phase

The Pre-tendering phase consists of four individual consecutive steps:

- the assessment of the need for a procurement
- a planning and budgeting phase
- defining the specifications
- the choice of the procurement procedure

Objectives of an efficient and unbiased pre-tendering-phase are to use methods that reduce or eliminate risks of inaccurate opinions influencing decisions that affect the pricing of the procurement. All resources and experience should be used and coordinated to prepare estimates and definitions. Knowledge, continuous training and market evaluation are the basis for the unbiased start of a procurement-action.

In the following paragraph a short description of each step and possible risks of corruption within the steps is given. Also, an overview of red flags, possible consequences of corruptive behaviour and preventive actions against such behaviour is delineated.

6.1.1 Needs Assessment

The procurement process normally starts with the phase of needs assessment. This phase is hallmarked by the analysis and assessment of present situation. The process can be based on and the information can be obtained through desk research, interviews, surveys, review of

relative documentation or focused studies as well as questionnaires and/or interviews with focus groups such as management and users.

Common and exemplary risks³³ for this phase are the under- or overstatement of the need, the misinterpretation of the need, a “non-existing” need, a shortage of time, a lack of capacity/capability within the procurement staff, and possible political or economic influence. The following table depicts the specific risks of this phase, associated red flags, examples of non-compliance and possible preventive actions.

Table 6: Needs assessment – risks, red flags, examples of non-compliance and preventive actions

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Understatement of the need	Considerable deviation compared to previous purchases.	Purchase of unsuitable products, services, works and projects Need not satisfied.	Profound and unbiased analysis of needs.
Overstatement of the need	Considerable deviation compared to previous purchases.	Waste of funds; Infrequent use.	Profound and unbiased analysis of needs.
Misinterpretation of user needs	Lack of documentation in the purchase-file.	Purchase of not most suitable product or service; Loss of Time; Increased costs; Possible downtime.	Profound and unbiased analysis of needs.
Impractical timeframe	Hints in correspondence with tenderers.	Inadequate responses from tenderers; Delivery schedule not met;	Obtain clear statement of work and definition of need; Improve forecasting and

³³ The risks described herein may indicate corruptive actions or behavior, but could also be the result of mismanagement without the intention of criminal behavior.

		Reduced competition.	planning; Improve consultation/communication with users and tenderers.
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Typical questions auditors could ask during their field work are:

- Was there a reasonable justification for the need of the purchase, especially when made towards the end of the financial year?
- Were the performance conditions in the request comprehensive and unambiguous?
- Was the performance described clearly, unambiguously and comprehensively, giving precise definition of the characteristics of what was to be supplied, so that all concerned had an equal understanding of requirements and that clarification or amendments are not necessary?
- Were technical requirements set strict enough to guarantee the desired performance without being unnecessarily tight to exclude favorable bids that don't comply with all requirements?
- Did technical specifications (required characteristics of a material, product, supply or service) afford equal access for tenderers, containing no feature that directly or indirectly discriminate in favor, or against, any bidder, product, process or source?
- Were technical specifications formulated by reference to performance or functional requirements admitted by the respective legal framework?
- Did technical specifications exclude any reference to a specific make or source, to a particular process, to trade marks, patents, types or to a specific origin or production, thus preventing favoring or eliminating certain undertakings or products?
- When such references were made, was a precise description of the performance not possible? Were those references accompanied by the words "or equivalent"?

To illustrate the danger of corruption at this early phase of a procurement action an **example** based on the experience of a specific SAI is given:

During their field work the auditors compared the technical specification for maintenance of IT-equipment with the general requirements of such service. The documentation was written in such a way that only one vendor firm could meet all specifications. In the purchase-

documentation the auditors also found hints for collusion between the purchasing division and one agent of the vendor firm. The auditors came to the result that it was intended to pay one purchasing agent a specific amount of money after the award of the contract.

6.1.2 Planning and Budgeting

To prevent corruptive influence in the procurement process a sound and profound planning and budgeting of the individual procurement is essential.

Tools to achieve the most realistic budget information are the analysis of previous procurements and an actual market research.

Table 6: Planning and Budgeting – risks, red flags, examples of non-compliance and preventive actions

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Insufficient/unrealistic funding	Additional claims from the vendor firms; Supplementary requests.	Delay in making the purchase; Additional costs for re-tender.	Improve financial forecast and planning; Obtain appropriate approvals before starting a procurement process.
Probity issues	Increasing project cost after award of contract; Quality of product or service questionable.	Increased procurement costs; Misuse of resources; Most suitable product not obtained; Unethical conduct.	Implement best practice policies, guidelines and practices; Maintain ethical environment; Improve training of personnel; Install suitable controls and reviews.

Typical questions auditors could ask during their field work are:

- Did the public authority identify the full contract value and include options and provisions for renewals?
- Was the estimation of contract value in accordance with the criteria fixed in the Directive?

- Is there any evidence that the works or supply required was subdivided in order to remain below levels of authorization or procedure?
- Was the estimated contract value based on realistic and updated prices?
- Was the estimated contract value in line with the final cost of the contract awarded?

An **example** for corruptive behaviour in this specific step of the procurement process is as follows:

Some years ago, a government agency planned to expand an already existing office building. The estimated funds for this project were – compared to other projects in previous years – unrealistically low. This precluded competition in such way that only one firm submitted an offer. This company was awarded the contract. During the construction phase the company claimed several times for supplements and additional funds. The auditors detected an arrangement between a person in the planning staff, a procurement officer and the vendor firm to prevent competition by underestimating the project cost. After contract award the vendor firm increased the overall project cost with several amendments to the basic contract.

6.1.3 Specification and Requirement

A clear definition of the required goods/services is the basis for an efficient tender-phase. This definition should be based on a standardized procedure (rules), outlined e.g. in a procurement-handbook or guideline. Possible splitting procedures need to be investigated and eliminated.

The requirements and specifications should be simplified to avoid or at least minimize sole-source-procurements. Also, terms like “emergency”, “immediate” and “exceptional” need an explanatory statement and should only be accepted in exceptional cases or extraordinary situations.

All staff involved in the definition of requirements and specifications need to be identified. This includes also middlemen and vendors.

Included in the requirements and specifications should be a paragraph, that bidding companies obligate themselves to comply with anti-bribery and anti-corruption laws and regulations.

Table 7: Specification and Requirement – risks, red flags, examples of non-compliance and preventive actions

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Narrow definition or commercial specification	Use of brand names.	Fewer alternatives; Most suitable product or service may not be obtained; Increased costs.	Use of functional and performance specifications.
Definition of inappropriate product or service	Specifications not in accordance with previous or comparable purchases.	Need not satisfied; Time lost; Increased costs; Possible downtime.	Ensure specification is consistent with needs analysis: Improve market knowledge; Use functional and performance specifications.
Biased specification	Inadequate responses from tenderers; Claims concerning unfair dealings.	Most suitable product or service may not be obtained; Increased costs.	Use of functional and performance specifications; Implement a control; Mechanism to review specification before release.
Inadequate requirements and criteria for selecting the most advantageous offer	Big variety of offers.	Insufficient responses; Products offered not meeting needs; Difficult to evaluate; Restriction in competition; Elimination.	Be familiar with requirements; Use of functional and performance specifications; Use an Expression of Interest or Request for Information to clarify requirements.

Typical questions auditors could ask during their field work are similar to those asked also for the phase of needs assessment. Such questions could be:

- Was the performance described clearly, unambiguously and comprehensively, giving precise definition of the characteristics of what was to be supplied, so that all persons concerned had an equal understanding of requirements and that clarification or amendments are not necessary?
- Were technical requirements set strict enough to guarantee the desired performance without being unnecessarily tight to exclude favorable bids that don't comply with all requirements?
- Did technical specifications (required characteristics of a material, product, supply or service) afford equal access for tenderers, containing no feature that directly or indirectly discriminate in favor, or against, any bidder, product, process or source?
- Did technical specifications exclude any reference to a specific make or source, to a particular process, to trade marks, patents, types or to a specific origin or production, thus preventing favoring or eliminating certain undertakings or products?
- When such references were made, was a precise description of the performance not possible? Were those references accompanied by the words "or equivalent"?

To illustrate the danger of corruption at this phase of procurement another **example** based on the experience of a specific SAI is given:

During an audit the representatives of the SAI revealed that purchase-actions repeatedly contained restrictive technical specifications leading to only one vendor firm without giving a sole source justification. An analysis of the purchase documentation came to the result that the vendor firm had influenced a purchase agent to eliminate competition by paying a bribe.

6.1.4 Choice of Procurement procedure

To avoid corruption and bribery full and open competition is deemed to be the best procurement-procedure. This includes public notification of the bidding opportunities. The steps of the bidding process and contract terms and conditions need to be defined and published. This also comprises the criteria for choosing the winner.

Only sealed bids shall be accepted, opened in the presence of all bidders at a specified time and place.

The evaluation of the bids has to be carried out by competent unbiased staff. The whole process needs to be documented to allow future audit and evaluation.

Simplified procurement procedures like sole-source-procurements need to be avoided to the highest extent possible. But if simplified procurement procedures are used, a valid justification has to be included in the purchase-documentation.

Table 8: Choice and Organization of Procurement procedure – risks, red flags, examples of non-compliance and preventive actions

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Failure to identify potential sources	Only one or very few offers.	Lack of offers from suitable tenderers.	Improve procurement planning; Improve market research.
Selecting inappropriate method	Inadequate responses from potential vendor-firms in purchase-files; Complaints from vendor firms.	Need to seek offers again; Possible cost variations; Failure to obtain value for money.	Improve implementation of procurement policies, guidelines and practices; Improve tender documentation and clearly identify the evaluation criteria in Request for Tenders; Provide staff with appropriate training and experience

Typical questions auditors could ask during their field work are:

- Was the procurement process clearly organized and documented?
- Were all referring tasks allocated?
- Were all steps of the bidding process and contract terms and conditions clearly defined and published?
- When and how were they published?
- How was the team evaluating the bids trained and were they competent?
- Was sole-source procurement justified and documented?

Also, for this phase of procurement an **example** based on the experience of a specific SAI can be given to illustrate possible corruptive actions:

During an audit the auditors analysed the purchase-file of a construction project. They found several letters from potential vendor-firms complaining for not being invited to submit a proposal. The responsible purchase agent has deliberately minimized competition by excluding potential vendors from the competition. The reason for this behaviour was an arrangement between the agent and one specific company.

6.2 Tendering Phase

Independently from the selection procedure (negotiated procedure restrictive procedure etc.) there are five common steps of the tendering process, depending on the selected process of procurement:

- Request for proposal
- Bid submission
- Bid evaluation
- Negotiation
- Contract award

The objectives of an efficient and unbiased tendering-phase are to provide equal opportunity to all eligible tenderers by issuing complete specifications, information and timeline. An impartial evaluation is based on agreed yardsticks or conditions to select the best proposal. Later, negotiations with selected tenderers to remove any reservations have to be performed. During this process, risks have to be eliminated, e.g incorrect or inappropriate specifications, restricting information, subjectivity in decision-making, evaluation not on specified criteria, personal interests or corruptive behaviour.

In the following paragraph a short description of each step and possible risks of corruption within the steps is given. In addition, an overview of red flags, possible consequences of corruptive behaviour and preventive actions against such behaviour is delineated.

6.2.1 Request for proposal

The Request for proposal process objective is to provide equal opportunity for all suppliers and normally starts with clear definition of requirements with specifications, timelines, evaluation criteria etc.

Common and exemplary risks for this phase are the asymmetric information, under- or overstatement of the need, the misinterpretation of the need, terms and conditions unacceptable to tenderers such as delivery schedule etc.

The following table depicts the specific risks of this phase, associated red flags, examples of non-compliance and possible preventive actions.

Table 9: Request for proposal – risks, red flags, examples of non-compliance and preventive actions

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Terms and conditions not comply with technical specifications and/or legal requirements	Considerable deviation compared to previous purchases, including difficult or impossible conditions to favour some tenderers; Need not specified.	Unability to submit quotations by some tenderers.	Use standard and appropriate documentation; Improve tender planning; Consult with legal department, as needed; Use commercially acceptable terms; Provide staff with appropriate tender planning and procurement skills; Evaluation as per request for proposal.
Providing inadequate information	Asymmetric information to favour some tenderer; Inclusion of rare or	Increased procurement costs; Misuse of resources; Most suitable product not obtained;	Ensure all tenderers have same and equal information; Use standard conditions; Review tender documents

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
	specific conditions; Need not specified clearly.	Unethical conduct; No equal opportunity for all tenderers; Misinterpretations on need or under or over estimates lead to wrong product or service in quotations and they are not comparable.	to ensure evaluation criteria clearly specified.
Non-compliance with laws, regulations and approved policies and procedures	Non-compliance	Unethical conduct; Penalties or fines from law monitoring agencies.	Checklist to ensure applicable laws and regulations.

Typical **questions** auditors could ask during their field work are:

- Were the performance and delivery conditions in the request comprehensive and unambiguous?
- Was the performance described clearly, unambiguously and comprehensively, giving precise definition of the characteristics of what was to be supplied, so that all concerned had an equal understanding of requirements and that clarification or amendments are not necessary?
- Were technical requirements set strict enough to guarantee the desired performance without being unnecessarily tight to exclude favourable bids that don't comply with all requirements?
- Did technical specifications (required characteristics of a material, product, supply or service) afford equal access for tenderers, containing no feature that directly or indirectly discriminate in favour, or against, any bidder, product, process or source

- Were technical specifications formulated by reference to performance or functional requirements admitted by the respective directorate or department ? Were technical specifications are accurate and impartial?
- Did technical specifications exclude any reference to a specific make or source, to a particular process, to trade marks, patents, types or to a specific origin or production, thus preventing favouring or eliminating certain undertakings or products?
- When such references were made, was a precise description of the performance not otherwise possible and were those references accompanied by the words "or equivalent". If equivalent mentioned, did the specifications clear?
- All information provided reached to all tenderers and all of them have equal opportunity
- Was the procurement information disclosed to public?
- Issue of RFP or request for quotation (RFQ) as per applicable laws, approved policies and procedures? Whether any checklist was prepared and duly reviewed to ensure compliance of the above.
- Request for proposal is issued for all similar requirements of organization and not scaled down to adhere the approval limits mentioned in law or policy?
- Approval from appropriate authority exists?

To illustrate the danger of corruption at this early phase of a procurement action an **example** based on the experience of a specific SAI is given:

During their field work the auditors compared the technical specification for one product with the general requirements of such service and some rare conditions. The documentation was written in such a way that only one vendor firm could meet all specifications. In the purchase-documentation the auditors also found hints for collusion between the ordering directorate and one agent of the vendor firm. The auditors came to the result that it was intended to pay one purchasing agent a specific amount of money for some products with rare conditions without business need. There may be some kickbacks while buying the products.

6.2.2 Bid submission

The objective of the Bid submission process is to provide clarifications to all tenderers as requested by them, obtain all completed bids in closed envelope in specified place before due date and time and place s mentioned in Request for Proposal. Results after opening the closed envelops need to be published as soon as possible.

Common and exemplary risks for this phase are the asymmetric information, disclosure of confidential information, lack of process to receive closed envelopes, no response from quality suppliers etc.

The following table depicts the specific risks of this phase, associated red flags, examples of non-compliance and possible preventive actions.

Table 10: Bid submission – risks, red flags, examples of non-compliance and preventive actions

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Failure to adequately address enquiries from tenderers	Claims of unfair practices.	Offers with qualifications by tenderers; Withdrawal of offers; Favour Award to some tenderer.	Implement standardised procedures for responding to enquiries in writing Provide staff with appropriate tender management training and experience; Respond in a timely manner to enquiries to all tenderers even one tenderer asked the information; Allow adequate time for tenderers to respond.
Actual or perceived favouritism in providing information or breach of confidentiality	Claims of unfair practices or favouritism.	Complaints from tenderers; Mistrust by tenderers; Lack of reputation to organization.	Implement standardised procedures for responding to enquiries in writing; Provide staff with appropriate tender management training and experience; Respond in a timely manner to enquiries to all tenderers

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
			even one tenderer asked the information; Allow adequate time for tenderers to respond.
Insufficient number of responses	Inclusion of rare or specific conditions to favour some tenderer over the others.	Insufficient number of responses.	Need to undertake process again.
No response from known quality suppliers	Tenders were published in less known newspapers; Vast difference between estimated and bid prices.	No response from known quality suppliers; Reduced competition.	Need to repeat the process.
Bid rigging	Repeatedly the same bidders are involved in procurement; Prices in bids are higher than estimated value.	Reduced competition; Quality of product can be compromised.	Market research, information about similar procurement, clear definition of specifications, open procedure can reduce the risk of corruption.

Typical **questions** auditors could ask during their field work are:

- Were fair and impartial procedures in place in relation to receiving and opening of quotations?
- Were quotations or bids held in secure location prior to the closing time for quotes?
- Were all the received quotes marked with the time and date of receipt and recorded in an appropriate schedule or register?

- Were all quotation forms and quotation schedule pages signed in the appropriate manner?
- Have the procedures for any late quotations been followed or excluded as per approved procedures?
- Were tenders with any errors treated as per approved procedure?
- Were all the tenderers provided with information, even if a request for clarification was raised by a tenderer?
- Was the information provided by tenderers kept confidential?
- Were all documents kept secured in safe place?
- Has any checklist been prepared to ensure all process as per approved policies and procedures?
- Have the details of authorized persons to open the box or receive bids and orderly mechanisms for this topic been made public?
- Is the segregation of duties of the tender officer in charge clearly defined?

To illustrate the danger of corruption at this early phase of a procurement action an **example** based on the experience of a specific SAI is given:

During their field work the auditors compared the documents and quoted price for one tender wrote differently in numerals and alphabets. However, management accepted the bid to give favourable treatment for tenderer as one price quoted is less than all other quotations received. There might be some kickbacks (bribes) while buying the products.

6.2.3 Bid evaluation

The objective of bid evaluation process is to fairly evaluate all received quotations technically and financially by an independent tender committee to select best tenderer to obtain optimum value from the tender process.

Common and exemplary risks for this phase are the inappropriate delegation, noncompliance with laws and regulations, favouritism, evaluation not as per criteria in the Request for Procurement (RFP), lack of proper training for committee, subjective evaluations, conflict of interests etc.

The criteria for selecting the most advantageous offer (bid evaluation) allow to evaluate the submitted offers, they express the intentions of the contracting authority and also indirectly

describe the subject of the purchase. The criteria for selecting the most advantageous offer aim to ensure the transparency of the offer selection, to increase the legal certainty and the standardization of all public procurement procedures.

The following table depicts the specific risks of this phase, associated red flags, examples of non-compliance and possible preventive actions.

Table 11: Bid evaluation – risks, red flags, examples of non-compliance and preventive actions

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Failure to follow effective evaluation procedures	Inconsistent evaluations; Subjective not objective; Evaluation of offers.	Possible complaints from tenderers; Selection of inappropriate tenderer; Legal issues.	Improve tender assessment and evaluation processes in line with organization policies; Provide staff with appropriate tender assessment and evaluation training and experience; Maintain all relevant documentation, audit and review evaluation procedures; Ensure that Evaluation Committee members declare conflicts of interest with proper sign-off; Accountability measures.
Breaches of security	Claims of unethical or unfair practices.	Loss of faith in organization.	Maintain, audit and review security procedures; Provide staff with appropriate training and experience and monitor performance; Ensure that Evaluation Committee members understand and sign

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
			Confidentiality Agreements.
Offers fail to meet needs	Claims of unethical or unfair practices	Need to call tenders again; Additional costs; Delay in delivery.	Conduct market research and improve knowledge; Improve tender documentation with proper specifications and suitable criteria.
Failure to identify a clear winner; Decision made on subjective grounds.	Claims of unethical and unfair behaviour.	Complaints from tenderers; Loss of faith in organization.	Ensure evaluation criteria contain the critical factors on which the assessment of tenders will be based and that they are clearly identifiable to tenderers in tender documents; Ensure evaluation criteria are appropriate and measurable; Ensure that Evaluation Committee members sign Declaration of Conflict and Confidentiality Agreements; Accountability measures; Tenders should be awarded based on evaluation criteria mentioned in RFP; Implementation of effective whistleblowing policy and controls and educate all responsible officials.

Typical **questions** auditors could ask during their field work are:

- Have the members of the tender commission been chosen in a transparent and impartial manner?
- How have the responsibilities of each member of the tender commission been individualized?

- Were fair and impartial procedures in place in relation to evaluation of bids and selecting the most appropriate tenderer?
- Was the evaluation criteria mentioned in RFP or RFQ duly adhered for technical and financial selection of bids?
- Were all the tender committee members present and quorum available for decision?
- Were all tenders opened at the specified time and place in the presence of the members of the Committee?
- Are there appropriate and measurable evaluation criteria for bid evaluation?
- Is there a conflict of interest between the members of the Commission and the bidders?
- Have the members of the Commission and the associated committees been given adequate training to obtain an appropriate tender selection at the best prices?
- Has any checklist been prepared to ensure all process adhered as per approved policies and procedures?
- Whether all documents along with required bonds such as performance bond, insurance etc are available?
- Is the selection of appropriate tenderer acceptable as per applicable laws and regulations?
- Has the selected tenderer accepted all conditions as per RFQ or RFP?

To illustrate the danger of corruption at this phase of a procurement action an **example** based on the experience of a specific SAI is given:

During their field work the auditors compared the documents and noted the management had considered training as a factor to evaluate tenders and had provided more preferential treatment for the selected tenderer. However, this requirement has not been mentioned in the evaluation criteria in RFQ/RFP. Based on further investigation, it was determined that the respective department management had accepted kickbacks to prefer the selected tenderer. The responsible authorities initiated the necessary measures.

6.2.4 Negotiations

The negotiations process objective is to discuss with best tenderer to remove any qualifications they put or negotiate for the benefit of public. The negotiation phase is one of the important stages that precedes the conclusion of the contract with the winning bid in the

tender for determination of obligations and rights of the parties to the contract. This stage ends at a time when the parties agree on the legal issues and clauses of the contract. This approval is the dividing line between the negotiation stage and the contract stage.

Common and exemplary risks for this phase are no response from selected bidder, Non-agreement on the terms of the proposed contract between the contractual parties/failure to secure the mandatory conditions and reaching an agreement regarding the contract privacy policy / the existence of unfair or cumbersome conditions on the bidder / Agreed upon.

The following table depicts the specific risks of this phase, associated red flags, examples of non-compliance and possible preventive actions.

Table 12: Negotiations – risks, red flags, examples of non-compliance and preventive actions

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Not matching the expectations of buyer and tenderer	Contract disputes.	Delivery delays; Cost variations; Reduction in value for money; Purchase of less suitable product; Inefficient use of resources.	Ensure potential suppliers aware of requirements before submitting quotations; Improve communication, including ensuring that Conditions of Contract form part of the Request for Tender.
Deadlock on details of agreement	Contract disputes.	Delays in delivery; Need to restart procurement; Possible cost of legal action.	Look at alternatives to share risk; Distinguish between essential and non-essential goals and requirements.
Failure to secure mandatory conditions	Inability to finalise contract.	Delays in delivery; Variations in cost; Inefficient use of resources.	Establish baseline before negotiations; Distinguish essential goals from others; Provide negotiators with

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
			adequate training.
Failure to secure agreement in relation to Contracts Confidentiality Policy	Inability to finalise contract.	Delays in delivery; Inefficient use of resources; Requirement to negotiate with other ranked suppliers.	Ensure potential suppliers aware of requirements before submitting responses; Compliance with laws and regulations; Confidentiality agreements.
Unfair or onerous requirements on the tenderer in the contract conditions	Contract disputes	Invalidity of contract; Legal action; Poor supplier/customer relationship.	Provide negotiators with adequate training and support; Negotiate commercial terms Terms should be fair and reasonable.
Failure to reflect the terms offered and agreed in the contract	Contract disputes	Legal action; Poor supplier/customer relationship.	Check final draft of contract with successful tenderer; Keep records of all negotiations and agreements.
Inadvertently creating a contract without the delegate's prior approval	Commencement of contracts without valid approvals from appropriate authority from both contractual parties.	Expense of negotiating out of the contract and paying damages; Legal issues.	Procedure in place to ensure delegate's approval obtained first; Provide negotiators with adequate training; Compliance with laws, regulations and approved policy and procedures.
No timeframe defined for negotiation	Extensive time for this phase	Delay in the procurement process; Biased decision process.	Clear definition of timeframe.

Typical **questions** auditors could ask during their field work are:

- Were fair and impartial procedures in place in relation to negotiations with the lowest selected tenderer?
- Has the lowest tenderer been given opportunity to remove reservations, if any?
- Has the negotiations committee been appointed by tender committee?
- Has negotiations committee been declared any conflict of interests?
- Are negotiations conducted on fair and reasonable manner?
- Are all documents retained properly?
- Have the members of the negotiations committee been given an adequate training to negotiate in a proper manner?
- Has any checklist been prepared to ensure all processes adhered as per approved policies and procedures?
- Are the negotiations with selected tenderer acceptable as per applicable laws and regulations
- Has the legal department been contacted for all legal issues?
- Are binding conditions included in the purchase order?
- Have the terms of the contract been presented to a legal adviser?
- Have the mechanism and methods of resolving contract disputes been determined in the event if they occur?
- Do penal requirements exist in the event that the supplier fails to supply at the right time, place and specifications?
- Has the potential cost of legal proceedings been determined in the event of a deadlock between the parties?
- Has the purchase resulted in the same quality and specifications previously set for purchase?
- Are the negotiations in accordance with the target package and the actual requirements?
- Are the wrongdoers charged with the resulting losses or has the contract been cancelled?
- Has a timeframe been defined for the negotiation process?

To illustrate the danger of corruption at this phase of a procurement action an **example** based on the experience of a specific SAI is given:

During their fieldwork, the auditors reviewed the documents and noted management-initiated negotiations with not first ranked tenderer based on evaluation criteria. They had negotiations with some other tenderer. Due to this contract, value is higher and organization lost lot of money.

6.2.5 Contract award

The contract award process objective is to award contract after the final agreement between the buyer and the supplier and after obtaining all approvals from appropriate authority. With this, contractual liability of the parties arises.

Common and exemplary risks for this phase are the selection of an inappropriate resource / inappropriate product selection.

The following table depicts the specific risks of this phase, associated red flags, examples of non-compliance and possible preventive actions.

Table 13: Contract award – risks, red flags, examples of non-compliance and preventive actions

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Selecting an inappropriate supplier	Failure to fulfil the contract.	Legal issues; No value addition or benefit from the contract; Additional expenses for retenders; Delivery delays; Penalties.	Provide staff with appropriate tender evaluation, financial and technical skills training and commercial expertise; Improve evaluation procedures; Improve evaluation criteria and clearly identify them to tenderers in tender documents; Reject unacceptable offers; Perform financial, technical

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
			and company evaluations before awarding contract; Procurement Review Committee to review tender and selection process prior to awarding contract.
Selecting inappropriate product	Failure to meet the client's need	Legal issues; No value addition or benefit from the contract; Additional expenses for retenders; Delivery delays; Penalties.	Ensure users are involved in the evaluation/selection process; Improve technical evaluation procedures and train staff as appropriate.
Failure of either party to fulfil the conditions of the contract	Contract disputes. Failure to satisfy needs.	Delays in delivery; Downtime; Legal action. No benefit from contract; Additional expenses.	Ensure good contract administration and performance management. Hold regular inspections / meetings and ensure progress reports; Ensure all staff know responsibilities and conditions; Ensure good record keeping and documentation.
Inadequate management of the contract	Failure of contract.	Cost increases; Full benefits not achieved;	Maintain up-to-date agency procedures and practices; Ensure all staff are suitably

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
		Delivery of unsatisfactory product; Contract/supply disputes.	trained and experienced in contract planning and management.
Unauthorised increase in scope of work	Unanticipated cost increases.	Contract disputes; Full benefits not achieved; Contract/supply disputes; Additional expenses.	Ensure all contract amendments are issued in writing; Record all discussions and negotiations; Confirm instructions in writing.
Commencement of work by the supplier before contract is exchanged or letter of acceptance issued	Noncompliance with applicable laws, regulations and approved policies and procedures.	Potential liability to pay for unauthorised work; Possibility of legal action for perceived breach of contract; Personal accountability for officials approved the commencement without proper approvals from appropriate authority.	Confirm verbal acceptance of contract with written advice; Accept all contracts in writing; Ensure approvals are received before allowing work to start.
Unwillingness of the supplier to accept the contract	Delays in delivery.	Delay in the starting date of the project; Need to restart procurement.	Seek legal redress if non-acceptance causes loss; Negotiate but retain integrity of the contract.

Typical **questions** auditors could ask during their field work are:

- Were fair and impartial procedures in place in relation to contract award?
- Were employees adequately trained on commercial, financial and technical tasks?
- What are the criteria for vendor evaluation and clarity for bidders in tender documents?
- What is the mechanism by which unacceptable offers are rejected?

- Are evaluation criteria developed in accordance with evolving technical or market conditions and overall economic situation?
- Did any checklist has been prepared to ensure all process adhered as per approved policies and procedures?
- Were the legal department had been contacted for all legal issues?
- Are binding conditions included in the purchase order or contract?
- Have the terms of the contract been presented to a legal adviser and obtained the legal opinion?
- Has the mechanism and methods of resolving contract disputes been determined in the event if they occur?
- Are there penal requirements existing in the event that the supplier fails to supply at the right time, place and specifications?
- Has the potential cost of legal proceedings been determined in the event of a deadlock between the parties?
- Was the commencement of works only after valid legal agreement?

To illustrate the danger of corruption at this phase of a procurement action an **example** based on the experience of a specific SAI is given:

During their fieldwork, work commenced without obtaining approvals from appropriate authority and without valid legal agreement. There was a dispute in making the payments to contractor and they went to court. Due to this, organization is suffered and paid extra money³⁴.

6.3 Post-award Phase

Post-award project management commences upon award of the Project i.e. from the date of issue of the Letter of Award to the successful bidder and ends after the completion of the Project and expiry/termination of such Agreement. The Post-award objective is to consider performance monitoring of the contractor/successful bidder, relationship management with all

³⁴ See also *infra*, example 6.3.3, the case including a kind of « Selecting an inappropriate supplier »

Stakeholders, resolution to disputes if any, try to serve all the objectives set out in the Agreement in the best possible manner.

The Post-award phase consists of three consecutive stages:

- the Contract Management Stage
- the Order and Payment Stage
- Evaluation

6.3.1 Contract management stage

The objective of contract management is to ensure that all parties to the contract fully meet their respective obligations as efficiently and effectively as possible, delivering the business and operational outputs required from the contract and providing value for money. It also protects the rights of the parties and ensures required performance when circumstances change. Contract management includes monitoring and documenting performance.

Table 14: Possible risks, red flags, examples of non-compliance and preventive actions:

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Variations in price and foreign exchange	Cost overruns.	Reduction in international trade; Adversarial relations amongst stakeholders; Price inflating.	Agree on a formula for calculating variations; Agree on prices and the basis of prices (hedging).
Failure of either party to fulfil the conditions of the contract	Contract disputes.	Delay in the procurement process; Legal action; Additional expenses; Missing deadlines; Failure to satisfy needs; Delays in delivery; Downtime.	Ensure proper contract administration and performance management; Hold regular inspections / meetings and ensure progress reports; Ensure all concern units are aware of responsibilities and conditions;

			Ensure good record keeping and documentation.
Change in contract conditions to allow more time and/or higher prices for the supplier/bidder	Unjustified preference of a bidder.	Unjustified delay in the procurement process; Cost increases; Legal Action by unsuccessful bidders..	Standardized terms of contract.
Product substitution or sub-standard work or service do not meet contract requirements	Incorrect performance of the contract.	Delivery of unsatisfactory product; Legal Actions and Liability. Delivery of an unsatisfactory product.	Standardized terms of contract; Establish and implement control of compliance with the contract requirements.
Penalty clauses missing from the contract	Signing an incomplete procurement contract	Procurement contract is not valid; Legal Action and Liability.	Establish standardized penalty clauses and control of compliance with the standardized penalty clauses before signing.
Lack of proper reporting and recordkeeping of changes in contract	Use of different contract variations.	Legal dispute; Adversarial relations amongst stakeholders.	Establish and implement reporting and recordkeeping control procedures.
Inadequate management of the contract	Contract supply disputes.	Budget overruns; Cost increases; Project remains uncomplete; Failure of contract;	Maintain up-to-date agency procedures and practices in progress report; Ensure all staff are suitably trained and experienced in

		Delivery of unsatisfactory product; Full benefits not achieved.	contract planning and management.
Commencement of work by the supplier before contract is exchanged or letter of acceptance issued	Non compliance with applicable laws, regulations and approved policies and procedures.	Potential liability to pay for unauthorised work; Possibility of legal action for perceived breach of contract.	Confirm verbal acceptance of contract with written advice; Accept all contracts in writing; Ensure approvals are received before allowing work to start.
Loss of intellectual property	Loss of commercial opportunity; Unwarranted reliance on supplier for product support.	Legal Action; Wastage of resources; Theft; Lost opportunities; Inefficiencies throughout the entire value chain; Bottlenecks at key process points.	Ensure suitable clauses are included in the contract.
Failure to meet liabilities of third parties (eg. Royalties or third party property insurance)	Damage to the agency's professional reputation; Liability disputes.	Breach of contract; Abandonment of the project; Legal action.	Check that all obligations are covered in the contract; Agree on responsibilities; Implement appropriate safety standards and programs.
Fraud	Misuse of resources.	Budget overruns; Project comes to a standstill/is abandoned;	Maintain an ethical environment; Maintain accountability

		Entire process has to restart (delays in the approved schedule); Legal action; Disruption to procurement activities.	procedure; Follow and maintain fraud control procedures.
Key personnel not available	Progress on project disrupted; Less expertise.	Low quality of work; Contract specifications not followed through.	Include requirement in specification and ensure compliance in post-tender negotiation; Know the market; Accept risk and manage possible delay.

Typical questions at the contract management stage auditors could ask during their field work are:

- Are standards and procedures in place for the negotiation and conclusion of procurement contracts?
- Are standards and procedures in place for reporting and recordkeeping control procedures?
- Are procedures and controls in place to ensure the completeness and legality of procurement contracts?
- Is the staff at the contracting authority aware and trained on the negotiation and conclusion of procurement contracts?
- How is the delivery at satisfactory level of quality ensured?
- Have there been cases of contractors being unable to deliver at all or not delivering at satisfactory level of quality? How have the cases been handled?
- How are disputes with contractors handled?

To illustrate the danger of corruption at this post- award phase an **example** based on the experience of a specific SAI is given:

During their fieldwork, the auditors discovered that a very important supplier did not declare and pay VAT, social taxes, and did not comply with labour law of the country, though compliance with taxes and other laws is a mandatory condition.

The supplier answered that he respected the law of a third country, its affiliate being registered in a free zone where there is no taxes and no compulsory social security.

However, in its bid, he presented its self as "john doe –group" without referring to an off-shore subsidiary. But the signatory of the contract was "john-doe-affiliate".

Therefore, the supplier had cheated while the contracting authority turned a blind eye.

The lack of monitoring laid during the phase of implementation – the supervisor didn't ensure the compliance with taxes and laws - but the contracting authority failed also at the signing phase – not ensuring the law that supplier claimed to comply with.

6.3.2 Order and Payment stage

The objective of the Order and Payment Stage is to ensure that there are no deficient separation of financial duties and/or lack of supervision of public officials that may lead to false accounting and cost misallocation or cost migration between contracts, or late payments of invoices as well as false or duplicate invoicing for goods and services not supplied or for interim payments in advance of entitlement.

Table 15: Possible risks, red flags, examples of non-compliance and preventive actions:

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Deficient separations or financial duties and/or lack of supervision of public officials	False accounting and cost; Misallocation or cost migration between contracts.	Receipt of goods and services are not in line with expected standards and at least two officials were not involved in the verification of the receipt of goods/services; Budget funds were not committed promptly prior to or during the award of the contract;	Implement segregation of duties, i.e officials who examine the invoice against the goods and orders/delivery note be different from those officials who give the payment order to the accounting department.

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
		Over or under-evaluation of availability of resources.	
Lack of adequate controls of works, supplies and services provided by either internal or external audit	False accounting.	Late payments of invoice; False or duplicate invoicing for goods and services not supplied and for interim payments in advance of entitlement; Goods were not checked against the purchase order and the delivery invoice before payment.	Implement risk management with efficient controls; Regular evaluations of control mechanism.
False accounting and cost misallocation between contracts		Systematic completion reports for the certification of budget execution has not been prepared and delivery does not reconcile with the budget.	Implement systematic reports on certification of budget execution and accounting.
Late payments and invoices	Random supervisory checks on payments were not done, also proof of outstanding payments were not monitored.	Delay in the procurement process; Litigation.	Implement systematic controls of payments and invoices.

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
False or duplicate invoicing for goods and services supplied	Over or under-evaluation of availability of resources.	Payments are not cross-checked by the accounting entity afterwards; Budget funds were not committed promptly prior to or during the award of the contract.	In instances where purchase cards for small value procurements were used verify that the use thereof is limited to purchase of specified items and that expenditure is limited / controlled.
Systematic completion reports for the certification of budget execution has not been prepared and delivery does not reconcile with the budget.	Delivery does not reconcile with the budget.	Delay in the procurement process; Legal action.	Implement and control systematic completion reports for the certification of budget execution.
Fraud	Misuse of resources.	Budget overruns. Project comes to a standstill/is abandoned; Entire process has to restart (delays in the approved schedule); Legal action; Disruption to procurement activities.	Maintain an ethical environment. Maintain accountability procedure; Follow and maintain fraud control procedures.

Typical **questions at the order and payment stage** auditors could ask during their field work are:

- Is the contracting authority's business focus moving to other areas after the contract award, reducing the added value for the contracting authority in the arrangement or impacting on the timelines of delivery of goods or works?
- Is the contracting authority's financial standing deteriorating after the contract award, eventually endangering its ability to maintain the agreed quality requirements of the goods purchased or level of services?
- Is staff of the contracting authority with knowledge of the contract transferring or moving on, weakening the relationship?
- Is there a risk that the project vision might not be clear?
- Could the statement of project objectives be more realistic?
- Does the project scope define borders clearly?
- What project deliverables are defined and what might be under-defined?

6.3.3 Evaluation

The results evaluation should be used to improve the corruption prevention system in public procurement. No system is perfect, controls can sometimes be avoided and structural weaknesses may not be timely identified. Therefore, it is necessary to analyse in detail the corruptive acts that have already occurred and to use the results to permanently improve the system.

Furthermore, the use of e-procurement could enhance the transparency of public procurement and facilitate access for all stakeholders to information on public procurement. E-procurement might reduce the opportunities for corruption, but sufficient care must be taken in the development of e-procurement platforms to ensure confidentiality, accountability and transparency.

Table 16: Possible risks, red flags, examples of non-compliance and preventive actions:

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Failure to evaluate procurement and management processes	Possible failure in the future.	Cost overruns; Missing deadlines; Legal action; Compromised quality of product.	Develop systematic evaluation methods, techniques and evaluation criteria.

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
Failure to identify and address problems	Procurement objectives not achieved; Possible failure in the future;	Legal action; Missing deadlines.	Agree on performance criteria (with supplier and customer); Develop good relationships with suppliers; Include evaluation clause in the contract; Implement performance management strategies.
Failure to evaluate procurement and management processes	Failure to improve procurement and management processes.	Missing deadlines; Legal actions; Compromised quality of product.	Develop systematic evaluation methods, techniques and evaluation criteria.
Failure to identify and address problems	Procurement objectives not achieved; Possible failure in the future.	Missing deadlines; Legal actions; Compromised quality of product.	Agree on performance criteria (with supplier and customer); Develop good relationships with suppliers; Include evaluation clause in the contract; Implement performance management strategies.
Inadequate need analysis	Overstatement/ understatement of the need; Unrealistic timescales and schedules;	Cost/Budget overruns; Compromised quality of product; Waste of time.	Plan your procurement processes so that everyone on your team understands the protocols they need to follow to ensure all data is accurate, complete, and

Risk	Red flags	Examples of Non-Compliance	Preventive Actions
	Inadequate budget; Poorly-designed requirements.		up-to-date.

Typical **questions at the order and payment stage** auditors could ask during their field work are:

- Are the project's customers well understood?
- Are the project stakeholders clearly identified?
- Are the roles and responsibilities across the project team well documented and understood?
- Is the project structured in a way where success is a achievable outcome?
- What are the strengths and weaknesses to the chosen approach for the project?
- Is the project sufficiently financed?
- Is the quality of the project clear and achievable and easily measurable?
- Do the project stakeholders have a good way to manage issues on the project as they will inevitably arise?
- Does the project have any hard constraints?

7 Conclusion

One of the most corruption prone government activities is public procurement. The reasons for this include "the volume of transactions and the financial interests at stake" as well as "the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders" (OECD, 2016). This Guideline aims to help auditors understand the corruption risks and red flags veiled in the intricacies of public procurement.

The procurement in various countries is governed by the established regulations and rules of each country whereby the rules and regulations may differ in matters of detail. Nonetheless, this Guideline provides practical guidance across boundaries and shall serve as a companion for auditors in auditing public procurement as part of the financial statements audit, compliance or performance audit with the objectives of uncovering and preventing corruption in public procurement.

8 Annex

Editor	Name of Document	Link
ADB/OECD (Asian Development Bank / Organisation for Economic Co-operation and Development) Anti-Corruption Initiative	Anti-Corruption Initiative for Asia and the Pacific, ADB, Manila (2007)	https://doi.org/10.1787/9789264041332-en .
Business anti-corruption portal	Public Procurement Due Diligence Tool	https://www.ganintegrity.com/portal/tools/due-diligence-tools/public-procurement-due-diligence-tool/
Council of Europe	Civil Law Convention on Corruption	https://rm.coe.int/168007f3f6
European Commission (study by PwC and Ecorys)	Identifying and Reducing Corruption in Public Procurement in the EU	https://ec.europa.eu/anti-fraud/system/files/2021-07/identifying_reducing_corruption_in_public_procurement_en.pdf
European Commission	Anti-Corruption Report 2014	https://ec.europa.eu/home-affairs/system/files/2020-09/acr_2014_en.pdf
EU Directive	Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (stages of public procurement)	https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0024&from=EN
EU Directive	Directive 2014/24/EU	https://eur-lex.europa.eu/legal-

	of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC	content/EN/TXT/HTML/?uri=CELEX:32014L0024&from=en
European Union	"Convention against corruption involving public officials", Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union	https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:41997A0625(01)&from=EN
European Union	ACT 134/2016 Coll., on Public Procurement, Czech Republic	https://sovz.cz/wp-content/uploads/2017/08/act-no.-134_2016-coll.-on-public-procurement.pdf
INTOSAI	GUID 5260 - Governance of Public Assets	https://www.issai.org/wp-content/uploads/2019/08/GUID-5260-Governance-of-Public-Assets.pdf
INTOSAI	GUID - 5270 - Guideline for the Audit of Corruption Prevention	https://www.issai.org/pronouncements/guid-5270-guideline-for-the-audit-of-corruption-prevention/
OECD	Policy measures to	https://read.oecd-

	avoid corruption and bribery in the COVID-19 response and recovery	ilibrary.org/view/?ref=133_133216-hn3bqtlvk&title=Policy-measures-to-avoid-corruption-and-bribery-in-the-COVID-19-response-and-recovery&_ga=2.121986824.207606167.1638532239-1349666158.1525699780&_gl=1*1u1vr0x*_ga*MTM0OTY2NjE1OC4xNTI1Njk5Nzgw*_ga_F7KSNTXTRX*MTYzODU0MjMzNy4yLjAuMTYzODU0MjMzNy4w
OECD	Prevention Corruption in Public Procurement OECD, 2016;	https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf
OECD	Recommendation of the Council on Public Procurement	https://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf)
OLAF	Identifying conflicts of interests in public procurement procedures for structural actions - A practical guide for managers	http://m.esfondi.lv/upload/02-kohezijas_fonds/Lielie_projekti/EK_vadl_par_interesu_konflikta_identif_publ_iepirk_EN.pdf
Transparency International	Curbing Corruption in Public Procurement – A practical Guide	https://images.transparencycdn.org/images/2014_AntiCorruption_PublicProcurement_Guide_EN.pdf
Transparency International	Why fighting corruption matters in times of COVID-19, Corruption Perceptions Index 2020: Research analysis	https://www.transparency.org/en/news/cpi-2020-research-analysis-why-fighting-corruption-matters-in-times-of-covid-19
Transparency International EU	Financial flows & crime	https://transparency.eu/priority/financial-flows-crime/

U4	The basics of integrity in procurement	http://www.u4.no/publications/the-basics-of-integrity-in-procurement/downloadasset/2219
U4	Examples of procurement compliance checklists	http://www.u4.no/publications/examples-of-procurement-compliance-checklists/downloadasset/427
Chr. Michelsen Institute U4 March 2015, Issue No 8)	Corruption in the Construction of Public Infrastructure: Critical Issues in Project Preparation	https://www.u4.no/publications/corruption-in-the-construction-of-public-infrastructure-critical-issues-in-project-preparation-1.pdf
United Nations Development Programme (UNDP)	Tackling Corruption, transforming lives. Accelerating Human Development in Asia and the Pacific	http://hdr.undp.org/sites/default/files/rhdr_full_report_tackling_corruption_transforming_lives.pdf
United Nations Office on Drugs and Crime (UNODC)	United Nations Convention against Corruption (UNCAC)	https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf
(UNODC)	Global Corruption Book – Chapter 11 Public Procurement and Corruption	https://track.unodc.org/Academia/Documents/GlobalCorruptionBook-Chapter11.pdf
UNODC	COVID-19 Vaccines and Corruption Risks: Preventing Corruption in the manufacture, allocation and distribution of vaccines	https://www.unodc.org/documents/corruption/COVID-19/Policy_paper_on_COVID-19_vaccines_and_corruption_risks.pdf

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- Public procurement audit, The contact committee of the SAIs in EU, 2010