

Red-flags: indicators that may help prevent, detect and investigate malpractices

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TOPICS TO BE COVERED

- A. Typology on bribery in public procurement
- B. Key Findings : Risks and Remedies
- C. Considerations on Red-flags
- D. Conclusion

A. OECD Typology on bribery in public procurement

WHAT?

Typology = splitting an offence into a series of constituents

WHY?

- Public procurement is an important economic area for all countries – 15% of GDP and above
- Media reports on bribery allegations lead to believe that public procurement contracts lend themselves to bribery
- Need to better understand the different aspects of this criminal activity in light of OECD's mandate to fight corruption

HOW?

- Experts from 12 countries and international organisations - with different qualifications - discussed anonymised cases

B. Key findings

“Risks are high and exist in all procurement contracts”

- Public procurement rules do not specifically address bribery and corruption
- No economy and no sector are free from risks
- Appears in association with other crimes
- The image of legitimacy masks irregularities
- Public Procurement = a long and complex process where corruption can occur at all different phases
- An arsenal of counter-measures is required *i.e.* preventive, detective, investigative and prosecutorial

1) Public Procurement Rules and procedures

- Are designed to:
 - Increase competition,
 - Increase transparency in the decision process,
 - Facilitate the task of the buyers,
 - Obtain the best quality/price ratio,
 - Reduce the risks of errors of the buyers...
- not to fight bribery and corruption

Regulatory risks

- Ignorance of procurement procedures
- due to:
 - Absence of clear procurement rules;
 - unclear regulations,
 - ever-changing regulations
- may **purposely** or **unwillingly** lead to corruption.

Recommendations:

- Need of clear procurement rules and procedures;
- Fighting bribery and corruption should be one of the fundamental concerns

2) No economy or sector is risk-free

Contract size : large contracts versus subdivided projects

- Smaller-sized contracts may result in high amounts when added together (splitting contracts)

Complexity of products purchased: higher risks associated with sectors/projects for which evaluation and cost comparisons are difficult (information asymmetry).

This is generally the case for vast, highly centralised, capital intensive new projects involving high technologies or sophisticated materials.

Services: subjectivity and discretion leading to single source contracts.

3) Bribery and Corruption are not alone

They frequently come in association with:

- ❖ Fraud
- ❖ Collusion
- ❖ Political Party Financing
- ❖ Conflict of Interest
- ❖ Money Laundering
- ❖ Tax evasion
- ❖ Accounting crimes
- ❖ Organised crime and blackmail

4) It can occur all along the tendering process

I. Identification of needs & design of tenders

- Over or under-estimations of 1) needs, 2) benefits, 3) costs,

II. Selecting businesses

- Specifications manipulated to 1) fit only one company , 2) omit key information; 3) exceeding time or technical norms

III. Bidding procedures

- *Non-competitive bidding* - restricts participants;
- *Framework contracts* - negotiated once only and no review;
- *Other* : 1) splitting contracts; 2) emergency procurement;
- *Competitive bidding* – least risks.

IV. Contract Award

- Ineffective controls;
- lack of transparency (contract criteria or attributions);
- omission of mandatory clauses.

V. Contract Execution

- Factious works;
- inflated work volumes;
- changing orders;
- quality below specification;
- alternations between contract decision and conclusion;
- multi-level subcontracting;
- non-enforcement of penalties;
- lack of controls.

VI. Payments

- payment without execution of the contract;
- additional provisions outside the core contract;
- withholding payment.

5) Bribery and Corruption are difficult to detect

- Participants in corrupt business transactions operate in a secretive manner
- They generally:
 - disguise the act(s) as a legitimate transaction, or
 - conceal the matter from plain view.

C. Consideration on Red-flags

Red-flags are:

- signals, unusual events, anomalies that inform, indicate or announce that something is different from the norm or the expected activity.
- They are symptoms or indicators that have been associated with irregularities and fraud in the past.
- They are NOT EVIDENCE!

EXAMPLES:

1) A corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.

Red flags include:

- Project officials living beyond their means
- Unusually high (unit) bid prices
- New or unknown companies winning contracts
- Well-known companies not pre-qualifying
- Delays in contract award or disbursement
- Loan brokers/dubious intermediaries involved

2) A fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation.

Misleading or false information in bidding documents

Red flags include:

- Overstatement of qualifications (or courses don't exist)
- False technical specifications – no such thing
- Unusually high (unit) prices
- False references for previous experience

Accounting frauds (false invoicing etc.)

Red flags include:

- Original documents never available for inspection
- 'Plain' documents (easily generated)
- Two sets of books
- Spurious balancing items

A collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

Collusion, for example by creating appearance of competition

Red flags include:

- Unusual clustering of prices
- Last minute delivery of bids
- Spelling mistakes common to more than one bid
- Similar or same letterheads, addresses, phone numbers etc.
- Use of shell companies and/or off-shore jurisdictions

There is no single red-flag system

- Red-flags have been developed by public administrations, international financial institutions and multilateral development banks ;
- Red-flags frequently build on risk assessment systems (RAS) ;
- Generic RAS and Red-flags exist ;
- Each unit has to determine their own risks and risk-flags depending on: size, means, type of business transactions, AND legal framework (i.e. what is reprehensible).

Use of Red-flags

Pro-active:

staff involved in public procurement notably to prevent the occurrence of fraud and corruption in a business projects

Reactive:

Auditors and investigators to detect and investigate possible malpractices in a public procurement project

- Exercise “professional scepticism” - if something looks odd
- Don't rely on appearances – look behind the paperwork and beneath the surface (e.g., conduct random sampling)
- Seek evidence

Complementary Actions

- Reporting and recourse mechanisms
- Teamwork & Exchange of information among different administrations, including prosecution, to hold up corrupt actors
- Train staff to recognise red flags of fraud/corruption and reward them for reporting suspicions
- Enforce the rules and controls

D. Conclusion

Effective fight against corruption remains a challenge; it requires implementation and enforcement of adequate procurement and anti-corruption rules.

To achieve the latter, it is key to:

- Identify & receive information on suspicion, and
- Make sure to be able to act upon allegation and identified evidence.