



## CORRUPTION ALONG THE PROCUREMENT CYCLE

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### **Abstract**

*In Ghana, public procurement constitutes over 50% of Government budgets besides the cost of government wage bill and accounts for the largest share of government expenditure. Corruption in public procurement some-times manifests as bribery, rent-seeking, contractor-client payoffs, kick-backs etc. According to a recent study by the World Bank, Corruption costs the African Continent about \$148 billion approximately 25% of its Gross Domestic Product (GDP) and usually results in the execution of shoddy contracts which have far-reaching and most debilitating effects on society as a whole. (<http://ppaghana.org/documents/Bulletins/PPAE-BulletinJulAug2013Final.pdf>). There is no single accepted definition of corruption, as it tends to mean different things to different people at different times, a contextual definition which basically defines corruption as the abuse of office for personal gain. According to Transparency International, corruption is the abuse of entrusted power for private gains. Corruption Watch also defines corruption as the abuse of public resources to enrich or give unfair advantage to individuals, their family or their friends. It is believed that corruption has been with human institutions for a long time. It is simply using government or institutional resources as a result of a person's control over those resources to gain personally at the expense of the common good.*

**KEYWORD:** *Corruption, Procurement Cycle, Procurement Processes*

### **INTRODUCTION**

In order to carry out its functions, government needs to purchase goods, services and works.

This government (including State Owned Enterprises and Sub-vented agencies) activity is referred to as public procurement (or as government procurement or government contracts or public contracts). The procurement of photocopy paper, information technology (IT) equipment or medical devices, the provision of health services or consultancy services, the construction of a road or an airport terminal, are just a few examples of government spending through public procurement.

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It is the sheer volume involved in public procurement that makes it so vulnerable to corruption.

In fact, public procurement is estimated to account for 15-30 per cent of the gross domestic product (GDP) of many countries. This means that thousands of billions of dollars are spent by governments every year to purchase different kinds of goods, services and works. Although the costs of corruption are difficult to measure, due to its clandestine nature, it is obvious that corruption in public procurement has an enormous negative impact on government spending. These costs arise in particular because corruption in public



procurement undermines competition in the market and impedes economic development. This leads to governments paying an artificially high price for goods, services and works because of market distortion. Various studies suggest that an average of 10-25 per cent of a public contract's value may be lost to corruption. Applying this percentage to the total government spending for public contracts, it is clear that hundreds of billions of dollars are lost to corruption in public procurement every year.

The seriousness of the problems and threats posed by corruption and its effects on sustainable development, the United Nations General Assembly passed a resolution for a convention against corruption that called for the need to fight corruption in public procurement by providing under article 9 that "Each State Party shall in accordance with the Fundamental principles of its legal system take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia in preventing corruption."

### A TYPICAL PROCUREMENT PROCESS AND EXPOSURE TO CORRUPTION

Public procurement can be characterised as a process flow starting with procurement planning preparation of solicitation documents, advertising, invitation to tender, prequalification, tender evaluation (broken down further into technical and financial evaluation), post-qualification, contract award and contract implementation. Each link in the chain is potentially vulnerable to corruption in some form or another.

**Identification of needs and design of tenders:** Different preparations take place before launching a tender. Identification of needs and the design of tender are known to be vulnerable to corruption as there are many opportunities for manipulation. Furthermore, corrupt acts that will occur later can be planned at that stage. For instance, exchanges and discussions at this initial stage may lead to the disclosure of confidential bid information. Exchanges between project designers and intermediaries, involving the public bodies which provide or obtain funds for the project(s), may have an impact on the planning of public works and can lead to the introduction of inaccurate policy requirements. During the planning period, hidden mistakes and fictitious positions can be built into the project calculation and designs, affecting the terms of

reference, which leaves openings that can later be used to conveniently account for increased costs, influence the selection process or the selection. The briber (person offering the bribe) and the bribe (person being bribed) may for instance decide to: (i) limit the time frame for the tendering process, (ii) Use specifications that preclude competitive bidding, (iii) Select additional fictitious bidders or ones unlikely to submit competitive bids, (iv) Plan a very low bid price and include "hidden" possibilities to expand the contract at a later stage to recover the economies for the vendor, etc.

**Selecting Tenderers:** Fraud in the selection of tenderers may occur, with unqualified or untested companies being licensed to be a vendor or a bidder. This may result from various shortcomings. The participation criteria may be excessively selective, specifying features that are provided by only a few businesses. These features may or may not be relevant to the project. Unclear or ambiguous clauses may be included or insufficient explanations given as to the tendering arrangements. Any of these defects could result in the exclusion of a large number of bidders; the contract can then be awarded to those familiar with the clauses and conditions. When no tenders have been made in the public procedure, due to various types of built-in subterfuges, tendering authorities will resort to a private treaty, which provides a greater discretion.

**The tendering procedure:** Certain tendering procedures lend themselves more easily to hiding bribery and corruption. The procurement process may be more vulnerable to corruption when non-competitive procurement has become the norm. Although this kind of contract is not in itself proof of corruption, opportunities and inducements for corruption may increase. Similarly, competitive procurement cannot be a guarantee of integrity. *Non-competitive procurement* contracts are awarded by a government to a company without competitive process. Such contracts also referred to as sole-source, single-source, or no-bid, are justified by reasons of expediency in emergencies, or when national security interests are at stake. Non- competitive procurement contracts have been identified as a source of concern for reasons of transparency, democratic oversight, value for money and corruption risks.

*Framework contracts* are standing agreements used as a basis for goods and services purchases as needs arise.



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Such agreements can save time and money by eliminating numerous bidding processes. However, there are concerns that they may represent “a huge growing wedge of contract dollars” that lack transparency and are unaccountable regarding competition.

Prices are often not fixed before frameworks are drawn up, leaving the agreements open to corruption risk. However, it was noted that electronic reverse auctions based on price may only cure problems that framework agreements are supposed to address.

*Competitive tendering* or restrictive competitive tendering involve prequalification of vendors and are considered to offer fewer chances to favour a company seeking to influence the right people. Usually, competitive processes also include various levels of supervision, with expert bodies evaluating bids for quality, specificity and value for money. Furthermore, companies that are not awarded a contract theoretically have the opportunity to call public and judicial attention to their concerns about potential irregularities. Due to the different layers of appraisal, corruption is considered more difficult to conceal. However, diverse sets of corruption risk remain at the various stages of the procurement process and integrity depends on the application and objectivity of the selection criteria.

Ineffective control structures along the process provide for frequent manipulation. Lack of transparency in the attribution of the contract may also occur as all tenders may not be publicly opened, or their content may be subject to manipulation. Inadequate communication with participants is another widespread feature. The absence of objective decision criteria or the inadequate weighting of the various criteria are further ways to influence the awarding process. For instance, costs are only one among a number of components to be considered. It is often found that technical features of a proposal, the fact that it meets community requirements or the time required for its implementation, are given excessive, poor or no consideration, as the case may be. The fact is that the evaluation is being left to the individual discretion of the official.

Some models have been moving towards dispersing the authority, including by committees, so that there is not a single person taking the decision. In this case,

attention needs to be paid to the composition of the committee and how effectively it carries out its duties.

Experts suggested that transparency is absolutely indispensable in preventing corruption. The decision criteria and objectives should be known and communicated to all bidders. This means that all bids are opened publicly with their content registered immediately to prevent them from being manipulated.

**Contract execution:** This phase is less susceptible to regulation. Techniques to hide bribes during the execution of a contract are manifold. Rendering of fictitious work, inflating the work volume, changing orders, using lower-quality materials than specified in the contract, supplying goods of a lower price and quality than quoted, and rendering contracted services in an improper way are some of the most common ways of defrauding the public budget. Alterations between the decisions made and the conclusion of the contract may also go unnoticed and provide ample room for bribery and corruption.

In addition, flaws in the technical and administrative supervision (Monitoring and Evaluation) of the works may be exploited. Interventions by the public service to control the quality of the materials, the completion of deadlines, the quality of the services, the financial accuracy and the full execution of a contract may be insufficient. Certification of the execution of the works may not correspond with the real work done. In the execution phase, new corruption challenges may emerge with officials threatening to withhold payment unless they are remunerated by a percentage of the contract. In such cases, officials delay due payment in view of bribe payments, creating serious liquidity problems for the companies that have adequately executed the contract (this qualifies as ‘solicitation’; if in addition the supplier is physically threatened it qualifies as ‘extortion’).

### OTHER RISKS IN RELATION TO TENDERING

**Ignorance of procurement procedures:** although contrary to the regulations in place, procuring entities may ignore the tendering procedures. This can be due to a lack of knowledge, but it can also be a deliberate decision to avoid due procedures and rules of fair competition. In the absence of announced procurement contracts, information about the contracts can only be obtained through audits, competitors or citizens.



**Confidential bid information:** Experts noted that in principle, the release of confidential information is regulated. Confidential information may for instance relate to the tendering procedure, the evaluation criteria or the oversight process. Of course, bid information or documents pertaining to transactions, business, technical or financial structures may also be secret and should thus be handled with care and not released to competitors. It was noted that little attention is actually paid to the information that is released.

Since confidential information dealings raise bribery and corruption opportunities, experts suggested that further attention be given to where, when and how information is disclosed.

**Procurement complaints mechanisms** are destined to bring forward possible violations of procurement procedures. While these procedures are generally very useful, they can also be misused. For instance, companies can file unfounded complaints to delay the process or harm competitors selected for the attribution of the bid. Indeed, the submission of a complaint suspends the competition and delays the contract until the complaint has been processed and reviewed. Experts stressed, however, that corruption is far more frequent when no mechanisms to report corruption exist.

### PREVENTIVE MEASURES

While public authorities can probably do little to directly counter greed or other personal aspirations, they may put in place mechanisms to make corruption difficult and prevent this phenomenon from flourishing. The following are some of the actions that could be taken in dealing with corruption in public procurement:

#### **Public notice and transparency**

Publicity and transparency are crucial for sound and open procurement practices. These principles also act as deterrents to corruption in public procurement. Equally, experts suggested that the lack of public notice and transparency create a haven for corruption. Publicised and transparent procedures allow a wide variety of stakeholders to scrutinise public officials' and contractors' performance and decisions. This scrutiny, in addition to other mechanisms, helps keep officials and contractors accountable.

#### **Training of procurement personnel**

Training may apply to various aspects of the procurement process. Procurement personnel may be familiarised with the *rules and regulations* applicable to public procurement as well as anti-corruption measures.

Experts noted the importance for procurement personnel to be well trained in purchasing techniques and in understanding of the importance of rules. To ensure that adequate rules are applied, training may encompass explanations of the usefulness and the reasons for the rules. Training may also sensitise purchasing authorities and their personnel to the detrimental effects of corruption and the benefits of ethics for the contracting authorities and officials. Additionally, officials may sign *ethical codes*. Prosecutors consider that although internal codes do not necessarily prevent corruption, they may be useful during investigations as they help gain time.

#### **Good practices**

Experts also highlighted the need to make procurement authorities and procurement officials familiar with *best practices*, including for instance personal asset declaration, defining standards of conduct and adopting the "four eyes" principles in the bid selection and attribution as well as the rotation of staff in key positions

#### **In conclusion these actions are required in using procurement process for fighting corruption**

- ✓ Procurement administrations must increase awareness and application of adequate procurement rules and controls, and cultivate a better understanding among officials of the detrimental effects of bribery and corruption.
- ✓ A network of experts with judicial and non-judicial skills should be created to improve detection and prevention of bribery and corruption, including within procurement administrations.
- ✓ Clear rules and regulations must be developed, effectively applied and properly enforced with substantial penalties. This is the most effective means to combat bribery and corruption in public procurement. Further harmonisation of anti-bribery legislation as well as procurement rules and procedures is essential; the development of





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common anti-bribery standards and the establishment of multidisciplinary networks that co-operate internationally would significantly strengthen the ability of governments to fend off bribery and corruption in public procurement globally.

It is evidently clear that proper management of the public procurement process will go a long way to nib bribery and other corrupt activities in the bud and free lots of funds to the use of public good. Professionalism in the practice of public procurement is very prime to achieve the objectives and tenants of the public procurement law.

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