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## Public Procurement Topic Guide

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### What are public procurement corruption and integrity assessments?

We define public procurement corruption and integrity assessments as those diagnostic tools which aim to identify governance weaknesses and/or corruption risks in a country's public procurement (public contracting) system. The scope of these tools ranges from assessments which cover the whole procurement system, to those designed for specific sectors (e.g. construction, education, health), through to those which examine specific stages of the procurement process (pre-bidding, bidding and post bidding<sup>1</sup>), down to indicators of some of the most common forms of corruption in procurement (e.g. bid-rigging).

### Purpose and context of the assessments

The most common uses of public procurement corruption and integrity assessments include:

- To monitor the compliance<sup>2</sup> of a country's procurement system with agreed protocols or signed agreements<sup>3</sup> or to assess the extent to which state institutions conform to international standards of transparency and equity in order to raise awareness<sup>4</sup>.
- To identify where major risks of corruption lie in a country's procurement processes and to engage national governments in dialogue about where to focus efforts for reform<sup>5</sup>.

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<sup>1</sup> Pre-bidding (Needs assessment; Feasibility Studies; Market Research Studies; Planning and Budgeting; Definition of Requirements; Choice of procedures), Bidding (Invitation to Bid; Evaluation of Bids; Bid Award, Signing of Contract), Post-bidding (Contract Management, Internal Supervision or Control of Activities, External Audit, External Technical Supervision of Implementation; Payment Orders)

<sup>2</sup> Integrity Pacts can, in some cases, also include sanctions for non-compliance.

<sup>3</sup> E.g. TI – Integrity Pacts, TI Armenia - Mapping Public Procurement System (MAAPS) in Armenia,

<sup>4</sup> E.g. Participación Ciudadana - Observatorio a las Contrataciones Públicas en la República Dominicana

<sup>5</sup> TI - Public Contracting in Latin America: Institutions, practices, and corruption risks, OECD - Enhancing Integrity in Public Procurement: A Checklist, World Bank - Country Procurement Assessment Report

- To assist project staff in detecting and addressing fraud and corruption in development projects<sup>6</sup>.
- For companies to assess the risk related to procurement or a sub-process in a given country (eg big rigging)<sup>7</sup>.

### Assessment approaches

The majority of assessments focus on anti-corruption (specifically transparency and integrity of the procurement system). Perceptions of corruption are also sometimes used to complement factual data on whether procurement legislation is being implemented<sup>8</sup>. The three main approaches to assessing anti-corruption in procurement are as follows. These are not necessarily mutually exclusive:

- Red flags and risk assessments: A common approach is to look for indicators or "red flags" in the different phases of the procurement process and devise a strategy based on these. Red flags are generally based on an analysis of the most common forms of corruption which have been reported in similar contexts (e.g. bid-rigging and illegitimate bids)<sup>9</sup>. Risk assessment is a more sophisticated approach which is based on the specific conditions of the country in question. A 'standard' risk assessment attributes risk based on the likelihood of a corrupt practice taking place and the impact of that practice should it occur (see Corruption Risk Assessment Topic Guide for further details). However, given the emphasis placed on transparency in procurement assessments, the variables according to which risks are identified in this context may be different. The Business Anti-Corruption Portal Procurement Due Diligence Tool, for example measures the level of risk to a company engaging in procurement as a factor of the level of fairness and the level of transparency in the procurement process. The higher the two, the lower the risk of engagement. A third dimension relating to the existence and effectiveness of recourse mechanisms, also feeds into the risk analysis<sup>10</sup>. Likewise TI's report on Public Contracting in Latin America takes a risk assessment approach, but where corruption is understood as the difference between the actual system and an ideal contracting system as determined by Transparency International's Minimum Standards for Public Contracting, the IACAC and the UNCAC, as well as international practices<sup>11</sup>.
- 'In law' and 'in practice': Even where legislation on public procurement is present, implementation is often weak. Accordingly, tools often combine 'in law' and 'in practice' indicators in their assessments to measure actual compliance with legal provisions. An interesting example is TI's report on Public Contracting in Latin America which has developed four sets of indicators which cover both institutional and perception-based measures of anti-corruption looking at: 1) what provisions the

<sup>6</sup> E.g. World Bank - Most Common Red Flags of Fraud and Corruption in Procurement

<sup>7</sup> OECD - Detecting Bid Rigging in Public Procurement, Business Anti-Corruption Portal - Procurement Due Diligence Tool

<sup>8</sup> RAIT, Lithuanian Public Procurement Agency, and TI Lithuania - Transparency in Public Procurement. A Survey of Lithuanian Companies Participating in Public Procurement, Poder Ciudadano - Vulnerable Public Contracting: Research on the Perception of Vulnerabilities of the National System of Public Contracting, TI Serbia - Efficiency in Public Procurement

<sup>9</sup> OECD - Detecting Bid Rigging in Public Procurement, World Bank - Most Common Red Flags of Fraud and Corruption in Procurement, U4 - The "Red Flags" Learning Tool

<sup>10</sup> Business Anti-Corruption Portal - Procurement Due Diligence Tool

<sup>11</sup> TI - Public Contracting in Latin America: Institutions, practices, and corruption risks

law contains, the context in which the law is applied and whether the conditions necessary for its application are in place, and 2) expert opinions and statistical data on whether the law is actually being applied and how<sup>12</sup>. Likewise, the OECD / World Bank's Methodology for Assessment of National Procurement Systems uses 'baseline indicators' (in law) and 'compliance/performance' indicators (in practice), the latter based on a review of a sample of procurement transactions<sup>13</sup>. In a small number of cases, a review of selected tendering processes and contracts is followed up with in situ observations to assess the extent to which the terms of contracts are actually fulfilled (ie technical appraisal of works)<sup>14</sup>.

- Using publically available data: A relatively new approach involves the use publicly available procurement data to identify potential conflicts of interest, or general patterns with regards to collusion between government departments and certain private contractors. For example, TI Slovakia's Open Public Procurement Journal<sup>15</sup> collects and structures data in such a way to allow users to track trends in procurement in Slovakia, whilst Transparencia Brasil's Interactive Bidding Wizard allows any member of the public can verify whether a public tender is in accordance with Brazilian law<sup>16</sup>.

#### Data sources

The majority of corruption assessments in procurement use institutional analysis, secondary sources and case studies, although key informant interviews or targeted questionnaires are sometimes used to provide perception-based data to complement factual data.

#### Issues/challenges

- Availability of data: Given the anti-corruption focus of most assessments of procurement, the availability and reliability of factual data is a key factor in generating a relevant assessment. Lack of reliable data may itself be an indicator of weakness of the procurement system (where the data does not exist) or lack of transparency (where the data is not accessible). Such deficiencies will necessarily make monitoring or analysis of the system more difficult and should be highlighted in the assessment report.
- Expert knowledge: Because of the technical nature of public procurement and the related legislation, assessments of corruption in procurement systems usually require some input from a legal expert who has prior knowledge of procurement procedures and freedom of information issues. Sector specialists may also be required in some cases, for example where the assessment relates to infrastructure or construction projects.
- Avoiding subjectivity: As most assessments are indicator based, special attention needs to be paid to the allocation of scores, in cases where quantitative indicators are used and aggregated into a single score. Furthermore, there may be occasions where indicators are open to some degree of subjective judgment, especially in the

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<sup>12</sup> TI - Public Contracting in Latin America: Institutions, practices, and corruption risks

<sup>13</sup> OECD / World Bank - Methodology for Assessment of National Procurement Systems

<sup>14</sup> Grupo Etica y Transparencia - Draft Report on the Study: Supervision and Evaluation of Public Works in the Education Ministry, TI Moldova - Public Procurement Transparency in Chisinau

<sup>15</sup> TI Slovakia - Open Public Procurement Journal

<sup>16</sup> Transparencia Brasil - Interactive Bidding Wizard

case of risk assessments. To minimise subjectivity and maintain consistency, scores should be accompanied by qualitative information, and results should be subjected to external validation

### Examples of promising practices

- **Context:** Procurement systems operate within a broader set of institutional and governance arrangements in a country. Whilst these may not relate directly to the formal regulations which govern procurement processes, they may nevertheless have an important secondary impact on the system. In light of these external influences, TI's report on Public Contracting in Latin America has developed a set of broader indicators (called System or Context Integrity Indicators) taken from existing surveys or indicators, which assess the quality of the judicial system, the political system and the bureaucracy as well as budget transparency in the country of analysis. Context indicators have also been developed at the institutional level to assess factors which may be indirectly related to more formal aspects of procurement processes, but which might also affect the objectivity of the award decision, such as norms relating to the access of information, conflicts of interest and budgetary planning. Both sets of indicators are rated according to the corruption risk they pose to the procurement system<sup>17</sup>. Similarly TI Serbia have developed a set of "system integrity" indicators which do not relate to public procurement law, but to important provisions related to integrity found in other laws which are relevant to the procurement process, such as the budget system law, the law governing the Supreme Audit institution, the law on misdemeanours, and the Law on contracts and torts etc<sup>18</sup>.
- **Proxy indicators:** A small number of tools attempt to estimate economic losses in procurement as a proxy for corruption through, for example, questionable awarding of contracts or unnecessary delays<sup>19</sup>. However, it must be noted that it is very difficult to isolate corruption from other factors such as inefficiency or the external economic climate as the cause of such losses. A simpler, but arguably more reliable, approach is to compare the value of open tenders with that of non-competitive tenders as an indicator of transparency of the procurement system<sup>20</sup>.
- **Innovative data sources:** As mentioned above, some assessments use a range of publicly available information (government websites, procurement portals, national newspapers) to assess the consistency and compliance of information being produced<sup>21</sup>. One particularly interesting data source is the use of freedom of information requests. These can produce useful information on the processes and outcomes of public tenders whilst at the same time the response rate of requests can itself be a proxy indicator of transparency of the procurement system<sup>22</sup>. Whilst

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<sup>17</sup> TI - Public Contracting in Latin America: Institutions, practices, and corruption risks

<sup>18</sup> TI Serbia - Monitoring of Public Procurement System in Serbia

<sup>19</sup> Grupo Etica y Transparencia - Draft Report on the Study: Supervision and Evaluation of Public Works in the Education Ministry, TI Moldova - Public Procurement Transparency in Chisinau, TI Czech Republic - Assessment of inefficiently used public funds in public procurement in the Czech Republic in 2004

<sup>20</sup> TI Czech Republic - Indicators of Transparency in Public Procurement

<sup>21</sup> Participación Ciudadana - Observatorio a las Contrataciones Públicas en la República Dominicana, TI Slovakia - Open Public Procurement Journal, Transparencia Brasil - Interactive Bidding Wizard

<sup>22</sup> E.g. TI Serbia - Monitoring of Public Procurement System in Serbia

some tools offer guidance on specific sources for data, TI Serbia's Monitoring tool provides additional advice on what resources are needed to collect the data (time required, who should be involved and at what stage of the assessment)<sup>23</sup>.

**All tools referenced in this guide are accessible via the gateway tool database:**

<http://gateway.transparency.org/tools>

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<sup>23</sup> TI Serbia - Monitoring of Public Procurement System in Serbia

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