



**TRANSPARENCY
INTERNATIONAL**

the coalition against corruption

Best Practice framework for clean public contracting

**Public Contracting Programme
Marcela Rozo**

Contents

- 1. International Conventions & Instruments**
- 2. Guidelines for public procurement**
- 3. Recommended best practices for Integrity in public procurement**
- 4. How can Civil Society contribute?**

1. International Conventions & Instruments

Regional Conventions & Instruments

- OAS Convention- 1996
- African Union Convention- 2003
- Council of Europe
 - Conv. fight Corruption involving Public Officials –1997
 - Criminal Law Convention on Corruption – 1999
 - Civil Law Convention on Corruption – 1999
 - Twenty guiding principles to fight corruption -1997
- APEC non-binding principles on Gov. Procurement – 1999
- ADB-OECD Anti-Corruption Initiative for Asia-Pacific – 2000
- EU Procurement Directives - 2004

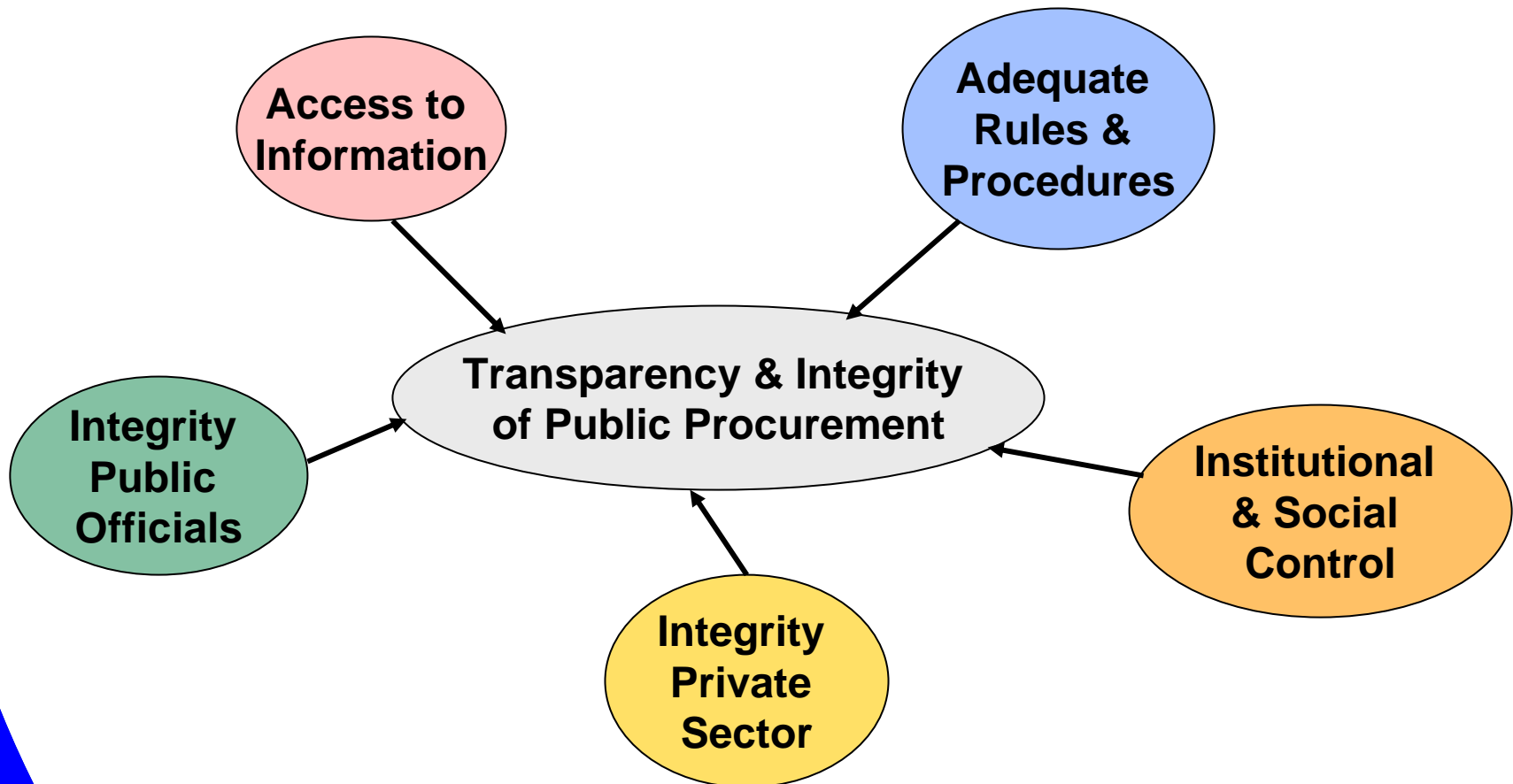
Global Conventions & Instruments

- United Nations
 - Convention against Transnatl. Organized Crime – 2003
 - Convention Against Corruption – 2003
- OECD
 - Convention on Combating Bribery of Foreign Public Officials in International Business Transactions — 1997
 - Recommendations on Combating Bribery in International Business Transactions – OECD -1994
- UNCITRAL Model Law on Procurement - 1994
- WTO Agreement on Government Procurement - 1994
- TI Minimum Standards for Public Contracting – 2003

2. Guidelines for public procurement included in international instruments

Integrity of a procurement system

Transparency & Integrity in public procurement depend on several factors covered by the instruments:



A GLOBAL EXAMPLE

THE UNITED NATIONS CONVENTION AGAINST CORRUPTION – UNCAC -

UNCAC Provisions (I)

1. Procurement:

- Art 9 – appropriate systems based on transparency, competition and objective criteria that are effective in preventing corruption, through:
 - Public distribution of information relating to procedure & contract
 - Establishment, in advance, of conditions for participation
 - Use of objective and predetermined decisions criteria
 - An effective system of domestic review
 - Regulations regarding personnel responsible for procurement

UNCAC Provisions (II)

2. Public Officials:

- Systems promoting transparency and preventing conflict of interest
- Codes or standards of conduct for the correct, honourable & proper performance of public functions.
- Public officials to declare outside activities, investments, assets, benefits etc. from which conflict of interest may result

3. Private Sector:

- Preventing conflicts of interest - restrictions on professional activities of former public officials
- Promoting development of standards & procedures to safeguard private sector integrity in contractual relations with the State

UNCAC Provisions (III)

- Establish bribery as criminal offence (the promise, offering or giving to a -national or foreign- public official, and the solicitation or acceptance, of an undue advantage, for himself or another person or entity, in order that he act or refrain from acting in the exercise of his official duties)
4. Social control:
- Promote active participation of civil society in the prevention of and fight against corruption
5. Access to Information:
- Facilitate access of the public to information on organization, functioning and decision-making of public administration

3. Best practices (measures) for curbing corruption in public procurement *

* Based on different Conventions & International Instruments

Four Areas to work on

- **Laws & Regulations**
- **Transparency and Fairness**
- **Promoting integrity of individuals**
- **Verification mechanisms**

1. Comprehensive Regulations

Regulations that:

- cover the full project cycle (from procurement planning to implementation & delivery)
- apply to all State levels
- apply to all sectors &/or entities
- apply to all categories of goods & services
- cover especial circumstances as emergency or disaster relief
- consistent & harmonized (central procurement authority)

2. Transparency & Fairness

- a. Transparent proceedings
- b. Attention to selection of Procurement Method
- c. Elegibility of bidders
- d. Selection of winning offer (clear award criteria)

3. Promoting integrity of individuals (I)

a. Institutional Mechanisms

- ✓ Decisions made by groups rather than individuals
- ✓ Crucial decisions approved by superior authority
- ✓ Rotation of procurement personnel (if feasible)
- ✓ Training
- ✓ Codes of conduct for public officials that include provisions for conflicts of interest (disclosure, incompatibility)
- ✓ Measures for integrity of suppliers
 - Corporate codes of conduct
 - Integrity Pacts or Anti-corruption clauses/agreements
 - Disclosure of fees and gratuities
 - Guidelines to avoid/manage conflicts of interest

Promoting integrity of individuals (II)

b. Dissuasive Sanctions

✓ Penal sanctions

- Include bribery through intermediaries
- Hold legal persons criminally liable for corruption

✓ Economic Sanctions

- Termination of Contract / Civil liability for damages
- Debarment – define clearly scope and time frame

Verification Mechanisms (I)

a. Record keeping & documentation protection

- ✓ Obligation to record acts and decisions from planning to implementation
- ✓ Retention of documents for long enough periods

b. Complaint Mechanisms

- ✓ Administrative review of procurement decisions, including appeal mechanisms / review panels / independent review bodies
- ✓ Reasonable period allowed for filing an appeal
- ✓ Obligation to disclose attempts to unduly influence decisions

Verification Mechanisms (II)

- ✓ Create channels for anonymous reporting/Whistleblower protection
- ✓ Allow for judicial review & addition to administrative

c. Review and audit Mechanisms

- ✓ Regular & effective review by independent internal and external audit or supervisory bodies
- ✓ Make audit reports publicly available
- ✓ Scrutiny by civil society actors / on the basis of access to information guarantees
- ✓ Special attention to civil society monitoring reports by audit & anti-corruption bodies

4. How can civil society contribute?

Civil Society Initiatives

- Assess Public Procurement Systems (PCMS)
- Create Awareness
- Advocacy for Reform
- Monitoring (Budgets, Integrity Pacts & others)
- Training to different stakeholders on corruption risks & measures
- Promote self regulatory initiatives in Private Sector
- International advocacy for better standards

A SPECIFIC EXAMPLE

INTEGRITY PACTS – A POWERFUL TOOL FOR CLEAN BIDDING

Concept

Tool to **PREVENT** and fight corruption in public contracting

- Contract/binding agreement: **LEGAL COMMITMENT** – anti bribery in particular processes
- **PROCESS** to ensure transparency, level playing field

Participants

- Government & Bidders (signatories)
- Civil Society (facilitator/independent monitor)

Concept

- Range
 - The whole cycle of the contracting process (from contract design to execution)
 - All types of public contracts (procurement, licensing, privatization, concessions, complex contracts –PPPs, BTO's-, etc.)
 - All types of sectors
 - Could be used private to private

Characteristics

- **Flexible but consistent:** allows adaptation to local rules/culture while maintaining **essential characteristics**
- **Requires political will/commitment for success + “appropriate situation”**
- **Essential & highly desirable Elements**

ELEMENTS

- Not to bribe
- Not to collude

- Not to demand/accept

- Alternative resolution mechanisms

- Must be trusted by all
- Reviews and provides expert feedback on all documents and steps of procurement process
- Monitors access to Information
- If monitoring implementation can link with end beneficiaries
- Hears of eventual complaints by bidders
- Informs Publicly & to authorities
 - Contributes to raise overall confidence in the process

Undertaking of public officials and bidders

Sanctions

Arbitration

Expert Independent Monitoring (C.Soc.)

Company's Code of Conduct & compliance program

**ets
ls**

Disclosure of payments to Middlemen

Why implement an IP?

- As Public Official
 - Help increase credibility and legitimacy when honestly concerned about corruption and transparency problems
 - Make work easier. The process has support from the outset . Reduces unnecessary trials.
 - Saves public money/ Increases “value for money”
- As Private Bidder
 - Addresses the “Prisoner’s dilemma”/ Levels the playing field
 - Makes bidding process easier
 - Reduces transaction costs: corruption is not free of charge or cheap. Winning and loosing fairly is cheaper

Why implement an IP?

- As NGO (Civil Society)
 - Effective and efficient way to generate changes at different levels,
 - build up/restore trust in public institutions
 - contribute in bringing balance vs. powerful stakeholders
- As anyone interested in government change
 - A way to start from facts and not from theory or law: changing actual behaviour.

Some of TI's IP experience

Sectors and Areas of Work

- Telecommunications
- Public works
- Transportation
- School supplies
- Office supplies
- Utilities
- Services
- Tourism
- Police supplies
- Local government
- Finance
- Information systems

Countries

- Argentina
- Colombia
- Chile
- Ecuador
- Italy
- Latvia
- Germany
- Korea
- Mexico
- India
- Pakistan
- Indonesia
- Peru

**15 +
countries**

Experience

- Applied in more than 15 countries around the World (Africa still a challenge)
- > 300 monitored IPs
- 10+ years experience/ continuous improvement
- Reported results on contract savings (10%-60%), bidders increased confidence, decreased complaints, impact on procurement law.

Some results

- Savings.

- Colombia: reports savings ranging between 5% up to 60% of contract's official budgeted price
- Pakistan Karachi Dam: savings of more than half of initial budgeted price

- Trust.

- Bidders interviewed for case studies acknowledge they lost fairly
- Could potentially save future judicial claims.

- Sanctions

- In some countries, companies have been blacklisted for violating the Pact. (i.e. Italy, Korea)

- Law/Policy Reform

- In some countries IPs or disclosure procedures adopted by law or public policy (i.e. Colombia, Mexico, Pakistan, Italy)

THANK YOU FOR YOUR ATTENTION!

mrozo@transparency.org
