

Corruption in public procurement

Causes, consequences and cures

Tina Søreide

R 2002: 1

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1 Introduction

This study was initially carried out for a research institute in Angola, the *Angola-Instituto de Pesquisa Económica e Social* (AIP), as a contribution to the domestic preparations for a public procurement reform. This version is generalised and discusses the topic without any specific country in mind. The report provides an introduction to the international debate and experiences with procurement-related corruption, as well as recommendations on anti-corruption measures to be implemented in procurement procedures¹.

Motivation

For almost a decade now there has been a significant international focus on corruption as a threat to economic and human development. Several multilateral organisations, like the UN, the World Bank, the WTO and OECD, aims at fighting the problem. So far, however, the strategies to transform the alleged practices of a state administration from corrupt to honest and clean have failed in most cases. There are several ways to explain this persistence of corruption. The time it takes to curb the problem may have been underestimated. There may also be a failure in the adjustment of anti-corruption strategies to local conditions. And finally, the incentives to implement the necessary measures may be poor among politicians benefiting from the current system.

However, in countries where corruption is a common problem it tends to disturb the market mechanisms and impede economic development. Corruption in public procurement makes the officials or the politicians in charge purchase goods or services from the best briber, instead of choosing the best price-quality combination. The result may be construction projects several times as costly as necessary, or the acquisition of goods not actually needed. As an illustrating example Italian economists found that the cost of several major public construction projects fell dramatically after the anti-corruption investigations in the early nineties. The construction cost of the Milan subway fell from \$227 million per kilometre in 1991 to \$97 million in 1995. The cost of a rail link fell from \$54 million per kilometre to \$26 million, and a new airport terminal is estimated to cost \$1.3 billion instead of \$3.2 billion (Rose-Ackerman, 1999:29). Hence, when aggregated to a macro-economic level non-optimal choices of contractors can have noticeable effects on the economy.

Also the efforts of public officials to get into position for obtaining bribes may represent a significant cost. Gifted youth often prefer jobs in the bureaucracy instead of more scientific professions, the allocation of public funds may be biased in favour of capital intensive sectors at the expense of health and education, and laws and regulations may be introduced just in order to obtain

¹ The author would like to thank Arve Ofstad and Odd-Helge Fjeldstad of CMI for valuable comments, and Johann Graf Lambsdorff of Göttingen University for providing relevant literature.

bribes. Even worse, public sector corruption has a pervasive impact on the poor since it reduces the funding available for social services and distorts public choices in favour of the wealthy and powerful, resulting in larger income differences between rich and poor.

Assumptions and definitions

Corruption, as an illegal activity, is difficult to define exactly as different attitudes and customs prevail, for instance when it comes to gift-giving and bureaucratic integrity. However, this report is mostly concerned about the clear-cut cases, where no doubt about the misuse of public office exists. This is usually the case when the following conditions are all met (Tanzi, 1995:167-168). *First*, the act must be intentional and in conflict with the principle of objectivity in public service performance. This implies that the rule that is broken is precise and transparent. *Second*, the person who breaks the rule must derive some recognisable benefit for him/herself, his family, his friends, his tribe or party, or some other relevant group. *Third*, the benefit derived must be seen as a direct return from the specific act of “corruption”.

For public procurement it may also be useful to distinguish between *political or high level* and *administrative or bureaucratic* corruption. Tanzi (1998:119) explains that corrupt behaviour taking place during the budget *preparation* phase, a time when political decisions are made, reflects political corruption. Corrupt behaviour during the budget *execution* phase reflects mostly *bureaucratic corruption*. Amundsen (1999) extends the definition of political corruption to include all the corrupt transactions performed by political decision-makers. Political corruption may thus also take place when the improved procurement procedure is implemented, resulting for instance in political disagreement with a contract assignment.

The use of the term *procurement* applies to all kinds of acquisition of public goods and services. However, the problem of corruption is more common in certain categories of public procurement than others. Rose-Ackerman (1999) divides procurement into four categories:

- (i) Purchases that require specialised research and development, such as newly designed military aircraft.
- (ii) Purchases of complex, special purpose projects, such as dams or port facilities, that do not involve advances in technology but require managerial and organisational skills.
- (iii) Purchases of standard products sold in open markets, such as motor vehicles or medical supplies (off-the shelf purchase).
- (iv) Customised versions of products otherwise available in open markets, such as special purpose computer systems or fleets of police cars.

The procedures of procurement will differ for these four cases. The difficult question in the first case is how to write a contract for a product not yet developed. International Competitive Bidding (ICB) may be useful for the second case. The third case represents the benchmark-case for which the simple

rule prevails - purchase at lowest price available, taking into account discounts that may be available to large purchasers. The fourth category is more problematic as neither ICB with sealed bidding nor off-the shelf purchase is appropriate (Rose-Ackerman, 1999:60).

Although it is important to keep the different categories of public procurement in mind when discussing the administrative procedures and their vulnerability to corruption, the report mostly describes procurement in general terms. The relevance of the arguments will therefore vary depending on the acquisition in question.

When it comes to the providers of goods and services, the terms applied are *companies*, *firms* and *enterprises*, as well as *private* companies. Included in these terms are also state-owned companies, as well as bureaucratic institutions functioning as providers of goods and services for other parts of the state administration.

Contents

Chapter 2 describes various problems that may arise in a society if the bureaucracy is corrupt. Chapter 3 mainly concentrates on the mechanisms of corruption: *How* is corruption actually performed? Public procurement anti-corruption measures are described in Chapter 4. The discussion is focused on practical elements of the procedures. The chapter also includes a discussion about political commitment as a necessary condition for successful reform. The supply side of corruption and how to increase the companies' responsibility for the problem of procurement-related corruption is the final subject of debate.

2 The problem of corruption in public procurement

2.1 Obvious incentives?

The logic of incentives makes it reasonable to assume that human greed explains most of the bureaucratic corruption. However, in many developing countries, where monthly wages for ordinary officials often are less than \$100, the actual need may be an equally prevalent reason. In some cases these wages represent a *capitulation wage*. According to Besley and McLaren (1993) capitulation wage refers to a situation where the government “capitulates” because corruption is endemic and monitoring does not function. Thus, it makes no sense to revise salaries and the government pays very low wages, aware of the bureaucrats’ ability to manage on bribes and stealing. The bureaucrats’ demand for bribes is understandable under such circumstances. Nevertheless, it is observed in many countries that officials covering their economic need by the help of bribes do not stop when they reach an acceptable standard of living.

The *supply side* incentives may appear less obvious because bribes often represent a significant cost to a company. Preparing for a tender is a costly and time consuming process and the company may not trust their winning chances on legal basis alone. A bribe may thus ensure that the company obtains the government contract. Corruption may also help companies obtain a *de facto* monopoly situation, to retain business, to obtain secret information, to counterbalance poor quality or high price, to facilitate trade or investment, or to create demand for goods that otherwise would not have been purchased. Other motives may be to reduce political risk, to receive import licenses, to reduce taxes and attain special modifications of laws or just to induce government employees to perform their duties. Despite the secrecy in these cases, it is not difficult to exemplify incentives from the media and court cases².

The major reason for bribery in public contract assignment, however, is probably because everyone believes that everyone else is involved in such kind of business. Losing a contract because a competitor bribed the officials must be very frustrating. This problem of hidden information is reflected in the way that all the companies involved pay a bribe even if they would be better off with no corruption (prisoner’s dilemma). Hence, the companies that bribe public officials seem to forget the negative externality they impose on other firms, as well as the worsening of their economic environment.

For the company involved there are several common drawbacks related to bribery. One is the information about the bribery in hand of the public officials, information applicable to hit the reputation of enterprises, the multinationals in

² The books by Rose-Ackerman (1999) and della Porta and Vannucci (1999) provide examples on bribery of public officials.

particular. A problem is also enforcement, that a bribing company has no judicial guarantee of obtaining what it has paid for (unless the courts are corrupt as well). And, once a company has established a corrupt relationship it may be confronted by unexpected demands for additional payments. Ending a corrupt relationship is often difficult because of the risk of menaces, violence and other criminal activities. Apart from this, close connections to the government may imply a risk in case of political and governmental changes (Lambsdorff, 2000a and b).

2.2 The run for corrupt rents ... a race to the bottom?

Very often the most damaging cost of corruption is not the waste of money spent on bribes. Vito Tanzi (1998) states: *“The total economic and social effects of corrupt actions might be very costly and out of proportion to the bribes received by corrupt officials in terms of resources wasted, the opportunity cost of resources misused, and the inefficiencies introduced in the system.”*

The theory of rent seeking provides a useful starting point to understand the economic effects of corruption. Rent seeking is called corruption when competition for preferential treatment is restricted to a few insiders and when rent-seeking expenses are valuable to the recipient (Lambsdorff, 2000)³. The inclination by public officials to generate rents for private benefit has several welfare implications, as described in (i)-(vii) below. These implications also indicate why the influence by lobbyism is less harmful to a bureaucracy than corruption.

- (i) Decisions are biased, for example when it comes to the award of procurement contracts and concessions. The company in charge of building the new hospital may for instance not be the one representing the best price/quality-combination, but rather the most successful briber or the one with the best governmental connections. The result may be a project far more expensive than it could have been, with qualities below official standards (Tanzi and Davoodi, 1997).
- (ii) Also the individual job-decisions are affected by corruption. Gifted youth welcome a prosperous future by seeking positions in the bureaucracy, extracting as many rents for themselves as possible, instead of applying their talents in more scientific professions (UNDP, 1997; Diamond, 1993).
- (iii) Rent seeking increases expenditures. The bribe often increases with the size of procurement and is often calculated as a percentage of the total sum. The more money involved, the more important will it be for the companies to win the tender. Providing the public official with a higher bribe may also be necessary to compensate for the increase of risk involved with large projects. This proportional relation between project size and the bribe involved may result in inflated prices (Lambsdorff, 2000a).

³ Johann Graf Lambsdorff (2000) discusses corruption from a rent-seeking perspective explaining why corruption makes more harm than traditionally assumed in this theory.

- (iv) Corruption affects the allocation of public spending as investment decisions are influenced by the opportunity to obtain bribes. Large construction projects (e.g. big dams) are given priority to health and education projects, while spending on operation and maintenance is neglected (Tanzi and Davoodi, 1998; Mauro, 1997⁴).
- (v) The run for rents may result in a total disregard of existing procurement laws and procedures. Politicians may also be motivated to create inefficient rules intended only to generate rents for the public officials (Tanzi, 1998).
- (vi) Point (i) and (iii) explain the increase of public spending due to the too high payment for goods and services and the promotion of unnecessary or unproductive expenditures. These inferior investments also decrease government revenues, explaining parts of the budget deficit facing many countries in which corruption is comprehensive.
- (vii) Finally, it has been argued that corruption increases efficiency when the existing rules are too rigid and when the bribes to be paid are predictable (Leff, 1964). The given arguments about rent seeking clarify why this might be true only when the perspective is limited to the individual and restricted in time.

To illustrate the economic impact of rent seeking and corruption with an example, imagine that a highway is to be built, a \$500 million project. Ten companies take part in the tender. A modest suggestion is that five companies each pay \$500.000 in various types of grease payments to win the contract, while the winner also pays 10% of the contract value, \$50 million. The apparent effect is that \$50.250.000 is wasted (at least if the money is brought out of the country). Besides, the bribe paid by the contractor most probably inflates the highway price, or makes the company skimp on quality. The other four bribing companies also have to regain their sunk cost, for instance by increasing prices on other products offered by the company, contributing to higher domestic inflation. Macroeconomic effects are obvious if this example portrays e.g. ten percent of the public acquisitions in a country. This percentage is most likely higher in countries experiencing extensive corruption.

2.3 Corruption, “state capture” and transition economies

A different side of bureaucratic rent seeking is *state capture*, defined as the propensity of firms to shape the underlying rules of the game (i.e. laws, decrees and regulations) through illicit and non-transparent private payments to public officials (Hellman et al., 2000a). State capture evolves as a result of grand corruption. Key state institutions are “captured” by private interests to bias the policy-making process in favour of particular firms, leaving the operation of government non-transparent. The underlying threat to democracy is obvious

⁴ Mauro (1997) finds that government expenditure on education and health is negatively correlated with higher levels of corruption. Between corruption and the level of public spending, however, he does not find any relationship. According to Tanzi (1998), the reason may be that corruption both increases public spending *and* decreases government revenue, so that the pressure on higher spending is balanced in part by the reduction in resources necessary to finance spending. In general, however, statistical research on corruption is questionable, mainly because the data material on corruption is dubious.

when elected politicians and public officials make decisions on grounds deviating from the expected.

During 1999 the World Bank and the European Bank of Reconstruction and Development (EBRD) co-operated on a survey across 20 transition economies to acquire more information about grand corruption, manifested as “state capture” in the corporate sector⁵. Firms were asked about the extent and frequency of bribery, the recipients of bribes and the nature of the corrupt transaction. Some of the World Bank researchers conclude that the problem of state capture is particularly prevalent when “*firms face insecure property rights, insufficient economic liberalisation and competition, and only a partial liberalisation in civil society and media activities, impairing their ability to effectively monitor the activities of the state*” (Hellman et al., 2000a).

When it comes to public procurement the survey finds that 14.6% of a company’s total amount of bribes is averagely spent to obtain governmental contracts, in four of the countries between 30% and 45%⁶. On average the companies in all but one country paid more than 2% of the contract value in additional or unofficial payments to win the public procurement contract. The survey included the following question asked to reveal the opportunity for public officials to engage in corruption: “*How often is the following true? If a government agent acts against the rule I can usually go to another official or to his superior and get the correct treatment without recourse to unofficial payments.*” This was most often not the case. Only 10% of the respondents in all the 20 countries answered “*always*”.

The survey also reveals that bribery means more time on contract negotiations, not less; that more than 50% of the companies admitted bribery in 18 of the 20 countries; that in 17 of the 20 countries bribery represents an average cost similar to 3%-8% of yearly enterprise revenues; that new private firms have to pay higher bribes and meet corrupt demands more often compared to more established enterprises, and that small companies are more exposed than large ones. The strong incentives for new firms to engage in state capture represent a serious problem. State capture weakens the state’s capacity or commitment to enhance security of property and contract rights, a weakening that further amplifies the incentives of other firms to influence on state activity by the help of corruption, representing a vicious circle. In conclusion, the survey warns about the active “captor’s role” of private companies and describes a need to include strategies for addressing the way in which firms interact with the state in the planning of public sector reform.

⁵ The survey is called the 1999 Business Environment and Enterprise Performance Survey (BEEPS 1999) and is part of the World Business Environment Survey. It covers the perspective of 3000 private enterprises in Central and Eastern Europe and the former Soviet Union.

⁶ Croatia, the Czech Republic, Estonia and Slovenia.

2.4 Impaired competition, abated international interest and firm behaviour

“Systematic corruption can induce inefficiencies that reduce competitiveness. It may limit the number of bidders, favour those with inside connections rather than the most efficient candidates, limit the information available to participants and introduce added transaction costs” (UNDP, 1997). These distortions of market forces obstruct the ordinary benefits induced by competition, like the achievement of best value for money, a rational allocation of resources, and the pressure experienced by individuals and companies for general improvement. Usually, a public tender affected by corruption represents an inefficient investment of public assets. One reason is inflated prices, another is that a corrupt official who discriminates in favour of some bidders frequently selects an inefficient contractor (Lien, 1990; Rose-Ackerman, 1978).

A pervasive level of corruption in the economy may also abate the international interest in both trade and foreign direct investment (Wei, 1997 and 1999), resulting in a GDP growth lower than it could have been and a reduction of qualified competitors in procurement projects. Corruption represents an increase of trade or investment expenditures to a foreign enterprise. When demands for bribes also appear unpredictable, counting on the necessary profit is difficult.

Predictable corruption, however, may not necessarily be *less* harmful than *unpredictable* corruption. Lambsdorff argues that confidence in corrupt deals enhances the further spread of corruption. *“When business people have confidence that after paying a bribe a return will be provided as promised, there is less motivation to seek legal alternatives”* (Lambsdorff, 2001b:14). The uncertainty with regard to costs may thus cause the enterprise to turn the tender in question down. Besides, operating in a situation with informal rules is difficult as the company may not understand how to behave and react, who to bribe (and not to bribe), what contact to grease, etc., explaining a certain refusal to approach the economy. Companies may also decline tenders likely to be affected by corruption because of legal restrictions on bribery of foreign public officials⁷.

The companies defying all these challenges, on the other hand, experiencing successful trade or investment in the economy despite high levels of corruption, often exhibit a more lenient attitude towards bribery. Furthermore, UNDP (1997) explains how the uncertainties introduced by corruption into the economic environment may affect the way private firms do business. The firm may take up a short-run orientation, fearing either that those in power may overthrow because of their corruption, or the imposition of arbitrary financial demands once investments are sunk. The consequence may be a reluctance to invest in stationary capital and a too hasty project completion ignoring quality

⁷ When it comes to investment, Brunetti and Weder (1998) show that uncertainty caused by regulatory instability, of which corruption is only one element, affects investments more than does corruption itself.

demands. Political instability is though not always a problem in countries where corruption is extensive.

Of course, these problems are not characterising all companies. To some degree, however, the attitude towards bribery and the effect on firm behaviour may cause an adverse selection of foreign companies operating in the economy, companies whose success rests on bribery. Such an adverse selection of companies would ensure a constant flow of illegal payments to public officials, and restrict the efficiency of anti-corruption measures.

2.5 The dynamics of corruption

Another serious aspect of corruption is the way it amplifies other problems facing a society. Making an end to bureaucratic rent seeking is a very difficult task, as this “bad habit” tends to be increasing with the level of corruption.

According to Andvig and Moene (1990), the negative dynamics can be explained as follows: When corruption is rare, the economy is in a “low-corruption-equilibrium”, in which both demand and supply is limited. Looking for someone to bribe is more risky when the bureaucrats hold high ethical standards. With increasing corruption levels, however, the request for bribes becomes easier, so does the proposal of bribes. The moral scruples of corruption as well as the risk of being caught, falls with a higher frequency of corrupt acts. This way corruption may lead the economy into a vicious circle, ending up in kleptocratic circumstances under which corruption is the standard, where honesty is too costly, with a general disregard of law and a higher level of criminal activity, and where each individual is busy making the most for him/herself, feeling no obligations for the country. The situation is often referred to as a corruption-trap. This self-propagating force of corruption may also explain parts of the difference in corruption levels sometimes experienced by quite similar economies. (Andvig and Moene, 1990; Søreide, 2000).

The figure below describes several adverse dynamic effects initiated by corruption. These effects recoil on the extent of corruption, representing interaction and thus vicious circles.

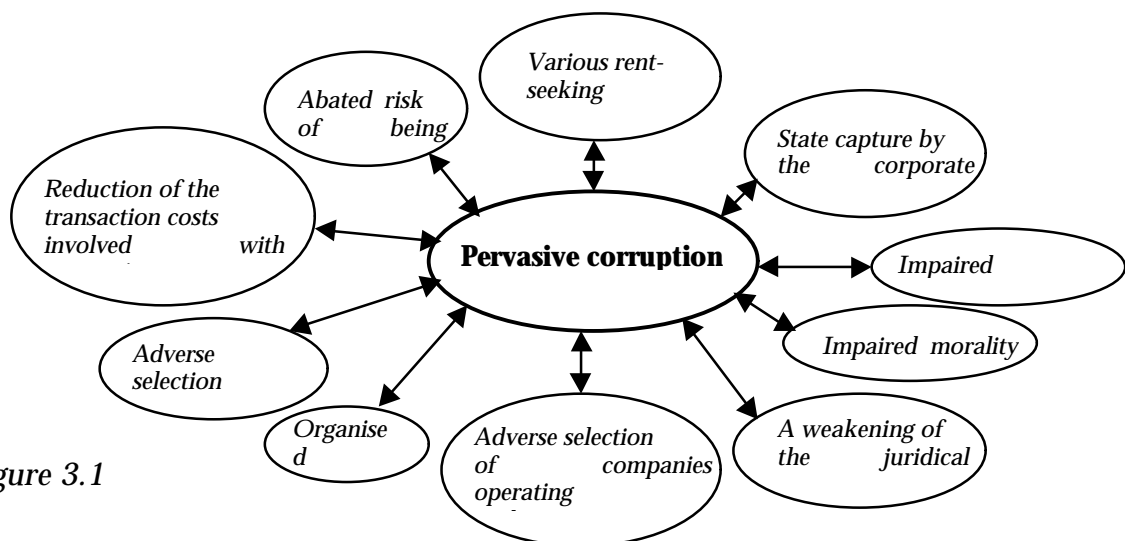


Figure 3.1

This theory on the dynamics of corruption also includes *positive circles*, in which a small reduction of the general corruption level may result in a significant improvement of the situation. A strategic choice of anti-corruption measures may in some cases commence this kind of positive dynamics, facilitating the fight against corruption.

3 The complexity of procurement and the mechanisms of corruption

Public procurement is a complex matter in a two-dimensional way. First, it represents many different situations, anything from the construction work of a new international airport to the acquisition of pencils. Second, the tender procedures usually include several steps, from designing the tender to evaluating the bids. Both the procedures and the opportunities for corruption vary significantly among the categories of procurement. To make these differences more visible this chapter starts by classifying procurement. Subsequently the mechanisms of corruption are studied, asking how the corrupt agreements are carried out. Section 3.1 considers corruption carried out by cheating on the procurement rules, while Section 3.2 describes corruption through legitimate deviations from the existing rules. This section also includes bribery without a specific case, frequently referred to as ‘grease payments’.

3.1 Different situations – different risks of corruption

The procedure

Governmental procurement is often supposed to be carried out according to the principles of International Competitive Bidding (ICB). (A discussion about ICB follows in Section 4.2). The major steps in this procedure are: (1) The choice of what to request⁸; (2) The tender design, including the technical tender specifications and criteria of evaluation; (3) Qualification and identification of the tenderers, including pre-qualification and short-listing; (4) The tender; (5) Evaluation, contract award; (6) Negotiations, final agreement; (7) Execution/delivery; (8) Evaluation and controls.

Each step is described by elaborated rules in the procurement directives, ensuring fair competition and best value for money. Disregard of the rules is, however, a problem in many countries. The ordinary procedure may be totally neglected, basing the procurement on negotiations alone. Alternatively, one or several steps may be ignored, leaving uncertainties about how competition and transparency have been protected. There are several legitimate reasons to evade the rules. Section 3.3 explains how these reasons can be misused to obtain bribes.

The type of contract

Within the ICB concept the type of contract may vary. The contracts most often referred to are the “fixed price contract” where the price is determined before

⁸ The allocation of resources across the state budget is vulnerable to corruption, but not part in what we generally call a procurement process. The procurement rules may neither apply to all sectors of an economy. Procurement involving national defence or national security is often exempted from the ordinary procurement rules.

the contract is awarded, the “cost-plus contract” in which the contractor is paid a fee plus the costs of carrying out the project, and the “incentive contract” where payments depend upon the contractor’s performance. These details are not actually part of the procurement *procedure*, and therefore, outside the scope of this report. Important to be aware of, however, is that the choice of contract between a government and a company can be very important to induce cost-efficient behaviour, as well as to reduce the opportunities for corruption during execution of project/delivery of goods (Laffont and Tirole, 1993; McAfee and McMillan, 1988).⁹

Size, complexity and the sector of economy.

The size and the complexity of the project or product in question are the most important factors explaining differences in motivation and opportunities for grand corruption. George Moody-Stuart (1997) describes three *criteria of attractiveness*:

- (i) *Size*: Bribes are often calculated as percentages of the total sum, representing a proportional relationship. Hence, the more money involved the more reason to demand a bribe.
- (ii) *Mystification*: The more high technology involved, or seemingly involved, the more attractive the project will be to the potential beneficiaries. This kind of “mystification” reduces the risk of being criticised for paying too much. (Moody-Stuart exemplifies: “*How many people can say whether a particular fighter aircraft should have cost \$21million rather than \$23million?*”)
- (iii) *Immediacy*: The term of office may be brief to many politicians, but also to officials. From this it follows that the most attractive projects are those in which the full purchase price, or at least a very substantial deposit, is payable at an early stage.

Moody-Stuart (1997:14) also explains that: “*A convention appears to be quite widely recognised that the proportion of commission payable from the deposit or down-payment belongs to those in office when the contract is signed, whereas the balance of the commission goes to those in office when it falls due. It would be a very rash supplier who would be prepared to disburse the total commission in advance, as subsequent office-holders might then prove to be very uncooperative.*”

Compatible with the “criteria of attractiveness” is a ranking by Transparency International, presented in the Bribe Payers Survey (Transparency International, 1999)¹⁰. Based on a high number of interviews, the survey ranks sectors of the economy according to their vulnerability to corruption - as follows:

⁹ McAfee and McMillan (1988) describe the optimal cost-effective contract. They also discuss how alternative types of contracting can be combined with competitive bidding. Laffont and Tirole (1993) explore the issue of incentives in regulation and procurement.

¹⁰For more information, see: www.transparency.org or www.transparency.org/documents/cpi/bps.de.html

1. Public works contracts and construction;
2. Arms and defence industry;
3. Power (including petroleum and energy);
4. Industry (including mining);
5. Healthcare/social work;
6. Telecommunications, post (equipment and services);
7. Civilian aerospace;
8. Banking and finance;
9. Agriculture.

Rose-Ackerman (1999:29) argues, however, that not all procurement and contracting scandals involve large-scale construction or capital goods projects. Goods that are used up in consumption are “prime candidates for payoffs” because post-delivery inspection of quantities and qualities are difficult. She exemplifies from a case in Malawi where auditors found that millions of dollars of non-existent stationary had been ‘purchased’ by the Government Press Fund.

Degrees of objectivity

“Whenever regulatory officials have discretion, an incentive for bribery exists”, according to Rose-Ackerman (1999:18). This discretionary authority of public officials often represents a golden opportunity to obtain bribes. della Porta and Vannucci (2001) rank discretion as follows:

- (i) When public demand and preferences are precisely defined with respect to both qualities and price structure. The award is automatic, and the public agent exercises no discretionary power.
- (ii) While public demand is precisely defined, general criteria for prices describe the public preferences. Discretionary intervention is necessary.
- (iii) Public demand is not defined with precision. Public preferences are described by general criteria for both price and quality. The public official has the power to assign weight to the various offers, according to general criteria.
- (iv) The demand and the public preferences are precisely defined during a bilateral bargaining process, delegated to the public agent. S/he is choosing the private part, while price and other contract conditions are the result of the negotiation process.

This way of classifying public procurement into various degrees of discretionary authority, or objectivity, is important to understand the inclination to corruption in different situations.

To conclude, some elements important to understand the risk of corruption in public procurement are: The *amount of money* involved, the *complexity* of the technology involved, the urgency to acquire the goods or the *immediacy* of the project, as well as the *discretionary authority* among the public officials.

3.2 Corruption through hidden violations of ordinary procurement rules

Disturbing the procurement process so that one specific bidder wins the contest represents a significant challenge. To reduce the risk of being caught the illegal transactions must be hidden while it must appear as if the rules have been respected. This section describes some of the more common ways to perform corruption in public procurement.

The power of invitation

The public officials may have the power to decide which enterprises to invite to the tender. One option to make the bribing company win the tender is to limit the call for bids, as well as keeping the project/acquisition secret as long as possible. The competition appears real if a large number of companies are invited to the tender. Della Porta and Vannucci (2001) explain, however, that these companies may not be real competitors. The tender invitation can be sent to companies with a completely different area of specialisation or without any experience in the relevant field. Another option is to make sure that only a limited number of the invited enterprises receive the invitation, and then put the blame on the mail system.

These methods become more efficient when combined with restrictions in time. The public acquisition and the call for bids may be exposed for a very short time, so that only the company/ies already informed have time to prepare the tender documents. Making the tender public during holiday time, when most administrative offices are closed, has the same effect. della Porta and Vannucci (2001:6) exemplify with a case from Parma, in which a corrupt official in the public health system used “the summer call for bid” together with a very close deadline for the presentation of the application. In other cases, time restrictions may even provide the bribing company with a monopoly situation, resulting in monopoly prices. This is also the case for sub-contractors, as time limits may justify the use of other suppliers than those agreed upon in the contract (Andvig, 1994).

Short listing /pre-qualification

Limiting the number of competitors according to previous experience is often referred to as *short-listing* or *pre-qualification*, representing a necessary step in the procedure when a high number of companies offering quite different degrees of quality want to take part in the tender. The inclusion on a shorter list may be dependent on a bribe, instead of quality and experience. A real competition among the companies accepted on a shorter list does perhaps take place, also when a bribe ensured their participation in the tender. According to della Porta and Vannucci (2001), however, a more common result is that the bribing companies share the contract among themselves like in a cartel, increasing prices and profits for all. In particular, this represents a threat when all the contractors are local.

When only one of the pre-qualified companies has bribed the tender board, justification of the contract assignment may be difficult if other companies apparently have better bids. One option may be to put much weight on one particular criteria of evaluation met by the bribing company only. Another possibility is to disqualify unwanted suppliers, for instance on ethical or political reasons (like trade with countries or groups in conflict with the government). If this fails, the tender may be delayed or recalled on grounds of changed priorities, shortage of finance, or a larger/smaller scope of work (Moody-Stuart, 1997).

The choice of technology

Another method in use by corrupt officials is to design the tender so that particular qualifications are requested, representing comparative advantages held by the bribing company. The protected company will thus offer the lowest price, and the contract award is defensible. Rose-Ackerman (1999: 64) tells about “*an African country [that] reportedly once set its telephone specifications to require equipment that could survive in a frigid climate. Only one telephone manufacturer from Scandinavia could satisfy this obviously worthless specification.*”

The choice of technology has more consequences for larger projects. Andvig (1994) explains the impacts of choosing either a production ship or an oil platform, made out of either steel or concrete. In such cases, the choice directly affects what sub-contractors to use. These specialised companies may thus have significant incentives to pay bribes, paying the public officials directly or to a construction company in order to be included in their bid.

Confidential information

There are numerous ways for a public official holding confidential information to misuse his/her position. For instance, few acquisitions have a character that makes them able to be treated completely automatic, only considering a price. Parameters like technical value, times of execution and costs of utilisation can to some extent be treated objectively. Some discretionary judgement will nevertheless often remain, for example when it comes to design and architectural values. When the public preferences are not clearly specified, the control of the choices becomes more difficult. And where no reliable way of evaluating the bids exists the ground is left open for corrupt officials.

Accordingly, the procurement procedure may appear competitive, still being vulnerable to corruption. When the briber knows in advance the relative importance of various parameters of evaluation, s/he can obtain the contract formally without any irregularity (della Porta and Vannucci, 2001:9-10). And when it seems obvious that several competitors had a better offer, the contract award may be justified by the extreme importance of one particular evaluation element.

Confidential information may also be bought for bargaining. Negotiations between the government and the chosen contractor on the terms of agreement are common in projects of significant size and complexity. For the company it will be easier to improve the contractual conditions when it is provided with confidential information about the other bids. A company holding a bid below those of the competitors may use the information to bargain an “uplift”, a higher price without technical improvements. And when the winning bid is high (to ensure profit) the company may bargain to reduce the contractual obligations. The potential gain of holding confidential tender information may thus be substantial, and in several sectors “information brokers” operates between the state and the companies involved, selling and buying facts and figures (Andvig, 1994).

Modifications of the contract

della Porta and Vannucci (2001:14-20) explain the way price revisions, modifications of the contract or obstacles to a quick payment of procurement contracts may be motivated by corruption. Changes of initial projects or supplementary works can be justified by new events or conditions found after the contract has been drawn. When the bureaucratic capacity of projecting and planning is inefficient such changes are particularly likely to occur. One explanation may be the incentives of the contractor to manipulate decisions regarding modifications or additions to the original project, as this kind of work usually increases the enterprise profits (also when rates for supplementary works are contractual). Hence, inadequacy among public officials in charge of the project can be misused by the executing enterprise. The enterprise ability to understand deficiencies of the initial project and to forecast the nature and dimension of the changes may thus become important to win public procurement contracts in general. Bribes are paid in this context to obtain promises of changes and additions of the work, so that the enterprise can win the bid with an inferior offer.

Similar agreements may also be settled once a project has started. Andvig (1994) explains several ways to obtain a request for supplementary work. The technical expertise of the procurement department can be bribed to ignore work that is left out of the contract. Those who define what to be counted as supplementary work may be corrupt. Or, the public officials may delete parts of the contract once the enterprise has won the tender, again in exchange for a bribe.

Other commodities worth bribing for during execution are time extensions (including more payment), as well as already agreed upon payments of the work. Both Jain (1998) and della Porta and Vannucci (2001) describe the way payments are delayed by the public officials in order to obtain bribes. This measure is efficient as enterprise expenditures on the project increase continuously. Besides, such delays are also applied to sanction defections from promises of bribes. A final example on how to obtain bribes during execution is the proposal of *impaired controls*. Skimping on quality without (short-term)

risk may leave the project more profitable as expenditures are reduced. The completion may also be achieved sooner than intended.

Hence,

“Those who believe – and particular those who want to believe – that grand corruption in the South is not really a major problem, place much reliance on the discipline of International Competitive Bidding. They are deluding themselves. ICB makes life a little more complicated for the suppliers and the receivers of corrupt payments but it seldom defeats them.”

George Moody-Stuart
(1997:16)

3.3 Corruption through legitimate deviations from the procurement rules

The previous section discussed the way deviations from the procurement rules can have considerable consequences caused by corruption. This section concentrates on the *deviation* of the competition-ensuring rules, motivated by corruption *but* justified on legitimate basis. There are indeed many examples of the total neglect of procurement procedures, contract awards with no justification for ignoring the rules. These cases represent a political problem outside the scope of this report. The focus of this section will rather be on the reasons for being suspicious to justifications given for avoiding ICB, while assuming that procurement rules usually are respected.

Justifications for bilateral negotiation of governmental contracts

A common applied justification is the preference for a previous supplier whose performance has been satisfactory. Working with known and trusted faces, the uniformity of spare parts and familiarity of operators with similar equipment represent real advantages, though often over-valued in price compared to the cost-efficient result usually achieved by competitive bidding. These advantages may be alleged and cover a corrupt transaction (Moody-Stuart, 1997).

Other reasons for avoiding the bidding procedure are speed and cost. Moody-Stuart (1997:16-17) explains that *“the need for a very detailed specification and proper legal formality in tender documents, as well as the time required for bidding and adjudication of bids, certainly makes ICB a time-consuming business.”* Usually, the tender procedure will delay a project by at least six months. In many cases this delay is a legitimate excuse for deviating from the bidding procedure. However, it may also be applied to cover corruption.

Referring to the aspect of cost is also possible, but seldom an honest excuse. There are at least three conditions for a direct negotiated agreement to be superior to ICB in cost-efficiency: Public officials holding (1) the necessary technical competence, (2) a cost-minimising focus, and (3) a high morality. These are qualities difficult to control. Consequently, the potential for corruption and dishonesty makes direct negotiations inappropriate for most major contracts.

Major events and states of emergency

Speed is already mentioned as a corruption-motivated reason to deviate from the rules. In some cases, the project is really urgent, for instance after an environmental disaster, or a sudden happening. In these exceptional cases certain public agents may be provided with significant authority for signing contracts exempted from the ordinary procurement rules, *de facto* also exempted from monitoring procedures.

In these cases the agent may hold the maximum degree of discretionary power (see Section 3.1), and corruption may be considered both easy and less risky. The Okinawa G8-meeting in 2000 is one such example of generous funding combined with inferior inspection. The spending has been subsequently investigated, and has so far resulted in several public officials being charged of corruption. Two officials are accused of fraud of approximately \$250.000 when awarding a car rental contract. A public official working in the department of foreign affairs told *The Japan Times* that accountal inspection is inferior in connection to major events as long as budgets are not exceeded. For some reason, however, the voted funding was exceptional large in this case, at about \$700 million (*Aftenposten*, 18.07.2001).

Motivated by corruption, the definitions of *urgency* and *exceptional* may be extended to avoid an ordinary competitive bidding procedure. In Italy a “culture of emergency” developed, and resulted in “a *systematic search for the exceptionality*” and a frequent use of “*mechanisms of arbitrary choice in public contracting*” (della Porta and Vannucci, 2001). According to the same source, 75% of 10.000 billions of lira contracts in connection with the 1990 Italian World Football Championships were awarded through “private negotiations”. All the contracts assigned in connection with the Celebration of Christopher Columbus Anniversary of 1992 were also assigned by such private negotiations. And after the earthquake in Irpinia, 1980, “*public bodies received a huge amount of public funds to be spent with full discretion,*” resulting in numerous judicial inquiries on bribe payments.

Corruption without a specific case

It may appear difficult to define corruption exactly, and the legal aspect of “grease payments” and “maintenance of connections” might be uncertain. This kind of activity may thus turn out to be legal. It may also have significant effects on the assignment of public contracts.

della Porta and Vannucci (2001:22) explain that enterprises specialised in the public market often search for a “general protection” inside the public administration. In this way they may avoid obstacles created by rent-seeking officials, as well as “problems” that may arise in an unpredictable bureaucracy (like loosing the contract to another company for no apparent reason). The *general protection* is provided with some kind of personal benefit even if no specific case of corruption takes place.

A legal establishment of connections may also represent the initiating step towards a corrupt agreement. According to Lambsdorff (2001a) corrupt agreements may emerge as a by-product of already existing legal relationships. This problem is present all over the world but is more serious the wider the bounds for public officials to pursue private interests in work.

4 Public procurement anti-corruption strategies

The number one problem in the planning of a governmental procurement reform is the contradicting considerations. Within given resources the procedure is supposed to be fair, competitive, information-protecting, transparent, cost-efficient, impartial and ethical, with rules ensuring secrecy, accountability, simplicity and justice. These demands indicate a complicated task that is not simplified by the fact that too many changes facing the public officials may ruin the success of reform.

When it comes to corruption in particular, the contradiction between simple rules and discretionary authority implies a certain challenge. A desire to regulate all procurement situations arises, making the procedure automatic in most cases. However, when rules become more complex, more reasons to deviate from them usually arise as well.

This chapter describes important qualifications and strategies to reduce the opportunities for corruption in public procurement. An overview is provided in Section 4.9.

4.1 Political commitment

Corruption in public procurement is often caused by top officials over-ruling the tender board, disregarding existing procurement rules¹¹. Where this is common, it may be more difficult to find honest officials at lower hierarchical ranks. Hence, it is found in most countries that the fight against corruption must start with an explicit commitment by the prime leadership of the country. Ending the pettier forms of corruption in the bureaucracy is difficult if the grand political corruption persists. An honest intention has to be followed up by good behaviour, expressing opposition against all forms of corruption, whether it involves family members and friends, political associates, or other members of government.

Accordingly, political commitment is a necessary condition for successful procurement reform. New rules alone are not sufficient. In many countries the regulatory framework is too wide as it is. Tanzi (1998) explains that one reason for corruption in developing and transition economies is that the role of the state to a large extent is carried out through the use of rules and regulations. The many regulations provide the public officials with a monopoly authority that may prove useful to demand bribes. In order to reduce the level of bureaucratic corruption it will therefore be important to reduce this regulatory framework, while improving, as well as executing, the anti-corruption laws.

¹¹ Coolidge and Rose-Ackerman (1997) provide an economic model and a broad discussion about political commitment as a necessary condition for reform. The paper includes case-studies from Botswana, Nigeria, Uganda and Somalia.

della Porta and Vannucci (2001) explain the early 1990s' procurement reform in Italy as symbolic and that the levels of corruption are probably again increasing. This is partly due to a resistance against anti-corruption laws in the Parliament. As a paradox, "*it seems that in Italy institutional reforms, relevant for the struggle against corruption, were easier to develop the less they focused on corruption*" (della Porta and Vannucci (2001: 25). The need for individual protection in higher political circles may thus undermine the total effect of an anti-corruption reform.

An anti-corruption reform of the public procurement system also depends on the political will to disclose the state budgets, extend the obligation to keep accounts, establish external monitoring systems and improve public access to bureaucratic and political information. The culture of concealment, prevalent in many corrupt bureaucracies, need to be replaced by a "culture of transparency". Extended freedom to the press is an important element to establishing such a new culture.

A final but not less important issue of political commitment is the necessary will to revise the salary structure for public sector employees. The combination of higher payment and larger risk of being caught was a central element in the successful anti-corruption reforms carried out in Singapore and Hong Kong. The curbing of corruption may thus turn expensive, though it will probably not exceed the price of doing nothing. Section 2.5 describes some dynamic effects of corruption and warns about vicious circles. As also mentioned, these circles may turn the opposite way by implementing anti-corruption measures. Today, a significant amount of knowledge is generated on measures to combat corruption, and some of our international organisations (like the World Bank and the UN) have worked out comprehensive anti-corruption strategies.

4.2 The organisation of public procurement

International Competitive Bidding (ICB) is the most accepted procurement procedure worldwide, mainly due to a high probability for a cost-efficient result when applying this system. One problem, however, is the many ways ICB can be manipulated. This implies that the cost-efficient result aimed at by ICB, is dependent on certain institutional qualities held by the state administration. Rose-Ackerman (1999:63-68) argues that many developing countries may not fill these necessary conditions, as the level of corruption may be extensive and the scarcity of economic and human resources severe. Hence, when the ICB concept is unlikely to be effective, alternatives to the procedure should be considered.

Performance rating

One example might be a system of "*performance rating*", as is part of the new procurement system introduced in the United States (in combination with ICB). This represents a negotiated contract where the company is chosen on the basis of past experience. For smaller countries, the reputation of bidders can be

drawn from the international arena. Rose-Ackerman argues that performance rating would reduce malfeasance and improve efficiency for many developing countries with limited capacity to carry out complex bidding procedures. At its best, it would encourage good performance at both sides of the table. Companies would have incentives to perform well in respect of contract agreements and they would be rewarded for helping the government to avoid mistakes. In order to improve their “performance rating” they would also have incentives to make investments and innovations specifically for the government work. Under ICB principles, in contrast, the lowest “responsible” bid must be accepted. If followed mechanically, this rule can lead to low-quality work and bid-rigging, in addition to the mentioned risk of corruption.

The major subjects of controversy regarding performance-rating are the evaluation of experience and the problems for small and new companies to enter the market. A further problem with performance-rating is actually the risk for corruption, as it asserts a high degree of discretion. Besides, several of the problems explained in Chapter 3 may also arise within this system. As compared to ICB, however, performance rating could be preferable if combined with an *independent procurement unit*.

Procurement unit

A well-functioning tender procedure is dependent on a high degree of professionalism among the responsible public officials. Professionalism is, however, difficult to obtain when the general level of education is low and when jobs are better paid outside the state administration. A procurement unit of few but well trained officials could therefore be established. Independence is important for protection against corrupt politicians and high-level officials. An improvement of the state’s reputation in procurement cases, might be another beneficial consequence of an independent procurement unit, increasing the attractiveness of FDI and trade with the country. A decent wage in combination with bonuses and loss of position in case of corruption would be necessary to encourage to an honest award of contracts. A control system would also be needed, carried out for instance by a the General Accountant.

Provided with thorough instructions about the goals of procurement, the procurement officials could (to some degree) be accountable for the contractor's ability to fulfil the procurement goals, as well as for the absence of corruption. Independent and accountable procurement units are also part of the US model on procurement (developed by Steven Kelman, Harvard)¹². This model is more focused on the *results* of procurement, and provides the procurement unit with considerable flexibility to determine the procurement procedures. Decisions about *what* to procure become no less important than decisions about *how* to carry out the procurement.

¹² For more information about the US model on procurement, contact the US Department of Commerce. www.stat-usa.gov

Performance-rating in combination with an independent procurement department represents a fundamental shift in perspective. The suggestion is motivated by the problems related to ICB, and included mainly to encourage a critical attitude towards this ruling system. Most of the discussion in this paper assumes an ICB procedure.

4.3 Elements important to reduce opportunities for corruption

This section continues the focus on organisational matters of public procurement. In contrast to 4.2, however, we now turn to more detailed recommendations. Issues of concern are disturbance of corrupt relationships, simplification of rules, bench marking of prices, supplementary works and rules for exceptional cases.

Disturbance of corrupt relationships

A challenge in the arrangement of corrupt agreements is often the search for a proper counterpart. It is important to find the right connection, preferably in a manner so that only the relevant connection knows. This is a risky undertaking as the counterpart may refuse on moral grounds and thus reveal the corrupt proposal. Apart from the will to be corrupt, the associates must also be “honest” enough to carry out their part of the agreement. The settlement of a corrupt contract represents a challenge on its own, as it may prove difficult to determine the appropriate value of a bribe and how to disguise payments. The transaction costs involved with corrupt agreements may thus reach a significant level. However, these costs are reduced by the help of rumours, past experience and the establishment of secret networks of associates. When this kind of transaction cost is reduced corruption becomes cheaper (Lambsdorff, 2000 and 2001b).

Accordingly, Lambsdorff (2001a) argues that an important anti-corruption strategy would be to disturb these established connections and increase the transaction costs of corruption. *Rotation of public officials* responsible for procurement could be an important measure in this respect. In countries experiencing rampant corruption, the benefits of reducing the opportunities for corruption may be superior to those obtained by keeping each official with a permanent area of responsibility. However, rotation may also lead to increased corruption if the officials use the opportunity on a lucrative post to steal as much as possible. Still, UNDP (1997) suggests the strategy, but warns that in a highly corrupt bureaucracy, superiors may use their ability to reassign officials for not playing along.

A common way to reduce the opportunities for corruption is to separate the evaluation work in the purchasing organisation, so that the economic department receives the price information in the bids while the technical department evaluates the quality specifications of material solutions. A consultancy is often applied for the technical evaluations. It may be important to divide large decisions into separable tasks. However, as a strategy against corruption it might be worth reconsideration. According to Andvig (1994) this

kind of separation may create opportunities for middlemen with high technical competence to buy information in the economic department and subsequently sell it to bidding companies. Also della Porta and Vannucci (1999) argue that the number of decision-making centres should be reduced. Hence, the fewer officials informed about confidential information, the fewer can profit by revealing it.

A further way to “disturb” corruption is to reduce the opportunities to *delay* the total procedure or parts of it. A public official may profit on delays as continuation could depend on bribes. Strict time limits by which a given request must be rejected or accepted are therefore important to curb corruption, or to “*reduce the chance that public officials invite bribes by simply sitting on requests*” (Tanzi, 1998:124). Still, the time limits must be wide enough to allow adequate and reasonable time for interested suppliers to prepare and submit the responsive bids (APEC, 1999). If not, these time limits may be misused to protect a bribing company, as explained in Section 3.2.

Simplification of rules

It is important that the underlying rules are clear and simple, so that people know what an honest system is supposed to produce.¹³ Uncertain and variable rules, in contrast, create opportunities for corruption. Information about areas of responsibility and degrees of discretionary authority among public officials should be accessible to ordinary people. Changes of the rules should also be published immediately.

This sort of transparency would make corruption more visible, and hence more risky for the agents involved. It is also important to establish whether officials act outside their area of competence in return for bribes, or whether they are providing something the payer should have received without a payoff (UNDP, 1997:2).

Despite the need to regulate authority, several researchers working on this field recommends a simplification of rules. della Porta and Vannucci argues as follows: “*An excess of rules stiffens the administrative system, justifying the emergency procedures, which then support the violations; the possibility to apply one law or the other, to implement or not to implement a control increases the arbitrary power of public administrators, and the push for private entrepreneurs to recur to ‘political protection’.*”

Bench marking and off the shelf items

Rose-Ackerman (1999:63) argues that also the goods procured should be “simplified”. Anti-corruption benefits is just one of several economic reasons to prefer standardised products to more specialised custom-made or “state-of-the-art” products. The state administration should apply private market prices as benchmarks and specify their requirements in terms of standard off-the-shelf

¹³ The procurement rules developed by APEC (Asia Pacific Economic Cooperation) are exemplary in their simplicity and their practical applicability (www.apec.org).

items. This would reduce both the cost of procurement as well as the risk of corruption. International prices instead of domestic prices should be preferred as bench marks because the government's own demand is unlikely to affect these prices. Goods sold in international markets should thus in many cases be favoured.¹⁴

Supplementary work

Section 3.2 explains the range of opportunities for corruption exposed in the "concept of supplementary works". Accordingly, the way additional work is specified in the contract is very important to reduce the risk of corruption. Does such kind of work have to go through a new procurement procedure? Or is it supposed to be carried out by the same enterprise? The latter might end up in a monopoly price if not prices of supplementary work are determined in advance. And what is the definition of supplementary work? These questions should be clearly answered in the procurement contract, while decisions to change or supplement the project should be monitored with caution by officials external to the centre in charge of the contract award.

Rules for exceptional cases

Some of the opportunities to misuse rules regarding exceptional cases are explained in Section 3.3. The exceptional situation may endure for a long time, for instance a war creating a constant state of emergency. Rules for emergency cases should thus not be absent, just made as simple as possible. The "emergency procurement" should be followed by evaluation and the rules applied for the real emergency cases only. It is therefore important to define the term "emergency" precisely.

In order to reduce the threat of "emergency cases" occurring after the assignment of contract, the introduction of insurance coverage and payments of deposits should be considered. To some degree at least, this sort of obligatory payments could protect both the public administration and the winner of the contract against non-fulfilment, burdens due to unanticipated difficulties, and other unforeseen circumstances (della Porta and Vannucci, 1999).

4.4 Transparency and the problem of discretionary power

"Transparency is a central characteristic of a sound and efficient public procurement system and is characterised by well-defined regulations and procedures open to public scrutiny, clear standardised tender documents, bidding and tender documents containing complete information, and equal opportunity for all in the bidding process," (UN, 1999:4). This quotation expresses the major points in this section.

¹⁴ The suggestion about a preference for goods sold in international markets must of course be weighted against other regards, such as the need to develop domestic economic activity. The perspective of this report is limited to the problem of corruption. When it comes to bench marking, quite detailed prices are obtainable in international trade statistics.

Trust, communication and information

Making information confidential often creates opportunities to obtain bribes. Access to information ought therefore to be the number one transparency principle in tender procedures, still including a few exceptions. The governmental request should be announced as early as possible and invitation for tender published in due time in the major newspapers, specialised trade journals, as well as some other compulsory sources. Among the information to be included in this announcement are the objective of the procurement, the chosen procedure, the most important rules and time limits, the criteria of evaluation, demands regarding tender documents, and other important conditions. APEC (1999) provides more details in this respect.

Protection of competition and business secrets represent the major reasons to deviate from the principle of transparency. The tender can be open in cases where this kind of protection is unimportant. However, in sealed bid tenders the competitive element will be undermined if one company holds information about the other competitors' bid. The market value of this type of information can be very high, and thus beneficial for public officials and information brokers to get hold of.

The bids may also include business secrets, like technological knowledge and organisational expertise. Diffusion of this information may reduce the competitive advantages of a company. Before deciding whether to join a tender a company probably translates risk to cost when measuring out the possible profit. A weakening of the enterprise confidence in the tender board will thus in some cases reduce the number of competitors attending the tender. Consequently, a general confidence in the bureaucracy that secrets are kept within the system is important to ensure competition.

It takes some time to build confidence. However, encouraging respect for the communication rules of procurement is a significant step in the right direction. In this regard APEC (1999:10) declares that: "*Contact between all procurement and evaluation personnel and tenderers and prospective tenderers should be on a formal basis once the formal procurement process starts.*" Other information rules, such as keeping tenders sealed until the designated time of opening, and the impartial treatment of all bidders, are equally important.

To improve confidence in the tender board it is also important to provide the unsuccessful bidders with an explanation of the rejection of their bid and relevant information about the tender (the number of competitors, their total contract price, etc.). These tender participants, as well as other interested parties, must be allowed to complain about the contract award, as well as the tender procedure. The procurement rules must therefore include an *appeal procedure*. Accordingly, a *board of contract appeals* should be appointed, for instance as part of the institution responsible of monitoring public procurement.

As a concluding remark, the confidential parts of the bids have to be kept secret, while open information must be accessible for all. Partial solutions in this respect will provide opportunities for corruption.

The use of discretionary authority

This topic represents a difficult balance. While the integrity of public officials should be assumed, one should not trust that decisions are unaffected by personal benefit. The perceived level of corruption and fraud in the bureaucracy is important for the choice of strategy against possible opportunistic judgements, although mechanisms to reduce the opportunity for corruption are important in all countries.

The contradiction between regulations and discretionary power represents another challenge. As complicated rules increase both the inclination for corruption and the cost of running the state administration, the number of directives regulating discretion should be minimised. One should not aim at developing rules for every kind of evaluation that may arise in all the different categories of procurement. In contrast, significant attention has to be paid to the *objectives* of each single procurement project.

To identify the desired outcome of each procurement activity, the officials in charge should consider “*where, why and when the need arises and for how long and for which unit or location*”. This quotation is one out of several practical advises for the procurement planning procedure, offered by APEC (1999:5, Paragraph 18-24). Accordingly, a thorough planning procedure has to take place in front of each procurement project. In particular, the identification of *need* and allocation of public funds are important in this respect. The practical consequence of a more thorough planning procedure, will thus be a reduction of discretionary authority, while the procurement rules are not made more complex.

Enabling inspection

All kinds of procurement decisions have to be monitored in some way. For discretionary procurement decisions this represent a certain challenge. While elements like technical value, times of execution, costs of utilisation to some extent can be monitored objectively, there will often remain an aspect of evaluation that is clearly individual (della Porta and Vannucci, 2001:9). Also to enable inspection of these judgements, specific objectives are the solution. When significant problems arise during execution, a committee should respond, and not just one official.

The most important way to enable inspection is, however, record keeping. APEC (1999:13) suggests: “*Proper record should be kept of the entire procurement process, including decisions and actions taken during the process and reasons for taking them, to the extent that is sufficient to justify the decisions and actions taken. These records should be retained for a predetermined period.*” Both the APEC rules and the UNCITRAL model law on procurement (UN, 1999) provide a list of the basic matters to be documented.

To improve accountability and reduce the risk of corruption it is also important to document the name of public officials responsible for the request, as well as the tender procedure.

Codes of conduct and rules of disqualification

Rules to ensure integrity make it easier for public officials to renounce corruption. *Codes of conduct* is a “compulsory” part of any procuring institution. However, they should not just remain on the paper, but characterise all forms of bureaucratic activity. A step in that direction would be to include ethical standards in the *legal* framework.

Codes of conduct are supposed to serve as an obstacle for private interests to interfere with those of the government. Important elements are the way gifts and personal benefits should be treated; forms of communication and association with external agents involved in administrative cases; what to do when fraud or corruption is discovered among colleagues; and what to do when uncertainty about these issues arises. Transparency International provides practical details for such rules, as well as an overview of the “codes” in use by different countries worldwide¹⁵.

Rules of *disqualification* are supposed to ensure integrity when codes of conduct is insufficient. A high international standard of these rules is very important, for instance to reduce the opportunities for insider-dealings. To illustrate, UNDP (1997:54) refers to a case in Argentina where several officials who designed a highway privatisation bidding process were employed by the companies that acquired the highways. Lambsdorff (2001a:17) explains the risk of corrupt agreements carried out through common ownership: “*Those who deliver and those who receive services or goods [may] integrate vertically to form a new company under common ownership and control. Raising the profit of the firm is now in the self-interest of each partner.*”

Consequently, public officials in charge of the procurement should have no forms of personal interest in any of the companies attending the tender, neither in countries where corruption is the absolute exception.

Finally, it must be realised that introducing codes of ethics and rules of disqualification are steps in the right direction, but not sufficient when the aim is to change a culture of rampant corruption.

4.5 Competition and technological competence

Does competition impede corruption?

Competition impedes corruption, according to Ades and Di Tella (1999), because it reduces the returns of economic activity and consequently also the funds available for bribery. A reduction of the bribes may also reduce the

¹⁵<http://www.ti-bangladesh.org/cgi-bin/cgiwrap/Wtiban/bpvo.pl> and <http://www.ti-bangladesh.org/cgi-bin/cgiwrap/Wtiban/bpvodocs.cgi>

motivation of public servants to enter into corrupt agreements. These arguments are logical. Still, they should not be allowed to pass unchallenged.

For instance, a look to the opposite situation, monopoly, makes it plausible to assume that more control of the market means less reason to bribe. If only one enterprise is able to provide the requested product, why should it pay bribes? Two companies operating in the market, however, may result in a fully competitive price, much dependent on the requested product. Under what circumstances will competition be ensured?

The number of competitors is thus not a reliable indicator of competition. Attending the tender of large projects means writing an entire book about technical details, prices, qualities, etc., usually at a high probability of losing the contract. Bidding may thus represent an expensive undertaking. The more profit involved the more apparent is the reason for commencing this work. Accordingly, a high number of bidders may indicate that excess profits are anticipated, perhaps through corrupt arrangements with officials. A small number of bidders may just mean that the government is viewed as especially likely to assure a competitive bidding process. A contract with a very high rate of return and a small number of bidders may, however, indicate a deal based on corruption (Rose-Ackerman, 1999:67).

And finally, in a true competitive environment corruption is still likely to take place. For instance, a competitive price may be the result if all the competitors pay about the same amount in bribes. In this case bribes would appear as a tax and part of the economic environment. However, a direct assignment of the contract is not the only advantage obtainable through bribes. Chapter 3 explains that bribes are used to skim on quality, to reduce the obligations according to the contract, to obtain supplementary work, etc. This implies that a company's ability to influence on the tender documents is important to win a tender in a corrupt environment. The incentives to do so are obvious in a highly competitive market.

International competition

Do the same arguments count for competition across borders? Perhaps multinational enterprises are less inclined to bribe compared to those operating in domestic markets only. These companies are often governed by additional legal constraints, they may have adopted voluntary codes of conduct, including anti-bribery commitments, and usually they are "*keen to enhance their reputation and respond to stakeholder pressures for more responsible corporate practices*" (Hellman et al., 2000c:4).

Actually, the World Bank/EBRD survey of transition economy businesses, the BEEPS referred to in Section 2.3, suggests just the opposite. According to Hellman et al. (2000c:5) transnational firms headquartered abroad are *more* likely than other firms to pay public procurement kickbacks. More than 35% of the FDI firms headquartered abroad pay kickbacks for public procurement in the transition economies included in the survey, while about 25% of the

domestic firms admit bribery in public procurement. The share is slightly higher for the locally headquartered FDI firms. Hellman et al. (2000c:6) continues: “At least for transition economies, these results challenge the efficacy of transnational anti-bribery conventions and laws or self-imposed codes of conduct to reduce corruption by themselves.” Maybe multinationals tend to adapt to new conditions, and bribe if the culture makes them believe that the competitors do?

Therefore, opening up public procurement for international bidding is not alone a reliable curb on corruption in public procurement. Applying international prices as benchmarks in negotiations will probably be more efficient to obtain an international competitive result. As argued above, this would also reduce the opportunity for corruption in public tenders.

The need of private expertise to ensure quality

Technical expertise among the public officials concentrates the competition to price offers and a more efficient result may prevail. This assumption supports the establishment of an independent procurement unit with professional officials. Due to experience, the technical skills will increase faster within a small group working on procurement issues, compared to a situation when procurement is carried out by the different purchasing institutions. Assistance from private sector expertise may, however, be useful in certain projects, independently of bureaucratic professionalism. In these cases it is important to be aware of the opportunities for corruption, and take necessary precautions¹⁶.

A company may bribe the external (private) technical expertise to recommend a certain solution appropriate to the bribing company. In cases when the recommendations are confidential the technical expertise may try to profit on the information. Implementing efficient measures is difficult at this point as well. Andvig (1994) recommends evaluation from different perspectives, although he warns about informal communication networks across company borders, for instance among engineers or other professions. Due to such networks it may prove difficult to keep technical information confidential. Again, transparency, as well as determined objectives, reduces the opportunities to sell or manipulate information.

Supply-chain corruption

In large projects a company aiming at participating in the tender usually makes a number of technical decisions while working out the tender documents or after contract assignment. These decisions may not be regulated in the tender specifications, neither determined after a bidding procedure. Some examples are technical specifications in minor operations, about the material to be applied, about co-operating companies, design, environmental considerations, etc., decisions just informed about in the tender documents without much

¹⁶ Manipulation of the tender through technical details and corrupt officials is mentioned already. At this point we concentrate on the external expertise, assuming an honest tender board.

discussion. These “sub-decisions” are essential to niche companies aspiring to be included in the bid. Corruption may thus take place in the tender procedure, still out of the control of the governmental institution in charge of the procurement. Similar to other forms of public procurement corruption, it may result in higher prices or less than optimal qualities.

4.6 Tenders on the Internet

Using the Internet for public procurement is a new option for most bureaucracies. Electronic commerce in general represents a new concept of trade and implies a number of benefits, in particular a potential for reduction of costs and a simplification of international trade. According to the UN (1999): *“The many advances in technology together with the relaxing of barriers to global trade have created an unprecedented area of opportunity.”* This section, however, will focus on the new opportunities for corruption introduced by applying the Internet for public procurement.

No assurance of a clean process

One of the benefits using the Internet is the new opportunity for a quick and paperless exchange of critical business information. This will, however, also imply a simplification of the opportunities for corruption. Electronic documents can easily be copied, changed and forwarded to companies offering bribes. For instance, if one company decides to send their tender contribution two days in advance to avoid problems with net and server stability, a competing company may be offered the secret documents and price estimates two days before the tender deadline. Again, confidential information is an attractive commodity, in many cases worth a significant bribe. When all the transactions can be carried out through the Internet, this kind of corruption is simplified.

To reduce the opportunity for corruption all the participants should submit the bid at a designated point of time. Otherwise, routines must be made to ensure that the tender documents can wait safely on the Internet.

A further problem is the business secrets often part of the tender documents. This information about one company will still be valuable for the competitor. Accordingly, a simultaneous submission of the bids would not eliminate the incentives to bribe for confidential information, not even after contract assignment. The use of the Internet will still make it easy to forward documents to a briber in a competing company. Proper routines should thus be developed for all parts of the Internet tender. However, it should be noted that any deviations from the routines to ensure a fair competition and limit opportunities for corruption would also reduce the potential benefits from using the Internet.

Irregularities in computer systems often occur in modern European or American companies with a good computer network and infrastructure, as well as skilled people to maintain the network. In many developing countries where the electricity supplies and phone systems are less stable, this problem is much more

frequent. Presence of old computers, maintenance problems due to lack of spare parts, and a lower competence of computer assistance would reduce the computer network stability. An Internet tender represents transfers of large amounts of data. This can easily amount to 10s, maybe 100s of Mb. Applying an ordinary modem line for these transfers can thus take hours. Even with an ISDN quality long transfer significant time are required for a 100 Mb. Stability problems in the e-mail systems, as well as limitations in the computer memory and disk space at the local server, may turn out to be significant obstacles to this transfer process.

Despite some technical problems, the Internet provides new opportunities to announce a tender and also to distribute necessary information efficiently. When applying the Internet for *sealed bid* tenders the risk of corruption is probably lower in the prequalification phase compared to the final competition. In order to reduce the risk of corruption concentrating the use of the Internet to this part of the tender should be considered.

4.7 The supply side of corruption

Definitions of corruption tend to focus on public officials misusing their bureaucratic position. The effect of measures may be limited if also the strategies for reform represent such a biased perspective. In practice, both the payer and the receiver of bribes must agree for corruption to occur.

A problem facing many developing countries in their achievements to curb corruption is the continuous supply of bribes from more developed countries. Industry representatives often point to an alleged cultural acceptance of corruption in the importing countries, disclaiming responsibility and assuming a higher degree of corruption in foreign countries. *“By contrast, people from less developed countries point to the difficulty of establishing an honest administration and a transparent political environment when low-paid public servants are constantly offered side payments by business people from industrial countries,”* (Lambsdorff, 2000:43).

Multilateral measures to obstruct the supply of bribes have been established in recent years, motivated by a US law that forbids companies to bribe abroad to obtain business.¹⁷ The most important establishments are the OECD convention on combating bribery of foreign public officials in international business transactions (enacted in 1999) and the OAS Inter-American convention against corruption (1998). A proposal for a UN convention is also in a preparatory stage. Evaluating the effect of these efforts is difficult. The conventions are still important as they represent a new willingness to confront the issue. They also illegalise cross-border bribery. A major remaining problem is that the activity of *middlemen* is not sufficiently regulated in the conventions.

¹⁷ The US Foreign Corrupt Practices Act (FCPA) of 1977. In many years the US was pushing countries to settle similar rules. The end of the cold war has facilitated widespread agreement and it has proved easier to initiate multilateral measures.

Agents, middlemen and “fronts”

In many countries a local agent is the key to obtain a business agreement. The agent represents the company and serves its interest in a foreign culture. In some cases the agent also functions as the key to an informal network of public officials willing to be corrupt. Different kinds of middlemen may thus play a central function in the accomplishment of corruption. Usually the agent is independent of the company and paid a certain percentage of the contract value after assignment. In cases of corruption the independence is important to arrange for shady operations, still protecting the name of the company. A company facing accusations of corruption may thus turn the charges towards their agent to make him a scapegoat. In order to solve the problem of “damaging information”, explained in Chapter 2, the agent may also keep the identity of the company hidden, for instance when bribing to obtain confidential information. In this way the agent serves as a “front” to protect the company (Lambsdorff, 2001a).

It is important to consider the function of middlemen, agents and brokers in the procurement procedure if aiming at restricted corruption. A sufficient identification of all the persons involved should follow the tender documentation, while some kind of registration of middlemen should be requested. Middlemen that have bribed or tried to bribe public officials should be excluded from future tenders.

Company responsibility

Both the domestic and the multinational companies face a dilemma when dealing with corrupt regimes. Each company believes that it needs to pay bribes, as if it were a victim totally unable to influence its environment. However, each company does probably understand that they all would be better off if nobody paid. It is therefore reasonable to claim also the multinationals responsible for the problem. This would probably not scare the foreign companies off, but rather improve the investment climate.

Accountability implies welfare aspects taken into consideration, as well as the externalities imposed on other companies and the total business climate. Susan Rose-Ackerman (1999:188) explains that it also means choices: “*Companies operating in a corrupt environment must decide whether to participate actively, quietly refuse to deal, or report corruption to local authorities and to those in the outside world.*” A company choosing to keep quiet about a tender won by bribing competitors, has not only lost business, but also contributed to a further cementation of the corrupt practice. Reporting corruption, on the contrary, would embarrass the competitor, but more importantly, it could have an important effect on bribery.

White lists, self certification and anti-bribery commitments

Despite the open eyes of consumers, the media, and other watchdogs, accountability and integrity do not come automatically from multinationals

experiencing clear incentives to bribe public officials. However, access to procurement may be a tool to make private companies stay honest.

OECD (2000) calls it the “white list” approach. Companies certifying that they comply with all anti-bribery laws and that they have internal managing and accounting practices adequate to ensure compliance with these laws can be included on the list. OECD (2000:81) further suggests: “*Contractors must state that no bribe, gift, benefit, or other inducement has been or will be paid directly or indirectly to obtain the contracts; and contracts are terminated if the statements turn out to be, or become false*”. The system would need a certification unit administering a database of “possibly clean companies” and “companies at risk”. As long as new opportunities of corruption do not arise with such a system it may reduce the companies’ incentives to bribe. The chances of making it do so increase if the contracts include provisions for liquidated damages. A certain percentage of the contract amount could be held back from payments and forfeited if bribery was detected.

Certification approaches are, according to OECD (2000), not widely used, not even in well-developed procurement systems. But with the new international focus on bribery such procedures will probably be more applied in the future. At least the companies selected for contract awards should meet this kind of requirements.

4.8 Detecting corruption

The problem of corruption is difficult to defeat by the help of new procurement procedures alone. There will always be ways to deviate from the rules and directives. The risk of corruption will therefore prevail, also when the rules for procurement are excellently developed. The rules must therefore be followed by qualities like accountability and integrity. Apart from higher wages, improved working conditions, specified areas of responsibility, as well as delegation of authority will be important to promote these values.

Inspection

Moral conduct can also be promoted by inspection and sanctioning. However, too many controls may encourage bribery of the controllers. Therefore, the reviews of cases that are carried out have to increase the chance that a corrupt act is discovered. More concentration on *product controls* (concerning the attainment of the aims) and less focus on *process controls* (concerning the formal regularity of the acts) is, consequently, to be recommended (della Porta and Vannucci, 2001:28). For instance, if the inspectors obtain bonuses according to the number of problematic cases discovered there are no incentives to go deeper into each single case, and only the most visible cases will be discovered. Bribes are often buried in other transactions and may be difficult to detect. Consequently, an analysis of the objectives behind the project, the criteria of evaluation, as well as the bids submitted by the different competitors have to be carried out for the case under scrutiny.

The choice of cases inspected has to be unpredictable. However, della Porta and Vannuci (1999:271) argue that the frequency of controls should be related to the amount of resources administered by the different divisions, so that the additional gains from corruption are more than balanced by an increase in their expected costs. It will also be important to inspect the role of officials at different levels of the hierarchy. All the persons involved in a corruption scandal have to meet sanctions, without regard to their position.

Reporting corruption

In many cases bribery is detectable only for the colleagues of a corrupt official. The cases difficult to observe for the police may be apparent for the associates. These can, for instance, discover unreasonable argumentation in favour of a certain company. Other people involved in the tender may also come across corruption. A way to report on the cases should therefore be established and published. A problem with anonymous “whistle-blowing”, however, is the risk of dishonest information reported in order to blacken certain persons and companies. Still, anonymous information has to be accepted to obtain knowledge about corruption from people fearing sanctions. In any case, the safety of persons revealing corruption scandals has to be considered.

When corruption is revealed the persons involved should be charged. Sanctions are therefore mainly a matter of the legal system. Either imposed by judges or the bureaucracy, the sanctions should, however, include a system of incentives in which the penalties for the corrupters grow more than proportionally to the price of the public contract. This would reduce the incentives to illegal activities (Rose-Ackerman, 1978).

4.9 Suggested strategies

The following points provide an overview of the strategies so far suggested. Explanations are provided and the relevance for corruption described in their respective sections.

- An *independent procurement unit* with professional officials should be established (4.2 and 4.4).
- *Rotation of public officials* responsible for procurement within a certain area should be considered in countries with high levels of corruption (4.3).
- *Performance rating* should be a part of the procedure in large procurement projects (4.2).
- The number of *decision-making centres* should be reduced. Separating the evaluation of bids into a technical and an economical team should be carefully considered (4.3).
- The procurement rules should be made *clear and simple* - so that people know what an honest system is supposed to produce (4.3).
- *Time limits* by which a given request must be rejected or accepted must be strictly respected, still defined wide enough to allow reasonable time for interested suppliers to prepare and submit the bids (4.3).

- The state administration should specify the requirements in terms of *standard off-the-shelf items* (4.3).
- International prices should be applied as *benchmarks* as far as possible (4.3 and 4.5).
- *Supplementary work* should be specified in the contract as far as possible. Also the term “supplementary work” should be precisely defined (4.3).
- The procurement procedures should include rules for *exceptional cases*, including a precise definition of the terms “emergency”, “exceptional” and “immediacy” (4.3).
- When rules for exceptional cases are applied, the procurement should be subsequently followed up by an *evaluation team* (4.3).
- *Insurance coverage* and payments of deposits should be requested to reduce the threat of various forms of problems that may arise after contract assignment (4.3).
- *Access to information* should be a number one rule in the procurement procedures, while the information still confidential should be treated respectfully according to the given routines (4.4).
- Rules and routines for *communication* during the tender should be carefully respected (4.4).
- The request should be *announced* as early as possible and invitation for tender published in due time in major newspapers (4.4).
- Unsuccessful bidders should be provided with an *explanation of the rejection* and relevant information about the tender (4.4).
- A *board of contract appeals* should be appointed (4.4).
- The *objectives* of each single procurement project should be determined as precisely as possible (4.4).
- When significant problems arise *during execution* of large procurement projects, a committee should respond, not just one official (4.4).
- *Record keeping* is essential to enable inspection (4.4).
- *Codes of conduct* should be central in all forms of bureaucratic activity (4.4).
- *Rules of disqualification* concerning public officials responsible for the acquisition should be included in the procurement procedures (4.4).
- A high number of tender participants are no assurance of a *competitive result*. And competition does not ensure a clean process. Benchmark prices should be referred to in negotiations (4.5).
- *Technical expertise* among the public officials is important, at least to enable internal evaluations of consultancies (4.5).
- Routines to reduce new opportunities for corruption by using *the Internet* should be created and included in the procurement rules (4.6).
- The use of the Internet for procurement procedures should depend on *technical qualities*. To reduce the opportunities for corruption the use should be considered restricted to the pre-qualification phase.
- *Identification* of the persons involved in a tender should follow the tender documentation. Registration should be requested for middlemen and agents (4.7).
- Middlemen that have bribed, or tried to bribe, public officials should be excluded from future tenders (4.7).

- Companies should be encouraged to certify that they comply with all anti-bribery laws. The companies selected for contract awards should be met with direct requirements of *anti-corruption commitments* (4.7).
- The tender contracts should include provisions making it possible for the state to *hold back payments* to be forfeited if bribery is detected (4.7).
- *Monitoring routines* should be implemented in the procurement rules. There should be more concentration on *product controls* (concerning the attainment of the aims) than *process controls* (concerning the formal regularity of the acts) (4.8).
- A way to *report* about detected corruption should be established and made known (4.8).
- *Sanctions* of corrupt acts, either internal or imposed by judges, should be proportional to the price of the public contract.

5 Summary of main conclusions

Corruption is rarely a one-sector phenomenon, occurring only in one institution of the state, or at one level of the bureaucratic hierarchy. Where it exists as a problem, it tends to pervade large parts of the state administration. The impairment of judicial systems, the police and investigative institutions are particularly destructive in this respect. Frequent failures to sanction and arrest perpetrators create a general disregard of existing laws. Trying to curb corruption by implementing anti-corruption measures into the procurement procedures can therefore appear optimistic in such a setting. However, the procurement system is a good place to start a more comprehensive anti-corruption reform.

This report discusses some strategies to reduce the problem of corruption in governmental acquisitions. In particular, it supports the establishment of an independent procurement unit of professional officials. In order to increase the chances of a cost-efficient result, the report also argues that the choice of procurement procedures should be influenced by certain qualities of the state administration, such as the level of bureaucratic corruption and available resources. Under certain circumstances the ICB concept, for instance, may fail to produce the expected competitive result.

Furthermore, the importance of transparency to reduce the level of corruption can hardly be underestimated. All relevant information should be made available to all interested parties in the same way. Albeit information to protect business or the competitive element of a tender has to be kept confidential, the principal rule should always be to publish as much information as possible. Transparency in procurement does also imply clear and simple rules, the announcement of evaluation criteria, and a well-documented explanation for the contract award. Clear and simple rules may, however, appear as a contradiction to restricted discretion. At this point the report argues for a thorough planning procedure. Specified objectives reduce the opportunities for corruption as well as the need for elaborated procurement rules.

While corruption tends to disturb a competitive result, the report argues that competition does not necessarily impede corruption. The need to apply international prices as benchmarks has been amplified, as has the advantage of standardising – to the extent possible – the goods and services requested.

A further discussion concerns the responsibility of private companies for the bureaucratic corruption in the countries where they operate. Many companies argue that corruption is a part of foreign culture. Each company then claims it necessary to adapt to this “culture” in order to obtain contracts, as if bribery could be justified by the companies’ need for profit. These attitudes imply an impaired economic environment for all. Consequently, the report argues for anti-corruption commitments as a necessary requirement for a company to be awarded a contract. Also agents and middlemen activity should be regulated.

The recent international anti-bribery conventions support this kind of requirements.

Finally, the report amplifies political commitment as the most important contribution to reduce the problem of corruption.

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Summary

This study explores the problem of corruption in public acquisitions of goods and services. While mainly concentrating on the bureaucratic administration, the discussion often includes the political level. Three aspects of procurement-related corruption have been examined. First, problems that often arise if this type of corruption is common. Secondly, the mechanisms: *How* is this illegal activity actually carried out? And finally, a major concern of the study is the practical strategies to combat the problem. This section also includes a discussion of the responsibility and regulation of private companies, and emphasises political commitment as a necessary condition for successful reform.