

4. Curbing corruption through verification mechanisms

Sound procedures and honest staff, while essential, are not sufficient to contain corruption in public procurement. Effective and swift review of major procurement decisions in response to complaints from aggrieved bidders is just as important in a procurement system that is well protected against corruption. Thorough control of the procurement process and its outcome by auditors, supervisory bodies, and the public must complement this review, to prevent and uncover corruption and collusion.

Complaint and review mechanisms fulfill two functions in curbing corruption. They allow involved bidders and the public to verify the conformity of individual decisions with the established rules and bolster trust in the fairness of the procedures. Sound verification procedures also have an important preventive role: the possibility that decisions can be overturned renders corrupt practices more difficult and therefore constitutes, together with credible sanctions, a strong incentive to respect the procedures.

The effectiveness and functioning of both these control mechanisms depend on the availability of complete and reliable documentation of the proceedings from procurement planning to implementation. Explicit requirements to record acts and decisions in the procurement process exist in Australia; the Cook Islands; Hong Kong, China; India; Indonesia; Japan; the Kyrgyz Republic; Mongolia; the Philippines; and Singapore. Some procurement regulations (e.g., those of the Kyrgyz Republic) provide for the precise contents of the records; others (e.g., those of the Philippines) do not regulate this matter.

Given the long duration of procurement for large projects, especially public infrastructure, and the difficulties involved in detecting fraud and corruption, these documents must be retained long enough. In some countries, records are kept for very short periods. In Hong Kong, China, for instance, procuring agencies may dispose of documents submitted by unsuccessful bidders three months from the date of execution of the contract. Mongolia, and, for certain records, Palau also have rather short record-keeping periods. Korea keeps records for five years; Japan, for at least five years, possibly longer; Thailand, for at least 10 years; and P.R. China for 15 years. India does not prescribe retention periods, and the practice varies among the procurement entities in the country.

To eliminate any possibility of manipulation or later modification of records, Kyrgyz law provides for their immediate transfer to a superior

body for storage. Hong Kong, China requires the storage of the documents in a strong room, a practice that does not necessarily protect the documents from intervention by a corrupt official. Many countries have no provisions for protecting documents from arbitrary destruction by procurement agency officials.

a. Complaint mechanisms

Administrative and judicial mechanisms exist for handling complaints or bid challenges from an aggrieved bidder. Such mechanisms typically have complementary functions. Administrative review allows a quick decision and serves primarily to correct errors. Judicial review, while often being much slower, is required to remedy willful misconduct that the administrative body refuses to rectify.

Complaint mechanisms at administrative level

There are provisions for the administrative review of procurement decisions in all countries that have passed procurement laws or regulations except for the Cook Islands and Vanuatu. In India, complaints to the procuring entity are also possible, but the procedure is not specifically regulated. Most of the countries (Australia; Bangladesh; P.R. China; Hong Kong, China; Korea; Kyrgyz Republic; Indonesia; Mongolia; Pakistan; Palau; the Philippines; Samoa; Singapore; Vietnam) direct the initial complaint to the procuring entity itself; many (Bangladesh, P.R. China, Indonesia, Kyrgyz Republic, the Philippines, Samoa) also provide for subsequent appeal to a higher level in the public administration. Australia and Pakistan further ensure a more objective administrative review by assigning the review to officers other than those who made the initial decision (Australia) or to review panels (Pakistan). Bangladesh and Japan have set up independent review bodies to handle bid challenges, as has Hong Kong, China, for procurement conducted under the World Trade Organization Government Procurement Agreement. Some of these bodies have limited authority. In Bangladesh, the review body is not authorized to review decisions made by the Cabinet Committee on Government Purchase, the country's highest-ranking procurement body.

The period allowed for filing an appeal or a request for review is usually short to speed up the procedure. For the review process to be credible and effective, however, the aggrieved party must be given time to verify the facts and to estimate the potential risks and benefits of lodging an appeal; allowing enough time for filing also helps avoid

premature and unfounded complaints. The period of filing in some countries is so short as to put in question the effectiveness of the review and due consideration of the merits of the appeal. Bangladesh, for instance, allows only three days and Indonesia five days for an appeal to be submitted. Costs can also discourage aggrieved parties from applying for review. In the Philippines, a non-reimbursable fee of at least 1 percent of the contract value is charged for administrative review.

Complaint mechanisms at the judicial level

While administrative review procedures provide a quick decision, they do not replace the remedial action ordered by an independent body, most commonly the judiciary. But despite the important role of an independent body in the control of administrative decisions, only some countries (Australia, P.R. China, India, Korea, Kyrgyz Republic, Mongolia, Nepal, Pakistan, Palau) explicitly permit judicial review in addition to administrative review or as an alternative. The Philippines does not grant judicial review of decisions concerning procurement below a certain value. P.R. China requires an aggrieved bidder to go through the two-phase administrative review before requesting judicial review. In the Cook Islands and Kazakhstan, judicial review can take place only if a designated administrative body agrees to it beforehand; the independence of the review is thereby compromised. Indonesia and Vietnam exclude judicial review of procurement decisions altogether.

b. Review and audit mechanisms

Complaint mechanisms are not effective if no complaints are lodged; they fail, for instance, in cases of collusion where all the parties are corrupt. In other cases, aggrieved bidders refrain from lodging complaints for fear of future disadvantage and retaliation. Moreover, such mechanisms are not likely to curb corruption in the early phases of procurement (procurement planning or the selection of the procurement method) or in the delivery phase, when there are no potential complainants. Indeed, the delivery of substandard quality or insufficient quantities—or no delivery at all—is a very common corruption scheme. To detect such forms of corruption and put a stop to them, regular and effective review by an independent audit or supervisory body or the public is an indispensable complement to complaint mechanisms. The review body can intervene during the project cycle or after the project has been fully implemented.

Most countries recognize the role of regular independent external and internal audit in curbing corruption in public procurement. Bangladesh, the Cook Islands, the Fiji Islands, Kazakhstan, Korea, Mongolia, Nepal, Pakistan, the Philippines, Samoa, and Singapore all require regular yearly or half-yearly audits of procuring agencies. In Japan, while internal audit is not mandatory, many procuring entities have established an auditing system. In Bangladesh, such audits have to be done by external consultants and must encompass at least 15 percent of the procurement projects and 30 percent of the value of public procurement in a given period. Mongolia conducts additional audits of projects in response to allegations of corruption. In contrast, Vietnam's legislation does not require internal or external audit of procuring entities.

c. Scrutiny by civil society actors

Civil society organizations can complement institutional oversight bodies, but they need to be granted access to relevant information throughout the project cycle to be effective in this important role. The experience of a number of countries shows that such access to information does not necessarily interfere with the confidentiality of information, contrary to an argument commonly advanced to justify the exclusion of public oversight. Australia and Hong Kong, China, for instance, publish procurement plans and provide, as does Korea, ample information about previous and ongoing procurement on Internet sites. Under India's Right to Information Act 2005, citizens have access to information on procurement processes. Australia, P.R. China, India, Korea, and Singapore make audit reports publicly available for scrutiny. Some countries, like India and Thailand, also empower individuals who are not involved in procurement to bring allegations of corruption to the attention of specialized audit or anti-corruption bodies.