Fraud and corruption in public procurement

Objectives - UNCAC
Effective, coordinated anti-corruption action, promotion of integrity and accountability via:

- Preventive measures
- Criminalization
- International cooperation
- Asset recovery
- Implementation mechanism
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WG on Prevention - Why focus on procurement?

Nature of procurement

- Involves decision-taking on behalf of government
- Decisions involve discretion and so risks of corruption
- All levels of government engage in procurement
- So procurement reform can drive general governance reform
- Interaction with suppliers involves supply side as well as demand side
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WG on Prevention - Why focus on public procurement?

Amounts involved

• 10-20% of GDP, 45% government spending (World Bank, OECD)
• Bribery and corruption: < US$ 1 trillion p.a. (Daniel Kaufmann, World Bank Institute)
• Systemic corruption = 20-30% of procurement wasted (World Bank)
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WG on Prevention - Why focus on public procurement?

Type of government activity involved

• Major & important projects (health, education, infrastructure)
• Significant impact on economic performance and development
• Provision of services to the most needy
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Corruption risks in procurement

- Procurement planning
  - Needs assessment
  - Choice of method
- Tender process
  - Specifications, qualification, evaluation
- Contract administration
  - Poor quality accepted/variations
  - Sub-contractors
  - “Pay to be paid”
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Preventive measures under UNCAC relevant to procurement

• Anti-corruption bodies (art 6)
• Codes of conduct (art 8)
• Procurement measures (art 9)
• Management of public finances (art 9)
• Transparency in public administration (art 10)
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Goals and objectives

UNCAC procurement system requirements (article 9):

- based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption
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Goals of procurement systems:

• Value for money
• Competition
• Fair and equitable treatment
• Integrity and fairness
• Transparency
• Objectivity
• Accountability
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ie anti-corruption and procurement have common objectives

- Integrity
- Avoiding abuse and corruption
- Accountability

And common principles towards achieving them

- Competition
- Transparency
- Objectivity in decision-making
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Components of a procurement system

• Legislative framework
• Remedies or challenge mechanism
• Sanctions regime
• Supporting institutional infrastructure
• Resources
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- Template for national procurement legislation
- Implements UNCAC requirements
- Reflects best procurement practice
- Promotes value for money
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- Framework law
- All essential rules and procedures for public procurement
  - Envisages detailed procurement regulations
  - Envisages supporting infrastructure
- Permits governments to pursue other policy goals through procurement

*UNCITRAL Model Law implements UNCAC article 9 requirements*
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Transparency (art 9(1)(a)) - UNCITRAL requirements:

• Publish all the ‘rules of the game’ in advance
  – Procurement law, regulations
  – Procurement advertisements
  – Evaluation criteria and award procedures
• Procurement record
• Publish results
• Public decisions on challenges

*e-procurement has a vital role in transparency*
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Competition - UNCITRAL requirements:

• Open tendering unless another method is justified
  – Urgency, emergency, low value/simple procurement
  – Complex procurement

• More participants = harder to collude and hide collusion
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Objectivity (art 9(1)(b), (c)) - UNCITRAL requirements:

• Specifications without trade names
• Relevant qualification criteria
• Relevant evaluation criteria
  – Expressed in monetary terms
  – Sub-criteria to be disclosed
• Exclusion only on basis of these criteria
• Pre-publication to ensure objective application of these standards
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UNCITRAL requirements for challenge mechanism (UNCAC art 9(1)(d)):

- All steps in process can be challenged
- By any potential supplier
- Optional peer review mechanism
- Independent administrative review mechanism
- Court procedures
- Supported by “standstill” provisions
- Default rule: public hearings
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Other anti-corruption measures in UNCITRAL Model Law:

- Facilitating e-procurement
  - Greater transparency, lower cost
  - Simplifying/clarifying processes
  - Removal of human interaction
- Mandatory code of conduct (art 9(1)(e))
- Sanctions for bribery etc
- Recommends procurement institutions and functions
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Corruption risks and procurement law

• Procurement laws focus on tender process, so
• *Legal reform is not enough*
• Procurement systems beyond procurement law
  – Regulation of other phases of procurement cycle, sanctions, conduct of civil service in other laws
  – Guidance and training to instil culture of ethics and integrity needed
  – eg Model Law is accompanied by Guide to Enactment for policy-makers
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UNCITRAL activities to support legal reform

• Technical assistance: implementation and training
  – To individual governments
  – Training and production of other materials
  – Programmes/partnership with multilateral development banks, other IGOs and international NGOs
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THANK YOU

Details of UNCITRAL’s work on procurement

www.uncitral.org