



Public Procurement

Fraud and corruption in public procurement

Caroline Nicholas

UNCITRAL

December 2010

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

Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

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)

Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

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”

Fraud and corruption in public procurement

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)

Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

Goals of procurement systems:

- Value for money
- Competition
- Fair and equitable treatment
- Integrity and fairness
- Transparency
- Objectivity
- Accountability

Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

Components of a procurement *system*

- Legislative framework
- Remedies or challenge mechanism
- Sanctions regime
- Supporting institutional infrastructure
- Resources

Fraud and corruption in public procurement

Legislative framework: UNCITRAL Model Law on Procurement (1994, 2011 (envisaged))

- Template for national procurement legislation
- Implements UNCAC requirements
- Reflects best procurement practice
- Promotes value for money

Fraud and corruption in public procurement

Legislative framework: UNCITRAL Model Law on Procurement (1994, 2011)

- 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



Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

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

Fraud and corruption in public procurement

THANK YOU

**Details of UNCITRAL's work on
procurement**

www.uncitral.org