

Introduction.

Steps for integrity in public contracts

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1. Introduction

Integrity of public procurement processes is universally recognized as a necessary condition to achieve public objectives, and thus to make proper use of precious taxpayer resources.(1) Lack of integrity in public procurement at any level of Government is, however, a well-documented phenomenon, which takes several and sometimes surprising forms.(2) The (estimated) economic cost of corrupt procurement is staggering,(3) and it exerts a profoundly negative impact not only on the economy of States but also on citizens' rights.(4)

(1) P. TREPTE, *Regulating Procurement. Understanding the Ends and Means of Public Procurement Regulation*, Oxford University Press, 2004; P. TREPTE, *Transparency and Accountability as Tools for Promoting Integrity and Preventing Corruption in Procurement: Possibilities and Limitations*, 2005, available at https://bvc.cgu.gov.br/bitstream/123456789/transparency_and_accountability_tools.pdf; J.-B. AUBY – E. BREEN – T. PERROUD, *Corruption And Conflicts Of Interest. A Comparative Law Approach*, Edward Elgar Publishing, 2014; S. ROSE-ACKERMAN, *Corruption and government. causes, consequences and reform*, Cambridge, 1999, 4 and 9-25; S. ROSE-ACKERMAN, *Introduction: The Role of International Actors in Fighting Corruption*, in S. Rose-Ackerman & P. Carrington (eds.), *Anti-Corruption Policy. Can International Actors Play a Constructive Role?*, Carolina Academic Press, 2013, 8-9; OECD, *Implementing the OECD Principles for Integrity in Public Procurement*, 2013, available at <http://www.oecd-ilibrary.org/>, 77-88.

(2) EU Commission, *Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report*, COM(2014) 38 final, 3 February 2014, 8 et seq.

(3) It is estimated that corruption represents 5 % of global GDP (USD 2.6 trillion), with over USD 1 trillion paid in bribes each year; it is further estimated that corruption adds up to 10 % of the total cost of doing business on a global basis and 25 % of the cost of procurement contracts in developing countries. The economic costs incurred by corruption in the EU possibly amount to EUR 120 billion per year. See: OECD, CleanGovBiz, *Integrity in Practice*, 2014 available at <http://www.oecd.org/cleangovbiz/49693613.pdf>, 4. This is one percent of the EU GDP, representing only a little less than the annual budget of the EU. See OECD, *Implementing the OECD Principles for Integrity in Public Procurement*, cit., 78; EU Home Affairs Department, data available at the home page of DG Home affairs: http://ec.europa.eu/dgs/home-affairs/what-we-do/agencies/index_en.htm.

(4) Transparency International estimates that “systematic corruption can add at least 20-25 % to the cost of government procurement” see: International Council on Human Rights Policy – Transparency International, *Integrating Human Rights in the Anti-corruption Agenda. Challenges, Possibilities and Opportunities*, 2010, available at http://www.ichrp.org/files/reports/58/131b_report.pdf, 43; EU Agency for

BRUYLANT

In order to understand corruption in public procurement, it is important to comprehend the procurement process. Public contracting processes broadly follow the same general steps. There are generally three phases of the public procurement process: the pre-tender stage, the tendering stage and the post-tender stage. Corruption risks exist throughout the entire procurement cycle.⁽⁵⁾

It is important to note that the tendering stage in public procurement, in particular, is highly regulated. International texts on procurement, especially the UNCITRAL Model Law, the WTO Government Procurement Agreement (GPA) and the EU Procurement Directives, focus on this stage. Practice, however, shows that corruption risks in the procurement cycle can be equally high before the tender process even begins (in the pre-tender or planning stage) or once the contract has been awarded (in the post-tender stage).⁽⁶⁾

Policymakers crafting a sound procurement system must balance a number of goals.⁽⁷⁾ Of those goals, experience has shown that competition, transparency and integrity are probably the most important ones.⁽⁸⁾ If a government's procurement system reflects all three elements, the system is much more likely to achieve best value in procurement and to maintain political legitimacy.⁽⁹⁾ These central goals, moreover, complement one another. A fully transparent procurement system is far

Fundamental Rights (FRA), *Fundamental rights: challenges and achievements in 2012*, 2013, available at <http://fra.europa.eu/en/press-release/2013/eu-agency-fundamental-rights-fra-presents-its-annual-report>, 12 et seq.; International Council on Human Rights Policy, *Corruption and Human Rights: Making the connection*, 2009, available at http://www.ichrp.org/files/reports/40/131_web.pdf. See: R. CAVALLO PERIN – G. M. RACCA, *Corruption as a violation of fundamental rights: reputation risk as a deterrent to the lack of loyalty*, in this volume.

(5) OECD, *Recommendation of the Council on Enhancing Integrity in Public Procurement*, C(2008)105, 2008, available at <http://acts.oecd.org/>; United Nations Office on Drugs and Crime – UNODC, *Guidebook on anti-corruption in Public Procurement and the management of public finances. Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, September 2013, available at <https://www.unodc.org/>, 1; S. WILLIAMS-ELEGBE, *Fighting Corruption in Public Procurement: A Comparative Analysis of Disqualification Measures*, Hart Publishing, 2012, 38 et seq.

(6) United Nations Office on Drugs and Crime – UNODC, *Guidebook on anti-corruption in Public Procurement and the management of public finances. Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit.

(7) S. L. SCHOONER, *Desiderata: objectives for a system of government contract law*, in *PPLR*, 2002, 107, in that article, Schooner outlined nine objectives, or desiderata, of public procurement systems: competition, integrity, transparency, efficiency, customer satisfaction, best value, wealth distribution, risk avoidance, and uniformity. C. H. BOVIS, *EU Public Procurement Law*, 2007, 72 et seq. In order to achieve the secondary goals see: S. ARROWSMITH – P. KUNZLIK, *Social and Environmental Policies in EC Procurement Law: New Directives and New Directions*, Cambridge, 2009. For ensuring sound procedures see: *Modernisation Green paper*, para. 5, 48 et seq.

(8) C. R. YUKINS, *Integrating Integrity and Procurement: The United Nations Convention Against Corruption and the UNCITRAL Model Procurement Law*, in *PCLJ*, 2007, 308; P. TREPTE, *Regulating Procurement. Understanding the Ends and Means of Public Procurement Regulation*, Oxford University Press, 2004; ID., *Transparency and Accountability as Tools for Promoting Integrity and Preventing Corruption in Procurement: Possibilities and Limitations*, 2005, cit.

(9) OECD, *Fighting Corruption and Promoting Integrity in Public Procurement*, 2005, 22 et seq.; R. HODESS, *Civil Society and Nongovernmental Organisations as International Actors in Anti-Corruption Advocacy*, in R. S. Ackerman – P. Carrington (ed. by) *Anti-Corruption Policy. Can International Actors Play a Constructive Role?*, cit., 75 et seq.

less likely to have problems with integrity, as many more stakeholders can exercise oversight in a transparent procurement system.⁽¹⁰⁾ The reverse is also true: a system with weak strategies to enforce integrity will probably have shoddy competition, and transparency is likely to erode as corruption drains the procurement system of political legitimacy.⁽¹¹⁾ Too often competition and transparency have been dealt with as issues of procurement reform, while integrity has been addressed separately, as part of anti-corruption initiatives.⁽¹²⁾

This book aims at examining the integrity issues together with the procurement rules and practices in order to highlight the criticalities and the possible solutions.

Safeguarding efficiency of public spending requires a mindset shift among public officials and in public entities' organizational models. To ensure legitimate procurement procedures and adequate public records, many elements are required: the establishment of a sound procurement system; transparency in procurement; objective decision-making in procurement; domestic review, or bid challenge, systems; integrity of public officials; and soundness of public records and finance. Efforts to promote such principles and instruments in order to prevent corruption must be maintained throughout the cycle of public procurement, from the beginning of the procurement procedure to the conclusion of the performance phase.⁽¹³⁾

Corruption in the field of public procurement usually involves a series of actors. The key actors facilitating corruption in public contracts are the entity paying the bribe and the recipient of the bribe. The briber is usually the legal entity competing for and delivering on contracts (e.g., the bidder, including consortium partners, subcontractors or suppliers).⁽¹⁴⁾ The recipient

(10) EU Commission, *Fighting corruption in the EU*, 6 June 2011, COM (2011) 308 final, in <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0308:EN:NOT>, 10-14; C. R. YUKINS, *A Versatile Prism: Assessing Procurement Law Through the Principal-Agent Model*, in *PCLJ*, 2010, 71-79.

(11) EU Parliament – Directorate General for Internal Policies, *Political and other forms of corruption in the attribution of public procurement contracts and allocation of EU funds: Extent of the phenomenon and overview of practices*, 2013, in <http://bookshop.europa.eu/>, 29 et seq. United Nations Office on Drugs and Crime – UNODC, *Guidebook on anti-corruption in Public Procurement and the management of public finances. Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit., 2.

(12) United Nations Office on Drugs and Crime – UNODC, *Guidebook on anti-corruption in Public Procurement and the management of public finances. Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit.

(13) EU Commission, *Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report*, cit., 26-27; G. M. RACCA – R. CAVALLO PERIN – G.L. ALBANO, *Competition in the execution phase of public procurement*, in *PCLJ*, 2011, 89-108, also available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2011114; G. M. RACCA – R. CAVALLO PERIN, *Material Amendments of Public Contracts during their Terms: From violations of Competitions to Symptoms of Corruption*, in *European Procurement & Public Private Partnership Law Review*, 2013, 279-293; C. R. YUKINS, *A Versatile Prism: Assessing Procurement Law Through the Principal-Agent Model*, cit., 70-71.

(14) EU Parliament – Directorate General for Internal Policies, *Political and other forms of corruption in the attribution of public procurement contracts and allocation of EU funds: Extent of the phenomenon and overview of practices*, cit., 23-29.

of the bribe is usually a procurement official with the procuring entity who is responsible for awarding and/or managing the public contract. Frequently, bribes do not flow directly between the bidder and the procuring personnel but instead through an agent, consultant or other intermediary. Corruption – broadly understood here to mean a breakdown in the best-value procurement process – may take place even when no procurement officer is involved. A good example of this are anti-competitive agreements, such as price fixing between bidders.⁽¹⁵⁾ Similarly, politicians tainted by corruption can attempt to influence a decision to initiate a procurement procedure, or to award a particular contract to a certain company.⁽¹⁶⁾ Sound legal frameworks for public procurement and anti-corruption are important pillars in the fight to reduce corruption.⁽¹⁷⁾ Both are prerequisites for a transparent, competitive and objective procurement system. Respect for the rule of law is essential. Experience has shown, however, that legislation alone is not sufficient to prevent corruption in public procurement. If that were the case, corruption in public procurement would barely exist in countries with advanced legal regimes based, for example, on the UNCITRAL Model Law or the EU Directives; indeed, on the contrary, excessive regulation can favor a lack of integrity.⁽¹⁸⁾ It is essential that legal frameworks be supported by other efforts to ensure qualities such as accountability and integrity. Various additional strategies have proven to be particularly useful in fighting corruption in public procurement.⁽¹⁹⁾

It is very difficult to create “incentives” in public procurement for public officials as there is too little political support for high government pay, or for large bounties for “good” contractors.⁽²⁰⁾ The real dichotomy, therefore, is not between “incentives” and “disciplinary measures”, but rather between “transparency” and “disciplinary measures”. Of the two, in the long run transparency seems to be the better course. It forces officials to act with far less corruption, and it opens the procurement process to more stakeholders, which ultimately makes the procurement system much stronger. While disciplinary measures

(15) OECD, *Guidelines for Fighting Bid Rigging in Public Procurement* OECD, 2009; OECD, *Recommendation of the Council on Fighting Bid Rigging in Public Procurement*, 17 July 2012, in <http://acts.oecd.org/>.

(16) S. ROSE-ACKERMAN, *Corruption and government. causes, consequences and reform*, cit., 27-38; EU Commission, *Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report*, cit., 8-9.

(17) EU Commission, *Fighting corruption in the EU*, cit., 12 et seq.

(18) EU Commission, *Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report, Italy annex*, COM(2014) 38 final.

(19) United Nations Office on Drugs and Crime – UNODC, *Guidebook on anti-corruption in Public Procurement and the management of public finances. Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit., 24.

(20) OECD, *Integrity in Public Procurement: Good Practice From A to Z*, in <http://www.oecd.org/>, 2007, 56.

are important and inevitable, it seems that transparency should always be the first choice, as it enhances both competition and integrity.(21)

Ethics regulations for officers and employees of procuring entities usually require procurement officials to pursue ethical, fair and impartial procurement procedures in line with applicable legislation and tendering rules for a particular procurement.(22) Public officials should promote and maintain the highest standards of probity and integrity in all their dealings. In assessing ethics requirement for public officials, including procurement officials, policymakers may wish to consider that ethics rules and screening procedures are almost always part of a broader fabric of social norms, laws and mechanisms for ensuring social harmony. In that light, the ethics rules crafted to protect the procurement system should complement the broader set of norms and rules, and may well draw upon other formal and informal mechanisms for maintaining social order.(23)

The key puzzle in public procurement is, in fact, what economists would call a “principal-agent” problem. In public procurement governments regularly use agents, contracting officials, as intermediaries. This occurs because governments are unsure of who the principal is – either the legislature, or the people, or the agency itself – and so the contracting official can serve as a sort of proxy for the collective goals of the uncertain principal. The contracting official, while ostensibly the agent, in fact becomes a proxy for the principal.(24)

The principal-agent model lends new clarity to concerns about integrity and corruption.(25) Someone could argue that the anticorruption regime is

(21) The UNCITRAL Model Law is designed so that, as countries evolve (develop more sophisticated anti-corruption systems, for example), those countries will be able to deploy more sophisticated procurement systems, to achieve better value.

(22) P. TREPTE, *Transparency and Accountability as Tools for Promoting Integrity and Preventing Corruption in Procurement: Possibilities and Limitations*, cit., 25 and 36; Transparency International, *Handbook for Curbing Corruption in Public Procurement*, available at <http://www.transparency.org/>, 2006, 65-72.

(23) United Nations Office on Drugs and Crime – UNODC, *Guidebook on anti-corruption in Public Procurement and the management of public finances. Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit., 11-12.

(24) The contracting officer can buy a reasonably fast jet plane for the government, whereas the pilot (left to his own devices) would buy an outrageously expensive plane, while a taxpaying citizen (who has to pay for the plane) might buy a dangerously slow jet plane. “A strongly hierarchical organizational mechanism suggests that the ‘principal’ is the bureaucracy itself – that there are not clear lines of accountability to those outside the government organization. As a governance mechanism, this probably is not optimal. The alternative is to ‘flatten’ the government, to give contracting officials more authority, but at the same time to make them more accountable to members of the public outside government. This can be done by making each stage of the procurement process – planning, solicitation, competition and award – more transparent, so that others can view the procurement process as it unfolds. It can also be done by establishing sound systems for review, such as remedies systems that allow for challenges by affected third parties”. See also: P. TREPTE, *Regulating Procurement*, cit., 129-132.

(25) C. R. YUKINS, *A Versatile Prism: Assessing Procurement Law Through the Principal-Agent Model*, cit., 70. OECD, *Implementing the OECD Principles for Integrity in Public Procurement*, 2013, available at <http://www.oecd-ilibrary.org/>, 32 et seq.

sometimes overly cumbersome and inefficient because, beyond normal anti-bribery provisions, a vast array of lesser anticorruption rules impose additional constraints on procurement officials to discourage gratuities, constrain “revolving door” contacts, and bar the distribution of sensitive information.⁽²⁶⁾ Agency theory suggests, however, that those additional constraints are necessary because as the chain of authority stretches from principal to agent, and from this latter to subagent, the risk that the procurement actions will diverge from the principal’s goals rises dramatically, and so there must be special legal controls to dampen the corrupt conflicts of interest that could otherwise arise.⁽²⁷⁾

By applying the principal-agent model it is possible to adopt an extensive oversight mechanism (as in place in the U.S. system) reflecting “monitoring” and “bonding”, undertaken in order to align procurement (the actual purchasing of goods and services) with the “principal’s” (or “the public’s”) interests. Again applying this model, an active press can provide low-cost monitoring (and thus reduce risk), much as whistleblowers serve as surrogate monitors and enforcers of the principal’s interest. Bid protests, under this model, are arguably another means of monitoring and of forcing procurement officials to adhere closely to the principal’s goals, as defined by the procurement rules, including the conflict-of-interest rules.⁽²⁸⁾

Extending the agency model, fraud actions brought by whistleblowers are arguably stopgap solutions to enforce monitoring and bonding on the principal’s behalf where contracting officials have failed to detect fraud or malfeasance. Finally, under this model, those who admonish procuring officials to follow the rules, including those in the “accountability” community (auditors, lawyers, courts, and for example, the U.S. Government Accountability Office) are merely reinforcing that same monitoring role.⁽²⁹⁾

Conflicts of interest, as economists understand them, are a natural result of a principal-agent relationship. An agent (here, a contracting official) may exploit his information asymmetry (his greater knowledge) to take advantage of an opportunity that may well be at odds with the goals of the principal.⁽³⁰⁾

(26) C. R. YUKINS, *Integrating Integrity and Procurement: The United Nations Convention Against Corruption and the UNCITRAL Model Procurement Law*, *cit.*, 321-323.

(27) C. R. YUKINS, *A Versatile Prism: Assessing Procurement Law Through the Principal-Agent Model*, *cit.*, 63 et seq.

(28) D. I. GORDON, *Bid Protests: The Costs are Real, but the Benefits Outweigh Them*, in *PCLJ*, 2013, also in *GW Law School Public Law and Legal Theory Paper*, No. 2013-41, 43 et seq.; D. I. GORDON, *Constructing a Bid Protest Process: Choices Every Procurement Challenge System Must Make*, in *PCLJ*, 2006, 434.

(29) C. R. YUKINS, *A Versatile Prism: Assessing Procurement Law Through the Principal-Agent Model*, *cit.*, 2010, 70.

(30) P. TREPTE, *Transparency and Accountability as Tools for Promoting Integrity and Preventing Corruption in Procurement: Possibilities and Limitations*, *cit.*, 6 et seq.

To combat this – to force the agent/contracting official to pursue the principal’s ends – economists suggest the use of monitoring (transparency) or sanctions (discipline).(31) Of the two, monitoring and increased transparency in the procurement process ensure that the official follows the principal’s goals (the goals of the people, or the legislature, whoever is considered the “principal”) honestly and effectively. For these reasons, ethics rules typically require public officials to disclose gifts that they might receive, or outside financial interests that might tie them to prospective contractors.(32)

Another, emerging approach is to force self-reporting by highly motivated organizations – including contracting firms. In the United States federal system, the government recently initiated a system of mandatory self-reporting by contractors, if they discover, among other things, fraud or certain criminal activities internally (through rapidly maturing ethics and compliance systems).(33)

Whistleblowing allows insiders to provide information to other individuals or organizations, such as the compliance officer within the corporate structure of a private company participating in a public tender or a public anti-corruption authority, so they can take the necessary ameliorative steps. It is absolutely essential to have effective whistle-blower protection systems in place in order to encourage reporting of corruption.(34)

In order to accomplish these broader integrity goals, this book highlights the importance of education in establishing a cadre of professional procurement personnel. Their specialized knowledge sets them apart, and creates a community – that is, “self-cleaning” members of the cadre will monitor one another, and so will discourage corruption. Training will vary from organization to organization within the procurement system. Leaders in the system need to make very clear the core principles in a successful system – transparency, integrity, and effective competition – to guide the training undertaken by individual organizations within the system.

Along these same lines, electronic procurement is emerging as another tool for improving public procurement systems. The use of electronic procurement can be very efficient in increasing competition and transparency and

(31) OECD, *Integrity in Public Procurement: Good Practice From A to Z*, cit., 29 and 89 et seq.

(32) EU Commission, *Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report*, 29; EU Parliament – Directorate General for Internal Policies, *Political and other forms of corruption in the attribution of public procurement contracts and allocation of EU funds: Extent of the phenomenon and overview of practices*, cit., 55.

(33) L. E. HALCHIN, CRS Report for Congress Prepared for Members and Committees of Congress, *Transforming Government Acquisition Systems: Overview and Selected Issues*, 20 June 2013, available at: <https://www.fas.org/sgp/crs/misc/R43111.pdf>.

(34) United Nations Office on Drugs and Crime – UNODC, *Guidebook on anti-corruption in Public Procurement and the management of public finances. Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit., 27.

in reducing corruption in public procurement.(35) E-procurement in the area of anti-corruption is also important for other reasons. In particular, e-procurement has the advantage of allowing for easy data generation and data management.(36) This could in particular be helpful in the assessment of offered prices, to assess whether bid prices are reasonable and in line with market rates, by benchmarking collected data such as prices/price items in an electronic database with offered prices in a particular tender procedure in order to detect overpricing or bid rigging.(37)

“Blacklisting”, or debarment, is also considered a useful instrument to fight corruption in public procurement,(38) but there are several different models: a highly discretionary model, with rigorous but informal procedures, focused first on issues of performance risk (e.g., the United States);(39) a more structured and adjudicative approach, focused on issues of fiduciary loss (“leakage” through corruption) and reputational risk (e.g., the World Bank sanctions process)(40) and, the European approach, which remains a somewhat uneven hybrid of the discretionary and the compulsory, with only loosely described procedures.(41) Discussions between officials in the various procurement communities and discussions including debarment officials and their stakeholders, would be a very useful way to harmonize sanctions systems, and to regularize the incentives and deterrents regarding fraud, corruption and poor performance.(42)

Civil society plays a vital role in monitoring procurement. Because of the complexity of procurement, however, members of civil society – professors,

(35) G. M. RACCA, *The role of IT solutions in the award and execution of public procurement below threshold and list B services: overcoming e-barriers*, in D. Dragos – R. Caranta (eds. by) *Outside the EU Procurement Directives – Inside the Treaty?*, Djøf Publishing, Copenhagen, 2012, 373-395.

(36) EU Commission, *Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report*, cit., 31-32.

(37) G. M. RACCA, *The Electronic Award and Execution of Public Procurement*, in *Ius Publicum Network Review*, 2012, available at www.ius-publicum.com/repository/uploads/17_05_2013_19_31-Racca_IT_IUS-PUBLICUM-EN.pdf, 16 et seq.; United Nations Office on Drugs and Crime – UNODC, *Guidebook on anti-corruption in Public Procurement and the management of public finances. Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit., 27. All the tools of e-procurement (e.g. e-communication, e-submission, e-tendering, etc.) have one essential effect: they eliminate or minimize the direct human interactions between bidders and the procurement personnel, interactions which are one of the main sources of corrupt behavior in public procurement.

(38) S. WILLIAMS-ELEGBE, *Fighting Corruption in Public Procurement: A Comparative Analysis of Disqualification Measures*, cit., 38 et seq. S. SCHOONER, *The Paper Tiger Stirs: Rethinking Exclusion and Debarment*, in *PPLR*, 2004, 211-216.

(39) U.S. Gov’t Accountability Office, GAO Report, *Suspension and Debarment*, September 2012, available at: www.gao.gov/assets/650/648577.pdf.

(40) C. R. YUKINS, *Rethinking the World Bank’s Sanctions System*, November 2013, *GWU Legal Studies Research Paper No. 2013-132*, available at <http://ssrn.com/abstract=2357691>.

(41) H. PUNDER – H.-J. PRIESS – S. ARROWSMITH (eds. by), *Self-Cleaning in Public Procurement Law*, Carl Heymanns, 2009.

(42) C. R. YUKINS, *The European Procurement Directives and the Transatlantic Trade & Investment Partnership (T-TIP): Advancing U.S. – European Trade and Cooperation in Procurement*, forthcoming.

journalists, non-governmental organizations, users, etc. – are less effective in forcing transparency and professional standards at the operational level.(43) The monitoring of the entire procurement cycle by the unsuccessful tenderers, by social witnesses,(44) NGOs, the press, citizens, might cumulatively help assure correct performance, and might well create an incentive for proper conduct by officials and contractors during the award and execution of a contract.(45)

It is therefore vital that anti-corruption initiatives and procurement reform work more closely together. Within the EU legal framework the national implementation of the three new (2014) EU Directives on public procurement and concessions may represent a chance of the utmost importance to effectively enforce integrity in the public procurement process.(46)

Promoting professionalism and stressing the ethical requirements binding procurement officials inside complex organizations, such as central purchasing bodies, will be useful means of pursuing the financial and economic benefits of transparent, efficient and competitive procurement.(47) Efficient spending through good public procurement practices is a key lever to improve the quantity and quality of public entities activity.(48)

It seems that adopting anti-corruption laws and model procurement codes will only partially solve the problem. More focus should be placed on supporting the rules by norms such as accountability and integrity – in other words, the ideals of anti-corruption must be brought into the fabric of the procurement community.(49)

(43) OECD, *Implementing the OECD Principles for Integrity in Public Procurement*, cit., 119, in which principle No. 10 provides that “Member countries should empower civil society organisations, media and the wider public to scrutinise public procurement. Governments should disclose public information on the key terms of major contracts to civil society organisations, media and the wider public. The reports of oversight institutions should also be made widely available to enhance public scrutiny. To complement these traditional accountability mechanisms, governments should consider involving representatives from civil society organisations and the wider public in monitoring high-value or complex procurements that entail significant risks of mismanagement and corruption”.

(44) OECD, *Implementing the OECD Principles for Integrity in Public Procurement*, 2013, cit., 84.

(45) R. HODESS, *Civil Society and Nongovernmental Organisations as International Actors in Anti-Corruption Advocacy*, 77-78; United Nations Office on Drug and Crime (UNODC), *Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit., 26-27.

(46) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC; Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

(47) See the chapter in this book: G. M. RACCA – R. CAVALLO PERIN, *Corruption as a Violation of Fundamental Rights: Reputation Risk as a Deterrent to the Lack of Loyalty*.

(48) OECD, *Implementing the OECD Principles for Integrity in Public Procurement*, cit., 22, concerning the healthcare spending.

(49) United Nations Office on Drugs and Crime – UNODC, *Guidebook on anti-corruption in Public Procurement and the management of public finances. Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit., 1-2.

This book aims to enter the fabric of the procurement community and through its chapters highlights how corruption can determine violations of fundamental rights and undermine the fiduciary relationship between citizens and public institutions. The discussion on the different models of procurement systems underlines the important issues on objective or subjective award criteria and how a correct choice of the best tenderer can assure the best use of public funds, provided that proper execution is monitored too.

While displaying a wide scope of application, the tools for fighting corruption are nonetheless limited by several features that hamper their potential to address the problem effectively. Transparency, efficiency and monitoring must be correctly addressed. Moreover, the risks of overregulating the procurement process are high, and overregulation leads to waste and litigation and can simply reinforce a failure in integrity. Improving the instruments to prevent collusion between the tenderers is a crucial issue too and requires special capacity. To this purpose, the need of professional capacity becomes evident, as the main source of waste in public procurement seems to be incompetence rather than corruption. Highly trained and diverse professionals are required to assure the quality of spending for the benefit of the citizens. Correctly addressed, forms of aggregation of the procurement and of networks between procurement agencies could assure the needed mix of professional skills required to use procurement as a strategic tool for public interest and economic development.

BRUYLANT