

U4 Expert Answer



Examples of procurement compliance checklists

Query

Would you have any idea if companies or agencies use procurement compliance checklists to report possible irregularities, suspicious cases or difficulties in the procurement process? Could you name any examples and how such lists are designed?

Purpose

In order to improve our internal procurement system, we are currently considering asking our procurement officers at HQ and in our country offices to fill out a compliance checklist. The idea is to get feedback from them on a regular basis about possible irregularities, suspicious cases or difficulties in the procurement process. Next to this function as reporting tool, the checklist should also serve as compliance tool: the procurement officer declares that all cases that are not reported in the checklist are to be considered as 'regular', for which he/she takes the responsibility.

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Summary

Due to the volume, number and complexity of the transactions involved, procurement is one of the government activities most vulnerable to corruption. Procurement compliance checklists constitute an important element of corruption risk management strategies in procurement processes, both in terms of prevention and detection of fraud and corruption. They can guide procurement staff through the process of transparent and effective procurement and help detect and report irregularities.

Compliance checklists reflect good practice in procurement processes by providing a set of indicators to assess adherence to the agency's procurement rules and regulations. They are often structured around the major phases of the procurement cycle and typically cover the various risks associated with each phase of the contracting process, using red flags and "blinking" indicators. For successful implementation of such compliance tool, checklists should be designed in a participatory manner, be user-friendly and easy to apply and supported by regular training and awareness raising activities.

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1 Designing a procurement a compliance checklist

Procurement is one of the government sectors most vulnerable to corruption, due to the important financial flows involved as well as the complexity of contracting processes that provide both incentives and opportunities for rent-seeking behaviors. Corruption in procurement can take many forms and can occur at all stages of the procurement cycle from the decision to contract, the identification of needs, the specifications of the contract, the tendering process, to the contract implementation and final evaluation. Yet, corruption risks are especially hard to detect because of the size, number and complexity of the transactions involved that often require high levels of technical expertise at all stages of the process.

In addition, corruption schemes in procurement processes are complex, technically challenging, and often perpetrated by individuals who know exactly how to abuse the system. The lack of proactive corruption risk management processes in many organisations further exacerbates detection challenges. Therefore, a good, transparent and accountable procurement system needs to ensure effective control, complaints and review mechanisms to ensure that decisions are conform to the procurement regulations.

What are procurement compliance checklists?

Procurement compliance checklists are one of the corruption risk management tools that can be used to effectively monitor procurement processes, identify and detect fraud and corruption risks at all stages of the procurement cycle. They typically consist of a comprehensive summary of existing standards and requirements at all stages of the procurement process, with the view to ensuring adherence to an agency's procurement policies and guidelines.

Their potential benefits for managing corruption risks are many, both in terms of fraud prevention and detection:

- They reinforce existing guidelines and policies by providing detailed and clear expectations at all stage of the procurement process;
- They can help operationalise and translate the objectives of fairness, openness, competition

and transparency into a set of detailed steps and indicators;

- They provide concrete guidance to procurement officers on how to design procurement tenders that minimise risks of fraud, corruption and anti-competitive behaviours;
- They allow the tracking of procurement decisions and can help the detection of irregularities through a system of red flags and indicators;
- They support consistent procurement processes across the agency;
- They can serve as a comprehensive tool for reviewing procurement processes and assess compliance with existing guidelines.

Such compliance checklists are usually part of a broader set of complementary measures that can be implemented, including the establishment of clear reporting procedures, effective complaints mechanisms, adequate whistleblowing protection and an effective system of internal and external controls.

Contents and structure of procurement compliance checklists

Procurement checklists reflect good practice in procurement processes, based on an overview of the potential vulnerabilities associated with each phase of the contracting process. In addition to monitoring compliance with the agency's procurement guidelines, they can guide procurement officers through the process of managing the procurement exercise in an effective and transparent manner.

According to the Business Anti-corruption Portal, transparent and effective procurement processes can be characterised by three major underlying principles:

- **Fairness:** all competent suppliers should have equal chances to participate;
- **Transparency:** all procedural steps are based on open, predictable, known and written procedures, including the process and criteria used for awarding the contract to ensure that all participating bidders are treated on equal terms;

- **Recourse possibilities:** a transparent procurement process should also allow for an open and independent contestation mechanism.

At the operational level, cutting across all phases of the procurement cycle, these principles should translate into effective record keeping and documentation, making sure that all bidding, procedure, evaluation and award documents are publicly and timely available, as well as public access to information through effective communication channels, including by using online systems where information can be shared with auditors, complainants and the general public.

According to the U4 thematic page on procurement, there is a broad agreement about the major features of a competitive process that should be covered to some extent by any compliance checklist, including:

- Public notification of bidding opportunities;
- Documentation of the needs for goods and services, specifications, technical requirements, etc
- Documents clearly outlining the contracting process, terms and conditions, criteria for awarding the contract;
- Submission of secret sealed bids that are publicly opened at a specified date, time and place;
- Impartial evaluation and comparison of bids by competent evaluators without interference by bidders or other parties;
- Award of the contract to the bidder complying with all requirements and offering the best value for money bid, as defined by the published selection criteria;
- Documentation of the contract award decision and notification of the unsuccessful bidders with the ground for decisions and relevant information about the tender;
- Effective supervision of contract implementation.

Compliance checklists are usually structured around the key stages of the procurement cycle, including: 1) Identifying the need; 2) Defining the contract specifications; 3) Tendering process; 4) Awarding the

contract and 5) Managing and supervising contract implementation. They typically cover the various risks involved at each stages of the process by spelling out detailed indicators of adherence to the agency's procurement regulations, and providing a series of red flags such as suspicious pricing patterns, statements, documents and behaviour by firms, that can be used as a warning system to identify potential suspicious transactions.

Overview of procurement corruption risks and red flags

Overview of corruption risks

The first step involved in developing a procurement compliance checklist consists of mapping the various risks associated with the various stages of the procurement cycle and identifying indicators and red flags for the detection of irregularities.

Most common schemes used to manipulate corruption processes include bribery, kickbacks brokered by local agents, various forms of bid rigging, collusion, influence peddling, etc. As the World Bank's Fraud and Corruption Awareness Handbook states, corruption schemes in procurement often involve more than one type of misconducts, beginning by a bribe, followed by bid rigging and finally fraud to cover up the scheme (World Bank 2009):

- **Demand for payment.** A government official demands a bribe or kickback from a firm or individual, or a firm or individual offers a bribe, in exchange for a contract award. In most cases, the corrupt official will permit the bribe payer to inflate the price to cover the bribe and preserve its profits.
- **Bid rigging.** To ensure that the contract will be awarded to the bribe-paying firm (whose prices are now inflated to cover the cost of the bribe), government officials manipulate the bidding process to exclude other (presumably cheaper) competitors.
- **Fraud.** To recover the cost of the bribe, and to exploit the corrupt relationship, the firm—usually with the knowledge and complicity of government officials—inflates prices, bills for work not performed, fails to meet contract specifications or substitutes substandard products during

implementation. This often requires further corrupt payments to inspectors or auditors.

While it is generally assumed that corruption risks are especially high during the evaluation phase of the tendering process, when the bids are evaluated and the award decision is made, practice indicates that many procurement problems can also occur in the early stage of the process, at the pre-tendering stage, where needs are being assessed, planned and budgeted for and choice is made on the required bidding procedures. A 2007 World Bank study provides an overview of potential vulnerabilities associated with each phase of the contracting process, including (Glenn T. Ware, Shaun Moss, J. Edgardo Campos, and Gregory P. Noone 2007):

- At the project selection phase, demand for goods and services can be manipulated, inflated or artificially induced to identify projects with higher return value.
- During the tendering process, opportunities for corruption include tailoring specifications to limit competition or favour a particular bidder, abusing confidentiality, limiting advertisement and publicity, manipulating the preparation, submission and evaluation of bids, etc.
- At the contract implementation stage, there are also many risks of fraud and abuse such as false invoicing, overbilling, underperforming, failure to meet specifications, contract changes and renegotiations, etc.

The U4 thematic page on procurement also synthesises some of the main corruption risks at each stage of the process, providing a useful description of potential fraudulent schemes.

Most common red flags

As part of its prevention program, the World Bank's Integrity Vice Presidency has developed a handbook - the Fraud and Corruption Awareness Handbook - to assist operational staff in early detection of fraud and corruption, which describes how fraud and corruption work and how they can be detected. A number of fraud and corruption indicators are identified as well as common corruption schemes that may become apparent during a procurement process. Among these, the 10 most common red flags of fraud and corruption in procurement processes include (World Bank, 2009):

- **Complaints from bidders and other parties** are a vital source of information, as many investigations lead to the discovery of fraud and corruption.
- **Multiple contracts below procurement thresholds** can indicate contract splitting schemes used by perpetrators to avoid higher level review or competitive bidding.
- **Unusual bid patterns** such as unexplained inflated bid prices, round or unnatural numbers, apparent rotation of winning bidders, etc, can indicate collusive bidding.
- **Seemingly inflated agent fees** can be used to disguise corrupt payment, such as for example the involvement of an unnecessary middleman.
- **Suspicious bidders** can set up fictitious companies or consulting firms to obtain the contract or a shadow bidder can submit higher price bids and give the appearance of competition.
- **Lowest bidder unjustifiably not selected** can indicate bid rigging with project officials having a hidden interest in a contractor.
- **Unjustified and/or repeated sole source award** should be closely reviewed, especially if these requests are made for reasons of urgency.
- **Changes in contract terms and value** with regards to the price, amount or type of services between the selection and the signing of the contract should also be carefully reviewed.
- **Multiple contract change orders** after the contract has been signed can indicate collusion between the client and contractor to increase the value of the contract without delivery of additional product or services.
- **Poor quality or undelivered good, works or services** is a strong indicator of fraud and corruption.

Guiding principles for designing and implementing procurement compliance checklists

Format

Procurement compliance checklists may use different formats but should be tailored to the agency's procurement guidelines and regulations.

They should be user friendly, easy to understand and apply, providing a practical step by step approach for each stage of the procurement process.

Some consist of a simple compilation of yes/no answer questions for each stage of the process, while others are more elaborate, explicitly listing specific objectives, risks, criteria, evidence required and policy references for each step of the process.

Coverage

Appropriate guidance should also be given with regards to who should use the checklist, what project the checklist applies to, who performs the compliance reviews (whether internal or external staff and agencies) and what are the consequences in case of detection of irregularities.

In principle, all procurement activities could be subjected to compliance reviews, depending on available resources and capacity, as part of "good practice" procurement processes. An alternative can be to implement a risk based assessment to determine which completed project will be evaluated using the compliance review checklist.

The U4 thematic page on procurement mentions a few factors that are likely to increase risks of fraud and corruption that could be taken into consideration when selecting which projects should be more systematically assessed against the procurement compliance checklists, including:

- **Size of the contract:** The more money involved the more incentive to demand a bribe, as bribes are often calculated as a percentage of the total amount of the contract.
- **Level of technical complexity:** The more technical (or seemingly technical) is the project, the easier it can be manipulated, as the level of complexity increases transparency, control and oversight challenges.

- **Level of immediacy:** the most attractive projects are those in which the full purchase price or a very substantial deposit is payable at an early stage of the project.
- **Level of discretion:** The discretionary authority of public officials with regards to the power of invitation, pre-qualification, choice of technology, etc provides many opportunities for bribery.

Participatory design process

One shouldn't underestimate the potential resistance to change that the introduction of such checklist may create for procurement officials and employees used to the "old" way of doing things and who may lack incentives for reform, as such intervention may deeply affect work processes, existing procedures and institutional arrangements.

For the success, credibility and legitimacy of the whole initiative, it is recommended to use a participatory development process, involving key experts and practitioners that will be directly affected by the initiative and supported by a proactive change management strategy. The group should be composed of individuals who have the technical skills and expertise to review procurement process design, risk rating, and reports throughout the project cycle.

Implementation strategy

Procurement officials need to be made aware of the risks, techniques and actors involved in corruption along the procurement chain usually through regular training activities. Regular awareness raising and capacity building initiatives targeting staff of procurement administration are therefore a crucial component of any effective implementation of such compliance tool. Training activities should not only focus on procurement rules and procedures but also on how to identify fraud and corruption risks along the whole procurement cycle.

This implies that adequate human and financial resources must be allocated to the intervention, keeping in mind that, if properly implemented, transparent procurement processes may lead to cost saving.

2 Examples of procurement compliance checklists

While there are many examples of procurement compliance checklists that have been developed to prevent and detect fraud and corruption in procurement processes, there is little information available on how they have been used and implemented by the various organisations and how effective they have been.

OECD's procurement checklists

Checklist on enhancing integrity in public procurement

One of the most comprehensive checklists that has been developed to guide policy makers in the implementation of good practice procurement policies is the OECD's 2008 [Checklist for enhancing integrity in public procurement](#). It is meant as a practical tool that can be applied, adapted and developed in different legal and administrative contexts. It aims at supporting policy makers at the central level in promoting a culture of integrity in the whole procurement cycle, from needs assessment to contract management and payment. It consists of two sections:

- The first section provides 10 key recommendations for developing an adequate policy framework.
- The second part provides guidance for implementing this framework at each stage of the procurement process, including the pre-tendering phase – consisting of needs assessment, planning and budgeting, definition of requirements and choice of procedures; the tendering phase – consisting of the invitation to tender, evaluation and award; and the post tendering phase - consisting of contract management, order and payment.

Checklists for preventing bid rigging in public procurement

The OECD has also developed a specific methodology to help governments detect and combat bid rigging in public procurement. Drawing on the experience of more than 30 jurisdictions, the OECD Guidelines for Fighting Bid Rigging in Public Procurement aims at assisting procurement officials to, first, reduce the risks of bid rigging through careful design of the procurement process and, second, to detect bid rigging conspiracies

during the procurement process. The Guidelines include two checklists, namely: a [Checklist for Detecting Bid Rigging in Public Procurement](#) and a [Checklist for Designing the Public Procurement Process to Reduce the Risks of Bid Rigging](#).

Although focused on a specific corrupt practice, this easy-to-use checklist provides an example of a user friendly tool for detecting bid rigging. This checklist can be applied in a decentralised manner across central and local government agencies. It has been developed to help identify:

- Markets in which bid rigging are more likely to occur;
- Practices that procurement agents can use to detect bid rigging;
- Suspicious pricing patterns;
- Suspicious statements, documents and behaviours by firms.

In particular, it identifies seven areas where special vigilance should be exercised including vulnerable markets, communication opportunities between bidders, indication of relationships among bidders, suspicious bidding patterns, unusual behaviours, similarities in documents submitted by different bidders, etc.

Common benchmarking and assessment methodology for public procurement systems

Although not directly relevant within the framework of this query, one should also mention the methodology for assessment of national procurement systems that the OECD developed (2006) to provide a common tool which developing countries and donors can use to assess the quality and effectiveness of national procurement systems. The methodology is accompanied by a benchmarking, compliance and performance tool that provides a format that can be used for assessing procurement processes, and includes baseline indicators, compliance and performance indicators, proposed actions, scores, level of priority, etc.

European Union

EU Supreme Audit Institutions' checklist for use in the financial audit of procurement

In 2008, the Working Group (WG) on Public Procurement of the Contact Committee of the Supreme Audit Institutions of the European Union was mandated to develop a **common checklist for use in the financial audit of procurement**. This detailed checklist is meant to be relevant and applicable to auditors operating within different frameworks, requirements and procedures.

It begins with the analysis of the procurement function and is organised according to the major phases of the procurement cycle, including the pre-tender stage, the choice of procurement procedure, publicity and notification used, identification of potential bidders, evaluation of tenders and award procedure, taking fraud and corruption risks into consideration. Specific attention is also given to works and supplies as a frequent form of direct contracting.

Other checklists for EU funded projects

With regard to the activities for prevention of irregularities and fraud with **EU Structural Instruments**, the DG Regional policy of the EU has published in 2009 an **information note of fraud indicators** that provides a list of fraud schemes and related fraud indicators that may be relevant in the area of structural action.

The **European Social Fund** also provides a downloadable **procurement checklist**. This checklist is also organised following the various steps of the procurement cycles and consists of a simple list of key questions and requests for documentation supporting the procurement process.

Another example of a checklist used by an EU funded project to assess whether all EU directives and procurement rules and have been adhered to is the **Checklist for First Level Control** (European Territorial Cooperation 2009). The checklist is mainly concerned for ensuring that procurement rules are properly carried out and adequately documented.

Hong Kong's Independent Commission Against Corruption (ICAC)

ICAC has also developed a **best practice checklist** for procurement processes for use by small and medium enterprises. It differs from other checklists by its target audience and very practical, down-to-earth approach, providing tips and practical guidance at each stage of the procurement process. It promotes the establishment of sound and competitive procurement processes by providing a checklist of effective and practical measures to control each stage of the procurement processes.

The Business Anti-Corruption Portal's public procurement due diligence tool

Although not a checklist *per se*, The Business Anti-Corruption Portal has developed this public procurement due diligence tool as a risk management strategy to enable companies to assess and avoid corruption risks when participating in developing countries' public procurement processes. The recommended approach is to look for indicators and red flags in the different phases of the process in order to reduce risks of being subject to extortion, blacklisted, not awarded the contract, etc when engaging in tendering processes.

The due diligence tool consists of 3 documents and an interactive tool that constitute a corruption risk assessment tool in a specific procurement process:

- The **guidance document** briefly describes the overall principles for sound public procurement and the risks associated with lack of transparency, fairness and recourse possibility;
- The **procedure document** guides through the questions posed in the tool and the evaluation matrix;
- The **risk assessment document** provides a flow chart of the questions posed in the procurement tool and the phases in the procurement process that they relate to;
- The **public procurement tool** can be used to determine the risks arising from procedural steps in a public procurement process. Based on the answers given, a general risk profile is given and

point to an evaluation matrix for either case of good or bad recourse possibilities.

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