Public procurement corruption risks: how can we assess and prevent them?

A EUROPEAN RESPONSE

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Overview

- Public Procurement is the largest channel of public spending
- Vulnerable to fraud and irregularities?
  - Investigative / audit experience
  - Findings of studies
  - Control activities by national authorities
- Fraud and corruption in public procurement: red flags
Corruption + fraud

- Active/passive corruption and fraud
- Dangerous correlation:
  - when there is corruption there is always fraud
  - Fraudster's perspective: bribes are a cost
  - ROI: Project cost inflation (artificial)
- Against EU funds seen as a victimless crime
- How can it substantiate?
  - Public procurement / selection / awarding procedures
  - control
Protecting the EU financial interests against fraud and irregularities: the actors

- European Court of Auditors
- OLAF
- EUROJUST
- EPPO
- EUROPOL
- EPPO
- AFCOS
- Specialised (antifraud) bodies
- FIUs
- Customs
- Police
- Judicial authorities
- Managing authorities
- Audit authorities
- Certifying authorities
The European Anti-fraud Office (OLAF)

1. MISSION
   ✓ Step up fight against fraud, corruption and other illegal activities
   ✓ Assistance to Member States
   ✓ Contribute to design and development of methods of preventing and combating fraud, corruption and other illegal activities
   ✓ Promote and coordinate the sharing of operational experience and operational practices

2. INVESTIGATIVE ROLE
   ✓ Administrative investigations
   ✓ Recommendations
   ✓ Monitoring

3. POLICY ROLE
   ✓ Promote legislative proposals
   ✓ Coordinating policy initiatives
   ✓ Analysis

4. COOPERATION WITH AND SUPPORT TO MEMBER STATES
   ✓ Committees
   ✓ Working Groups
   ✓ Joint Customs Operations
   ✓ Hercule

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The European Anti-fraud Office (OLAF)
OLAF's experience (from Annual Reports 2016-2017)

- OLAF cases have revealed:
  - Unclear or complicated applicable national pp laws
  - Lack of administrative capacity and expertise
  - Insufficiently qualified members of the evaluation committees
  - Inadequate level of audits, controls and checks
  - Corruption remains an almost universal aspect of fraudulent public procurement cases investigated by OLAF
  - Collusion between winner of tender, consultant/beneficiary of the funding
  - Conflict of interest
  - Increasing trend to use off-shore accounts and transnational fraud
  - Fraud at procurement level leads to fraud at the implementation level (false invoices, product substitution, etc.)
### Costs of corruption in public procurement

#### 2013 PwC study – 8 Member States

<table>
<thead>
<tr>
<th>Direct public losses</th>
<th>18% of overall project budgets concerned</th>
<th>13% attributed to corruption</th>
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<tbody>
<tr>
<td>Probability of corruption</td>
<td>Highest for ‘staff development services’ (23-28%)</td>
<td>Lowest for (airport) runway construction works (11-13%)</td>
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<tr>
<td>Direct costs</td>
<td>Highest for “Urban/utility construction: 830 – 1 141 MEUR</td>
<td>Lower for ‘Water and waste’: 27-38 MEUR</td>
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</table>
Public procurement irregularities in the use of EU funds – cohesion policy – detected and reported by MS
What are we fighting for?

*Estimation from slide 8
A red flag is a warning signal, which can indicate the existence of fraud or corruption.

This does not mean that fraud or corruption have occurred.

The situation must be checked and monitored with due diligence.

Action should be taken to confirm or deny the existence of fraud or corruption.

_Fraud in Public Procurement: a collection of Red Flags and Best Practices_  
developed by a working group of Member States' experts, directed and coordinated by OLAF.
Public Procurement: red flags and good practices by MS

- The document represents a good example of the lessons learnt by MS, insofar as it shows the grey areas highlighted by the control activities from national authorities and European bodies.

- Document structured on 4 axes:
  - Pre-tendering phase
  - Tendering phase
  - Post-tendering phase
  - Horizontal fraud prevention tools

- For each phase, the critical areas are identified and, for each of these, red flags, case examples and good practices are presented.
Pre-tendering phase (1)

Identification of needs and planning

- Justification of the necessity
  - Misleading justification / Pressure to use a study / study useless or redundant
  - Incompatibility of material to be supplied

- Relations between organisers and external actors
  - Conflict of interests
  - Expert or consultancy work

Content

- Requirements / specifications unfairly favour one bidder

- Delivery times unreasonably short; volume of the procurement is unusually large (only few bidders qualify); incompatible groupings of supplies, services; mandatory maintenance by the supplier
Pre-tendering phase

**Choice of procedure**

- Competitive to non-competitive; negotiated procedure after failed call; Unjustified assignments for force majeure
- Splitting contracts

**Publicity / information / deadline**

- Not properly advertised; changes of terms / evaluation criteria not published; call sent only to one operator; not published in e-procurement environment
- Insufficient information on contact point; inadequate clarifications / response; selective leaks of information; private communication to winning tenderer
- Very short deadline; intimidation or discouragement towards possible tenderers
Tendering phase

Level of competition

- Few of the companies which bought the bidding documents submit bids (especially if more than half drop out); only one or few invited operators respond to the call.
- Losing bidders unknown or seemingly not real companies; small company in relation to the tender volume; never active before in the field; lowest bidder the same in many cases.

Collusion

Significant links between two or more bidders; evidence that EO exchange price information, divide up areas or enter into informal agreements; only one bidder is active; some bidders seem to present “careless” bids; some bidders present bids outside their expected competence or business profile; round numbers in complex tenders; repeated winner / repeated loser; winner repeatedly subcontracts works to unsuccessful bidders; bids price differences.

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Single bidding and non-competitive tendering procedures in EU Co-funded Projects

Report by Mihály Fazekas, Central European University and the Government Transparency Institute

https://public.tableau.com/profile/directorate.general.for.regional.and.urban.policy#!/vizhome/Singlebidnon-open_proc/Singlebiddingoverview
Tendering phase

Evaluation

- Tenderers not opened in public; some tenders opened early; opening of bids is not conducted at advertised date; delayed submissions; new deadline after late submission
- Changes made after tenders were submitted; official documents manifestly modified; signs of bid manipulation in the premises of CA; not all foreseen pages signed by members of Competition Committee

Award

- High number of competitive awards to one tenderer; winner located in a specific region; unknown companies with no track-record win the contract; winning bid is too high; obligatory information is missing; last tender received is selected; contractor is not included in pre-selection list of pre-requisite qualifications
Post-tendering phase

**Contract**
- Standard contract clauses changed / Omissions (penalties); changes to quality, quantity or specifications that deviate from bidding document (TOR, technical specifications)
- Methodology and work plan not attached to the contract; removal of low budgeted value products
- Delays in signature (in particular in international projects)

**Execution**
- Frequent changes to increase the value of the contract; same project official
- CA accepts reduction of quality and quantity of goods; changes to reduce or change certain line items shortly after award; acceptance of works clearly non-adequate; discrepancy between test and inspection and contract claims and specifications
- Labour charges: excessive or unusual; inconsistent with contract progress; changes to timesheets
  - Contractor accounts / records not consistent with contract execution
From prevention to recovery: a holistic approach

- Commission Anti-Fraud Strategy (CAFS)
- National Anti-Fraud Strategies (NAFS)
- Necessary cooperation among various actors
- Cooperative approach
  - Guidance documents on several topics
    - NAFS methodology
    - Public procurement
    - Conflict of interests
    - Forged documents
  - Sharing of good practices

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Conclusions

- Public procurement remains an area at risk
- Corruption and fraud
- Awareness, IT tools and red flags can increase detection
- From detection to prosecution and beyond (completing the cycle)