



GUIDELINES FOR PUBLIC BODIES

Corruption Prevention in Direct Procurement



“Where do the evils like corruption arise from? It comes from the never-ending greed. The fight for corruption-free ethical society will have to be fought against this greed and replace it with 'what can I give' spirit.”

A. P. J. Abdul Kalam
Former President of India

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List of Abbreviations

CWA	Central Water Authority
e-PS	Government e-Procurement System
ICAC	Independent Commission Against Corruption
MOF	Ministry of Finance, Economic Planning and Development
OECD	Organisation for Economic Co-operation and Development
PoCA 2002	Prevention of Corruption Act 2002, as amended
PO	Procurement Officer
PPO	Procurement Policy Office
PPA 2006	Public Procurement Act 2006, as amended
PSACF	Public Sector Anti-Corruption Framework
UNCAC	United Nations Convention Against Corruption

Abstract

The Public Procurement Act (PPA) 2006, as amended, defines procurement as ‘the acquisition by a Public Body, by purchase, lease or any other contractual means, of goods, works, or consultancy or other services’. It applies regardless whether the Public Body is building infrastructure of multi-million rupees or providing an office with the necessary stationery. Procurement includes planning, design, determination of standards, writing specifications, selecting suppliers, financing, administering contracts and other related functions. Public procurement is a high risk area for corruption and malpractices, as it involves huge expenditure.

Different procurement methods are defined in the PPA 2006 and the choice of these acquisition methods are generally determined by the monetary thresholds and specificities of the goods, works or services being acquired. One of these methods is Direct Procurement. This method enables purchasers to acquire items without undue administrative burden in line with set thresholds. However, as demonstrated by the various corruption prevention exercises conducted by the Independent Commission Against Corruption (ICAC), Direct Procurement is not adequately regulated and contains relatively few safeguards against corruption and fraudulent purchases.

Moreover, the mandatory use of the Government e-Procurement System (e-PS) in all public sector bodies, as announced in the Budget Speech 2020-21, will be an effective means in the fight against corruption as it will, among others, minimise manual intervention, reduce face to face contact with suppliers and promote record keeping, among others. However, e-PS is only one of the ways to minimise corruption risks.

As such, every effort should be made by Management and staff of Public Bodies to incorporate necessary safeguards to prevent corruption/malpractices from occurring in Direct Procurement. Thus, implementation of corruption prevention measures and compliance with set standards and procedures within its operations are critical if the organisation aims at value for money for goods, works or services procured.

Based on the above, the ICAC has developed this document in collaboration with the Directorate of the Procurement and Supply Cadre of the Ministry of Finance, Economic Planning and Development (MOF) to promote and reinforce integrity in Direct Procurement. It is intended for guidance to establish appropriate management systems to fight corruption and malpractices when procuring goods, works and services through the Direct Procurement Method. It focuses on the enhancement of transparency, accountability and integrity in Direct Procurement and provides guidelines for corruption prevention measures. The ICAC expresses its deep appreciation to all those who have directly or indirectly contributed to the development of this document.

Chapter 1: Introduction

1.0 Overview

As per Sections 20 and 30 of the Prevention of Corruption Act (PoCA) 2002, as amended, the ICAC is mandated to exercise vigilance and superintendence over the integrity systems and practices in Public Bodies with a view to eliminating opportunities for corruption.

The ICAC has conducted several Corruption Prevention Reviews on procurement in Public Bodies over the last years following complaints of alleged malpractices/acts of corruption in Public Bodies. The reviews have demonstrated that Direct Procurement, amongst others, can easily open the door to corruption risks. This document is thus aimed at assisting Public Bodies to reduce risks of corruption/malpractices by reinforcing integrity in this area.

1.1 The Direct Procurement Method

Public procurement can be referred to acquisitions of goods, works or services such as stationery, office equipment, health services, contracting for consultancy services or works on infrastructure projects. Procurement is generally recognised as an area vulnerable to risks of corruption/malpractices.

As far as Direct Procurement is concerned, it is a method that allows Public Bodies to purchase items quickly in line with set thresholds. However, it is not well regulated and there may be risk of abuse of procedures. For example, officers may create situations of urgency or use artificial division to favour bidders.

It is, thus, important for Public Bodies to ensure that integrity principles and transparent procedures are part and parcel of their procurement framework.

Acquisition of items through Direct Procurement

The Direct Procurement process goes through three key stages to fulfill the task of purchase of works, goods or services whether under formal contract or not. First, it should assess its needs of goods or services to procure; then determine who will be the best supplier of the goods or services; and the third stage is to ensure that the goods or services are delivered according to agreed terms and specifications (Heggstad et al. 2010).

It is true that the items being acquired by Direct Procurement are relatively low value ones (as determined by the thresholds and conditions set in the PPA 2006). However, whether the value is low or not, expenditure is met out of public funds and any act of corruption during the procurement process is punishable by law.

1.2 Corruption prevention

Corruption prevention is about changing organisational features that allow corruption to occur and possibly to go unnoticed or unreported. It focuses on improving systems and procedures, changing the attitudes of staff and reinforcing the overall integrity and performance of an organisation. It is important to bear in mind that corruption prevention is an on-going process that needs resources and continuous updating.

A clear understanding of the corruption risk exposure by the Public Body is the cornerstone and essential first step in building an effective anti-corruption compliance structure. Preventing corruption is instrumental to the broader goal of improving effectiveness, fairness and efficiency in the system.

1.3 Corruption risks in Direct Procurement

As determined by the conditions and thresholds set in the PPA 2006, Direct Procurement is an efficient method of procuring items. However, a procurement system that is efficient but lacks transparency, professionalism and competition can be an ideal breeding ground for corruption risks.

As such, Accounting Officers of Public Bodies should ensure that good governance prevails in procurement activities in order to obtain value for money with regard to procured items.

The United Nations Convention against Corruption

The United Nations Convention against Corruption (UNCAC) calls for the establishment of appropriate systems of public procurement based on the **fundamental principles of transparency, competition, professionalism and objective criteria in decision-making. These principles underpin and provide guidance on the essential standards to be met and elements needed to ensure procurement systems are corruption-free.**

To ensure legitimate procurement procedures and adequate public records, Article 9 of UNCAC requires, amongst others:

- the establishment of a sound procurement system
- transparency in procurement
- objective decision-making in procurement
- integrity of public officials
- soundness of public records and finance.

1.4 Objectives of this document

The objectives of this document are to:

- guide Public Bodies to carry out Direct Procurement processes in an ethical, transparent, accountable and fair manner
- provide general guidance to enhance the capacity of Public Bodies in effective procurement management
- obtain value for money when procuring items through Direct Procurement
- contribute to Public Bodies' commitment in the fight against corruption and fraudulent purchase.

1.5 Disclaimer

The aim of this document is to provide guidance to Management of Public Bodies and staff involved in procurement to enhance integrity in Direct Procurement. However, measures and areas covered in this document should not be considered as exhaustive. It is the responsibility of management of Public Bodies to ensure that appropriate measures are implemented to effectively fight corruption/malpractices in procurement. Moreover, this guide is neither a substitute for the law nor can it take the place of legal advice.

Chapter 2: The Legal Framework for Direct Procurement and Broad Guiding Procurement Principles

2.0 Overview

The very first step to prevent risks of corruption and malpractices in public procurement is to implement an appropriate legal framework. General issues that should be covered within procurement laws and regulations include, for instance, clear and objective rules regarding the different procurement methods, the grounds and monetary thresholds under which each of them should be used, the integrity of the bidding process and elements pertaining to procurement integrity.

The public procurement system should follow a set of established rules and procedures to ensure a transparent, fair and efficient process. In Mauritius, the PPA 2006 and the different Public Procurement Regulations regulate the procurement activities of Public Bodies.

2.1 The legal and regulatory framework

Sections pertaining to Direct Procurement as contained in the PPA 2006 and its Regulations are illustrated below. Section 25(1) and (2) of the PPA 2006 are as follows:

'(1) The direct procurement method allows a public body to purchase goods, other services or works from a single source without competition.

(2) Direct procurement is permitted –

(a) where the value of the procurement does not exceed the prescribed threshold;

(b) where only one supplier has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured, and no suitable alternative is available;

(c) within the prescribed limits, for additional deliveries of goods by the original supplier which are intended either as partial replacement or extension for existing goods, services, or installations and where a change of supplier would compel the public body to procure equipment or services not meeting requirements of interchangeability with already existing equipment or service;

(d) within the prescribed limits, where additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works from the initial contract would be difficult for technical or economic reasons;

(e) where the nature of the consultancy services requires that a particular consultant be selected due to unique qualifications; or

(f) where continuity of consultancy services is essential to meet the objectives of the consultancy assignment.'

Moreover, in line with Section 25(2) (a) of the Act, Section 44 of the Public Procurement (Regulations 2008) stipulates the following:

‘(1) ... a public body may resort to direct procurement-
(a) in the case of procurement of goods, where the value does not exceed 500,000 rupees provided that the total cost per single item does not exceed 100,000 rupees;
(b) in the case of procurement of works, consultancy services or other services, the value does not exceed 500,000 rupees.
(2) A public body shall maintain records showing details of oral or informal quotations sought from suppliers prior to the award of the contract.
(3) For the purposes of Section 25(2) (c) and 25(2) (d) of the Act the limit shall be fifty percent and thirty percent respectively of the initial contract value.’

The mandatory use of e-PS in Public Bodies as mentioned in the Budget 2020-2021 will also be an effective way to promote procurement integrity. As per Section 26A of the PPA 2006:

‘(1) There shall be an electronic bidding system to receive and process bidding documents for evaluation, and for the award of any procurement contract, in accordance with such regulations as may be made.
(2) Any reference in this Act to a document which has to be submitted in writing shall include reference to a document submitted electronically under the electronic bidding system referred to in subsection (1).’

2.1.1 Few safeguards against risks of corruption and malpractices

Direct Procurement, as compared to the other methods of procurement, contains fewer safeguards against risks of corruption and malpractices. This method of procurement is thus viewed as a high risk area which provides opportunities for corruption/malpractices. The existing procurement legislation/regulations do not necessarily address acts of corruption. They provide the regulatory framework but they should essentially be complemented with corruption prevention measures to detect and prevent corruption risks.

2.2 Abuse of the systems and procedures for Direct Procurement

Due to certain shortcomings regarding the framework for Direct Procurement, certain public officials may be tempted to abuse the systems and procedures for personal gain. In certain cases, high discretion given to public officials when performing Direct Procurement may encourage them to indulge in corrupt practices.

Some of the recurrent forms of alleged corruption/malpractices encountered with regard to Direct Procurement are listed below:

- Making split purchases through artificial division of the prescribed threshold to minimise competition
- Avoid adequate planning for corruption motives
- Favouring specific suppliers in return of bribe/gratification
- Acceptance of gifts from suppliers
- Situation of conflict of interests
- Making fictitious purchases using the Direct Procurement Method in collusion with suppliers.

Corruption/malpractices can quickly bring an organisation into disrepute. Malpractices in Direct Procurement in a Public Body implies that:

- public funds may be wasted through both corruption and mismanagement
- honest suppliers may lose confidence in the public sector marketplace
- it may face legal action to deal with unsuccessful and/or dissatisfied bidders
- it may fail to achieve value for money
- it may be subject to adverse reports in the media
- the public may lose trust in the organisation.

2.3 Corruption offences

Part VIII of the PPA 2006 emphasises important integrity aspects that should be applied in the procurement process. Public officials need to be familiar with the provisions of the PPA 2006 and abide by the Law/Regulations. They are called upon to comply with all Guidelines and Directives issued by the Procurement Policy Office (PPO).

Public officials involved in procurement are expected to demonstrate procurement integrity and must by all means:

- avoid conflict of interests
- not engage in collusion
- not commit or abet any corrupt or fraudulent practice
- not accept gifts of any sort from suppliers
- not favour suppliers
- not tolerate any malpractice/corruption
- report any suspicion of alleged malpractice/corruption.

The above can result in breach of one or more of the Sections of the PoCA 2002, as illustrated below:

Section 4	Bribery by public official
Section 5	Bribery of public official
Section 7	Public official using his office for gratification
Section 8	Bribery of or by a public official to influence the decision of a public body
Section 10	"Trafic d'influence"
Section 11	Public official taking gratification
Section 12	Bribery for procuring contracts
Section 13	Conflict of interests
Section 14	Treating of public official
Section 15	Receiving gift for a corrupt purpose

More information with regard to other Sections dealing with corruption offences is provided in the PoCA 2002, as amended, available on the ICAC website www.icac.mu

2.4 Roles and responsibilities of Management of Public Bodies and the different actors involved in the Direct Procurement process

Responsibilities rest with Management of Public Bodies and staff of the Procurement and Supply Cadre to ensure sound procurement practices by laying emphasis on transparency, accountability and fairness with a view to minimising corruption risks.

Management of Public Bodies has the responsibility, among others, to:

- create an environment that proactively identifies structural weaknesses that may give rise to malpractices/corruption
- ensure that procurement staff makes judicious use of Direct Procurement and adhere to the '*Code of Conduct on Procurement for Public Officials*'. The code is available on the ICAC website, www.icac.mu
- establish and maintain robust anti-corruption framework for Direct Procurement based on principles of transparency, fairness and accountability to reinforce organisational integrity.

Moreover, bidders and all other stakeholders involved in the procurement process also need to demonstrate procurement integrity and suppliers must not try to bribe public officials for favours. The different steps in the procurement activity must assure confidence to all actors involved.

Preventing corruption does not only mitigate corruption risks. By taking appropriate steps, a public entity is able to enhance its reputation with its own employees, clients, suppliers and other stakeholders, as well as cutting costs and ultimately gaining competitive advantages. Moreover, it should be borne in mind that failure from the part of public officials to take any appropriate measures may lead to sanctions.

2.5 Key principles and values

Procurement staff should be guided by the following key principles to promote integrity and secure the best value for public money. They are discussed below.

Transparency

Transparency imposes obligation on the Public Body to demonstrate publicly the procurement opportunities and to undertake the process openly. Given that procurement staff can have some degree of discretion in the procurement process, it is transparency, amongst others, which allows this discretion to be monitored and minimised to prevent risks of abuse, corruption or fraudulent practice.

Accountability

All those involved in the procurement process should be accountable for their actions/non-actions and decisions. Accountability in public procurement essentially refers to be responsible for actions/non-actions and decisions taken, and having the obligation to report and/or answer to a designated oversight entity (and the public) on the consequences of those decisions through proper record-keeping. Accountability is an obligation to ensure that work is carried out strictly in compliance with agreed rules and standards.

Competition

Competition helps to achieve value for money, resulting from prices obtained through lowest evaluated substantially responsive bids. Competition is also a drive for innovation.

Decision-making

Use of objective criteria for decision-making and elimination of biases are means to ensure that providers of goods, works and services are treated fairly.

Integrity

In Direct Procurement, the principle of integrity is two-fold. There is the integrity of the procurement process, and also the integrity of public procurement practitioners. Integrity translates into reliability.

The Organisation for Economic Co-operation and Development (OECD) identifies key pillars like transparency, good management, prevention of misconduct, compliance and monitoring; and accountability and control as the basics for enhancing integrity in public procurement (OECD, 2009).

Probity

Probity is the evidence of ethical behaviour in a particular process and supports integrity by minimising conflicts and avoiding improper practices. If implemented properly, probity will assist your organisation to identify and deal with corruption risks effectively. Demonstrating probity of process is fundamental to any procurement in order to provide confidence that transparent processes have resulted in value for money.

Objectivity

Objectivity is also linked to the principles of integrity, which guarantees ethical conduct and avoidance of corruption by all parties involved in the public procurement process.

Chapter 3: Means to Enhance Transparency and Accountability in Direct Procurement

3.0 Overview

Though Public Bodies have procurement systems which are established in accordance with the Procurement Law and Regulations, the reality is that implementation of the procurement systems is faced with several challenges. Like in most public procurement systems, bad practices may not only render procurement systems ineffective but also prone to corruption risks.

This chapter addresses common problems that may create favourable conditions for corruption/malpractices to occur in the Direct Procurement process and provides necessary measures to prevent them. The adoption of a structured approach to Direct Procurement is an important means to promote transparency, accountability, fairness and integrity into the system. This includes, for example, implementation of e-PS, development of documented procurement procedures, proper planning, adequate oversight mechanisms and transparent records, among others.

In line with the above, it is important that public officials who are entrusted with the responsibility of procurement are well aware of instances of corruption risks in the procurement process. As corruption risks exist at the different stages of the Direct Procurement activity, a structured approach for risk mitigation and corruption prevention is needed.

3.1 Structured approach for Direct Procurement

The opportunity for corruption and malpractices can increase substantially without appropriate mechanisms for accountability and transparency. As such, incorporation of the following in the framework for Direct Procurement can help to mitigate risks of corruption/malpractices:

Structured approach for Direct Procurement

Public Bodies should come up with a structured approach to ensure coherent and consistent sets of principles, rules and instructions that will guide officers in the discharge of their duties. This also includes the way in which responsibilities are assigned together with structural arrangements. The following elements are key to ensure effectiveness in setting up a structured procurement approach:



E- procurement in Public Bodies

Public e-procurement can play an important role for minimizing the risk of corruption in public procurement process (OECD, 2008). E-procurement has been recognized internationally as an important instrument for checking corruption and in misuse of power (Sohail & Cavill, 2008).

In Mauritius, e-procurement was launched online in 2015 and has become a key component in the reform and modernisation of public procurement. The e-PS has been rendered mandatory in Public Bodies following the Budget Speech 2020-2021 in view of urging all Public Bodies to adopt the system. Examples of Public Bodies which have already implemented the e-PS are the Central Water Authority (CWA) and the Mauritius Police Force, among others.

The case study below succinctly illustrates the functioning of the e-PS at the CWA based on information received from the organisation. However, the e-PS, no matter how advanced it can be, cannot offer the envisaged benefits if the organisation, staff and the underlying infrastructure cannot effectively support the System.

The CWA is the pioneer among the parastatal bodies to embark on e-PS in November 2015. It has committed itself to optimise on the innovation that the system has brought in public procurement. In its bid to shift from the traditional paper based procurement, the CWA has taken on board all its staff and divisions involved in the procurement process and thus encouraging and empowering them to think innovatively. The evaluation of the e-PS revealed a series of improvements that have been brought with the unexpected finding of the savings carried out. The following are some aspects of improvement achieved:


- *The e-PS has seen the business transactions improved and suppliers have responded positively.*
- *The resistance to change has been mitigated and the experience of the CWA can be replicated as the fear of the unknowns have been tackled.*
- *Through the e-PS, the CWA has rendered its procurement process more objective, transparent and accountable. The CWA disseminates all the project technical specifications and evaluation criteria on the e-PS.*
- *Any action on the e-PS can be carried out anytime and anywhere provided that there is internet connection.*

Source: CWA

Traditional methods of Direct Procurement increase direct human interaction within each stage of the procurement process. There are also regular face to face contacts between suppliers and officers thus increasing the risk for leakage of information. These drawbacks, among others, provide a fertile ground for corruption opportunities.

Recommendation 1: Implementation of e-procurement in Public Bodies

<ul style="list-style-type: none"> • <i>Digitalisation of procurement activities</i> • <i>Reduction of human intervention</i> 	<p>It is mandatory for Public Bodies to adopt the e-PS when conducting their procurement activities. The e-PS is important as it:</p> <ul style="list-style-type: none"> • facilitates the flow of information towards stakeholders • facilitates access to public bids
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<ul style="list-style-type: none"> • <i>Improvement of efficiency and effectiveness</i> 	<ul style="list-style-type: none"> • reduces face to face interaction between procurement officials and suppliers • reduces acquaintance and collusion among bidders and public officials • allows for easier detection of corruption, malpractices and irregularities through audit trail • reduces leakage of confidential information • minimises the discretion of officials involved in procurement. <p>Digitalisation of procurement processes strengthens internal anti-corruption controls and detection of integrity breaches. With the effective use of the e-PS, many risks associated with Direct Procurement can be duly eliminated. Techniques of Direct Procurement, such as quotations by fax or by phone should be rendered obsolete since they provide opportunities for corruption/malpractices.</p> <p>The e-PS can be very efficient in increasing competition and transparency and ensuring fairness in the selection of bids. However, regular interaction with and support from the PPO is vital in the successful implementation of the e-PS.</p>
<p><i>Training of staff and suppliers in e-procurement</i></p>	<p>Resistance to change and lack of training can be major hindrances for the transition to the e-PS. Since the established working processes are changed through the e-PS, users, including both staff involved in procurement activities and suppliers should be provided with appropriate training.</p> <p>Training will not only ensure that users can operate the System effectively and efficiently but also help to increase acceptance of the System and willingness to change so as to adopt the new process. The PPO has the mandate to deliver effective training to users for mastering the digital procurement system.</p>
<p> Documented policies and procedures</p>	
<p>Documented and comprehensive policies and procedures on procurement are essential to ensure objectivity and consistency in procurement. Based on corruption prevention exercises conducted by the ICAC, it has been observed that certain Public Bodies are reluctant to equip themselves with documented procedures pertaining to procurement.</p>	

Absence of well-defined documented policies and procedures regarding procurement may provide opportunities for malpractices and may, for example, lead to abuse of discretion. It may also provide a leeway to responsible public officials to favour undeserving bidders in return for gratification, thus undermining the principle of merit.

Policies and procedures are important as they provide the basis for fairness, consistency, equity and predictability. They also serve as a guide to all procurement staff. Adherence to the policies and procedures is both an individual and a corporate responsibility. Any breach of the procurement policies and procedures, or any departure from them may constitute a disciplinary or criminal offence.

Recommendation 2: Implementation of documented policies and procedures

Development and main contents of the policies and procedures

It is important that a Public Body develops and communicates comprehensive policies and procedures with respect to procurement. The documented policies and procedures should be in compliance with the PPA 2006 and subsequent circulars and directives issued by the MOF and the PPO.

Management of the Public Body can set up a team to work on the development of the policies and procedures. They should essentially contain the following, among others, to ensure transparency and accountability in the procurement process:

- Procedures and activities linked to e-PS including necessary controls
- Selection of procurement methods in line with the PPA 2006
- Selection of bidders
- Evaluation of bids
- Record keeping requirements
- Timeframes to be observed at the different procurement stages
- Registration of suppliers
- Monitoring of suppliers
- Means and ways to preserve confidentiality of information
- Roles and responsibilities of officers in the Procurement Section.

Moreover, the policies and procedures should also serve as preventive controls against corruption and malpractices. They should communicate the Public Body's zero-tolerance

	stance against corruption and create a framework that establishes an effective internal control structure.
<i>Ensuring that all bidders are treated consistently and fairly</i>	<p>All bidders, for instance, should be given the same information and that all bids are assessed against the same criteria. Officers who work with suppliers may favour (sometimes unconsciously) those with whom they have a good relationship. More seriously, a close or too familiar relationship with a supplier may lead to allegations or perception of collusion and bias that may result into corruption offences.</p> <p>As such, procedures should make provision for regular rotation of suppliers during bidding. Yearly registration of new suppliers for ensuring fairness in the system should also be addressed.</p>
<i>Accountable and transparent procurement processes that incorporate probity principles and responsibilities for staff and suppliers</i>	<p>Adequate and timely information should be provided about Direct Procurement to all stakeholders. Staff involved in procurement should also be clearly informed about their roles and responsibilities in the procurement functions. Both staff and suppliers must demonstrate probity and high professionalism. Additional information such as the procurement duration, Direct Procurement budgets, expenditures, etc. may further enable external parties to scrutinize public procurement practice.</p> <p>Furthermore, it is important that Public Bodies publish annually on their websites, a notice of every Direct Procurement contract awarded to successful bidders in order to promote transparency.</p>
<i>Effectively resolving probity issues</i>	The procedures should contain clear and concise information for managing integrity risks, conflict of interests, gifts and benefits, amongst others. It should be ensured that procurement staff receive regular training on these issues. Probity should be integrated into the procurement system, and be part and parcel of the organisation's procurement culture.
<i>Enhancing control over discretionary powers of public officials</i>	The duties of public officials involved in procurement should be well segregated so as to minimise discretion. An officer should not be a one man show in the Direct Procurement process.

	<p>Moreover, bids must be evaluated only on the basis of the requirements and criteria. The evaluation of bids should, as a general rule, be carried out not by a single individual but by more than one person or by a Bid Evaluation Committee. Furthermore, proper records should be kept for each step of the procurement process and be made available for scrutiny.</p> <p>Officers of the Procurement and Supply Cadre and those involved in the preparation and vetting of bidding documents should neither form part of the Bid Evaluation Committee nor should they be authorised to act as Secretary to the Committee.</p> <p>However, these officers may be called by the Committee to provide any pertinent information considered necessary for the smooth running of the evaluation. After the provision of the information, they should immediately leave the Committee room.</p>
<i>Mitigating any perception of malpractices /corruption</i>	<p>The organisation should ensure that there is no perception of corruption/malpractices. To avoid the perception of partiality or favouritism and ensure that no one is advantaged or disadvantaged in the procurement process, it is important that:</p> <ul style="list-style-type: none"> • all bidders are treated fairly and consistently • communication with all bidders are made in the same way • same evaluation criteria are applied in all cases. <p>For example, allegations of bias can easily follow if an employee gives information to one supplier but not to others.</p>
<i>Public awareness</i>	<p>The public can play an essential role in monitoring procurement processes to ensure that Direct Procurement is conducted in a transparent, competitive and objective manner. As such, it is essential that the procurement policies and procedures be disseminated to the public as well. For example, this can be done through the Public Body's website. The public can be a single citizen, media, a company, academia, etc. It needs to know about the procedures and may help to identify possible improper practices when going through the procedures.</p>



Procurement planning

A well-defined procurement plan helps to achieve an economical, efficient and effective procurement process and allows progress to be tracked and managed properly. The Procurement Section should plan ahead. The plan provides the basis for the preparation of the procurement budget.

Absence or unstructured procurement planning may open the door to recurrent purchase of certain items through the Direct Procurement Method. A lack of planning may thus result in the abuse of the Direct Procurement Method and may lead, for example, to malpractices through piecemeal and split purchases.

Recommendation 3: Implementation of a proper procurement plan to mitigate the risks of corruption and malpractices

<ul style="list-style-type: none">• <i>Implementing proper needs assessment</i>• <i>Comprehensive procurement plan to obtain value for money</i>• <i>Minimising opportunities of corruption</i>	<p>Goods, services or works should, as far as possible, be procured if there is an identified need in the foreseeable future. Needs assessment should involve a decision as to whether the envisaged purchase is required and whether the quantities and technical requirements are justified.</p> <p>As per the above, establishing requirements and procedures for procurement planning based on a structured approach are fundamental aspects in the procurement cycle. Public Bodies should ensure that all procurement activities are planned in a manner that would aggregate procurement requirements effectively.</p> <p>It should be coordinated with the organisations' requirements together with the financial and existing budget rules. As per Section 50 (2) (a) of the PPA 2006,</p> <p><i>'Every public body shall engage in procurement planning with a view to achieving maximum value for public expenditure and the other objectives of this Act.'</i></p> <p>The implementation of an effective procurement plan is also a proper means to:</p> <ul style="list-style-type: none">• fulfil the need for goods and services in a timely manner and at a reasonable cost• avoid last minute emergency or ill-planned procurement procedures.
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<p><i>Implementation of a centralised procurement system for minimising opportunities and perception of corruption</i></p>	<p>The main arguments in favour of a centralised procurement lie in the potential economies of scale and the minimisation of risks of corruption/malpractices. Volume purchases instead of piecemeal purchases (through informal quotations) make it possible to obtain value for money and significant reductions in the price of items procured.</p> <p>For example, a large Ministry having several Departments should be able to achieve greater savings that can be passed on in the form of reduced prices if it has a single large contract with a procurement body that can also supply the needed goods or services to all the concerned departments. But, without proper planning, coordination and forecasting, centralised procurement systems are bound to fail.</p> <p>Moreover, centralised purchasing systems encourage and enhance transparent and accountable provisions. They should, nevertheless, include proper recording and reporting of transactions, effective management controls, and an audit trail open to public scrutiny, amongst others. Purchases can more easily be checked for evidence of mismanagement and corruption. In addition, lines of responsibility are more easily established and sound practices more easily maintained.</p> <p><i>Framework Agreement</i></p> <p>In line with Section 29A of the PPA 2006, the Public Procurement (Framework Agreement) Regulations 2013 and circulars of the PPO, Public Bodies can also consider a Framework Agreement with regard to goods or services purchased recurrently.</p> <p>The Framework Agreement may be defined as an agreement between the Public Body and one or more suppliers where the purpose is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.</p> <p>A Framework Agreement can be an important tool that renders public procurement more efficient and effective. It may relieve the burden from procurement personnel for conducting repetitive bidding process and prevent risk of artificial division or malpractices with regard to recurrent purchase, among others.</p>
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Record management

For the purpose of Section 25(2) (a) of the PPA 2006, a Public Body shall maintain records showing details of oral or informal quotations sought from suppliers prior to the award of the contract.

Failure to maintain records or proper information may be an indicator of improper activity because well-kept records would reveal evidence of corrupt or dishonest activities and poorly managed processes. Moreover, manual transactions are prone to risk of tampering, especially due to lack of transparency and accrued human intervention.

Recommendation 4: Promoting transparency and accountability in record management

- **Enhancing the record system**
- **Computerised record management system**

Public Bodies should ensure that procurement decisions are recorded, justifiable and substantiated to promote transparency and accountability. Procurement files should contain the relevant documents to provide for the chronology and traceability of all the procurement processes.

To ensure completeness of the procurement file, the Procurement Section should ensure that all documents are properly filed.

Moreover, e-procurement exhorts the computerisation of the record system. A computerised record management minimises manual intervention and increases transparency, accountability and efficiency. Proper and effective utilisation of a computerised system would also enable the following:

- Render retrieval of documents and information faster and more efficient with better inbuilt control mechanisms.
- Improve accuracy, reliability, and control over access to information and reduce risks of corruption/malpractices.



List of registered suppliers

To avoid the perception of partiality or favouritism and ensure that no one is advantaged or disadvantaged in the procurement process, it is important to treat all bidders the same way.

Certain Public Bodies do not have an approved and updated list of registered suppliers/service providers for works, goods and services. For example, suppliers who are

invited for the submission of bids are selected randomly from an outdated list of suppliers or from the phone directory.

Proper and regular registration of suppliers is an important component in the procurement process. Having an updated list of suppliers and ensuring a rotation in the selection of these suppliers for invitation to bid are prerequisites to ensure transparency, fairness and integrity.

Recommendation 5: Measures to ensure transparency and fairness in the selection of suppliers

- ***Increasing fairness in the selection of suppliers***
- ***Compilation of a list of registered suppliers/ service providers***
- ***Qualification requirements to prevent fraudulent or incompetent bidders from participating***

Management should promote transparent and fair procedures in the selection of service providers for the submission of bids. The following measures are important to make sure that certain suppliers are not favoured at the detriment of others:

- Public advertisement in newspapers/website for the registration of suppliers should be made on a yearly basis.
- The public advert should be made on the website and in at least two newspapers with wide circulation for more than one day. As far as possible, a daily and a weekly newspaper need to be considered to obtain a reasonable response rate.
- The Procurement Section of the Public Body should compile its list of registered suppliers/service providers in line with goods, works and services to be procured.
- Suppliers should be selected for bidding based on a transparent and fair rotation system.

Besides, Public Bodies should set qualification requirements to prevent fraudulent or incompetent bidders from participating. Bidders who, for example, have been convicted of particular criminal offences, such as corruption and fraud, or who are guilty of repeated poor performance should be excluded from a bidding procedure. Procurement Sections may set out a list of criteria that they can use in the assessment of the qualification and performance of suppliers, as grounds for exclusion.

	<p>Moreover, suppliers should make the necessary effort and be ready to use the e-PS. They should also have the following to bid:</p> <ul style="list-style-type: none"> • Financial capabilities • Equipment capabilities • Commercial capabilities. <p>It is important that Public Bodies duly conduct campaigns to inform and sensitise their stakeholders with regard to the pertinence of the e-PS.</p>
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Control over access to confidential information

The security of sensitive and confidential information related to bids or bidders is critical to the Direct Procurement process. Inappropriately releasing it to third parties (e.g. other bidders) may lead to allegations of favouritism and lack of competitive neutrality.



As observed in corruption prevention exercises conducted by the ICAC, risk of leakage of confidential information is high with regard to Direct Procurement. The existing systems in certain Public Bodies do not provide for adequate checks and balances and security measures that would prevent leakage of information on bids.

Recommendation 6: Reinforcing control over confidentiality of information

- *Security measures for handling quotations*
- *Signing of an appropriate confidentiality agreement*
- *Implementation of an IT security policy*

Public Bodies should establish security measures for handling quotations received from bidders since they contain sensitive and confidential information. The following measures should be implemented to preserve confidentiality:

- All confidential information pertaining to bids should be kept at all times under secure conditions with access only to authorised personnel.
- All employees involved in the procurement process should sign an appropriate confidentiality agreement as a means to prevent disclosure of information which is sensitive and confidential in nature.
- In line with the application of the e-PS, Public Bodies should also come up with an IT security policy. The policy should identify the rules and procedures which all officers should adhere to, in order to ensure confidentiality, integrity, and

	accountability over availability of data, information and resources.
 Conflict of interests	
<p>Conflict of interests is a criminal offence punishable under Section 13 of the PoCA 2002. Absence of a proper mechanism in place to manage situations involving conflict of interests can easily expose staff to the risk of conflict of interests.</p> <p><i>Actual or perceived conflict of interests can damage both the employee and the organisation's reputation and performance. It is therefore vital that they be identified, declared, and managed transparently and effectively.</i></p> <p>Recommendation 7: Mechanism for management of conflict of interests</p>	
<ul style="list-style-type: none"> <i>Development of clear policies and procedures to manage situations of conflict of interests</i> 	<p>Public Bodies should implement a proper mechanism for the management of conflict of interests.</p> <p>They should develop and communicate to all concerned parties, clear policies and procedures to manage situations of conflict of interests so that officers:</p> <ul style="list-style-type: none"> • can recognise situations of conflict of interests • shall disclose in writing any conflict of interests that may arise • shall not participate in the decisions in line with Section 13 of the PoCA 2002 • shall keep record of situations of conflict of interests. <p>Management and staff of Public Bodies can consult the PoCA 2002 for more information. Staff should be regularly briefed so that their private interests do not improperly influence the performance of their public duties and responsibilities. For instance, risks of conflict of interests may be related to personal, family or business interests and activities.</p> <p>For more information on conflict of interests, a revised version of the handbook “Managing Conflict of Interests” is available on the website www.icac.mu</p>
 Gifts and hospitality	
<p>As per the Code of Ethics for Public Officers, a public official should not solicit or accept gifts which might compromise his integrity. Acceptance creates the perception of undue</p>	

influence and this can compromise the appearance of impartial decision making. For example, suppliers may offer gifts to public officials involved in procurement in order to ultimately benefit from a favour.

Acceptance of gifts by officers can become a serious issue and may be considered as a corruption offence as per Section 15 of the PoCA 2002. Any gift offer made with the expectation that a person or an organisation will be treated favourably may thus result in a criminal offence.

Recommendation 8: Implementation of an effective gift policy

<ul style="list-style-type: none"> • <i>Development of a gift policy</i> 	<p>Public Bodies should develop and communicate a gift policy prohibiting employees from accepting gifts or other benefits from persons with whom they have official dealings, as this may constitute an offence under Section 15 of the PoCA 2002. Such a measure will allow transparency and impartiality in the execution of public duties.</p> <p>Moreover, public organisations can refer to the ‘<i>Guidelines on Gifts and Gratifications for Public Officials</i>’ developed by the ICAC for the development of its gift policy. This guide is available on the website www.icac.mu.</p>
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Other important corruption prevention measures

Various additional strategies have proven to be particularly useful in complementing the anti-corruption measures outlined above. They are discussed below.

<p><i>Implementing the Public Sector Anti-Corruption Framework</i></p>	<p>The ICAC is working with Public Bodies to implement the Public Sector Anti-Corruption Framework (PSACF). This framework is meant to assist Public Bodies in the implementation of structures to effectively prevent corruption/malpractices. One of the major features of the framework is the conduct of the corruption risk assessment exercise at organisational level.</p> <p>The Integrity Officer as designated by the Public Body has an important role to play in ensuring that corruption risks are effectively identified and proper measures are implemented to prevent the risks.</p>
<ul style="list-style-type: none"> • <i>Reinforcing integrity of public officials</i> • <i>Rotation and change in posting of Procurement and Supply staff</i> 	<p>Public officials involved in the procurement process should strive for integrity. They should be perceived, at all times, as honest, trustworthy, responsible and reliable. Public officials should ensure that they responsibly manage the public procurement process within the mandate of the</p>

	<p>public procurement legal framework and in line with public procurement principles. Staff should be appropriately informed and regularly trained on procurement law and regulations as well as probity issues.</p> <p>There should also be a rotation and a change in posting of the Procurement and Supply staff every 5 years to do either procurement or supply duties. This will:</p> <ul style="list-style-type: none"> • render staff versatile and enhance their skills in both procurement and supply functions • reduce risk of acquaintance and prevent officers from being involved in corrupt practices through familiarity with the system and the environment. <p>Moreover, public officials involved in procurement and supply can refer to the following anti-corruption tools to enhance integrity in procurement and related activities:</p> <p><i>The Integrity Management Toolkit</i></p> <p>This guide has been developed by the ICAC and focuses on public sector integrity. It is meant to guide Integrity Officers in fostering a culture of integrity in their respective organisations</p> <p><i>Code of Conduct on Procurement for Public Officials</i></p> <p>This code was developed by the ICAC in collaboration with the PPO. It is an important tool as it provides, amongst others, clear sets of values for staff who are involved in procurement. The following key elements, among others, pertaining to behaviour, actions and practices of officials involved in public procurement are also addressed:</p> <ul style="list-style-type: none"> • Transparency in their decision-making processes • Accountability regarding their roles and responsibilities • Equity and fairness in their actions • Management of situations of conflict of interests • Management of gifts and other benefits • Use of confidential and proprietary information.
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	<p>Both the toolkit and the code are available on the ICAC's website www.icac.mu</p> <p>Guidelines in this document should be used together with those contained in the above-mentioned anti-corruption tools in order to enhance integrity and bring about in each and every public official the proper attitude in the fight against corruption.</p>
<i>Preventing submission of false, inflated or duplicate invoices</i>	<p>A supplier can commit fraud by knowingly submitting false, inflated or duplicate invoices with the intent to defraud, either acting alone or in collusion with a public official as the result of corruption. In Direct Procurement, such risk is high. It is thus important to increase preventive and detective controls over the review and payment of invoices by, for example:</p> <ul style="list-style-type: none"> • segregating ordering duties and payment of invoice duties • conducting periodic checks for duplicate invoices • checking order invoices for evidence that the orders are both genuine and authorized • determining the reasonableness of excessively low bids (in order to avoid risk of subsequent inflated or duplicate billing from fraudulent suppliers).
<i>Developing a statement of business ethics for suppliers</i>	<p>Public Bodies should contribute to the setting up of statements of business ethics for suppliers involved in procurement to promote ethical standards. Existing bidders and new suppliers should, at time of registration, sign and agree to abide by the statement which will ensure that they act in an ethical and professional manner. A model of the statement is provided at <i>Appendix I</i>.</p>
<i>Bolstering oversight and internal control</i>	<p>Oversight and internal control of the procurement cycle are not only essential in supporting accountability and promoting integrity in the public procurement process. These processes also generate valuable evidence on the performance and efficiency of the procurement cycle.</p> <p>Internal Auditors/ Internal Control Officers of Public Bodies should thus ensure that audit and verification of procedures with respect to procurement are conducted in a consistent and systematic basis for effective checks and</p>

	<p>balances. Public Bodies should also periodically review their approach to Direct Procurement with the identification and assessment of corruption risks and evaluation of internal controls.</p> <p>Risk assessment is essential to ensure the effectiveness of preventive controls in procurement processes. Weaknesses identified from the Internal Audit exercise should be brought to the attention of the Audit Committee. This will enable the Committee to effectively perform its oversight role and ensure that prompt remedial action is taken.</p>
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3.2 Case study on Direct Procurement

The hypothetical case study below concludes this chapter. It provides examples of corruption risks associated with Direct Procurement due to existence of loopholes in the systems and procedures.

Case Study

ABD, a Public Body specialised in the repair of public vehicles, uses the Direct Procurement Method for the purchase of items in line with the PPA 2006. Very often, the Procurement Section needs to purchase spare parts for the repair of vehicles. The Procurement Section has only two officers, a Procurement Officer (PO) and a Clerical Officer. The Clerical Officer newly joined the organisation and has no work experience.

The Public Body maintains a handwritten list of 10 potential suppliers of spare parts for quotation purposes. Suppliers found in the vicinity are generally preferred since it renders the procurement process of low value items more convenient. New suppliers often send their requests for registration along with supporting documents. However, they are not included in the list of suppliers. As such, the existing list of suppliers is not updated and it is the sole document used to select suppliers for the procurement exercise.

The user department submits verbal requisition for the required spare part. If the spare part is not available in store, the PO then seeks for quotations through the Direct Procurement Method. Very often, due to the user department's work load, it is the PO himself who prepares the specifications for the spare part. He selects an average of three potential bidders from the list of suppliers and prepares the Quotation Forms mentioning the quantity, specifications, terms and other special requirements, together with such other information as may be required. It should be pointed out that the e-PS has not yet been implemented at the ABD.

A Store Attendant is responsible to accompany him for the 'shop around' at the pre-selected suppliers with a used model of the spare part as exhibit. But he is sometimes absent from work. The PO then goes alone together with a locked portable Quotation Box.

While shopping around, the PO shows the model of the spare part to the potential bidders and hands over a Quotation Form to fill in the price and other information that may be needed. The bidders can either fax the completed Quotation Form to the Public Body or drop it in the locked portable Quotation Box.

The fax machine receiving quotations is found in the Maintenance Manager's office and nearly all his staff has access to it. On the closing date and time, bids are opened by the Clerical Officer in the presence of a Finance Officer and a Maintenance Officer. The PO and the Clerical Officer subsequently evaluate the bids. One of the bidders is the brother of the Clerical Officer. The lowest bid with acceptable quality and satisfying the conditions for delivery is normally selected. There are no records that support the evaluation and the selection of the most responsive bidder.

Systemic Loopholes

The loopholes are as follows:

- The Public Body does not have any written policy and procedures for managing situations of conflict of interests.
- There are no proper established procedures for the registration of new suppliers.
- The system does not provide adequate checks and balances and security measures to prevent leakage of information on bids.
- There are insufficient checks and balances as the PO has a lot of discretion with regard to the bidding exercise.
- There is no segregation of duties. The PO prepares the specifications, shops around and participates in the evaluation of the bids, among others, selects the potential bidders, opens the bids and conducts the evaluation.
- Inexperience in procurement processes, as in the case of the Clerical Officer, may (unconsciously) lead to malpractices.
- There is absence of records justifying the choice of the successful bidder.
- There is absence of digital procurement systems to prevent face to face contact, manual intervention and safeguard confidentiality.

Corruption risks

- Favouritism towards an acquainted bidder in exchange of gratification
- Abuse of office to procure the spare part from a particular supplier
- Officers involved in procurement are exposed to the risk of conflict of interests
- Manipulation of the list of suppliers to favour specific bidders
- Risk of leakage of confidential information on bids against gratification

The above may result in potential risks of corruption, thus, leading to a breach of one or more of the Sections 4, 5, 7, 12 and 13 of the PoCA 2002.

Conclusion

Direct Procurement is an area that requires scrutiny as it can have considerable impact on management and operations of Public Bodies. Weaknesses in the system and procedures for Direct Procurement may provide avenues for risks of bribery, favouritism and collusion with suppliers, amongst others. This can have damaging consequences which may thus seriously undermine the credibility, image and integrity of Public Bodies. As elaborated in this document, non-implementation of the e-PS, absence of documented policies and procedures, inadequate procurement planning, unstructured discretionary powers, lack of good governance and insufficient oversight mechanisms may contribute in increasing the risks of corruption/malpractices in Direct Procurement.

Corruption prevention measures have thus been proposed to address the identified weaknesses and shortcomings through elimination of potential corruption risks. The recommendations pertain to the enhancement of transparency, accountability, fairness and integrity in Direct Procurement. They include the:

- implementation of the e-PS
- development of procurement policies and procedures
- conduct of proper planning
- maintenance of proper records
- provision of training to staff
- rotation and the change in posting of the Procurement and Supply staff to other Ministries/Departments in a span of 5 years
- strengthening of control over confidentiality of information
- implementation of proper mechanisms for management of conflict of interests and gifts
- enhancement of transparency and fairness in the registration and selection of suppliers.

Moreover, implementation of the PSACF, reinforcement of oversight and internal control and the development of a statement of business ethics for suppliers, among others, are additional means that are useful in complementing the recommendations outlined above to curtail corruption risks in Direct Procurement.

In the same vein, Public Bodies should not only focus on systems but also on people when fighting corruption. The right attitudes and values held by staff is an important consideration to prevent corruption or a perception thereof. Management of Public Bodies should also be proactive. It should continuously emphasise on transparency, accountability, probity and value for money in procurement, practise vigilance and conduct risk assessment exercises to better fight corruption.

Corruption is dynamic in nature and evolves in conducive situations. In view to counter new corruption threats in Direct Procurement, this document will be updated accordingly and novel corruption prevention measures will be recommended for a zero tolerance stance against corruption and other forms of malpractices.

Appendix I: Statement of Business Ethics for Registered Suppliers

As a registered supplier, I shall:

- act professionally, ethically and in an impartial manner
- strive to increase the reputation and competence of suppliers
- not offer any bribe, gratification, gift or any other benefit to any interested party
- not be involved in any corrupt practice as per provisions made in the PoCA 2002
- always be accountable and act in the public interest
- not quote for bids that I am not competent to execute
- not collude with any public official in activities involving bidding exercises
- disclose to my client any relationship or conflict of interests that may influence my judgment
- not intentionally communicate false, insider or misleading information that may compromise the integrity of the bidding exercise.
- report to the ICAC if I come across or suspect any act of corruption.

I understand that my bid may be rendered null and void and that I may be subject to disciplinary action or criminal investigation should I fail to observe any of my above undertakings.

I acknowledge that I have read and understood this statement and accept the obligations set forth therein.

Name of Registered Supplier:

Signature:

Date:

Corruption Prevention Tools

Available on ICAC's Website:

Best Practice Guide on Recruitment and Selection in Parastatal Bodies

Public Sector Anti-Corruption Framework Manual

Model Code of Conduct for Employees of Parastatal Bodies

Guidelines for Officers of Public Bodies

Best Practice Guide on Overtime Management in the Public Sector

Managing Conflict of Interests

Code of Conduct on Procurement for Public Officials

Integrity Management Toolkit

Guidelines on Gifts and Gratifications for Public Officials

Available on Request:

Best Practice Guide on Inspection works for Public Bodies

Do It Yourself Guide - Internal Audit Charter



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