

INTEGRITY BREACHES IN PUBLIC PROCUREMENT

Public procurement is a high-risk area for integrity breaches. This brief informational note provides a typology of different types of integrity breaches in public procurement in the Greek context, as well as a summary of integrity risks across the public procurement cycle.

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INTRODUCTION

Public procurement is a high-risk area for integrity breaches, mainly due to the complexity of procurement procedures, the close interaction between the public and private sectors, and the high financial stakes involved. As part of the European Commission funded project ‘*Enhancing transparency and integrity in the public procurement system through an integrated risk management system*’, the OECD has adapted the general risk management policy and framework, mandated under Law 5013/2023 to public procurement. To ensure its successful implementation and based on the needs of Greek contracting authorities, the OECD has developed three tools:

1. A short information note on integrity breaches
2. Needs analysis guidelines
3. Market analysis guidelines

Integrity in public procurement refers to the use of funds, resources, assets and authority, according to the intended official purposes and in a manner that is well informed, aligned with the public interest, and aligned with broader principles of good governance (OECD, 2015^[1]). The OECD recommends that Adherents preserve the integrity of the public procurement system through general standards and procurement-specific safeguards. Indeed, a lack of safeguards in the public procurement process exposes governments to unethical business practices and increases the risk of misuse of public funds. Unethical practices undermine fair competition, threaten market integrity, create barriers to economic growth, and erode public confidence in government institutions. Implementing effective integrity practices helps governments mitigate these risks.

CATEGORIES OF INTEGRITY BREACHES

Integrity breaches in public procurement can be divided into the following main categories, although a specific integrity breach would usually fall under more than one category:

Corruption

Fraud

Conflict of
Interest

Collusion

CORRUPTION

Corruption is defined by Transparency International as the abuse of entrusted power for private gain (Transparency International, n.d.[2]). Corruption is not defined in Greek law but, in the context of public procurement, corruption can include bribery (passive and active), embezzlement, trading in influence and breach of duty, which are crimes punishable under the Greek penal code (Articles 236, 375, 237A and 259, respectively). In all cases, corruption leads to a situation where the contract is not awarded to the best bidder, to the detriment of public funds and/or the quality of the supplies/services/works delivered.

Furthermore, in the long-run, corruption leads to opaque and unpredictable decision-making, weakening institutional integrity and diminishes transparency. These factors can deter honest economic operators from participating in bidding processes and erode public trust in both government and businesses. Consequently, fewer bids and less competition result, hindering economic growth and development.

Example: An economic operator pays bribes to public officials to manipulate a public procurement process in the economic operator's favour. For example, this could be accomplished by including unnecessarily specific specifications in the tender documentation or by applying biased selection or evaluation criteria.

FRAUD

According to the Greek penal code (Article 386) the crime of fraud is defined as: "knowingly representing false facts to be true or dishonestly concealing or disguising true facts damaging to another's property by inducing a person to act, omit or tolerate an act, with the purpose of obtaining for himself/herself or another an unlawful pecuniary gain from the damage to such property." In the context of public procurement this may include false statements and claims, false bid documents, inflated invoices, poor quality works, product substitution, etc.

Authorities have put in place different tools to detect fraud in public procurement. For example, the European Commission developed Arachne, an IT-based fraud alert tool, which became operational in 2013. It is owned and maintained by the Commission. It has been designed to hold key data about projects funded under the European Regional Development Fund (ERDF), the Cohesion Fund (CF) and the European Social Fund (ESF), for example about companies and projects, so that relationships and connections between different economic actors participating in such projects can be analysed (European Commission, n.d.[3]).

Example: A supplier charges for work that was never performed, inflates costs or manipulates expenses to extract more money from the project than justified.

CONFLICT OF INTEREST

Conflict of interest is regulated under Article 24 of the Greek Public Procurement Law, which requires contracting authorities to take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures. This includes the design and preparation of the procedure and the drafting of the contract documents to avoid any distortions of competition and ensure equal treatment of all economic operators.

Public procurement, at the interface of the public and private sectors, is particularly vulnerable to conflicts between public officials' duties and their private interests. Conflict of interest arises when public officials' decisions during the public procurement process are influenced by their private interests. Common sources

of bias include financial interests, family relationships, and post-employment opportunities. If not adequately identified and managed, these conflicts provide opportunities for public officials to exploit their positions for personal benefit. Such risks can be identified through all phases of the procurement cycle, from the needs analysis stage, where officials may adjust the need for personal gain, to the preparation of the procurement documents, where public officials may tailor the specifications to serve their preferred bidders, to the contract management stage, where officials may accept substandard goods from favoured suppliers (OECD, 2005^[4]).

A related phenomenon, referred to as “pantouflage” in French or “revolving doors” in English, involves former public officials moving to the private sector that bid on government contracts. This can create conflicts of interest, as former public officials may use their insider knowledge and influence to benefit their new private sector employers, potentially leading to biased contract awards and undermining fair competition. It may also influence current public officials to provide favourable treatment to certain economic operators in the expectation of future employment.

Example: A member of the evaluation committee has a close relationship (e.g. is siblings) with the owner of one of the companies that submitted a bid pressures the committee to favor the latter.

COLLUSION

Public entities are significant buyers, making them targets of cartels. A cartel exists when economic operators agree to act together instead of competing. Collusion in public procurement (often also referred to as ‘bid-rigging’) refers to illegal agreements between economic operators with the aim of distorting competition in award procedures (European Commission, 2021^[5]). Collusion between economic operators is prohibited by EU law under Article 101 TFEU and by Greek competition law No. 3959/2011 under Articles 1 and 2.

Such agreements or concerted practices are designed to increase the profits of the cartel members at the public’s expense while maintaining the illusion of competition (Hellenic Competition Commission, 2022^[6]). Secret agreements between economic operators may take various forms, all aiming to eliminate competition so that prices are higher, and the government pays more (OECD, 2009^[7]).

Types of collusion: collusion may take various forms, including:

- Cover-bidding: A competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.
- Bid suppression: A competitor agrees not to bid or to withdraw a bid from consideration.
- Market allocation: A competitor agrees to submit bids only in certain geographic areas or only to certain public organizations.
- Bid rotation: Competitors agree on taking turns being the winning bidder.
- Price fixing: Competitors agree in advance on the price of the procurement project.
- Quantity fixing: Competitors agree to reduce or restrict the supply of a product or a service to limit availability and thus increase the price.

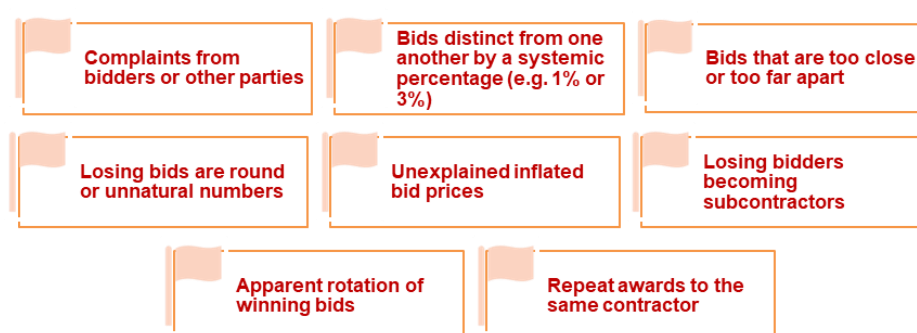
Source: Adapted from (OECD, 2009^[8])

The OECD’s [Guidelines for Fighting Bid Rigging in Public Procurement](#) includes the following checklist of steps that contracting authorities can consider to reduce the risks of bid rigging (OECD, 2009^[8]):

1. **Be informed before designing the tender process:** Collecting information on the products or services available in the market and information on potential is the best way for procurement officials to design the procurement process to achieve the best “value for money”
2. **Design the tender process to maximise the potential participation of genuinely competing bidder:** Competition can be enhanced if more credible bidders are able to respond and have an incentive to compete for the contract. For example, participation can be facilitated if officials reduce the costs of bidding, establish criteria that do not unreasonably limit competition, make it easier for firms from other regions or countries to participate, or make it possible for smaller firms to participate even if they cannot bid for the full contract.
3. **Define requirements clearly:** Specifications should be clear and comprehensive but not discriminatory. They should focus on what is to be achieved rather than how it is to be done (a functional approach).
4. **Design the tender process to reduce communication among bidders:** Transparency requirements are indispensable for a sound procurement procedure to aid in the fight against corruption. They should be complied with in a balanced manner, in order not to facilitate collusion.
5. **Carefully choose selection and award criteria:** The decision on what criteria to use is not only important for the current project, but also to maintain a pool of potential credible bidders. It is therefore important to ensure that criteria are chosen in such a way that credible bidders, including small and medium enterprises, are not deterred unnecessarily.
6. **Raise awareness among staff about the risks of bid rigging in public procurement:** Efforts to fight bid rigging can be supported by collecting historical information on bidding behaviour, by constantly monitoring bidding activities, and by performing analyses on bid data. This helps contracting authorities and competition authorities to identify problematic or high-risk situations.

The World Bank has also produced a list of red flags indicating potential bid rigging, which may also signal corruption (Figure 1).

Figure 1. Red flags for bid rigging



Source: Authors' elaboration based on (World Bank Group, n.d.^[9])

INTEGRITY BREACHES ACROSS THE PROCUREMENT PROCESS

Integrity breaches can manifest themselves at all stages of the public procurement process. The most common are summed up in Table 1 below. In addition, the OECD has developed a [checklist on integrity in public procurement](#) which provides a practical tool for implementing the policy framework for enhancing integrity at each stage of the public procurement cycle, from needs assessment to contract management and payment (OECD, 2009^[10]).

Table 1. Integrity breaches throughout the procurement process

Before the launch of the procurement procedure (pre-tender phase)		After the launch of the procurement procedure (tender phase)	During the execution of the contract (post-tendering phase)
<i>During the identification of the needs</i>	<i>During the preparation of the procurement documents</i>		
Modified or falsified needs to favour specific economic operators or create unnecessary demand	Favouring a specific supplier with tailor-made or excessive specifications/clauses	Limiting publicity of the tender opportunity	Modifying contracts to suit the contractor's needs or adding unrelated work
Commissioning unnecessary, falsified or subjective studies	Setting insufficiently defined selection and award criteria to create opportunity for biased evaluation	Applying criteria in a biased way to benefit specific economic operators	Approving goods/services/works of lower quality than agreed in the contract
	Intentionally using inaccurate data (e.g., data regarding needs) in the procurement documents while simultaneously providing accurate data to the favoured economic operator	Failing to reject tenders from specific economic operators despite non-compliance with specifications and/or mandatory clauses	Making payments for goods/supplies/works which are not delivered
	Artificially narrowing the parameters of the procurement (e.g., procuring works or services on advantageous terms, but imposing requirements for maintenance or additional work that can be provided only by the favoured economic operator)	Abuse of appeals mechanisms (e.g., misuse or overuse of the process of challenging the contracting authority's decision with the intent to delay proceedings or to distort competition)	Undertaking sub-contracting not permitted in the contract
	Misusing procedures or failing to use competitive procedures	Providing inconsistent access to information or leaking information to benefit specific economic operators (e.g., leaking information in advance about upcoming amendments to the technical specifications giving the favoured economic operator the opportunity to adjust the proposal accordingly)	Failing to impose penalties for non-compliance on favoured suppliers
	Splitting a large contract into several smaller ones in order to fall below publication thresholds	Collusion or bid rigging by economic operators	Diversion of procured materials or services intended for a specific project or purpose
	Inflating the estimated value of the contract (e.g., artificially increasing the projected cost of a project or service to benefit certain economic operators by allowing for higher bids)		

Source: Authors' elaboration

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