

Social Accountability in Procurement and Fund Tracking

Cambodia Social Accountability School
March 2008



Learning Objectives

- Discuss the reasons why citizens have the right and responsibility to participate in public decision making processes and hold their governments accountable
- Identify and analyse the many faces of corruption in public procurement
- Identify and discuss why civic engagement is critical in fighting corruption in public procurement
- Identify the social accountability strategies in public procurement

Outline

- Citizens have the right to hold their governments accountable:
 - Good Governance, Public Value
- Accountability Triangle
 - Political accountability
 - Managerial Accountability
 - Social Accountability
- Problem of Corruption in Public Procurement
 - Objectives
 - Modes
 - Stages
 - Red flags (risks/vulnerabilities)
 - Effects

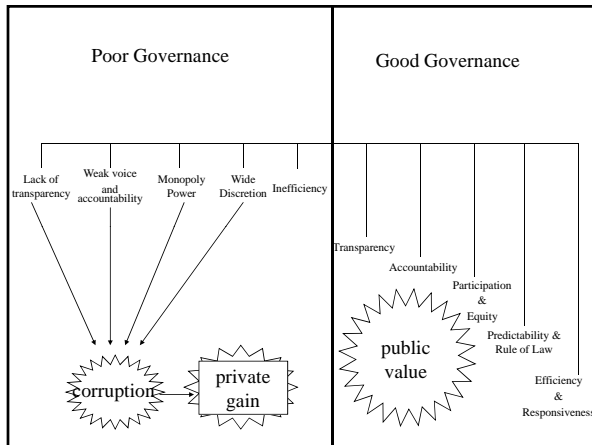
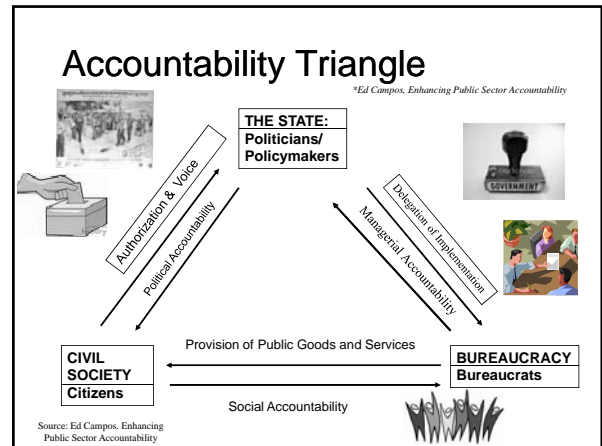
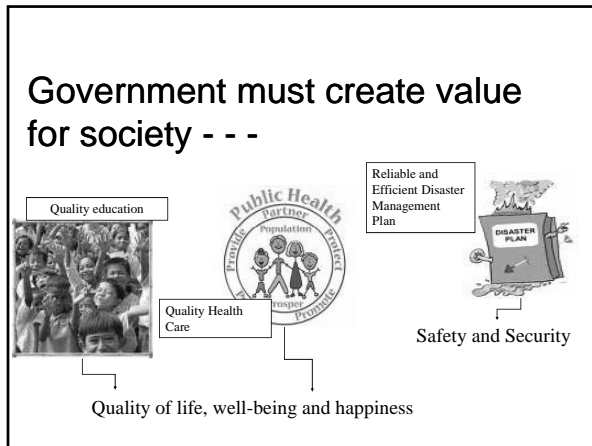
Outline

- Social Accountability in Public Procurement
 - Informed public advocacy
 - Contract implementation monitoring by CSOs

Good Governance is the responsible exercise of power to manage the social and economic resources of a society to create public value .

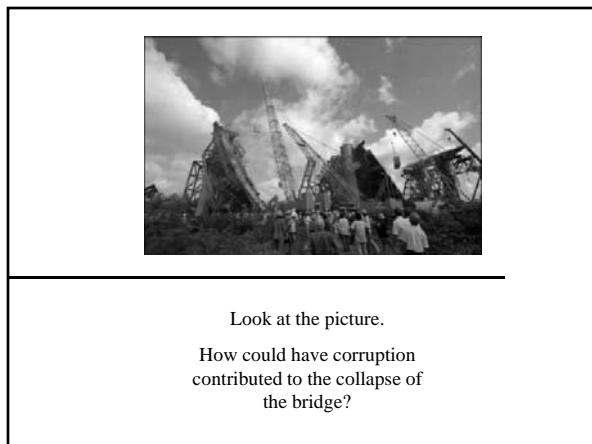
In the past, government has the sole responsibility to govern.

Today, governance is the responsibility of government, business, and civil society.



Corruption is

- Abuse of entrusted power from the people for private gain



Cost of Corruption

- World Bank Institute estimates that 5 % of the world economy or more than 1.5 trillion dollars a year is the total cost of corruption
- World Health Organization estimated 25% of drugs consumed in poor countries are counterfeit or substandard
- Transparency International estimates that approximately \$400 B is lost to corruption in public procurement

What do we know about corruption in public procurement?

Government Procurement

- Acquisition of goods, services and works in a timely manner that results in best value to the government and to the people

Source: Procurement Handbook
Transparency International

Modes of Procurement

- Mode of procurement practiced depend on the following:
 - Nature of the goods and services
 - Size and complexity of the contract
 - Administrative level
 - Market structure

Competitive Bidding/Open Tendering

- All eligible bidders are given timely and adequate notice of the requirements of the procuring agency and an equal opportunity to bid for the required goods, services or public works.

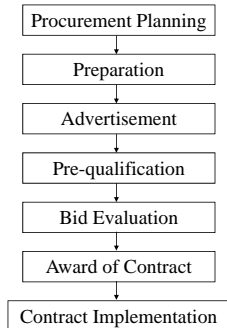
Shopping

- Compare price quotations obtained from at least 3 suppliers for readily available off-the-shelf goods of small values, such as office furnitures and equipments, medicines, books and educational materials

Direct contracting

- Used for contracts requiring the specialized skills of a specific individual or firm and in situations where time is of the essence

Stages of the Procurement Process



Source: Ed Campos, Public Procurement and Corruption: What Have We Learned Thus Far

Objectives of Public Procurement

- Economy/Efficiency
 - Acquiring goods and services of defined specifications on a timely basis and at the lowest evaluated cost based on the principle of value for money
- Foster competition
 - Equality of opportunity for qualified suppliers to compete for public contracts
- Predictability
 - Consistent and fair application of principles and regulations at each stage of the procurement process

Objectives of Public Procurement

- Accountability
 - Oversight to secure the confidence of the contractors in the process and the trust of citizens in the proper use of public funds
- Transparency
 - Equality of access to information for all bidders before, during and after the bidding

Objectives of Public Procurement

- Protect the interest of citizens
 - Process and result of procurement assure quality goods and services reach the citizens in a timely manner
 - Carefully monitor contract execution, give credible information to citizens about the actual providers of goods and services and opening avenues of complaint and recourse mechanisms in case of contractor failure

Procurement Planning

- ☆ Needs Assessment
- ☆ Determining what to request

Problem Area	Possible Distortion	Governance Issue
Poor planning Lack of plans	<ul style="list-style-type: none"> ● Demand is induced not real ● Misrepresent purchase as urgent so as to short cut bidding process 	Lack of competition Lack of transparency
Absence of a clear criteria for project selection	<ul style="list-style-type: none"> ● Misallocation of resources 	



• Are the goods or services to be acquired needed at this time?

- Transparency of process and independence of decision makers and hired consultants
- Public participation through public hearings to check the need, enable accountability and identify necessary or unnecessary elements of the goods or services to be acquired
- Proactive disclosure by government agencies of relevant information through billboards, radio, newspapers or internet



Problem Area	Possible Distortion	Governance Issue
Absence of opportunity for public discussion of government programs and decision-making	<ul style="list-style-type: none"> • Project may be supply driven • Misallocation of resources 	Lack of accountability
Non-transparent procedures which cannot be monitored		Lack of transparency

Procurement Preparation

☆ Clear and fair description of what is to be purchased and defining the criteria for evaluation

☆ Fair criteria for selection and decision-making



Problem Area	Possible Distortion	Governance Issue
Weak technical specifications	<ul style="list-style-type: none"> • Favor preferred bidders 	Lack of accountability
Project Management Office given sole responsibility over tender specifications and design	<ul style="list-style-type: none"> • Contract splitting to allow unqualified bidders to participate • Tailor fitting to favor a preferred bidder 	Lack of competition



• What are the optimal location, capacity and design for the investment?

- Public participation to discuss design process and ventilate any concerns or reservations about project
- Proactive disclosure by government agencies of relevant information

Advertisement

☆ Informing the public about the tender to provide equal opportunity to all to bid



Problem Area	Possible Distortion	Governance Issue
Limited/insufficient advertising	<ul style="list-style-type: none"> Published in papers with limited circulation 	Lack of competition Lack of transparency

Pre-qualification

- ☆ Determine eligibility based on capacity, experience, resources or other criteria defined in the tender



Problem Area	Possible Distortion	Governance Issue
Prospective bidders undergo detailed, tedious and potentially subjective pre-qualification process	<ul style="list-style-type: none"> Requirements set to favor a particular contractor or group of contractors Lengthy process that creates opportunities for bribe solicitation Contract sharing among the bribing companies 	Lack of contestability Lack of transparency

Bid Evaluation

- ☆ Submission, opening and post qualification of bids submitted.
- ☆ Qualified bids are assessed as to which bids meet the selection criteria



Problem Areas	Possible Distortions	Governance Issue
Wide discretion given to decision makers	<ul style="list-style-type: none"> Decision makers are biased Selection criteria allow biases to play a role 	Lack of competition
Tendency to seek judicial intervention	<ul style="list-style-type: none"> Imposition of court restraining orders 	Dysfunctional judiciary
Unusual or length delays in bid evaluation	<ul style="list-style-type: none"> May indicate that someone is attempting to discourage best bidders or give extra time to favored bidders on the basis of leaked information 	Lack of competition



Problem Areas	Possible Distortion	Governance Issues
Abuse of clarification period	<ul style="list-style-type: none"> Clarifications are not shared with all the bidders Advantage to a particular bidder is granted through the exchange of confidential information during the clarification period 	Lack of transparency

Award of Contract

☆ Winning bid selected based on (1) being substantially responsive to the bidding documents and (2) offered the lowest evaluated cost



Problem Areas	Possible Distortion	Governance Issues
Unclear rules	<ul style="list-style-type: none"> • Grounds for selection of the winners are not made public • Delay in the signing of the contract 	Lack of transparency Lack of accountability
Rejection of all bids	<ul style="list-style-type: none"> • May be an indication that improper negotiations are being done on the side 	Lack of transparency



- What is the best bid?
- Pro-active disclosure by government agencies of relevant information
- Public participation through civil society groups as third party observer in the bid evaluation process to ensure integrity of the process

Contract implementation

☆ Execution of contract according to set specifications as contained in the bid



Problem Areas	Possible Distortions	Governance Issues
Poor monitoring and enforcement	<ul style="list-style-type: none"> • Substitution of materials of poor quality and defective specifications • Failing to enforce quality standards, quantities or other performance standards of the contract 	Lack of accountability

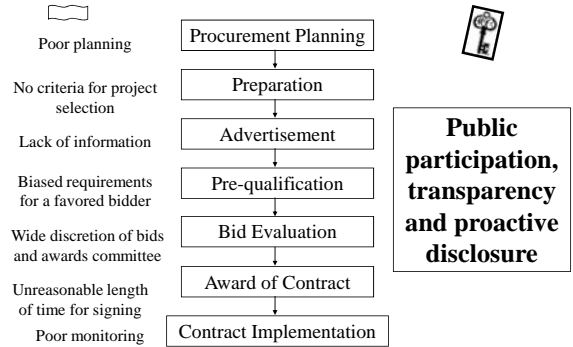


Problem Area	Possible Distortion	Governance Issues
Contract renegotiation is allowed - discretion given to site engineers	Change orders introduce substantial changes to the contract, often done in small increments	Lack of accountability



- Is the contract being implemented according to agreed specifications and quality?
- Public participation through civil society monitoring of contract implementation
- Clear and pre-established limits for contract change orders

Summary



Risk Factors

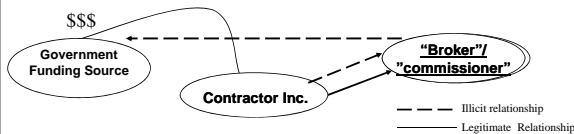
- **Size** - the bigger the project, the more money involved the more reason to demand a bribe
- **Technology** - the more high technology involved, or seemingly involved the more attractive the project will be to its project beneficiaries thus reducing the risk of being criticized for paying too much.
- **Specificity** - the more specific the product or contract - the lesser the opportunities for manipulating procurement process

C-schemes in Public Procurement

- Kickbacks
- Front companies
- Bid rigging or collusive agreements
- Use of “loan brokers” or “commissioners”
- Conflicts of interest

Kickback Scheme

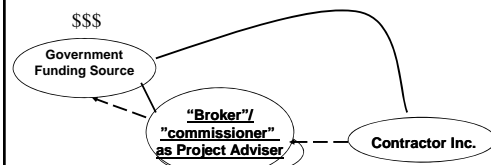
(Many Faces of Corruption, Ed Campos)



- Kickback is the centerpiece of corruption schemes
- Done with other schemes, such as bid rigging
- Cash payments, wire transfers disguised to leave no trail
- Appearance of legitimate relationship between actors
- Conspiracy of silence exists

Kickback Scheme

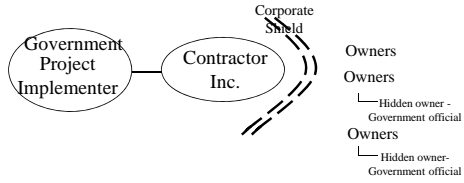
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- Middlemen can appear in more than one location and there may be multiple middlemen operating
- Lack of audit capability running to subcontractors makes it difficult to decipher legitimate from illegitimate relationships

Front Company

(Many Faces of Corruption, Ed Campos)

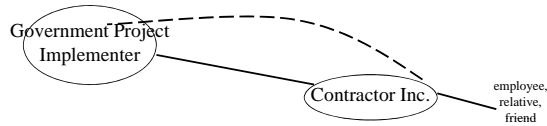


- Company appears with no history
- Company providing diverse connected services
- Few records exist on ownership
- Extreme interest shown by PIU official in company
- Subcontractor who is hired as local agent

Bid Rigging & Collusion

- Drafting tailored specifications to exclude unfavored bidders
- Tipping off the favored bidder that certain components in bid will not actually be called for
- Telling bidders to bid low and recover profit later through contract modification
- Bidders agree who will win contract

Conflict of Interest

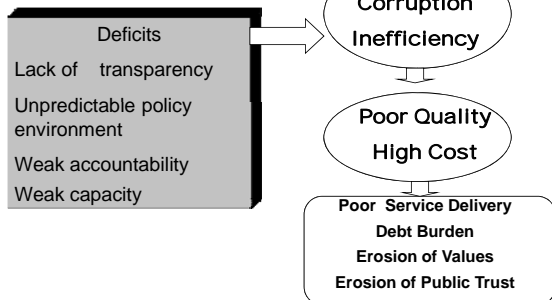


- Having a personal stake in the outcome of a contract is *per se* a conflict of interest
- Officials of agencies, friends, family members involved with contract
- If there appears to be conflict of interest, make disclosure early before questions arise

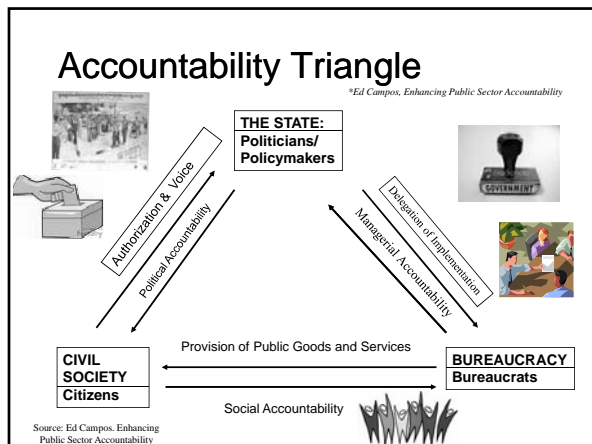
Effect of Corruption in Public Procurement to Project

- Service ↓
- Quality ↓
- Pricing ↑
- Impact ↓

Implications of Bad Governance



Social Accountability Strategies



Informed Advocacy for Policy Reform

CSOs analyze what is wrong with current procurement processes; how such deficiencies can be addressed by a sound procurement policy; learn from best practice; draw up proposals; lobby and advocate for the passage of such law.

Contract Implementation Monitoring by CSOs

CSOs are increasingly recognized as vital players in contributing to the transparency of public procurement processes as independent monitors of the process.

Monitoring bodies should be composed of the beneficiaries of the projects being investigated with access to technical or expert advice

- ### Key Steps
- Formulate a work plan
 - Gather information on the project to be monitored:
 - technical profile of the project
 - approved financials and necessary documentation
 - timeline commitments of contractor
 - Review supporting documents
 - Compare actual status against baseline parameters: workmanship, quality, cost and time

- ### Key Steps
- Analyze gaps (all possible reasons for the gaps)
 - Seek expert's advice if necessary
 - Present gaps identified and observed during the monitoring process
 - Present report in a conference/meeting where stakeholders are in attendance
 - Present report to media

- ### Other strategies:
- Integrity Pact
 - Budget Watch / Participatory Budgeting

THANK YOU !!!