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**Project "Cutting edge improvements in the public  
procurement system in Moldova through  
inclusiveness, creativity and  
law-abiding practices"**



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# **Public Procurement – good practices, standards and records at international level**

# Internationalization of public procurement

Procurement is no longer an area strictly limited by the administrative power and experience of national states. Standards of integrity and good governance are essential to maintain confidence in governments and countries. An efficient procurement management system produces direct effects through resource savings, procurement makes up 1/3 of all public spending, which means that by strengthening integrity we create additional resources for economic development. The modeling of legislation and practices according to international standards, thus creating mechanisms for solving complaints and forms to inform and communicate suspicions strengthens the ability to react to any integrity and procurement related situations. The role of active civil society groups, the private sector. Paradoxically, the more you buy through public tenders (goods and services) the higher are the risks of corruption, creating conditions that can affect the governance, the economy, the freedom of individuals and communities. Nobody is safe.

# Admitted and inadmissible risks

The public procurement procedure is complicated. Corruption can intervene at any stage: needs assessment (proposal determination), preparatory stage (draft decision and authorization documents), selection of the contractor and authorization stage, as well as implementation stage followed by the final stage of results measurement and audit. (TI 2006).

Investments in non-existent needs, rigged process (fake) which rather resembles a sort of baptism for those who offered higher bribes, fake prices, poor quality of the goods or services offered, etc. are forms of infiltration of corruption into the public system.

As a rule, the number of those involved in a procurement process is great (executive officials, politicians, competitors, subcontractors, agents, consultants, business partners, managers), which fact often creates a confusion over the real culprit.

# International Response Measures

Aware of the growing threats to the public sector, international actors (IFC, think tanks, international organizations) have been trying to create, promote and apply standards and principles of good practice in procurement. We'll mention – UN, WB, WTO, TI, EU which have developed codes and regulations to standardize procedures capable of ensuring integrity, transparency, accountability, professionalism, equity, efficiency. Good practices include the exclusion from the process of competitors involved in corruption scandals, the use of integrity pacts and qualification procedures for assessing technical and financial expertise, the use of certain types of law to purchase services and goods, assessment criteria and tools within national procurement systems. Since 1995, many countries have used the practice of the UN Commission for International Trade (UNCITRAL) with regard to laws in national procurement systems. Also the UN was the one wherefrom standards in determining anti-corruption rules have been taken (Convention Against Corruption). In 2006, OECD has developed an Assessment Tool for Public Procurement Systems to assess the risks of national procurement systems, formulating the Principles of Integrity – a living even today reference for procurement procedures in the EU.

# Why do we need international procurement standards?

- To uniformize practices, norms, rules accepted in a global market;
- To develop a multi-stakeholder environment which reflects a platform of dual consensus – technical experts and national jurisdictions
- To provide more diversity in comparing types of services and goods delivered in the public sector, reducing market inefficiencies, market failures and facilitating regulatory and authorities compliance:
- To educate suppliers to fully comply with existing regulations ensuring confidence in the quality of the products, systems, processes, services and staff involved.
- In order to ensure an adequate level of consumer protection applied to a mature or developing economy.



# Procurement standards are more than just a regulatory instrument...



# How international standards are used in creating good governance and domestic regulations?

## Legislative actions

- Laws (Parliament's actions)
- Technical regulations (which apply the legal norms)
- Other actions (notes, instructions, regulations, etc).

## Non-legislative actions

- Setting priorities
- Creating incentive systems
- Public education campaigns
- Public procurement
- Ethical Codes

The Government of Canada provides grants to industrial entities to adopt systems and processes to improve their efficient energy performance by using this criterion to allocate grants to companies that apply ISO 50001 Energy Management Systems Standard. The Government of Japan applies the “Basic Policy to Promote Eco-Friendly Goods and Services Procurement” establishing 267 categories as being “eco-friendly goods”, called JIS standards (i.e. IEC and ISO) tested and standards for other types of public procurement in Japan. International standards developed with IEC and ISO are voluntary.

# Modern trends in public procurement process

1. Public procurement is no longer an area controlled by bureaucrats (clerical job), but a strategic area for achieving the goals of good governance. 20 years ago procurement was not considered a separate profession, being allocated as an additional task to state bureaucracy.
2. Procurement no longer fits today in legal regulations only, but in the structure of digitized government functions that demand professionalization and new horizons in modern technologies. They demand innovation and digitization.
3. Procurement does not belong exclusively to national governments, that is why we need global performance indicators and unitary principles,
4. Modern procurement is increasingly based on ethical codes, social values, norms, migrating towards the creation of a university discipline. Several universities have begun to offer specialization courses in “procurement”, master degree programs, certificates and university degrees in EU and USA.
5. There are increasingly more international forums dedicated to this area – Global Revolution (2002), International Research and Study of Public Procurement (2003), International Public Procurement Conference (2004), World Bank Group on knowledge and best practices sharing.
6. Chartered Institute of Purchasing and Supply (CIPS) 2011, WB Benchmarking Public Procurement research World bank 2015.

# European norms and rules

Procurement has existed since the formation of the European communities, but the response measures have evolved gradually. Today, EU applies common rules on public procurement. The most important regulations – Directive 2004/18/EC of March 31, 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, Directive 2004/17/EC of March 31, 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2009/81/EC of July 13, 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts. The goal – to eliminate discriminatory practices that created barriers in EU and, as a result, affected the functioning of the internal market. Another goal – liberalization of procurement in the EU by preventing contracting authorities to favor someone. The result – a 34% decrease in prices paid by public authorities for goods and services. A 5% reduction in costs meant savings of 70 billion Euros (EC, 2004).

# Sources of positive practices EU, IFC, OECD

**World Bank Benchmarking Public Procurement** - measures the functional aspects of the public procurement system: duration of the bidding cycle, assessment of the needs, preparation of the application before the execution of the procurement contract, if the information on the procurement legislation, procurement plans, tender documents and notification letters are available. The indicators assess the status of the procurement system of the e-procurement system, the services that can be done on-line, the existence of e-mail or online platforms. Is it possible to sign online contracts or pay online services?

UE, Freyburg (2015) **proposes 3 models to promote good governance** – linkage, leverage and external governance. Linkage – refers to the structural conditions of a sustainable democracy and how endogenous democratization can support socio-economic development and openness. Leverage – the way in which elites can be influenced and what kind of incentives can change their calculations to strengthen the democratic order if there is no EU perspective, harder. The third model – external governance – based on principles of good governance in the context of making policy and norms, a legally-democratic governance in the public sector (transparency, accountability and participation), adoption of laws, but with little effect on application.

**Internationally recognized positive  
practices in public procurement**



# The 2015 Recommendation on Public Procurement: 12 integrated principles



# Positive practices in EU

French legislation practices the principle of proportionality in the dissemination of information on tenders and severe rules on the liability of officials for smaller contracts, exempted from tenders. Contracts of less than 4,000 EUR are not published, and higher than 90,000 EUR must be published in official newspapers. In other cases, the law requires ex-ante control for the authorization of public works contracts of at least 20,000 EUR or public services of 10,000 EUR. Among the successful measures of Germany – creation of codes of good conduct that regulate the conduct of the authorities, rotation of personnel, clear rules, increasing e-tendering, blacklists and records of corrupters (EC, 2014). A recent trend of the pre-bidding stage is to hold meetings with contracting authorities and to discuss measures to improve the public procurement process, exchange of experience (UK, Belgium, Germany). E-procurement and e-invoicing – is applied in Portugal, France, Slovakia, Estonia. A positive practice in Portugal – E-Procurement BASE that includes all the announced procurement, tenders, types of participation documents, e-invoicing. Since 2003, the system has demonstrated its efficiency through major savings for bidders and contracting authorities, but also keeping the public informed about how public money are used.

# Public procurement creates an excellent basis for innovation and partnerships between governments

Example #1. In EU, public procurement at Community standards has produced ideas for public-private partnerships that have brought the military-industrial industries closer together. An example – partnership of 9 countries (EU, USA, UK and Canada) to finance the development of F-35 fighter jet through Lockheed Martin + Northrop Grumman, Pratt @ Whitney, BAE Systems partnership. The agreement meant savings of 728 million USD and almost 8% lower costs for producing F-35 (Marilyn Hewson, Lockheed Martin, January 2017).

Example #2. Transformation of the public procurement system into an E-Governance Procurement (e-GP) platform as a catch-all term that applies several aspects of electronically assisted procurement. Internet access essentially changes the way global procurement is organized in order to create complex markets where actors offer a wide variety of e-procurement services and business to business. Benefits of e-GP. These are related to: free competition, transparency, efficiency/performance, timely decisions.

# Reducing corruption and bureaucratic procedures

Measures initiated by EU are related to encouragement of one-stop-shops for procurement, data sharing and standardization of procedures, data set up long before the adoption of the new rules, training and capacity building for SMEs. In 2013, CE reported on the simplification of EU laws on data protection, company registration, product safety, procurement, recognition of employee qualification.

Since January 15, 2014, EU issued new directives to simplify participation of SMEs in tendering procedures for procurement:

- Ensuring greater efficiency in the procurement process,
  - Simplification and flexibility of general rules
- Reducing administrative burdens for PP and contractors;
  - Facilitating the participation of SMEs:
- Stimulating competition in the common market and wider use of electronic procurement;
  - Promoting innovation and more rational use of resources.

# Simplification of the procurement process (Spain)

By Act 14.2013 on the Support of the Internationalization of Entrepreneurs, which amended the Royal Decree (3.2011 on Public Sector Contracts) Spain has introduced measures to facilitate the participation of SMEs. Thus, SMEs can submit a declaration on own responsibility instead of submitting a set of documents certifying the legal, social and fiscal situation of SMEs interested in participation in procurement procedures.

The declaration will be sufficient for contracts under 1 million EUR and services below 90,000 EUR. However, the winning bidder will be required to provide relevant data to the contracting authorities and these will not be signed until all the documents are submitted in the appropriate order. These measures follow the priority to mobilize small businesses and fall under the EU rules to reduce participation barriers in the procurement process (administrative barriers, bureaucracy reduction, exclusion on eligibility criteria, such as registration using a single document issued for the whole European area (ESPD European Single Procurement Document))

# System integrity – essential condition

Standards in the PP do not apply only to officials responsible of procurement but also to the private sector. Thus, Integrity Pacts developed by TI in 1990 in fact, forced government officials and private companies to accept signing ethical codes. The codes aim to self-oblige entities to refrain from corruption, creating a kind of “virtuous circle” based on trust and supervisory mechanisms, governments will reduce high costs and corruption-distorting effects in the PP, and citizens will be able to monitor more easily the PP process and actors’ actions. The Integrity Pacts are adaptable to local context, being attractive to societies in transition. As flexible instruments, they can be applied to concessions and extraction rights (exploration of oil and gas, production and transport, mines, fishing, other commodities), and which can be applied to PPPs, telecommunications, water supply and waste collection services. Positive practice – Austrian Federal Procurement Agency (BBG), internal control system (regular to 4 eyes, division of functions, rotation of personnel) – elements of guaranteeing fair competition. BBD employees declare on their own responsibility that they will refrain from any action that may give preference or preferential treatment to competitors. BBD – rules for banning gifts, for announcing conflicts of interest. BBD – code of conduct containing corruption prevention measures signed by all employees.

# Positive practices in procurement

## Transparency in the procurement process–

Most G20 publish **online information on procurement regulations and information on competitors**. The Australian system (AusTender) – centralized publication of notices, procurement plans, list of authorized contracts (from 10,000 USD). The aggregate data from AusTender is accessible at the Ministry of Finance (statistics on procurement, contracts on traded values, SMEs, supervisory mechanisms). The Compra system in Argentina – Procurement System website of the National Agency of Administration. Provides the catalog of goods and services that are purchased through open tenders according to specific criteria and codes. Helps the suppliers and the public know what the government needs to buy, how the government plans its purchases and the procurement authority. At the same time, the website provides information about the major providers authorized to purchase. Some G20 countries increase transparency through the practice of supporting **debriefings for bidders**, which fact improves their confidence in the honestly organized process. In particular, the UK and Canada carry out such practices. All G20 countries publish decisions on contacts authorization. UK regulations require the departments to inform candidates about the price thresholds. Phone discussions or videoconferences are held at least 15 days prior to the date of examination of the contracts under the authority of senior executives. Only after they will start to examine the bids.

# E-PP – good practices in the USA

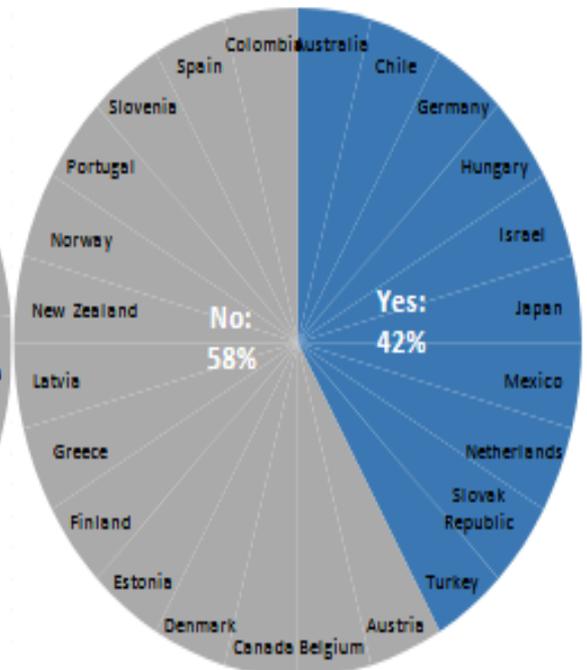
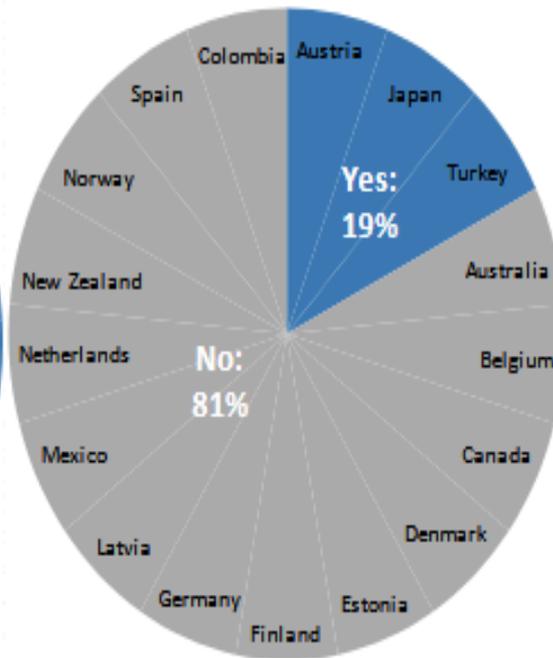
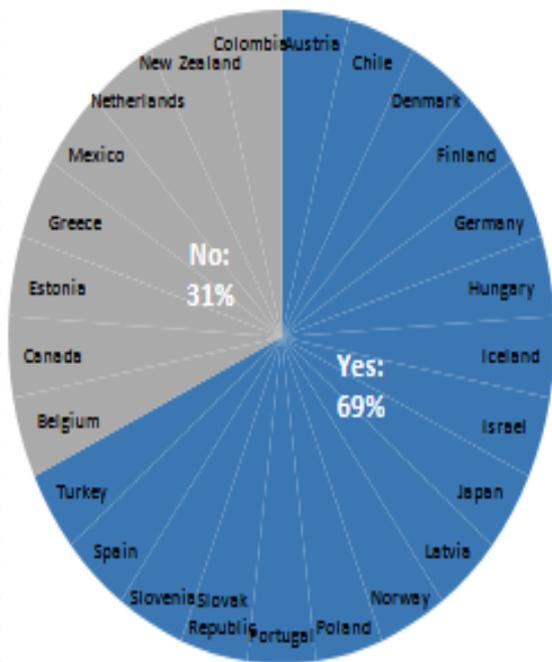
The US has the practice of maintaining close relationships with contractors that show price flexibility and offer a prize through integrity, performance. The federal and state departments require data on previous contractors' experience by identifying and describing relevant contracts with 6-dimensional scores (quality, cost, planning, use of SMEs) and a characterization at each score (Past Performance Information Retrieve System –PPIRS). Agencies must report information on any contracts over 150,000 USD. In March 2013, the USA set a multi-level model with annual performance targets to bring the environment interested in public procurement in line with the Federal Procurement System (Federal procurement data system – next generation).

*Source: United States Office of Federal Procurement Policy (OFPP), Improving the Collection and Use of Information about Contractor Performance and Integrity (March 6, 2013). Available at: <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/improving-the-collection-and-use-of-information-about-contractor-performance-and-integrity.pdf>*

# Measuring results in public procurement

% of countries monitoring the procurement process to amplify the following components:

**ecology ----- SMEs ----- innovation and new technologies**



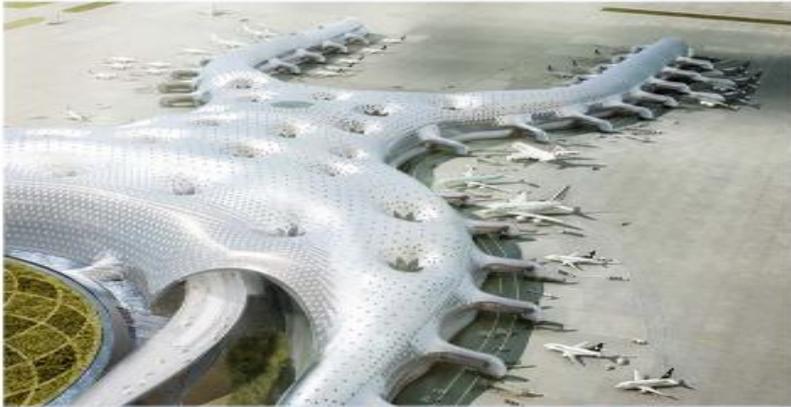
MAPS (Methodology for Assessing Procurement Systems) is used by 90 states and international financial institutions. Makes the link between the International Financial Instruments and the Sustainable Development Goals.

# Positive practices in procurement on international level

Argentina	Public hearings –Poder Ciudadano
Germany	Schönefeld International Airport, Berlin, a project worth €2.4 billion
India	The Central Vigilance Commission (CVC) issued the Directive 008/CRD/013, which refers to the implementation of integrity pacts as ‘standard operating procedure’ in procurement contracts of any major government department and they are essential part of the Draft National Anti-Corruption Strategy (see example below).
Indonesia	the pact has been adapted and applied to local government contracts in up to 20 districts
Italy	the pact has been introduced mainly at municipal level: Milan City Council
Korea	The Korean pact model emphasises the protection of whistleblowers and the creation of an ombudsman system to carry out independent external monitoring
Mexico	Transparencia Mexicana has implemented pacts in over 100 contracts, worth approximately USD \$30 billion in total
United Kingdom	Integrity pacts have also been adapted and implemented with particular focus on the defence sector

# Positive practices = Sustainability and Infrastructure

## → Requirements-based



**A new airport for  
Mexico City**

- **Sustainable financial instruments...**
- Using “green bonds” (USD 2 billion) to finance construction that has to follow specific environmental performance criteria



## → Competition-based



**A new Highway A6 in  
Almere, NL**

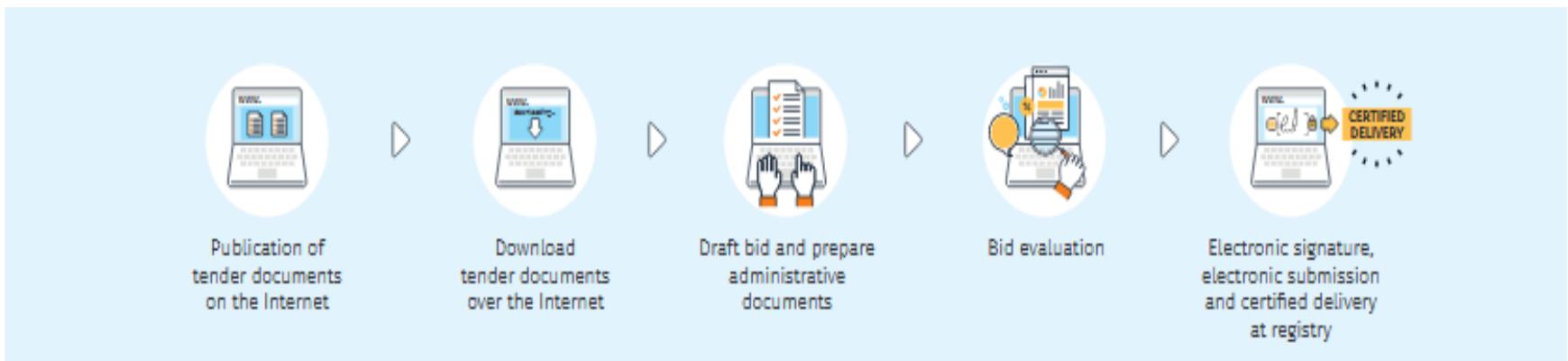
- **...or procurement strategies for sustainability?**
- Using technical specifications, MEAT, CO<sub>2</sub> performance ladder, Lifecycle Cost Analysis tool with Environmental Cost Indicator (ECI) to choose the greenest offer



# Traditional procurement method



# Modern procurement method



This will require the development of ICT and services so that SMEs are not excluded from procurement, protection of the online environment, development of standards and integrity processes, investment in education and good governance.

# Inclusivity and Competition

PP – a very important area for SMEs, which, however is hard to qualify usually because of limited expertise on procedures, complaints, fears of late payments and the feeling that they are not prepared for such exercises. In this way, although 58% of the economic transactions belong to SMEs, their participation in Public Procurement is only 42% (18% only belonging to small and micro enterprises). There is also a big gap in the participation of SMEs in international tenders. ). In EU there are 20 million SMEs, 99% of all existing businesses, a factor of innovation, growth, employment and social integration. In 2012, CE has launched public consultations to identify 10 most bureaucratic documents for SMEs, saying it will do everything to change them. These are – REACH (registration, evaluation, authorization and restriction of chemicals), VAT – VAT laws , safety production, recognition of professional qualifications, data protection.

# Binding and non-binding instruments

# Binding international instruments

**UN Convention Against Corruption (UNCAC)** – provisions on public procurement and financial management. Article 9 requires the signatory States to ensure transparency and accountability, to establish internal control mechanisms (art.9.2.d), i.e. Internal control system on legal resources and remedies in the event of irregularities.

**Agreement on Government Procurement (GPA)** negotiated in the context of WTO (1994), and renegotiated in 2012. Contains general and detailed provisions on public procurement, i.e. complaint system. Involves minimum periods between the tender and the authorization of the contracts. All EU Member States are signatories of the agreement, it applies to all contracts over a certain amount.

EU has adopted **3 concrete directives on public procurement**, i.e. THESE directives that regulate the public procurement process, that include remedies, procedures whereby any person can challenge decisions related to procurement (Directive 2004/17/EC, Directive 2004/18/EC, Directive 2009/81/EC.

Procurement is regulated by the CoE's Criminal and Civil Conventions on Corruption (1999) – measures to punish corruption, validity of contracts in cases of corruption.

## Intermestic dimension of international standards

In UE, Directive 2004/18/EC stipulates 3 principles: equal treatment, non-discrimination and transparency. The directives are backed up by national legislation that extend the norms of *acquis communautaire* through principles of economy, efficiency and effectiveness. They ensure that the contracting authority for public procurement can guarantee the economic and efficient use of public resources, achieving the goals determined by regulations on using goods and budgetary resources. The contracting authorities must create equal conditions for participation in the tendering/bidding process for all economic operators. Efficiency – proportion of the investment made and the impact achieved, Effectiveness – achieving desired goals and outcomes. Diligence – the conditions and criteria set for the tender must be proportionate to the subject of the tender, the criteria can not be unreasonably restrictive or discriminatory. Institutional format – educated officials, tools, institutions, procedures that make the tender a tool for achieving goals.

# Non-binding international instruments

**OECD.** Organization that developed the most comprehensive principles about integrity in the procurement system. Most relevant – OECD 10 Principles of Integrity in Public Procurement (2007). OECD – 4 pillars of integrity: transparency, good management, prevention of misconduct, control and supervision. OECD has developed general principles within detailed recommendations on various aspects of the procurement process.

**Transparency International.** Minimum standards in public contracts – these cover the entire procurement cycle (from the needs assessed up to the contract implementation). Standards apply to all types of contracts, i.e. privatization, concessions and licensing. Policy Paper (TI) on systems of integrity of European procurement (25 countries). TI recommends the adoption of “alarms” (red flags) setting criteria and methods for making comparative studies (2012). States should encourage civil society participation in monitoring tenders and implementation of public procurement contracts.

**Open Contracting Global Principles (OCGP)** – principles established for public contracts – full access to and participation in each stage of procurement. OCGP is promoted by the World Bank Institute.

INTOSAI (International Organization of Supreme Audit Institutions) – 1992 guidelines for the development of internal control standards in the public sector.

# Internationally Accepted Principles for Integrity of Public Procurement

Most international instruments contain recommendations on integrity principles to ensure the process and basic conditions for ensuring control and monitoring of authorization and implementation of contracts. These are:

- Transparency** – avoiding and unmasking corruption in public procurement, i.e. at the implementation phase (OECD, 2009, TI-2006, uncac). Transparency allows participants, controlling bodies and other actors to detect suspicious contracts and challenge the process at the final stage. Details of the contracts – are made public (TI,2012).
- Accountability** – the obligation of governments and suppliers to enforce regulations, acceptance of the consequences in case of their violation. It is part of the pillars of OECD principles and article 9 UNCAC.
- Non-discrimination** – equal treatment between suppliers as a consensual principle to ensure fair competition between competitors and prevention of discrimination of foreign companies, SMEs ensuring access to contracts and concessions, elimination of discretionary power and corruption (EU2006).
- Economy and efficiency** – these principles are crucial to the application of integrity in the process, they may require the regulator to choose the bids based on the lowest price or the most economical offer that can be interpreted as signs of integrity violation (Directive EU 2004/18/EC).
- Efficiency** – refers to procurement systems that are responsible, efficient and operate with as little bureaucracy as possible. Complicated procedures can create corruption incentives and undermine legal ways of resolving disputes (OECD2007).

# Safeguards against corruption in procurement

## **Communication with potential suppliers and contractors –**

All mail communication with potential contractors/suppliers should be honest without giving the impression of advantages or preferences. Firstly, communication must be documented and accessible for later reference. In order to prevent any abuse in selected procedures and to promote confidence in the selection process, all parties must respect confidentiality, especially if negotiations are taking place. Proactive measures to support and monitor the decisions prepared by employees.

## **Pre-selection and pre-qualification of contractors –**

The time pressure and the requirement to be as efficient and quick as possible should not lead to corrupting procedures established by law, allowing further verification of how the applicants were associated with pre-qualification procedures. There is a need to provide credible and transparent systems of verification of the fact that suppliers or contractors can be excluded from the procurement process if the records they provide do not prove true or if corruption has been detected by the officials involved.

## **Assessment of proposals and criteria –**

The assessment criteria must be honest, known and accessible. Assessment procedure – public, and assessment – transparent. The integrity of the assessment must be ensured at each stage. Deviation from legal proceedings must contain high probity standards, documented and recorded.