CORRUPTION RISKS IN PUBLIC PROCUREMENT

An overview over issues and tools

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Public Integrity Network Meeting on Preventing Corruption in
Public Procurement

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Outline

1. Why we should care about risks and risk management in public procurement
2. The procurement cycle and risks along the different stages
3. OECD instruments on corruption risk management in public procurement – broad frameworks and targeted tools
   - OECD work with countries to implement these: case study Kazakhstan

WHY WE SHOULD CARE ABOUT CORRUPTION RISKS IN PUBLIC PROCUREMENT SHOULD

Public procurement: the government activity with the highest perception of bribery risk
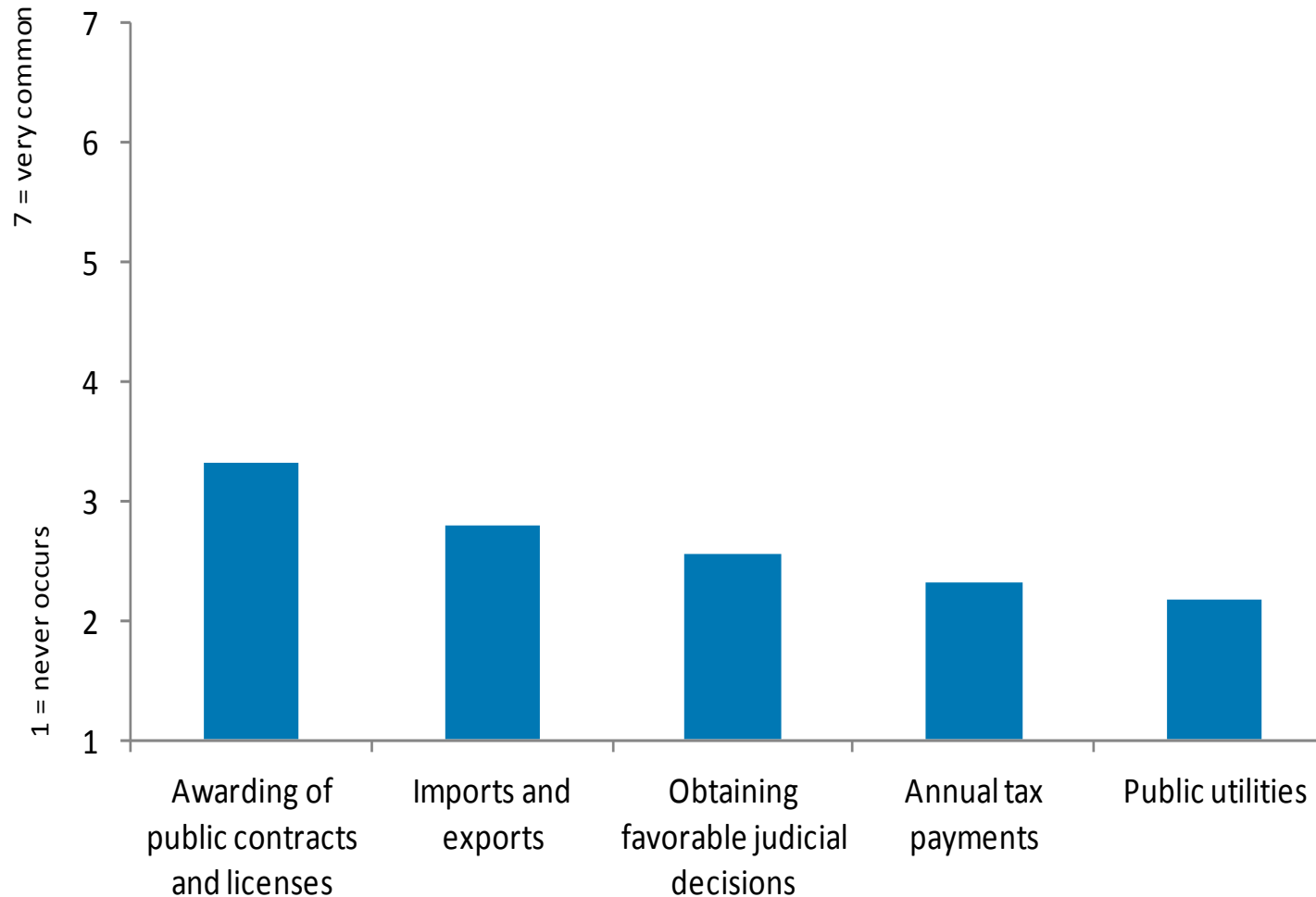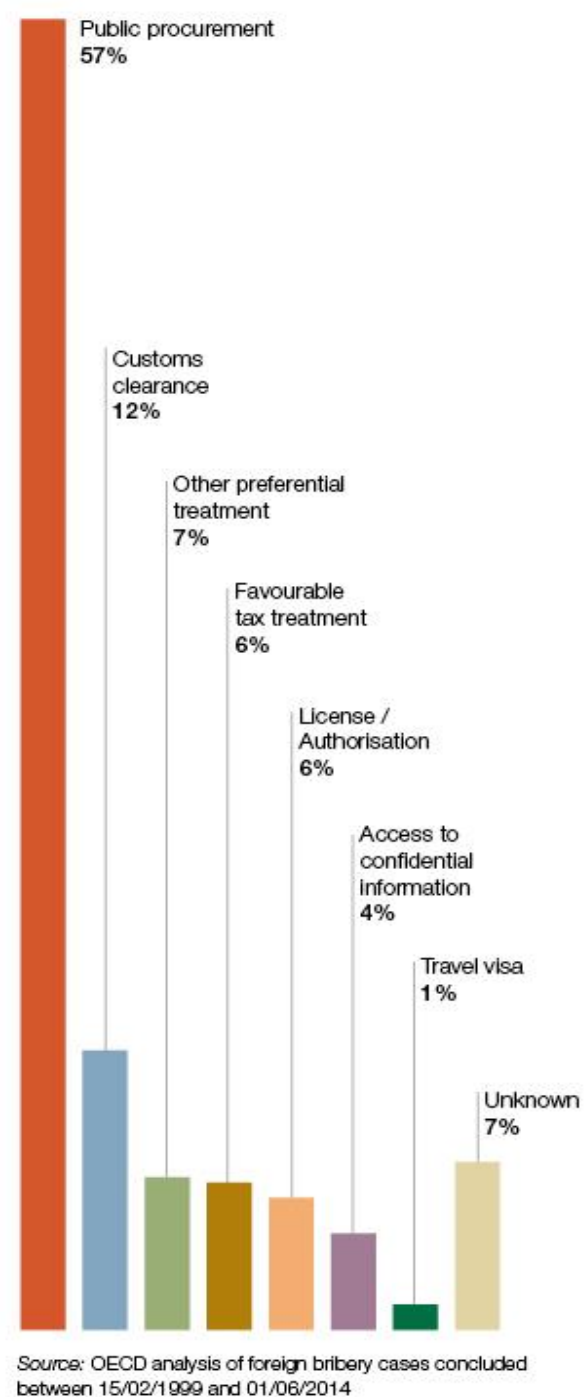
Purpose of foreign bribery

2/3 of foreign bribery cases in the last 15 years relate to public procurement

Data available in the

OECD Foreign Bribery Report, Dec. 2014

Public procurement
57%

Customs clearance
12%

Other preferential treatment
7%

Favourable tax treatment
6%

License / Authorisation
6%

Access to confidential information
4%

Travel visa
1%

Unknown
7%

Source: OECD analysis of foreign bribery cases concluded between 15/02/1999 and 01/06/2014
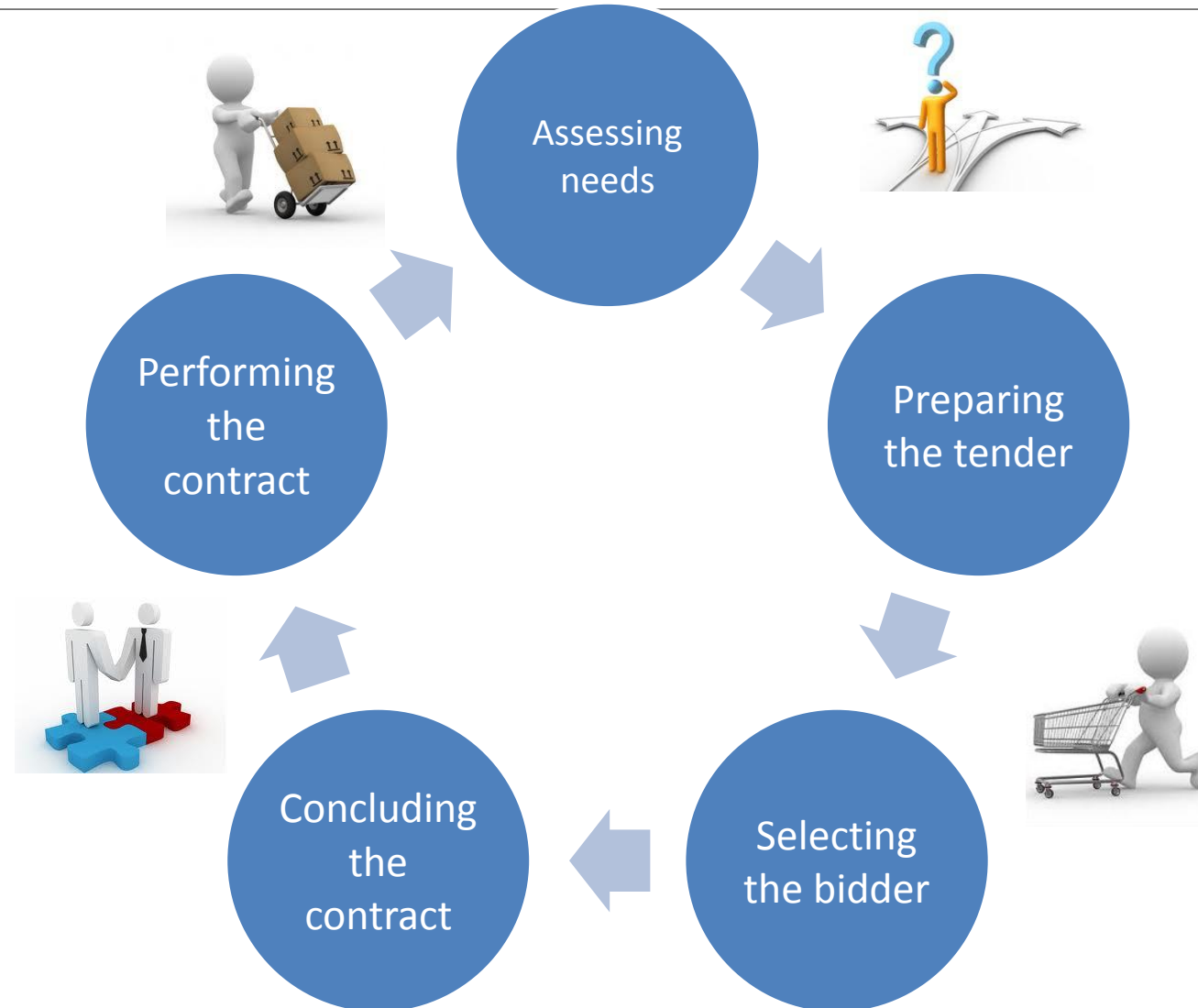
RISKS ALONG THE PROCUREMENT CYCLE

Public procurement cycle

Phases of procurement and risks factors

Pre-tender stage:
- Needs assessment and market analysis
- Planning and budgeting
- Development of specifications/requirements
- Choice of procedure

Tender stage:
- Request for bid/offer
- Communication between contracting authority and private sector
- Preparation and submission of the bids
- Public bid opening
- Evaluation and award notice

Post - tender stage:
- Contract management
- Execution of the contract (orders/payments)
- Monitoring and audit
- Archiving of documents

Holistic approach

- Integrity risks exist throughout the public procurement process: a holistic approach for risk mitigation and corruption prevention is needed.

- Focusing integrity measures solely on one step of the process may increase risks in other stages.

- Similarly, addressing only one type of risks may give leeway to integrity violations through other mechanisms.

  - E.g. administrative compliance measures in the bidding phase do not root out the risk for political interference in the identification of needs.

Red flags
as fraud/corruption indicator, a warning signal
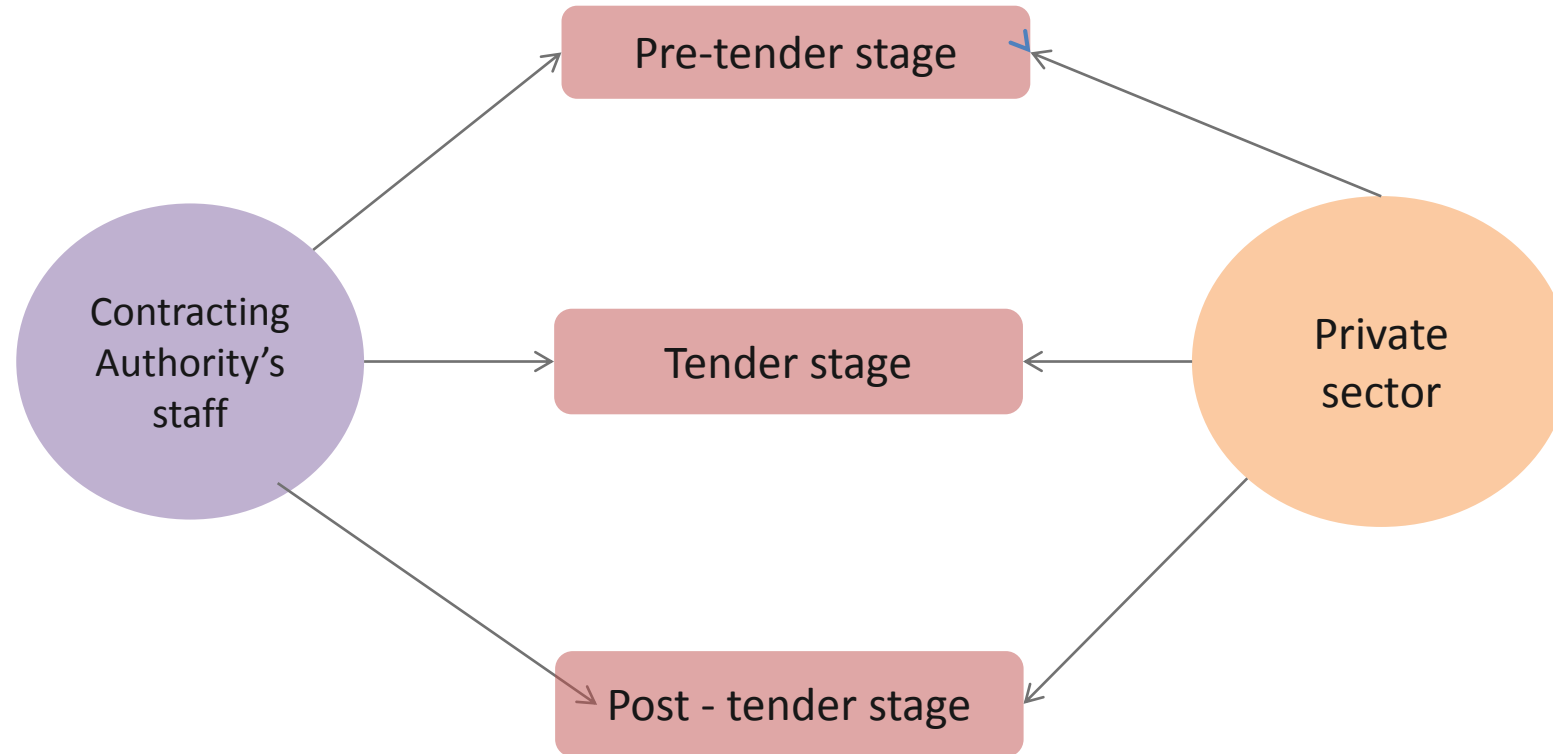
- Red flags represent patterns, practices and specific forms of activity that could signal irregularities or fraud/corruption.
- The existence of a red flag does not mean that fraud/corruption exists but that a certain area of activity needs extra attention to exclude or confirm potential fraud/corruption.

It takes two to tango: Two sides in fraud/corruption are equally responsible
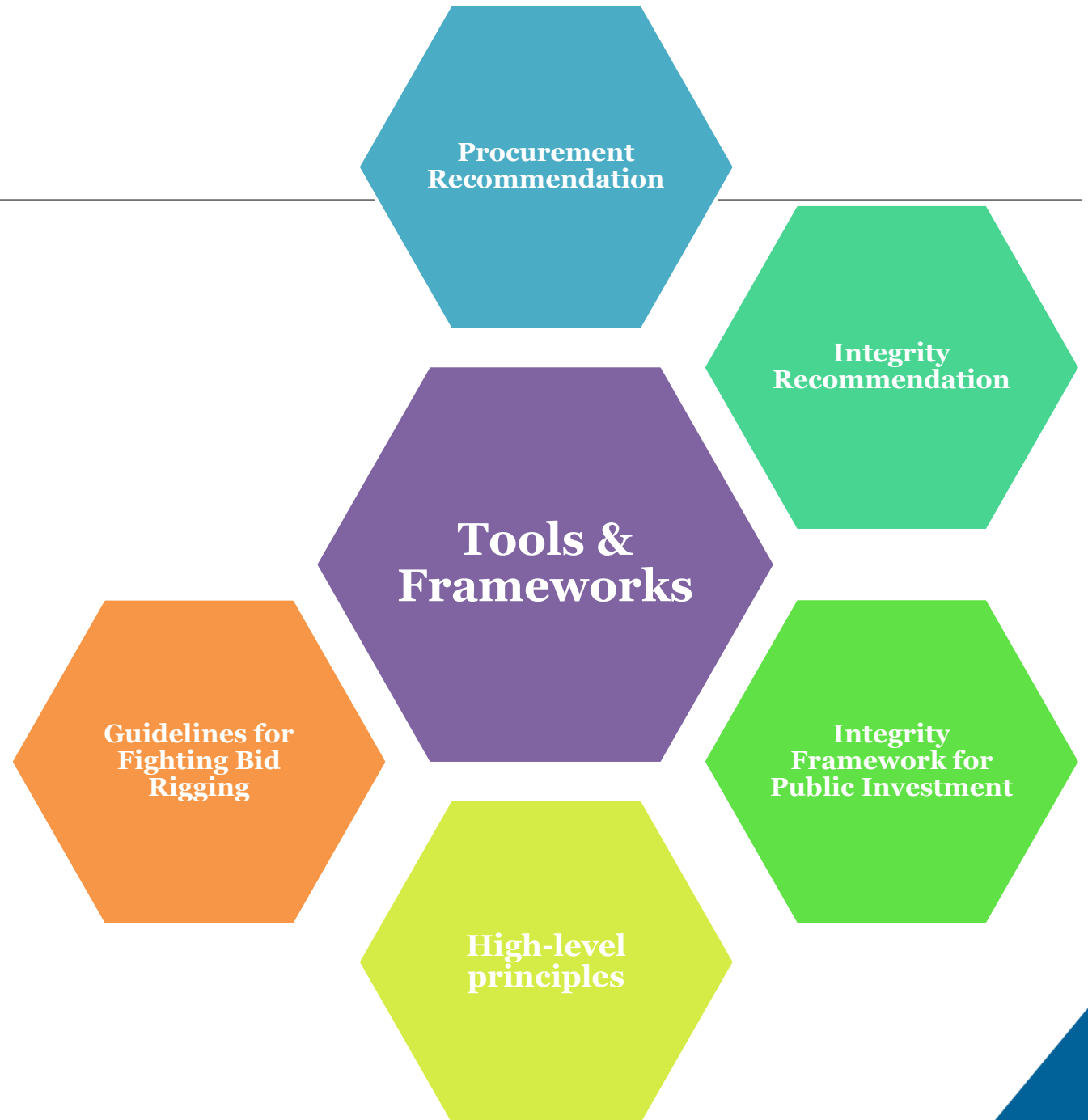
- Fraud/corruption requires two parties: public sector representative and private sector representative.

- Both sides are equally responsible for misuse of gaps in public procurement system.

- Illegal behavior is harmful to the needs of end users.

- Bid rigging is the "other side" of corruption and should be clearly declared as illegal.

- Private sector should be actively involved in helping to prevent fraud/corruption.

Procurement Recommendation

Integrity Recommendation

Tools & Frameworks

Guidelines for Fighting Bid Rigging

Integrity Framework for Public Investment
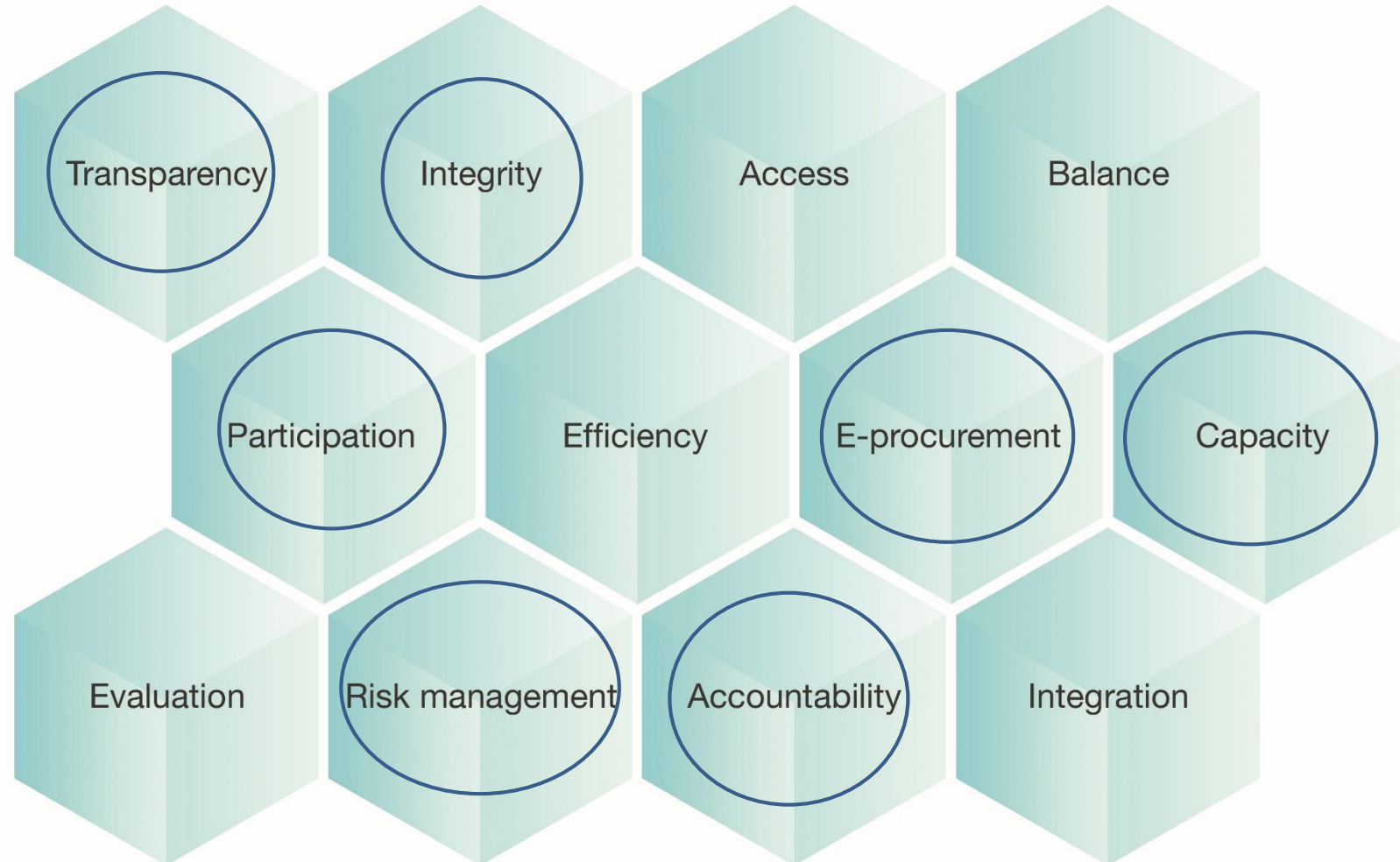
High-level principles

The new Recommendation on Public Integrity: 3 pillars, 13 Principles

A standard for Public Procurement in the XXI century: **2015 Public Procurement Recommendation**

Transparency Integrity Access Balance

Participation Efficiency E-procurement Capacity

Evaluation Risk management Accountability Integration

OECD Public Procurement Review of Kazakhstan

- OECD Procurement Recommendation: objective baseline, targeted according to country interest
  - Example: Kazakhstan (Ministry of Finance)
  - Focus: aggregation and efficiency, e-procurement, integrity
- Practical and targeted recommendations
- Follow up implementation work: workshops for specific stakeholders – in the capital and the regions

The MAPS Analytical Framework

OECD & World Bank joint assessment in Kazakhstan: government procurement system and Samruk-Kazyna
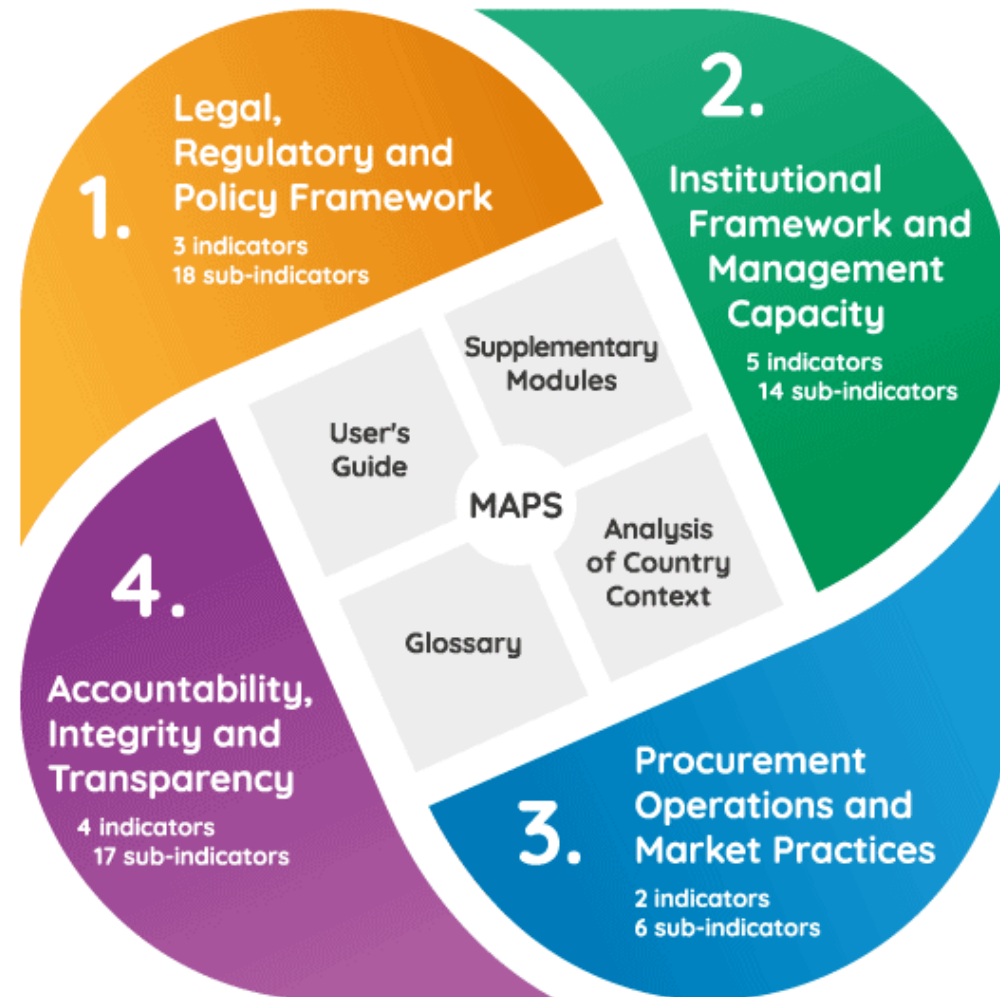
THANK YOU!

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LINKS TO OECD WORK ON PUBLIC PROCUREMENT

[WWW.OECD.ORG/GOVERNANCE/PUBLIC-PROCUREMENT/](http://www.oecd.org/governance/public-procurement/)

Instruments

Reviews

Tools

OECD PUBLIC PROCUREMENT
TOOLBOX AND OTHER TOOLS

Implementing high-level principles and recommendations: framework and tools

- The OECD Public Procurement Toolbox guides practitioners in implementing the OECD Recommendation on PP. It provides, for each of the 12 principles:
  - Policy tools, including frameworks (**67**)
  - Country/sector examples (**121**)
  - Country reviews and thematic reports (**84**)
- It includes *Checklists for Supporting the Implementation of the OECD Recommendation of the Council on Public Procurement*, one for each of the 12 principles

- It's an innovative, practical and collaborative tool

PUBLIC PROCUREMENT TOOLBOX

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Home   About ▾   Principles & Tools ▾   Search   Contact Us

This online resource will guide you in implementing the OECD Recommendation of the Council on Public Procurement. In addition to better familiarising you with the 12 Principles, the Toolbox provides policy tools, specific country examples as well as indicators to measure your public procurement system.

PRINCIPLES AND TOOLS

COUNTRY CASES

ASSESSMENT

OECD Recommendation on Public Procurement

A reference for modernising procurement systems, promoting the strategic use of public procurement. It takes into account the entire procurement cycle and integrates public procurement with other elements of strategic governance.

> See more

How to implement the OECD Recommendation in complex environments?

Public procurement can be particularly challenging in complex environments, such as major events, large infrastructures or specific sectors like energy or health.

> See more

OECD Reports on Public Procurement

> Preventing Corruption in Public Procurement
> Public Procurement Review of Colombia
> Going Green: Best Practices for Public Procurement

> See more

OECD Integrity Framework for Public Investment – Promoting sound practices

The Framework proposes measures safeguarding integrity at each phase of the investment cycle:

- **Selection phase:** making investment decisions in the public interest
- **Appraisal phase:** ensuring credible and objective estimations of all costs and benefits related to the project
- **Planning phase:** ensuring tender documents and processes do not unduly favour some stakeholders
- **Tendering phase:** ensuring processes that promote qualification, accountability and value for money
- **Implementation phase:** minimizing delays for completion, excess costs, and ensuring quality
- **Evaluation phase:** auditing the government project upon completion by an independent institution

OECD Public Governance Reviews
Integrity Framework for Public Investment

OECD
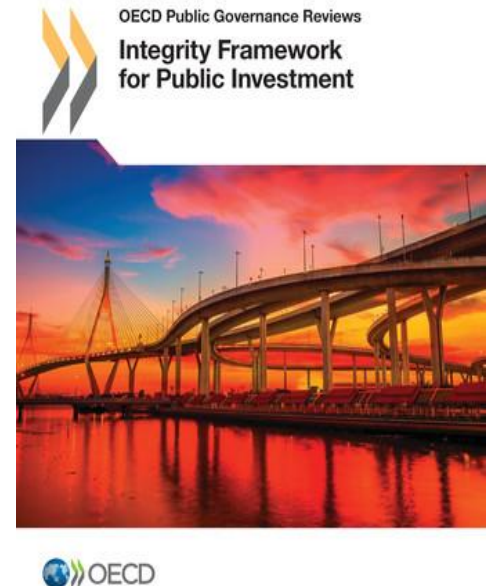
High level principles…

…for integrity, transparency and effective control of major events and related infrastructures

1. Transparency, accountability and openness

2. Institutional synergies, collaborative supervision and control

3. Multidisciplinarity and governance structures

4. Early and ex-ante controls

5. Comprehensiveness and timeliness

6. Adequate resources, skills and training

7. International cooperation and access to data

Cooperation with Italian Anti-Corruption Agency – EXPO Milano 2015

OECD Guidelines for Fighting Bid Rigging

Source
- Best practices in OECD countries

Better tender design
- Help procurement officials design public tenders to reduce bid rigging (Design Checklist)

Tougher law enforcement
- Help procurement officials detect bid rigging when it occurs (Detection Checklist)

THE CRITICAL ROLE OF PUBLIC PROCUREMENT

What is public procurement?

Public procurement matters…

Public procurement is:

- a **major economic and government activity**. It involves significant funds and is used to deliver public services to citizens as well as achieve policy goals

- a crucial **pillar of strategic governance** for public bodies and services delivery for any government

- a **high-risk area** due to the close interaction between private and public sectors

- a **challenging policy topic**: different priorities, need for cross-sectoral cooperation, overlaps or conflicts possible

… a crucial economic activity:
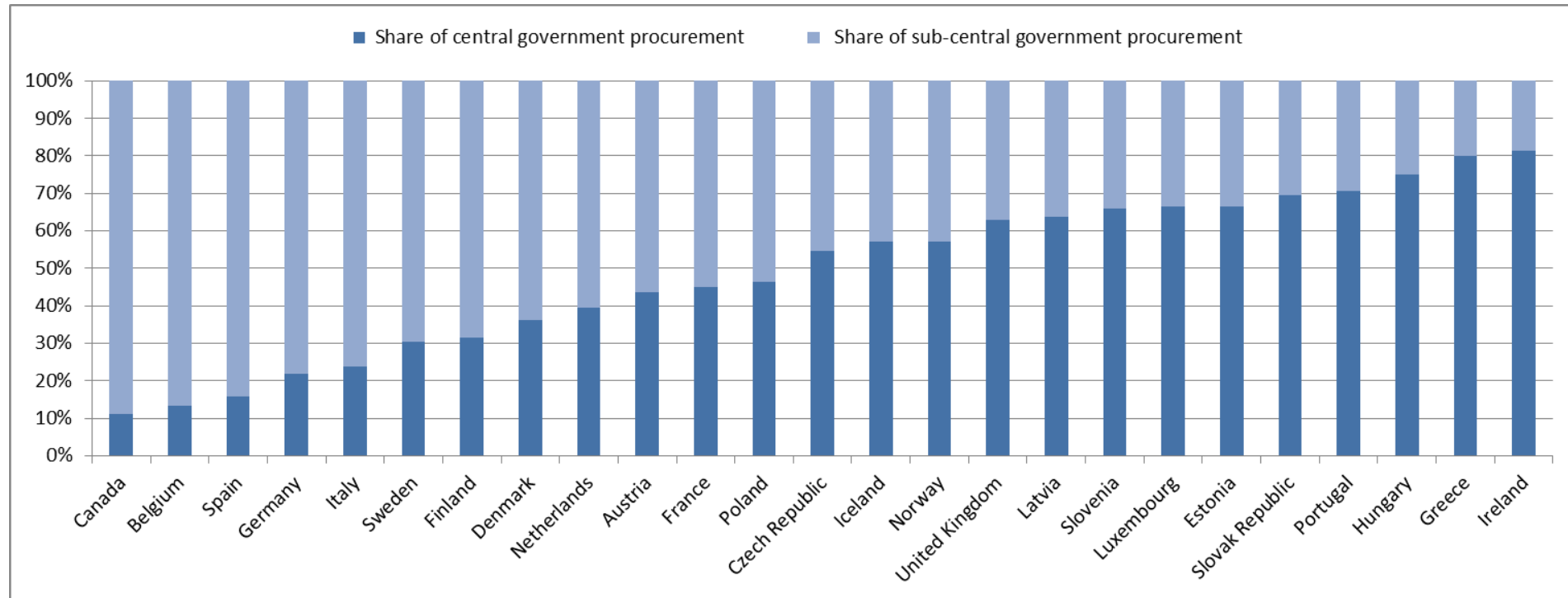
General government procurement spending
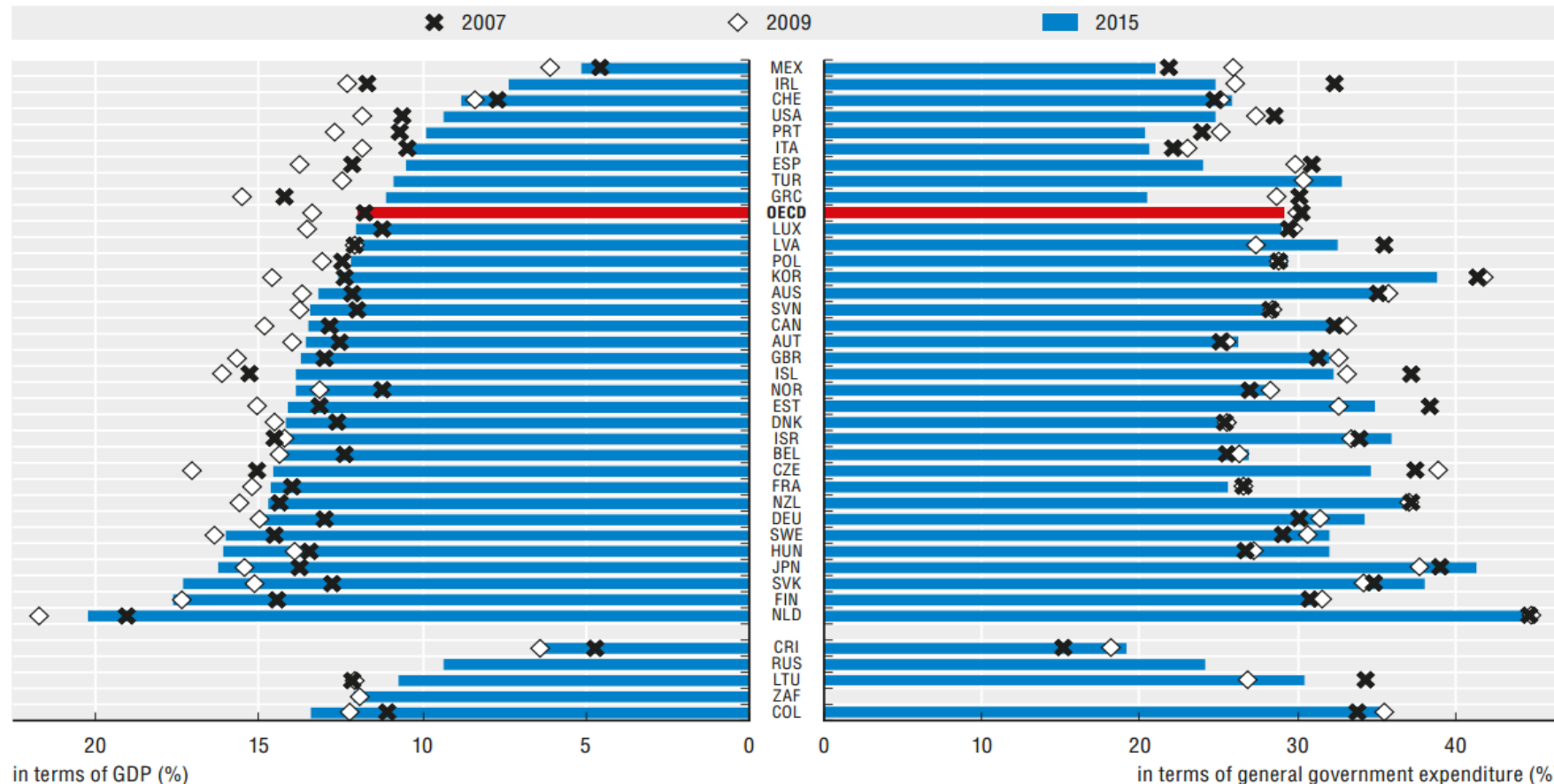
Source: OECD National Accounts Statistics (database). Data for Australia are based on a combination of Government finance statistics and National Accounts data provided by the Australian Bureau of Statistics.

StatLink http://dx.doi.org/10.1787/888933533131

…managed at all levels of government

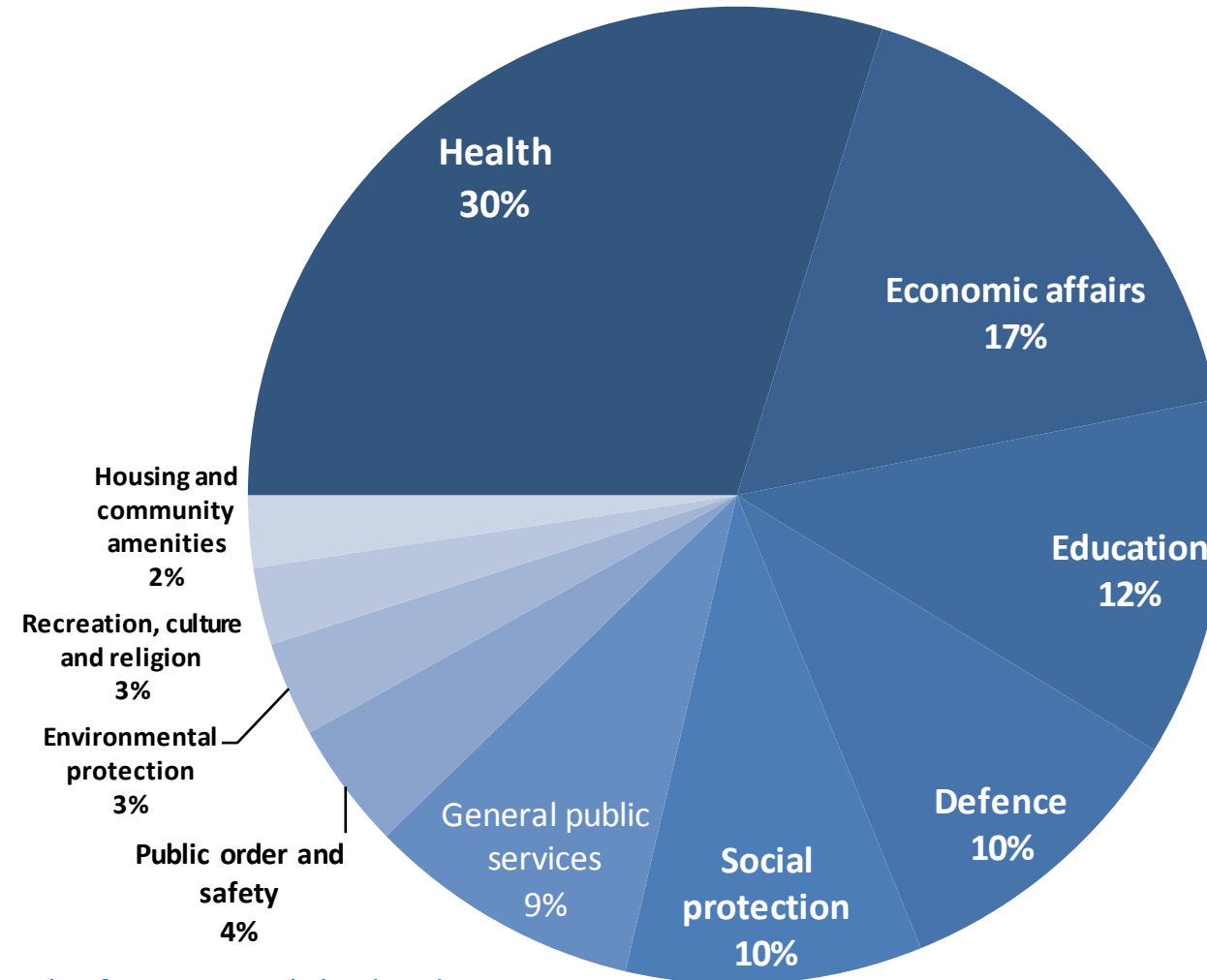## General government procurement by levels of government (2016)

Source: OECD National Accounts Statistics. (2017)

Public procurement has high implications for public service delivery

Structure of general government procurement spending in OECD countries (2015)

Health
30%

Economic affairs
17%

Education
12%

Defence
10%

Social protection
10%

General public services
9%

Public order and safety
4%

Environmental protection
3%

Recreation, culture and religion
3%

Housing and community amenities
2%

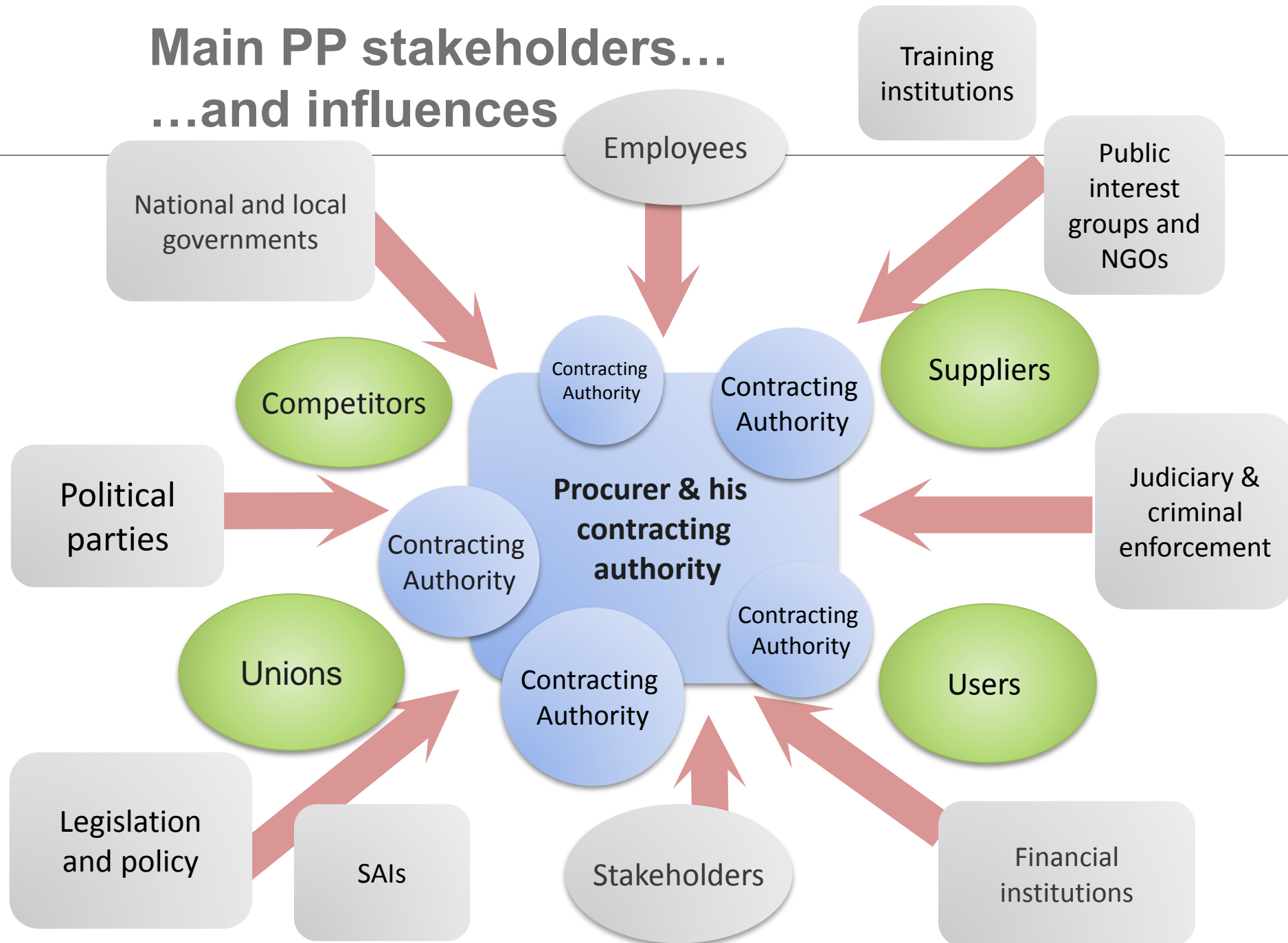Source: OECD National Accounts Statistics. (2017)

Bid rigging cases from around the world
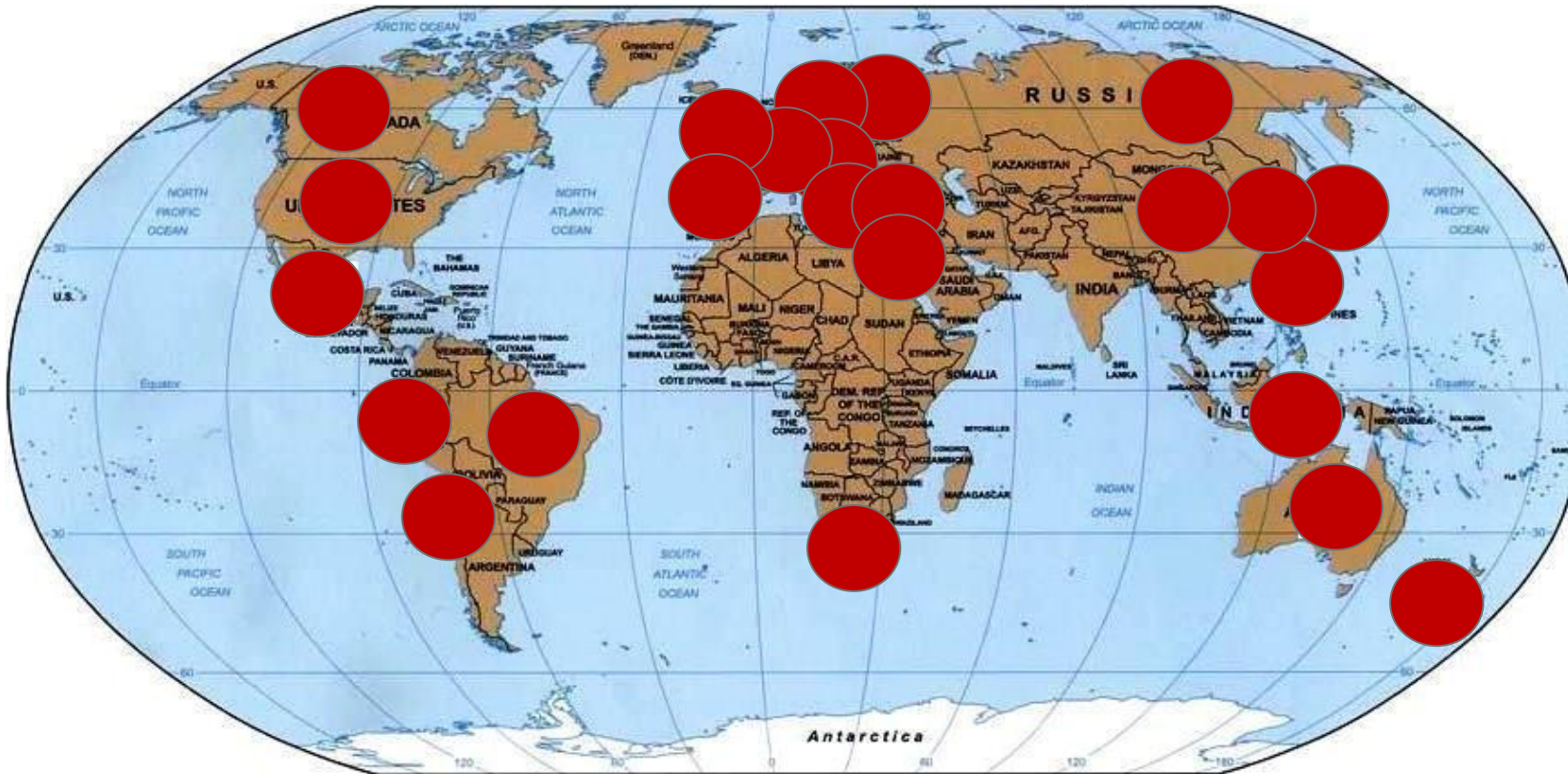
Main PP stakeholders… …and influences

RISK AND RED FLAGS THROUGHOUT THE PROCUREMENT CYCLE

Pre-tendering phase (overview)

Examples of red flags (corruption risks):

- Lack of adequate needs assessment
- Efforts to purchase unnecessary or inappropriate items
- Manipulation of procurement thresholds to avoid competition/prior review
- Inadequate evaluation criteria or procedures
- Unreasonable prequalification requirements
- Ambiguous, incomplete, or misleading contract specifications
- Contract specifications that are too narrow or too broad

Needs assessment and market analysis

Examples of risks

- Needs assessment is insufficient due to time pressure or lack of capacity or competence on the part of the procurement staff.

- Purchase is unnecessary, and demand is induced.

- Political and diplomatic pressures influence needs assessment.

Examples of mitigation strategies

- Map properly the market conditions and the sector.
- Use trained procurement staff.
- Allow sufficient time for mapping.
- Determine whether there is actual need for the service or product.
- (Map the risks created by the political climate and institutional framework.)

Planning and budgeting

Examples of risks	Examples of mitigation strategies
• Needs assessment, planning, and budgeting of purchases are insufficient and/or unrealistic. • Goods and services procured are not in line with the overall investment/procurement plan of the government/contracting authority. • Deficiency in the budget.	• Get more than one officer to approve the data from the mapping of the product, sector, and contracting authority. • Involve an independent organisation in an oversight role, such as thinktanks or civil society organisations. • Check alignment with government strategies.

Developing specification/requirements 1

Examples of risks:
Complex and unclear

- Bidding documents or terms of reference are unnecessarily complex, in order to hide corrupt actions and to make monitoring complicated.

- Unclear selection and award criteria are not objectively defined.

- Selection and award criteria are not established in advance.

- Conflicts of interest exist where one or more involved actors have personal interests in the various stages of the procurement process.

Examples of mitigation strategies:
Simple and clear

- Create clear and simple rules to specify what an honest procurement system is expected to produce.
- Simplify the goods procured as much as possible.
- Benchmark prices on the basis of private market prices and quality requirements inspired by off-the-shelf items.
- Give civil society representatives an overview of the public officials' areas of responsibility and degrees of discretionary authority.
- Define the evaluation criteria in measurable factors and establish a committee to evaluate subjective parts of the bid.
- Require disclosure of potential conflict of interest.

Developing specifications/requirements 2

Examples of risks: Low integrity

- Bribes are offered by bidders for shortlisting or prequalification.

- Bidding documents or terms of reference are tailored to fit one company, so that competition is restricted or is not possible.

- Firms provide falsified quality assurance certificates, allowing unqualified firms to take part in the bidding competition.

Examples of risk mitigation strategies: Check integrity

- Ensure that a code of conduct is implemented for the contracting authority and its employees.
- Encourage the companies to certify that they comply with all anti-bribery laws, and require anti-corruption commitments such as codes of conduct.
- Include identification of all persons involved in a tender, including middlemen/sub-contractor, in the tender information.
- Request insurance coverage and payments of deposits.

Choice of procedures

Examples of risks	Examples of mitigation strategies
• No justification or ignorance of requirements for the use of non-competitive procedures. • Non-competitive procedures are misused because of legal loopholes (e.g. abuse of extreme urgency, contract splitting). • Relevant information is not provided equitably to all bidders.	• Create clear rules that specify when competition is required. • Include rules for exceptional cases in procurement procedures. • Define terms such as *emergency, exceptional, immediate.* • Use available channels to reach all potential bidders. • Establish clear protocols for communications.

Examples of red flags

- Transparency:
  - Failure to make procurement information (tender notice) and bidding documents available. Short or inadequate notice to bidders.
  - Non-transparent bid-opening procedures.
- Market:
  - Unusual bidding patterns. Apparent connections between bidders. Rotation of winning bidders.
  - Bidder not listed in business or telephone directories. Qualified companies fail to bid.
- Price:
  - Unreasonably high / low bids. Winning bid is very close to budget or estimate.
- Procedures:
  - Disqualifications that are poorly supported. Long unexplained delays in contract award or negotiations. Multiple contract awards to the same company. Pressure to select a certain contractor, subcontractor

Post-award phase (overview)

Examples of red flags

- Use of questionable agents or subcontractors.
- Complaints regarding poor-quality goods, works, or services.
- Delivery of poor-quality goods, works, or services.
- Continued acceptance of poor-quality goods, works, or services.
- Questionable contract amendments (change orders).
- Questionable invoices.
- Payment of high prices without justification.
- Absent or questionable documentation.