

Preventing corruption in Public Procurement

Day 1



Know your Trainer



Jagdeep Singh
Partner

Jagdeep is a Partner with EY's Forensic & Integrity Services. He is a Chartered Accountant and a Certified Internal Auditor with around 20 years of professional experience. He is also an Associate Member of Association of Certified Fraud Examiners

Jagdeep has led several engagements involving development of need based training, formulating the roll out strategy and delivery of training to client staff/training team. These engagements have been for training related to fraud investigation, interviewing skills and also ethics & integrity. He is a guest faculty for one of the most prestigious business schools in India, where he takes up sessions on topics related to corporate ethics and fraud. Jagdeep has also been a guest speaker at conferences and workshops related to corruption & bribery issues (including FCPA), fraud prevention and detection.

He is passionate about training and coaching people and leads Learning & Development for clients as a solution



Siddharth Dasgupta
Associate Director

Siddharth is an Engineer, MBA and a fellow in Purchase & Supply from Lincolnshire, East England. He brings more than a decade of rich development experience through the lens of supply chain management and Global sourcing. Siddharth has worked with the World Bank, United Nations, Department for International Development (DFID) and Foreign Office of UK (both as a civil servant) within their respective procurement regimes. Apart from spending time in all the agencies mentioned above, before joining EY - He led the entire South Asian and Afghanistan procurement for all the respective Foreign Offices at FCO - UK.

At EY, he is responsible for the overall quality of the proposals being submitted to IFIs. Siddharth has delivered numerous lectures in forums worldwide and is shortly coming up with his own title on sourcing.

Providing contribution in public



Introduction activity

- ▶ On a flip chart, present the following attributes of your team members by use of words or pictures/sketches or a combination of both:
 - ▶ Age of team members (range)
 - ▶ Job content\profile
 - ▶ Country/geography
 - ▶ Experience in detecting procurement fraud (combined experience of the team in years)
- ▶ Also, choose a name for your team

(Time allotted: 15 minutes)

- ▶ One of the team members will be required to make a presentation to the larger group

(3 minutes each)



Ground rules

Interactive – the more you put in, the more you take away

Safe and confidential environment for learning and sharing

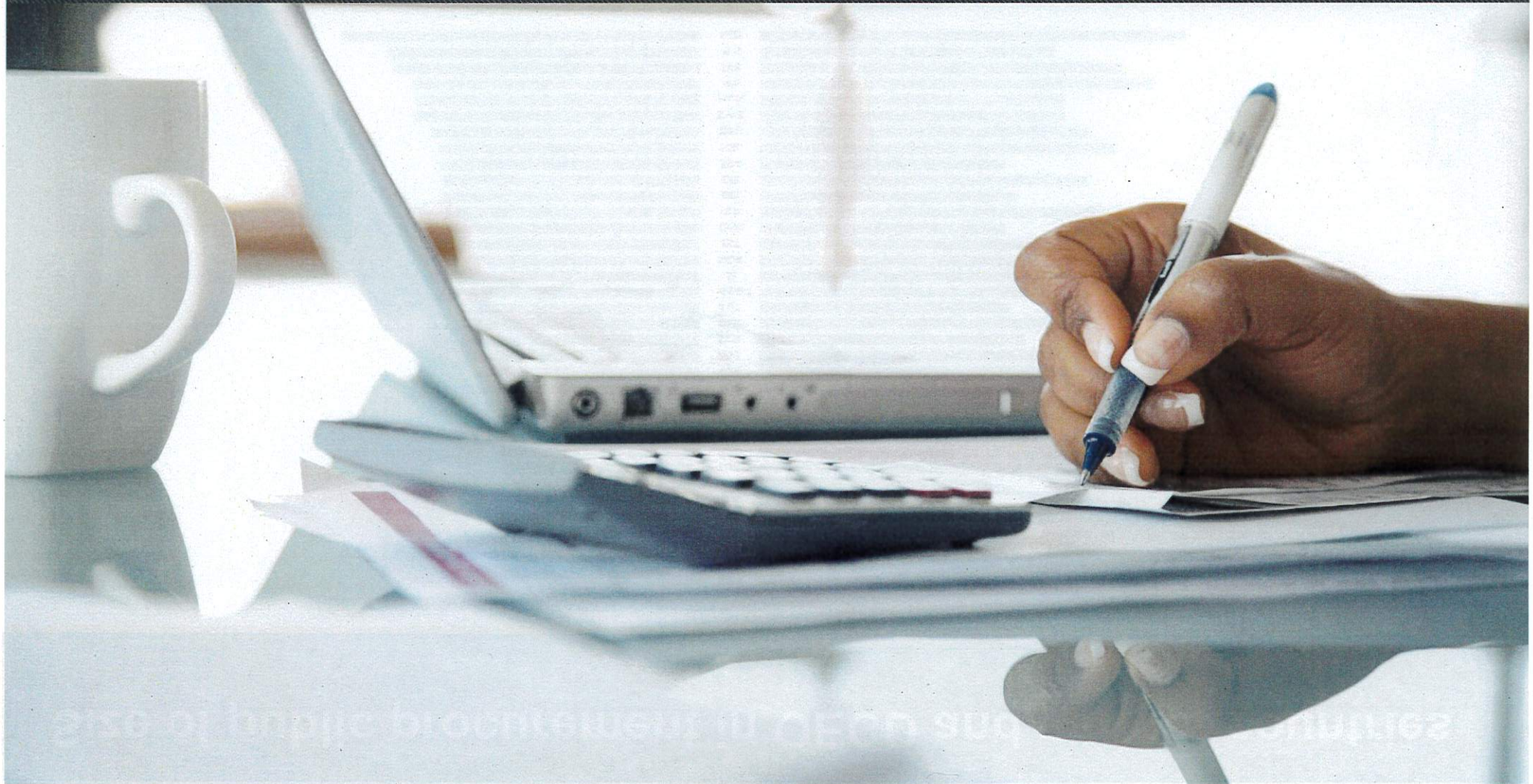
There are no penalties for wrong answers.
Please answer based on existing knowledge and learnings from this session

No laptops

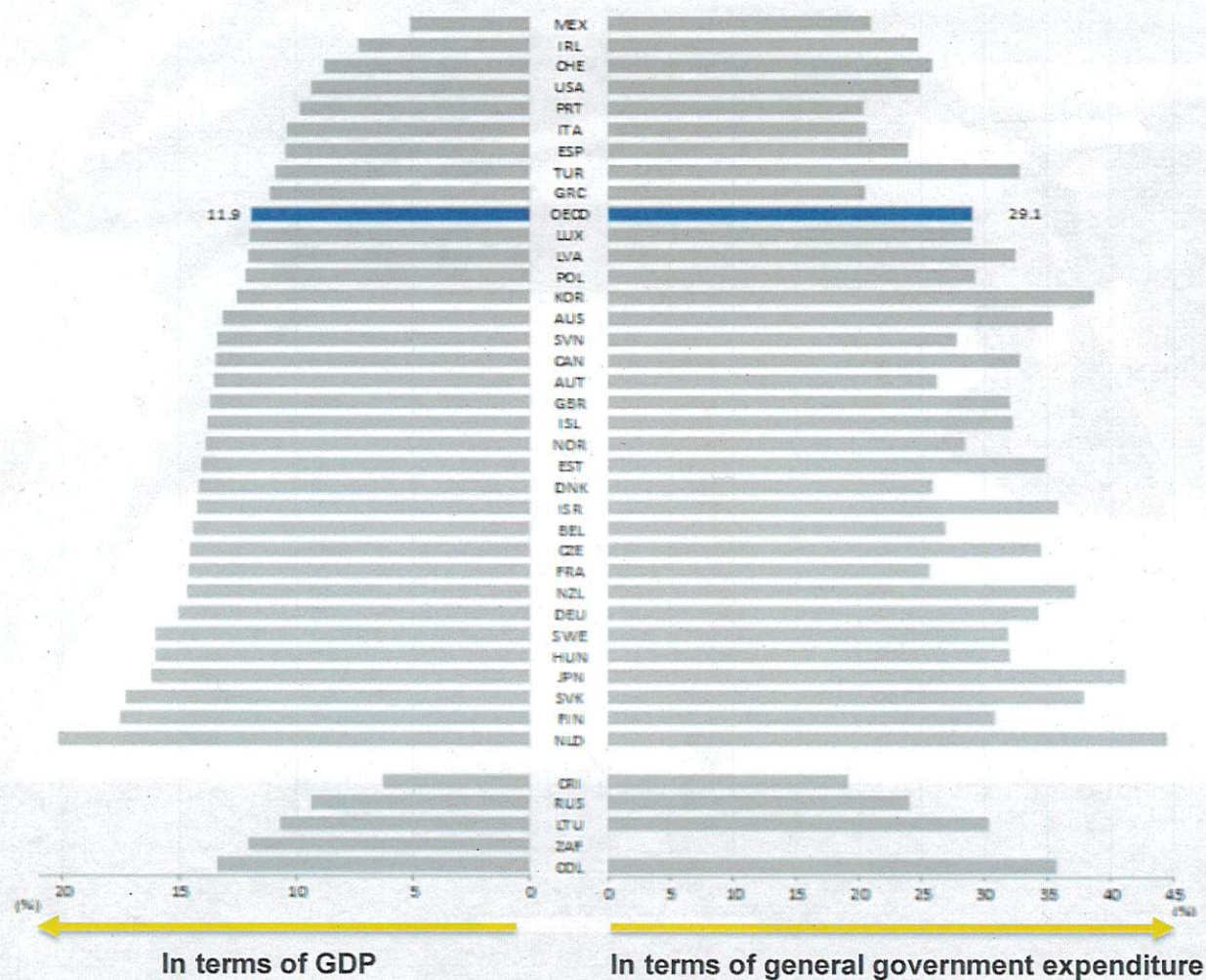
No mobile phones

Please feel free to interrupt- remember no question is stupid...

Context setting

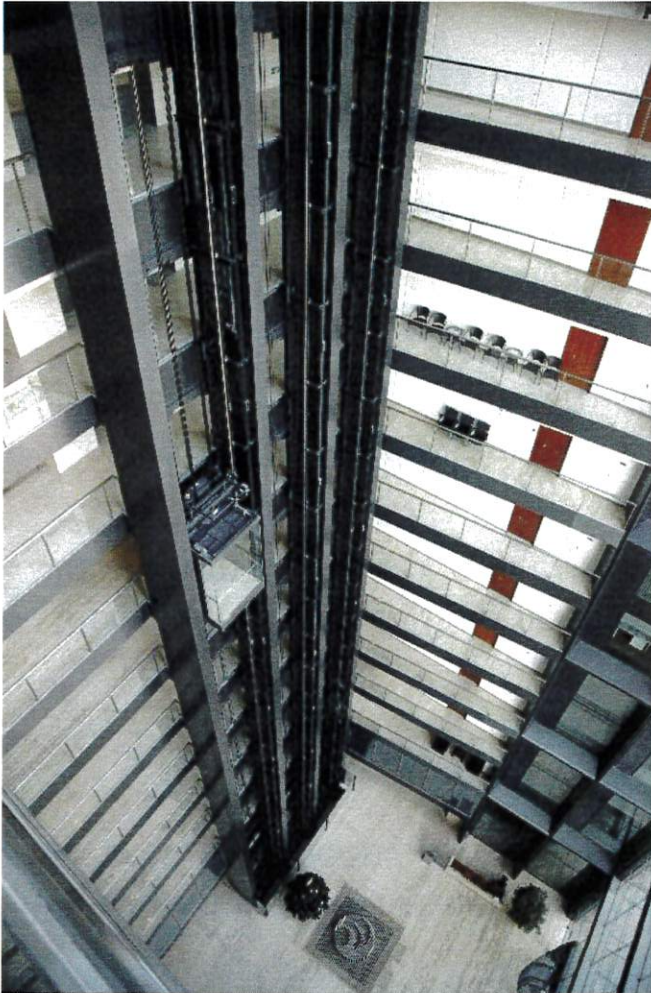


Size of public procurement in OECD and partner countries



<https://mneguidelines.oecd.org/Responsible-business-conduct-in-government-procurement-practices.pdf>

Most vulnerable industries



- ▶ Public works contracts and construction
- ▶ Utilities
- ▶ Real estate, property, legal and business services
- ▶ Oil and gas
- ▶ Mining
- ▶ Power generation and transmission
- ▶ Pharmaceutical and healthcare
- ▶ Heavy manufacturing
- ▶ Fisheries
- ▶ Arms, defence, and military
- ▶ Transportation and storage
- ▶ Telecommunications
- ▶ Consumer services
- ▶ Forestry
- ▶ Banking and finance
- ▶ Information technology
- ▶ Civilian aerospace
- ▶ Light manufacturing
- ▶ Agriculture

Transparency International's Bribe Payers Index 2011

Impact of corruption in public procurement

Trillions of dollars spent each year on public procurement. From schools and hospitals, to power plants and dams, this means big budgets and complex plans. It also means ideal opportunities for corruption.

- ▶ 10-30% of the investment in a publicly funded construction at risk
- ▶ More than 3 out of 10 companies that have participated in a public tender say corruption prevented them from winning (Flash Eurobarometer 428, 2015).
- ▶ Corruption can add as much as 50 per cent to a project's costs - cost major public construction projects fell after the anti-corruption investigations in early nineties
 - ▶ Construction cost of Milan subway fell from \$227 million/KM in 1991 to \$97 million in 1995
 - ▶ Cost of rail link fell from \$54 million/KM to \$26 million
 - ▶ New airport terminal estimated to cost \$1.3 billion instead of \$3.2 billion

https://www.transparency.org/topic/detail/public_procurement

Notable cases in the news

Padma bridge scandal

Background

- ▶ High-level corruption scheme implicating Bangladeshi government officials and executives at SNC Lavalin, a Canadian construction company, over a cancelled World Bank project in Bangladesh
- ▶ The \$1.2 billion project underlying the case was the Padma Bridge, a massive infrastructure that some estimated would increase the Bangladeshi GDP 1.2% each year.

Impact of corruption

- ▶ Withdrawal of funding from the World Bank
- ▶ The estimated cost of the bridge has climbed by over US\$1 billion, and the expected completion date is being pushed back by two years to 2020.
- ▶ The Padma Bridge would be a boon to the economy linking Dhaka to the poor and underserved southwest of the country

<https://globalanticorruptionblog.com/2015/11/06/when-should-corruption-be-tolerated-the-case-of-the-padma-bridge/>

Notable cases in the news

Sichuan earthquake

Background

- ▶ Over 7,000 schoolrooms collapsed in the course of the earthquake, mostly in rural areas, leading to the death of nearly 5,000 students and the injury of over 15,000 students.
- ▶ Hundreds of schools collapsed instantly — even newly constructed ones — while older buildings nearby were often unscathed.
- ▶ This led to allegations of corruption on the part of Education Ministry officials and contractors who constructed the school buildings dangerously below government-mandated standards, while pocketing the remaining surplus.

https://en.wikipedia.org/wiki/Sichuan_schools_corruption_scandal

Notable cases in the news

Bataan Nuclear Power Plant

Background

- ▶ Bataan Nuclear Power Plant is a nuclear power plant, completed but never fuelled in Manila. It was the Philippines' only attempt at building a nuclear power plant.

What happened

- ▶ Two proposals were submitted by- General Electric and Westinghouse Electric.
- ▶ The presidential committee preferred General Electric's proposal, but was overruled by Marcos (the President) in June 1974 despite the absence of any specifications on their proposal.
- ▶ By March 1975, Westinghouse's cost estimate ballooned to US\$1.2 billion without much explanation.
- ▶ The National Power Corporation would later construct only one nuclear reactor plant for US\$1.1 billion

Notable cases in the news

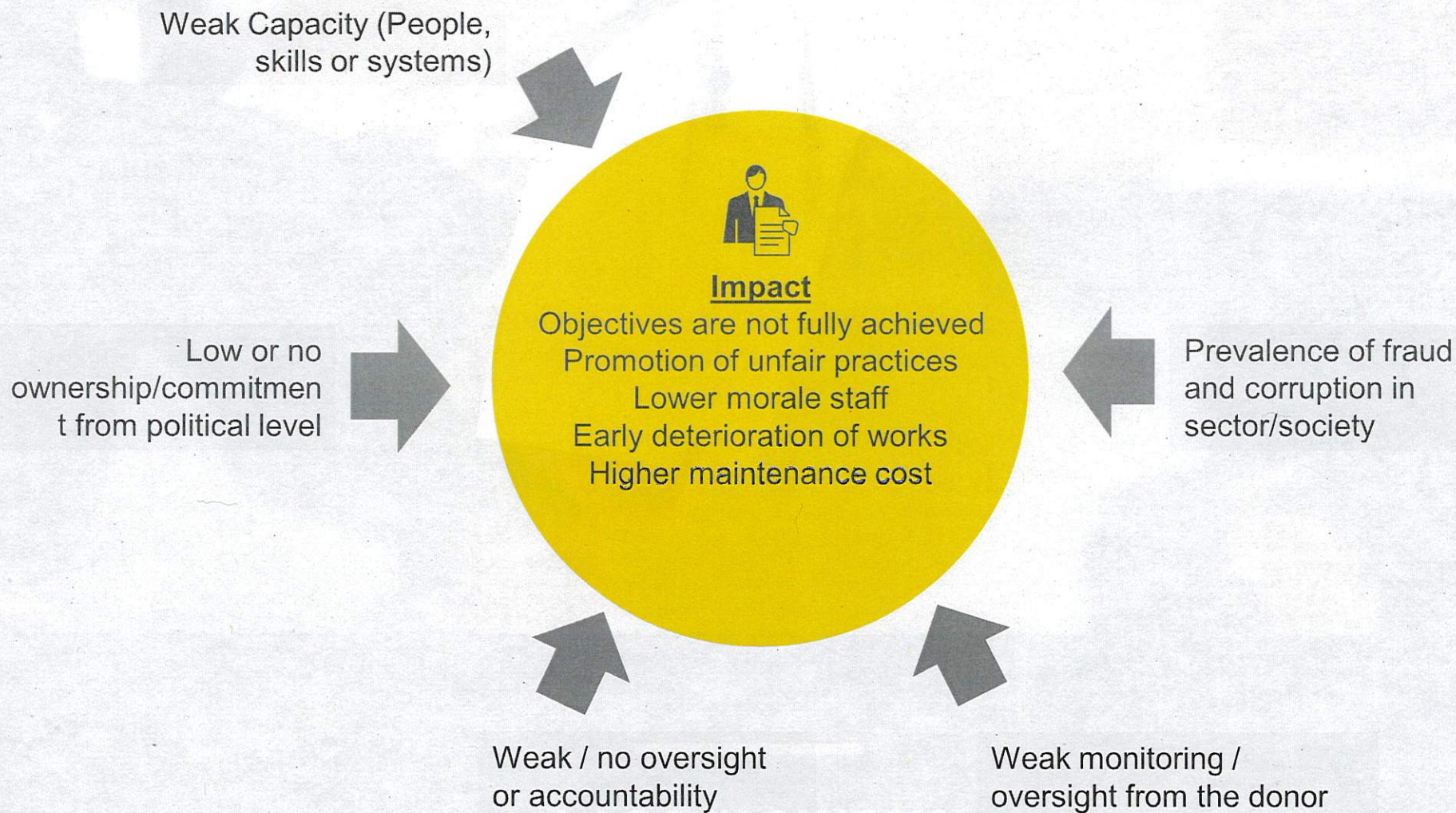
Bataan Nuclear Power Plant

Impact

- ▶ Safety inquiry into the plant revealed over 4,000 defects
- ▶ Built near a major geological fault line and close to the then dormant Mount Pinatubo
- ▶ The government sued Westinghouse for alleged overpricing and bribery but was ultimately rejected by a United States court.
- ▶ Debt repayment on the plant became the country's biggest single obligation
- ▶ The Philippine government completed paying off its obligations on the plant in April 2007, more than 30 years after construction began

https://en.wikipedia.org/wiki/Bataan_Nuclear_Power_Plant

Key contributors for non compliance or corruption



Procurement



What is procurement

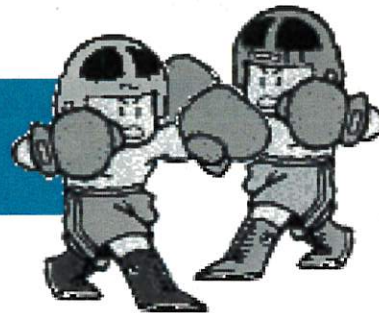


General principles

Procurement should be based on value for money



Goods and services should be acquired by competition



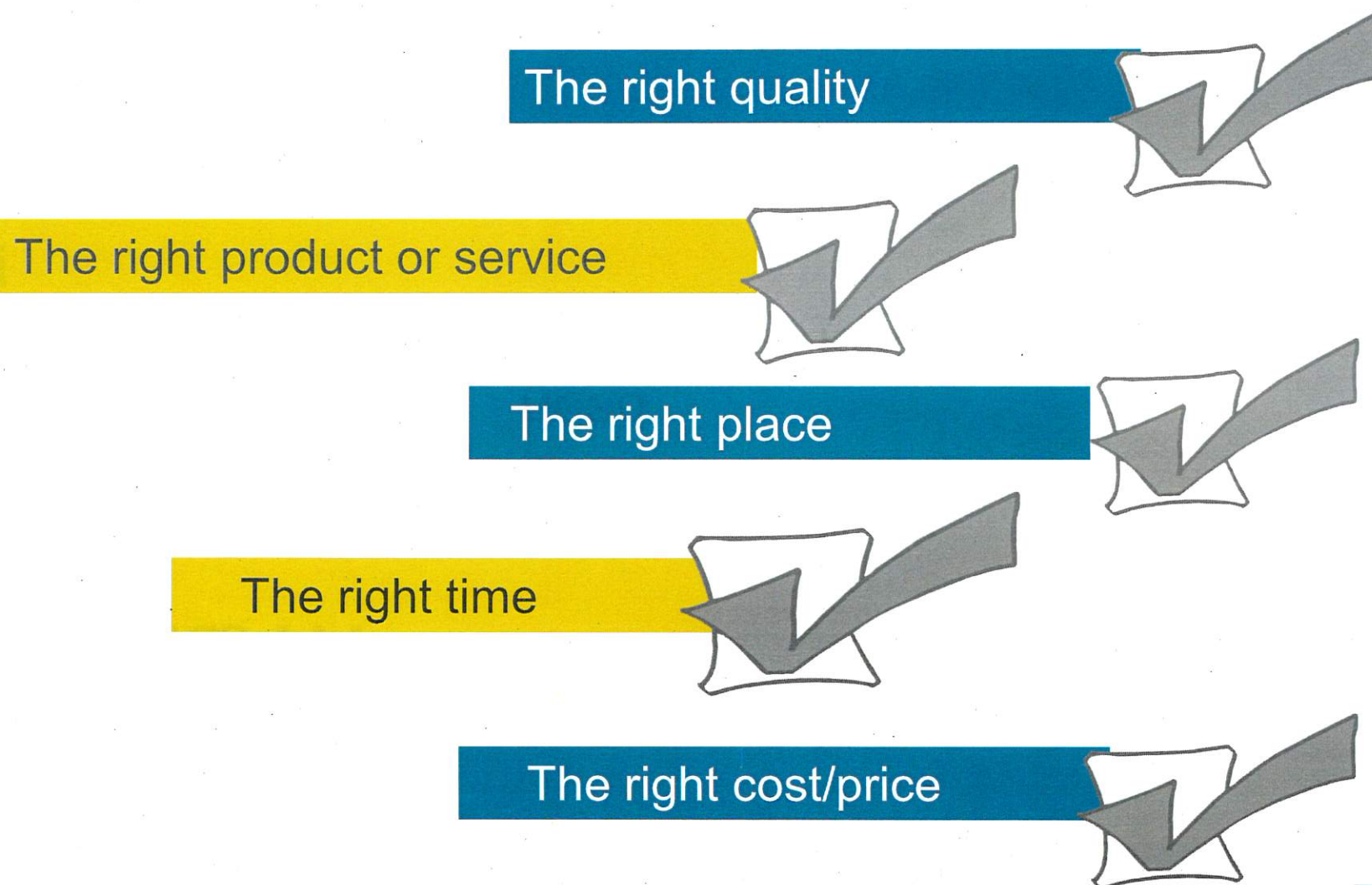
Separation of duties/ roles



Good planning



Broken down, what is Value for Money?



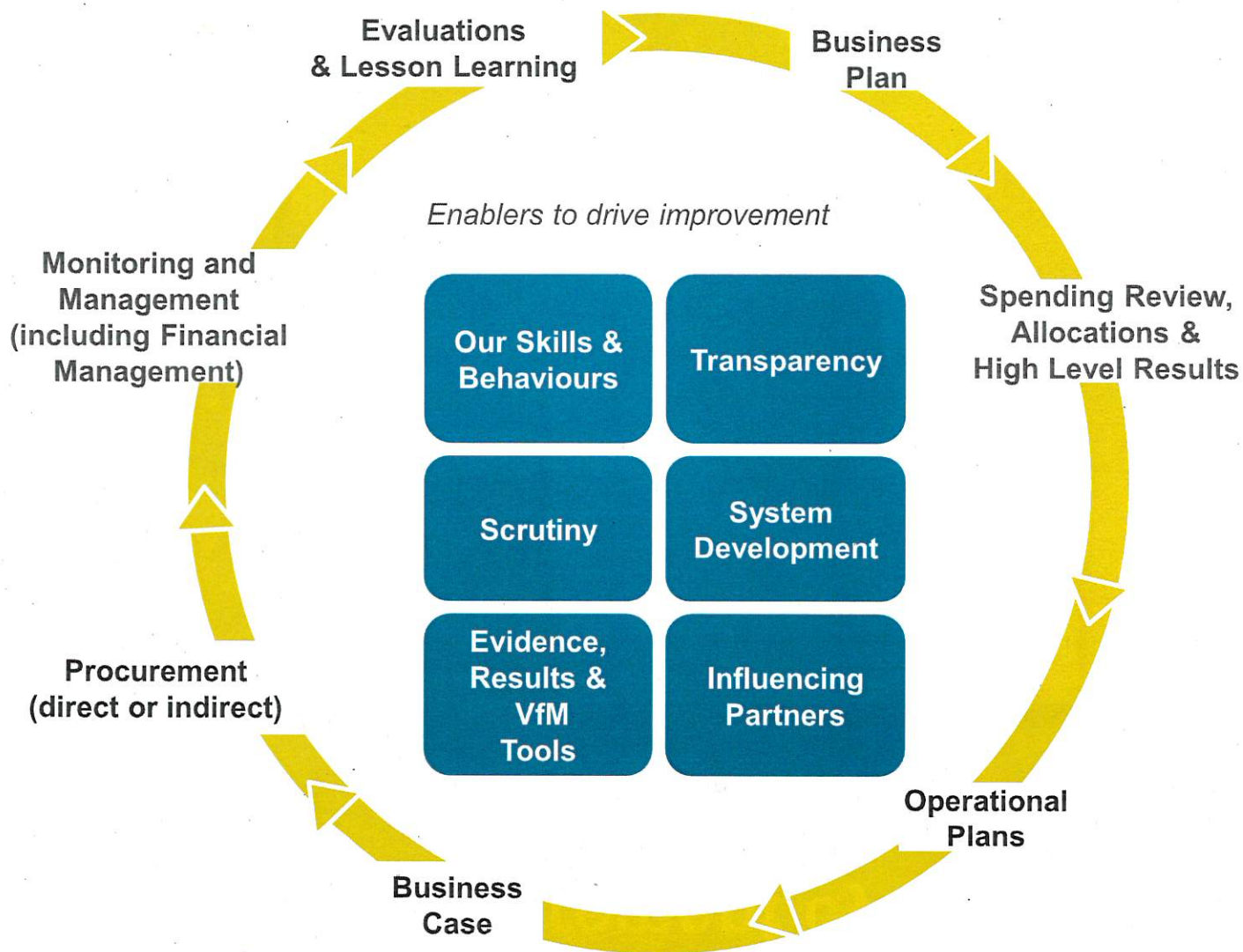
Value for money

In other words . . .

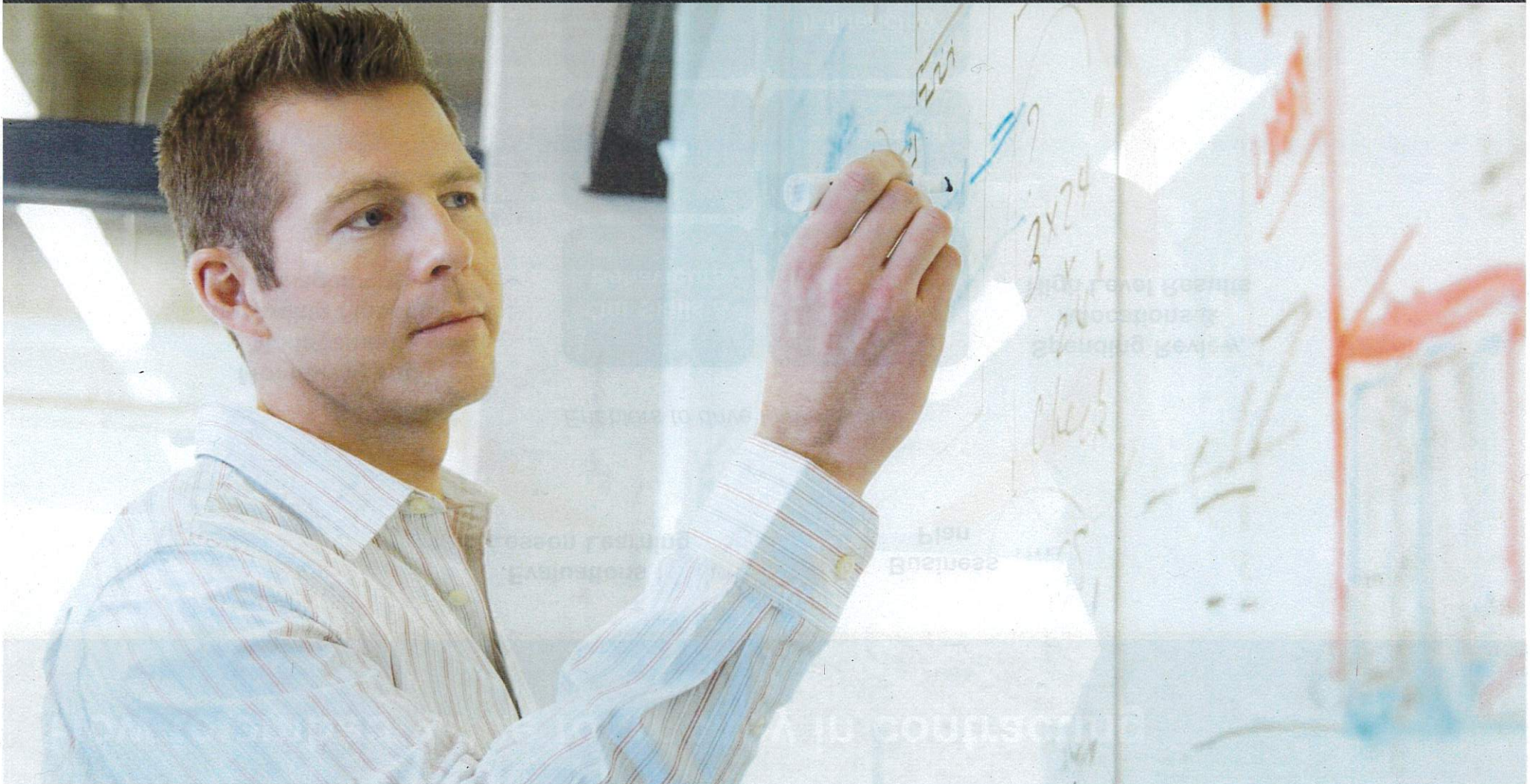
need

Getting exactly what you ~~want~~ at the lowest possible overall cost!

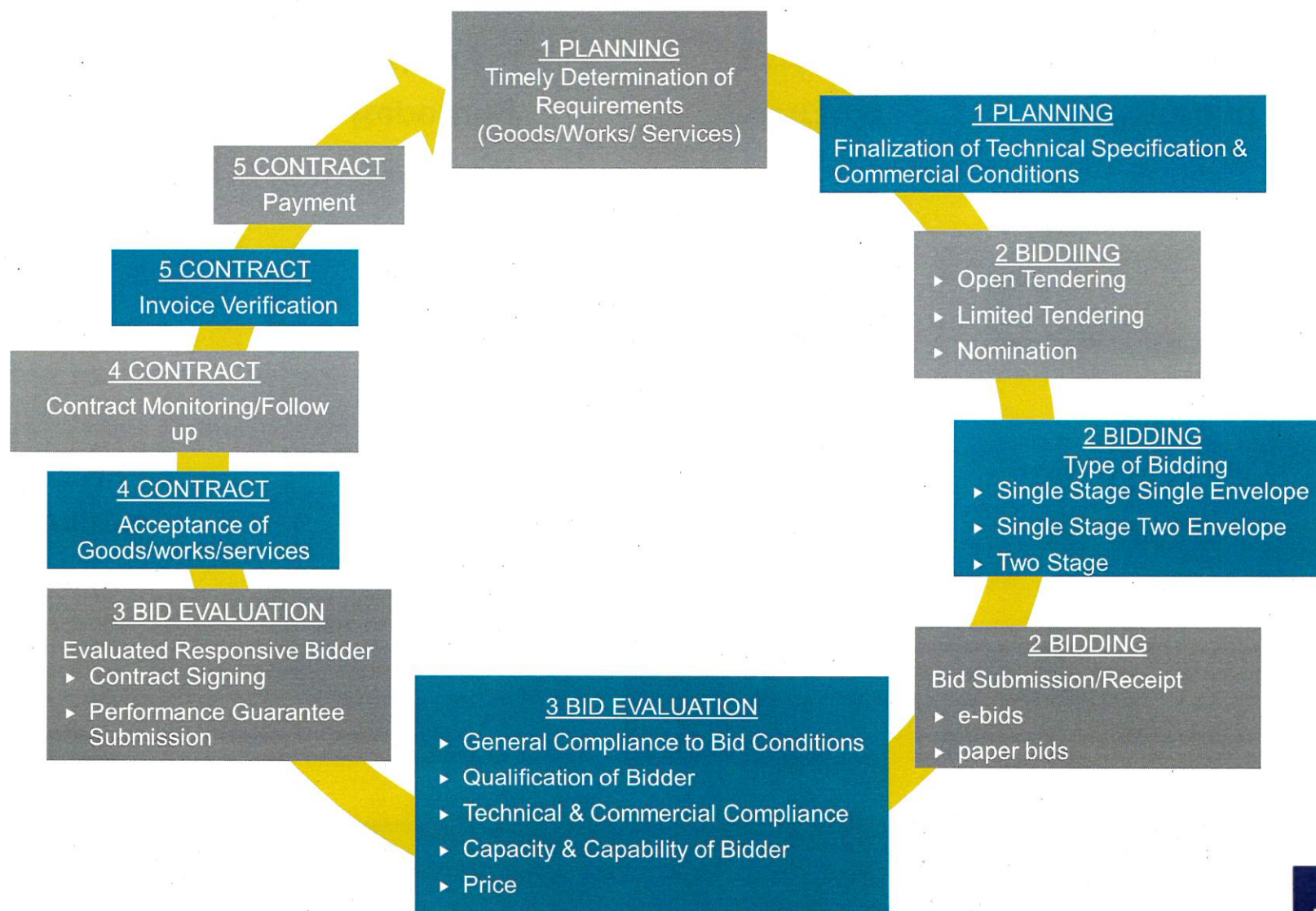
How to embed value for money in contracting



Procurement cycle



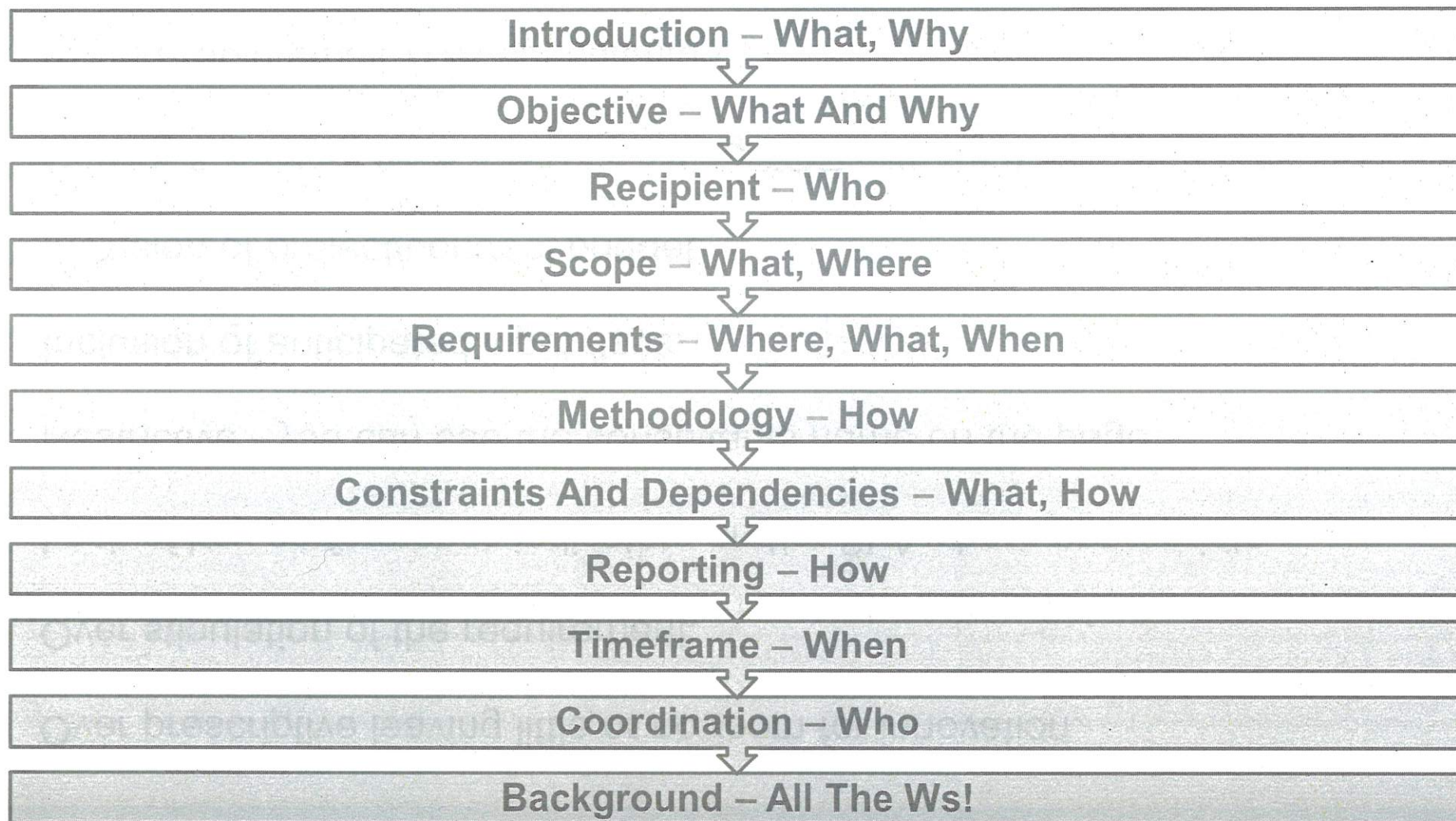
Procurement cycle



1. Planning: Structuring the ToR



1. Planning: Format of the ToR



1. Planning: Common pitfalls

- ▶ Over prescriptive leaving little or no room for innovation.
- ▶ Over stipulation of the requirement.
- ▶ Lack of key performance indicators and/or SLA where appropriate
- ▶ Restrictive - you can see the consultants name on the page.
- ▶ Inclusion of anticipated input days.
- ▶ Inclusion of project/contract budget.
- ▶ Cutting & pasting from similar existing TOR without thorough needs analysis
- ▶ Round-robin email TOR consultation
- ▶ No defined outputs.

1. Planning: Good Practice

- ▶ State requirement clearly and concisely.
- ▶ Provide sufficient information that allows bidders to make sound technical and commercial judgements.
- ▶ Ensure that evaluation criteria are clearly stated and linked to required outputs.
- ▶ Provide equal opportunity to all bidders.
- ▶ Comply with legal requirements.
- ▶ Stick to what is needed and not what is wanted

1. Planning: Red flags

Not advertising the request for EOI

Drafting overly vague/incomplete descriptions of the goods, works, or services required

Limiting circulation by posting the advertisement in a local newspaper, instead of a national newspaper

Drafting specifications that do not add value

Short submission deadline between period of advertisement and bid submission

Not providing timely clarifications to queries

Incomplete contact information provided

2. Bidding: Basics

- ▶ Drafting Bid Documents – in presence of the pertinent stakeholders
- ▶ Classifying the procurement as per G/W/S and Thresholds
 - Open Tendering
 - Limited Tendering
 - Nomination
- ▶ Type of Bidding
 - Single Stage Single Envelope
 - Single Stage Two Envelope
 - Two Stage
- ▶ Bid Submission/ receipt
 - E-bid
 - Paper Bid

2. Bidding: Normal Course

STEP 1



Developing Project Bid Specifications

Develop a checklist to ensure that you cover all aspects of the project, from implementation to inspection.

STEP 2



Recruiting and Qualifying Vendors

Consider adding a separate Request for Qualifications (RFQ) as a means to narrow down the pool of potential vendors and identify the best qualified.

STEP 3



Preparing the RFP

Package should include bid specifications, draft contract and bidding instructions, e.g. date and time of bid meeting, process for visiting the property, process for submitting questions and submitting RFP.

STEP 4



Developing the Bid Summary Report

Prepare a side-by-side report comparing the bids. Identify categories and any exceptions to the specifications. The purpose is to show an “apples to apples” comparison.

STEP 5



Presenting the Bid Summary Report to the Board

A Selection Criteria List highlighting factors such as Costs, Qualifications, and Pros and Cons Exceptions should be laid out concisely and systemically to aid the Board in making a decision

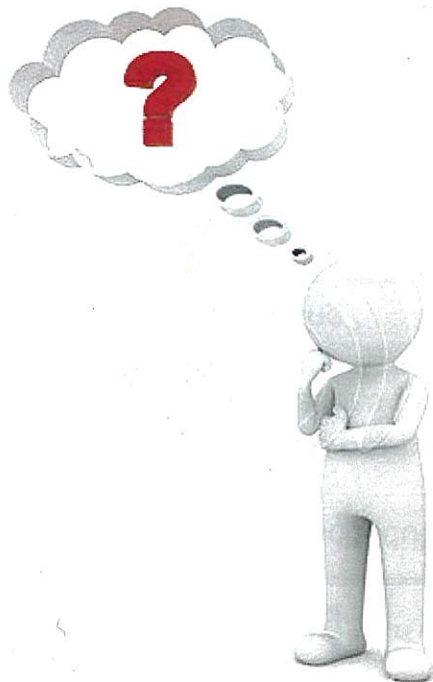
STEP 6



Awarding the Project

Prepare a letter awarding the contract and have the contract reviewed by your attorney. Wrap up details such as vendor's insurance documents.

Team Activity 1



The Task based on the case

Split into groups and brainstorm the following;

- ▶ **Identify and list of red flags?**

Time allotted: 10 minutes

2. Bidding process – red flags



Pre-bid meeting

- ▶ The pre-bid conference is scheduled too close to the bid submission date or yields changes to specifications without changes in deadline
- ▶ Questions raised during the pre-bid conference not addressed properly
- ▶ Clarifications and modifications to the bidding documents resulting from the pre-bid conference not shared with all the prospective bidders.
- ▶ Are we following e-tendering?



Bid submission

- ▶ One or more of the submitted bids lack a time stamp
- ▶ A bid is not in a sealed envelope
- ▶ Bids are not kept in a secure location with limited access
- ▶ The bid due date has been extended after some of the bids have been submitted
- ▶ Some or all bids are disqualified for simple errors
- ▶ Complaints from bidders that they were not allowed to submit bids
- ▶ A bid is “forgotten” in the safe

2. Bidding process – red flags



Bid-opening

- ▶ Bids are not opened in public
- ▶ The original bid form and price schedules of all bids are not initialled or signed by the members of the bid opening committee
- ▶ Pages are missing from one or more bids
- ▶ Pages with a different typeset are included in the bid
- ▶ Changes to the bid prices and bid security list are handwritten
- ▶ The applicable currency is not stated
- ▶ The attendance sheet lacks original signatures of the company representatives supposedly present at the ceremony
- ▶ Not all bids are brought to the opening ceremony

3. What is Bid Evaluation



Means by which the buyer identifies the supplier offering the most appropriate Value for Money solution

3. Why do we evaluate bids?

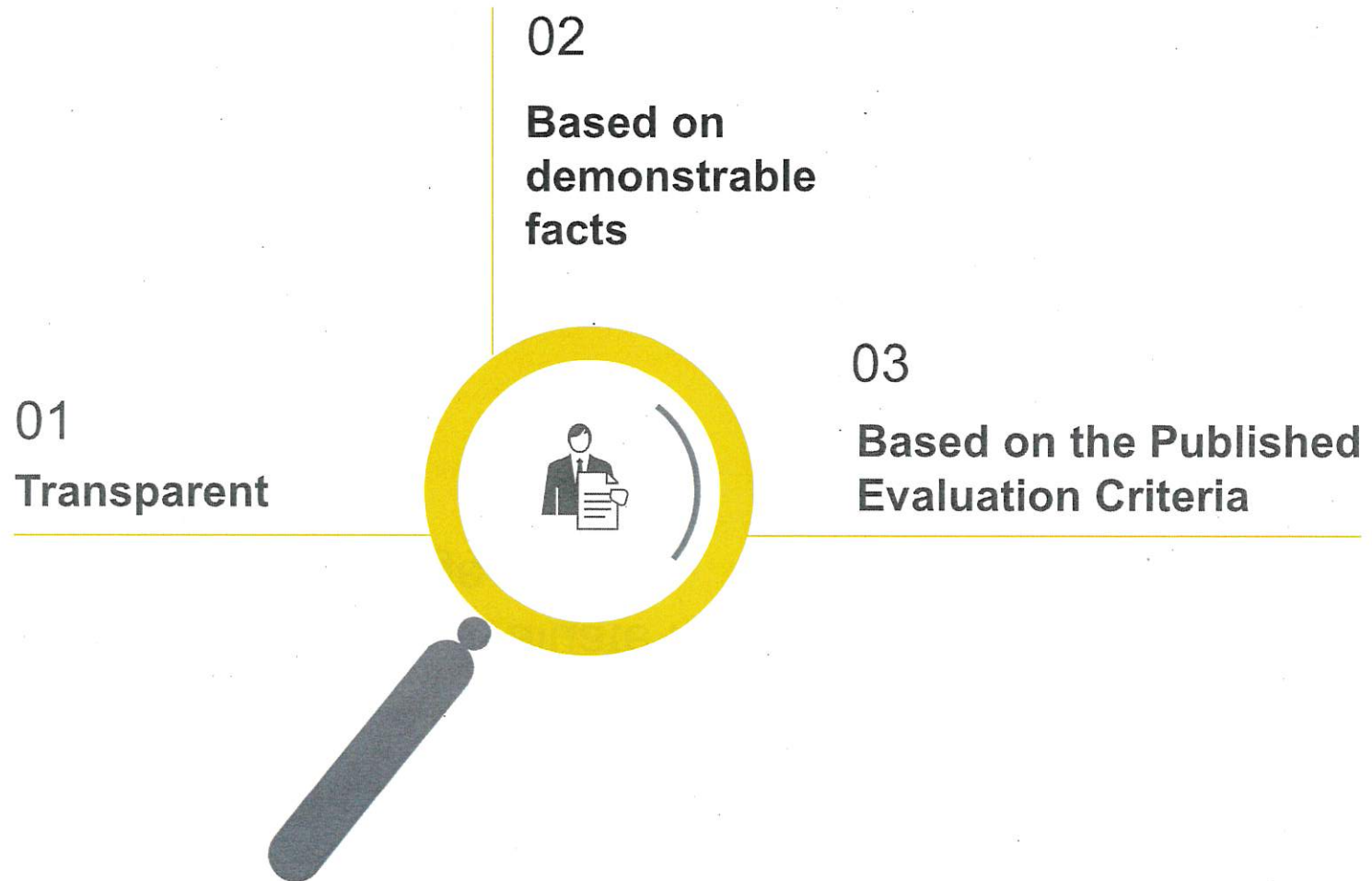


Maintain focus and awareness of the overall contract objectives



Failure to adequately evaluate leaves the evaluator potentially open to legal challenge

3. Bid evaluations must be



Team Activity 2



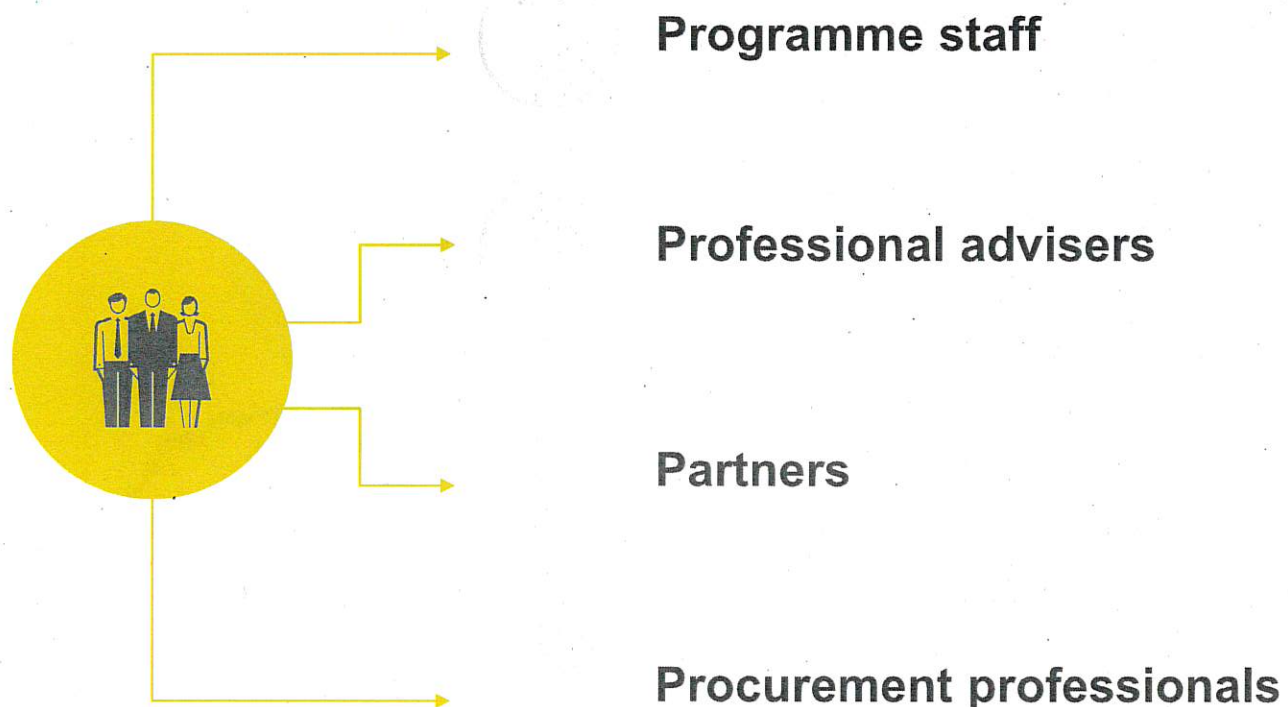
The Task based on the case

Split into groups and brainstorm the following;

- ▶ **Who should evaluate the bids?**
- ▶ **Identify and list of red flags?**

Time allotted: 10 minutes

3. Who should evaluate bids?



3. How to evaluate technical bids?

- ▶ Evaluation by members of the panel

- ▶ Compare notes and Discuss significant disparities

- ▶ Reach agreement / consensus

- ▶ Allocate consensus scores

- ▶ Document your decision and be able to defend it

3. How to evaluate commercial bids?

Evaluate:

- ▶ Competitiveness of supplier rates in relation to the market (benchmarking)
-
- ▶ Approach to deliver an output based contract with payment linked to outputs
-
- ▶ Demonstration of VfM over the programme

3. Bid evaluation– red flags

Red Flags	Checks Required
Mis-representation of Credentials	<ul style="list-style-type: none"> • Verifying the work orders • Validation of completion certificates • Cross checking with the clients • Ensuring the work order to address the company who has participated in the bid
Financial Statement	<ul style="list-style-type: none"> • Financial statements needs to be audited • Standalone statements should be considered not consolidated (as per requirement) • Latest financial year statements should be provided • Background Check on the company as well as auditors • Checking Annual Filing reports on public domain
Bid Security	<ul style="list-style-type: none"> • Bank Guarantee/Bid Security financial instrument should be valid • The date and location should be same as mentioned in the RfP • The validity of the bid security should as per RfP requirement
Bid Rigging	<ul style="list-style-type: none"> • Verification of bidders • Check for bid manipulations, the methods for this would include either changing bid parameters, evaluation processes, or other activity to effectively select the bidder of choice. • Checking for unbalanced bidding, which involves high bid prices for commencing phases of development and low prices for later stages.

3. Bid evaluation– red flags

Red Flags	Checks Required
Fictitious Bid Proposals	<ul style="list-style-type: none">• Checking on the format and style of proposal• Checking on the authenticity of the bid preparation• Checking on similar spelling mistakes• Checking on the links with the client• Checking on the company records for directors, registered address, etc.
Conflict of Interest	<ul style="list-style-type: none">• Performing document review• Performing public domain checks• Checking discrepancies in the Non Disclosure Agreements.

3. Bidding process – red flags



Shortlisting

- ▶ Unusual or unreasonable evaluation criteria
- ▶ Short-listed consultants or prequalified companies does not have the appropriate qualifications
- ▶ Unreasonable prequalification requirements
- ▶ Short-listed firms do not have similar qualifications or there is a wide gap in qualifications
- ▶ Highly qualified firms have expressed interest and are not shortlisted
- ▶ Unreasonable pre- and post-qualification criteria (e.g., abnormally high annual turnover, liquidity reserves, or years of experience in the country)
- ▶ The Bid Evaluation Report (BER) provides poorly justified reasons for the rejection of certain bids
- ▶ Companies complain that officials refuse to make bidding documents available to potential bidders or to accept the submission of bids

3. Bid evaluation– red flags



Bid evaluation report

- ▶ The lowest priced bidder is declared unresponsive (for no apparent reason)
- ▶ A high number of bids is unresponsive
- ▶ Recommendations and disqualifications are poorly justified
- ▶ Bids are rejected because of allegedly missing components, such as catalogs and brochures for the goods offered
- ▶ Same or similar telephone or facsimile numbers or address shared by bidders
- ▶ Unreasonably high bid prices by losing bidders for which there is no legitimate explanation and which cannot be attributed to an error
- ▶ Bid prices differ by a set percentage

Contract



A contract is an agreement between two or more parties that is binding in Law

4. Contract– red flags



Contract terms

- ▶ Any changes to quality, quantity or specification both to goods and services in the contract deviating from the bidding document
- ▶ Price schedules are not the same as the winning bid
- ▶ Changes to contract type
- ▶ Changes to standard contract clauses (audit, remedies, damages, etc.)
- ▶ Methodology and Work Plan not attached to the contract
- ▶ Appendix lacks information about services and facilities provided by the client or are changed substantially from RFP draft contract



Contract delivery

- ▶ Failed tests or inspections
- ▶ Complaints about poor quality from users Increased or accelerated product failures or repair costs
- ▶ Absent, inadequate or altered documentation submitted by the contractor to support billings
- ▶ Delayed start of works or the delivery of services beyond normal timeframes / failure to deliver
- ▶ Long delays in implementation of the contract
- ▶ Product substitution
- ▶ Deviations from specifications

4. Contract– red flags



Contract changes

- ▶ Change in the name and legal status of the firm
- ▶ Numerous or questionable change orders for a specific contractor that are approved by the same project official
- ▶ Pattern of change orders just below the threshold of prior review
- ▶ Changes in the scope of the contract and required outputs
- ▶ Changes in technical specifications
- ▶ Substantial changes in the TOR
- ▶ Changes to the original design and BOQ
- ▶ Increase in contract value (e.g., unit costs)
- ▶ Reductions in the quantity of items to be delivered without a commensurate reduction in disbursements
- ▶ Substitution of materials and equipment

Sourcing the Procurement: Options

Option 1

In-house resource / HR solution



In-house staff (e.g. Technical Adviser to develop business case)
HR recruitment / permanent or fixed term recruitment.
Secondment
Agency staff

Better VfM and avoids Col / legal challenge!

Option 3

Low Value Competition



- ▶ Advantages of Competition
- ▶ Ensuring fair and open competition
- ▶ Identifying a short list of suppliers to Invite to Tender (ITT)
- ▶ Developing the ITT pack
- ▶ Evaluating bids
- ▶ Negotiating with the supplier
- ▶ Contracting the supplier

Option 2

Framework Agreements



- ▶ What is a Framework Agreement?
- ▶ How does a Framework operate?
- ▶ What Frameworks are available?
- ▶ Mini competition / reduced timescales
- ▶ Call-Down Contracts

Option 5

Single Tender / Waiver



- ▶ When single tender is appropriate?
- ▶ Waiver of competition approval (mandatory!)
- ▶ Inviting a Single Tender (the ITT Pack)
- ▶ Evaluating a Single Tender
- ▶ Negotiating a Single Tender
- ▶ Contracting the supplier

Negotiation



Types of Negotiations

01

Win-Lose
Adversarial

02

Win-Win
Collaborative

Phases of Negotiations

1

Preparation

The gathering together of information, knowledge of the supplier, his product/service, his strengths and weaknesses, and likely tactical approach.

2

Discussion

Involvement of entire negotiation team in determining individual roles, strategy, objectives (LIM), concessions and tactics.

3

Proposal

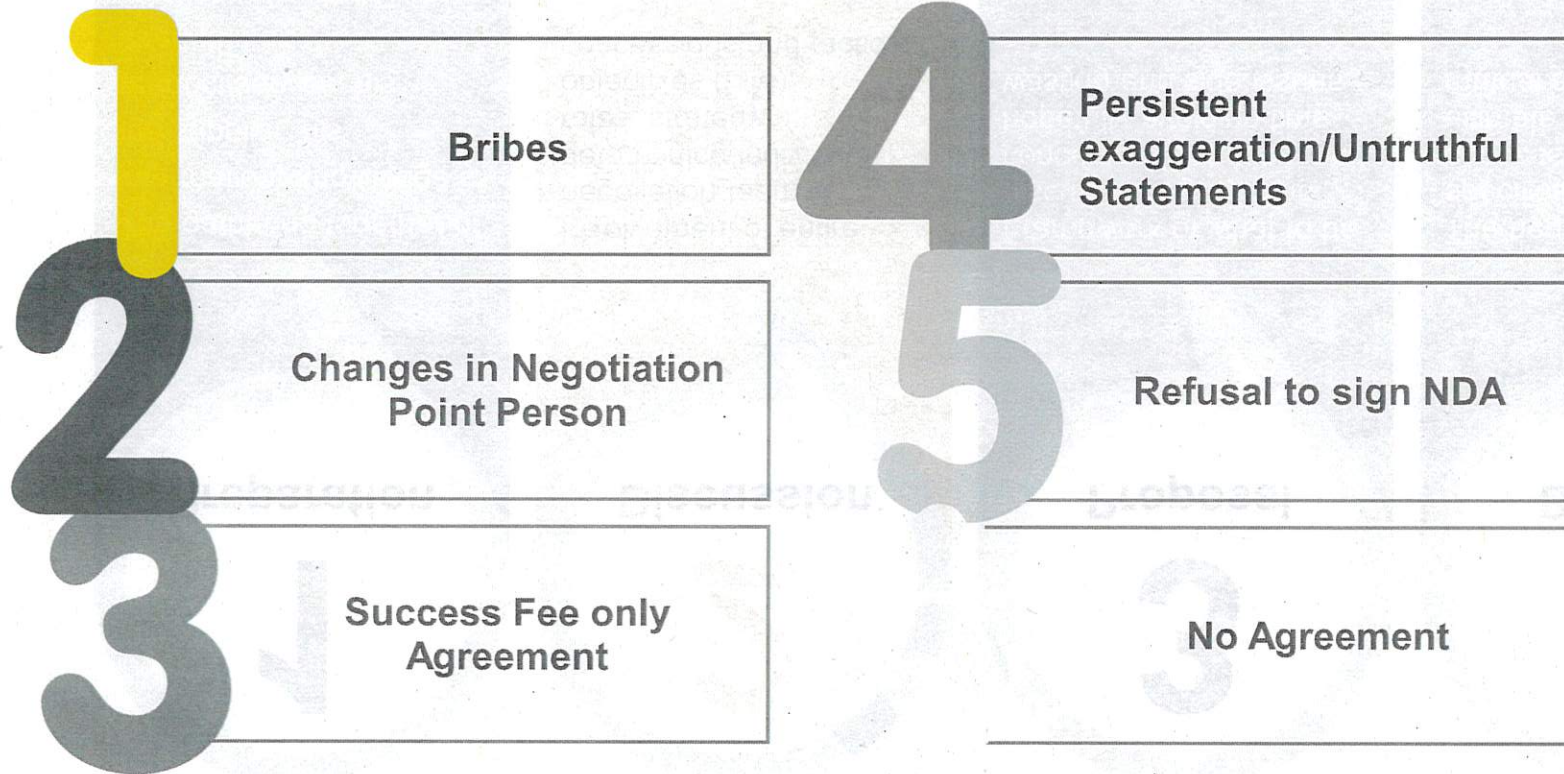
Framework of what to be discussed highlighting concerns of the team and hopefully avoiding time wasting and side issues.

4

Bargain

The negotiation of specifics and trading of concessions with the ultimate aim of reaching mutual agreement.

Red Flags in Negotiation



Ethics and fraud concepts



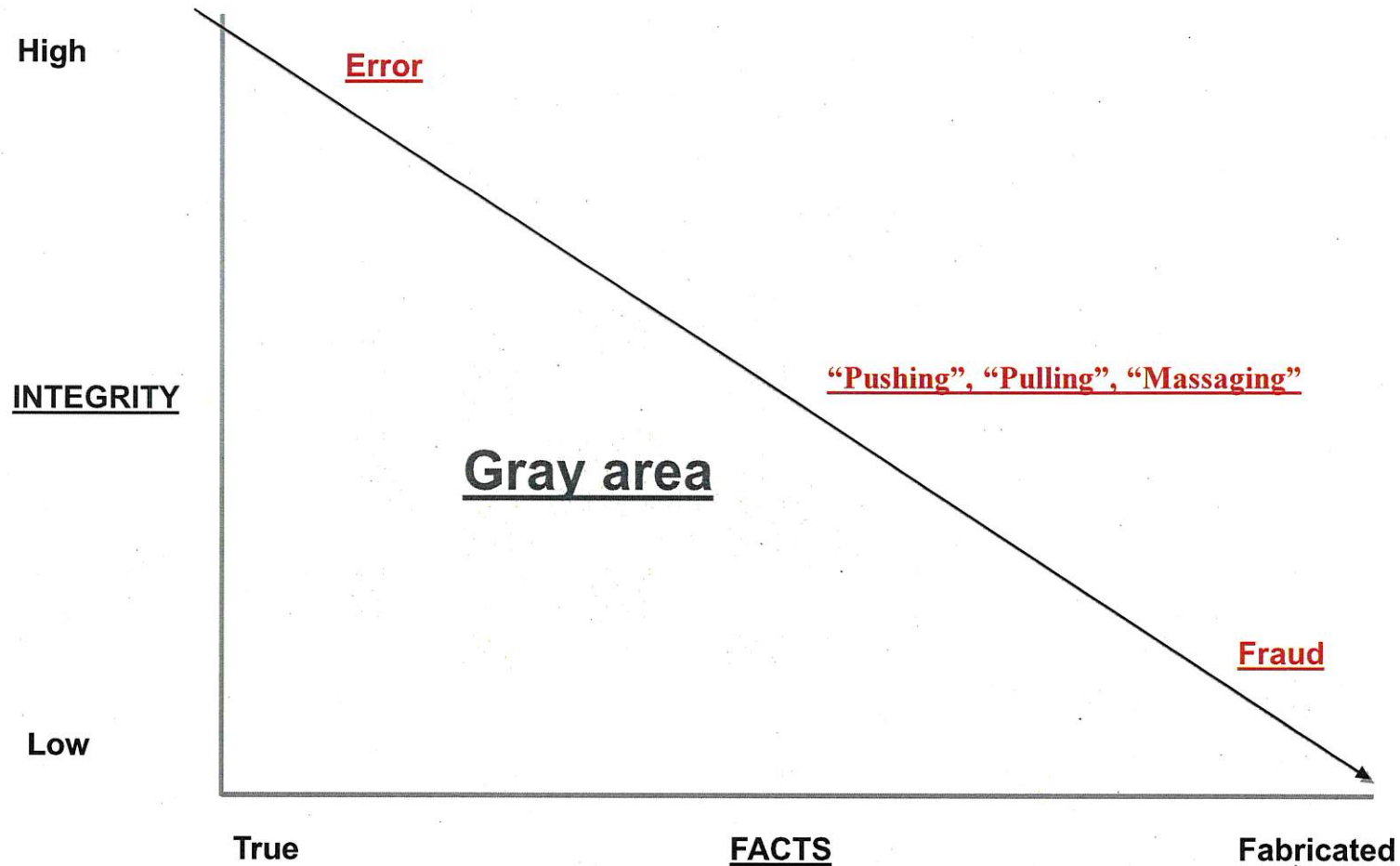
Error vs fraud

Error – **unintentional** misstatements or omissions of amounts or disclosures on financial statements

- ▶ Mistakes in gathering or processing accounting data
- ▶ For example, common expenses/vouchers of another financial institutions or unrelated to ADB)
- ▶ Incorrect estimates due to misinterpretation of facts
- ▶ Mistakes in the application of accounting principles (example, calculation of net worth, financial situation, etc.)

Fraud is **intentional**

Error vs fraud (contd.)



Team exercise

Vulnerable areas in procurement

In the following exercise, you need to:

Identify the vulnerable areas and explain its impact on procurement process.

Maximum City's Municipal Council has decided to upgrade the local rail network so as to transport passengers faster, more efficiently and in a safer manner. They have approached and obtained a loan from Multilateral Agency Z for USD 96 million and the seed capital for the project of USD 27 million is being contributed by the Central Government.

Post approval and signing of the loan agreement the project initiated as below:

- 1. Bid Preparation:** The cost estimates were prepared based on the cost estimates for a similar project executed by "Speedy Rails" 3 years ago. Development of Standard Bid Documents. The Bid documents were prepared by the same design consultants who had designed the project and were now in charge of supervision of the project implementation.

To speed up the project the Bid documents were available for purchase and submission for 14 days. Further, the Bid advertisement was also done in a local newspaper owned by the Mayor's cousin. The Bid documents were to be submitted to the supervision consultant who collected these bid documents, opened them and conducted the preliminary evaluation.

Team exercise

Vulnerable areas in procurement

2. **Bid Evaluation:** As this was a busy period the Bid evaluation Committee was composed by the mayor from his group of knowledgeable personnel. These consisted of politicians and a few administrators. A training was organized on Bid Evaluation by the mayor but due to their busy schedules the members were unable to attend it. However, it was not a problem as they performed the evaluation based on the bidders submitted bid forms and hence they did not need to refer to the supporting documentation.

3. **Bid Award:** The winning bidder ("Speedy Rails") was selected, negotiated with and finalized prior to informing the Multilateral Bank. The winning bidder was sent a Letter of Acceptance and asked to submit the Performance Bank Guarantee prior to clearing the site.

4. **Contracting:** As they were anticipating delays in execution due to the government departments being busy the Consultant and the Project Manager removed the "liquidated damages" clause from the contract document.

Time allotted: 20 minutes

Questions?



A close-up photograph of two business people shaking hands over a desk. One person is wearing a dark suit and a white shirt cuff, while the other is wearing a light blue sleeve. In the foreground, a white tablet lies on the desk, displaying a dark image. The background is blurred, showing a computer keyboard and some papers. A yellow rectangular box is overlaid in the top right corner.

Thank you