

Government spending and public procurement: Transparency, efficiency and accountability

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CAR ACQUISITION

Planning stage (priorities definition)

Budget allocation

Criteria selection (specification)

Tender (competition)

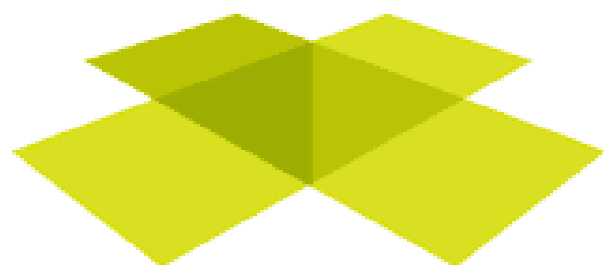
Contract signature

Payment (money transfer)

PUBLIC PROCUREMENT

Public procurement is primarily economic process
(what government buys and at what conditions)

Highly and detailly regulated by legal norms and
Institutions (EC Directives, international best
practices)



Open
Contracting



Procurement



Innovation



Challenge

Openness | Transparency | Effectiveness

PROCUREMENT

Complexity - from toilet paper to nuclear power-plant equipment; from legal advice to highways construction

Technical expert knowledge vs. Public (democratic control over use of public funds

Many actors with diverging interests and incentives

Exceptions: national security; protection of local producers and companies; employment; know-how protection

PRINCIPLES

- ❑ Transparency
 - ❑ Non-discrimination
 - ❑ Equal treatment
 - ❑ Efficiency
 - ❑ Proportionality
-
- ❑ Common sense

PUBLIC PROCUREMENT PROCESS AND CORRUPTION RISKS



PROCUREMENT STAGES

**Define
Business
Need**

**Prepare
Business
Case**

**Develop
Procurement
Strategy**

**Supplier
Selection
and
Tendering**

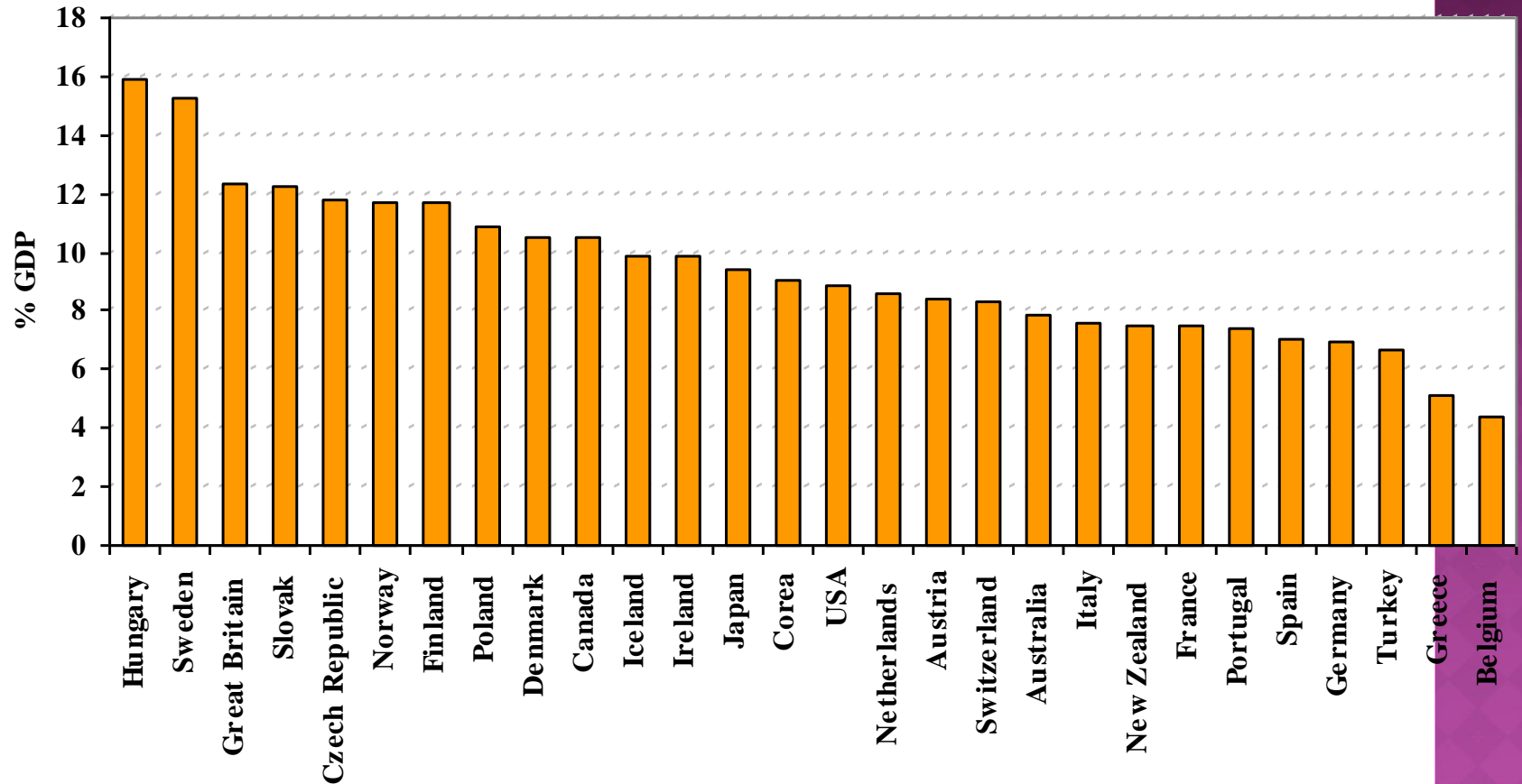
**Post
Tender
Clarification**

**Standstill
Period**

**Contract
Award
and
Debriefing**

**Implement
and
Monitor
Contract**

OECD - PROCUREMENT MARKET



COMPLEX INFRASTRUCTURE CONTRACTS

Few acquisitions in one project (parallel)

Many economic and political actors

Execution oversight needed (on-site controls, regular quality reports,...)

Prolonged deadlines, overpricing

Centralization of project management, budgeting, clear division of labour and responsibility

USEFUL LINKS

- ◉ TI: Curbing Corruption in Public Procurement: A Practical Guide
- ◉ https://www.transparency.org/whatwedo/publication/curbing_corruption_in_public_procurement_a_practical_guide
- ◉
- ◉ OECD documents on Public procurement:
- ◉ <http://www.oecd.org/governance/procurement/toolbox/>
- ◉
- ◉ TED - Tenders electronic daily - EU procurement portal
- ◉ <http://ted.europa.eu/TED/main/HomePage.do>

I. GENERAL PERCEPTIONS

- ❑ High level of perceived corruption (CPI, WB) - most vulnerable government activity
- ❑ Politization of public administration
- ❑ Conflict of interests, patronage, misuse of power, fraud, kickbacks, non transparent party financing
- ❑ Unenforceable regulation, insufficient control mechanisms
- ❑ Public Procurement System (15-20% of GDP)
 - Government Perception - system works, individual cases of wrongdoing sometimes happen everywhere
 - Public Perception - systemic problem, corruption monumental, manipulations immense

I. GENERAL PERCEPTIONS

- Weak and non-transparent governance at all levels of state administration
- Lack of personal and political accountability
- Greed, envy and fraud criminal intentions combined with lack of education
- High tolerance to corruption
- The consequence = declining trust in institutions and democracy

CORRUPTION IN PROCUREMENT

Corruption - Misuse of entrusted power for private gain. Third party is always affected negatively

Bribery

Facilitation payments

Bid-rigging

Fraud

Collusion (cartels)

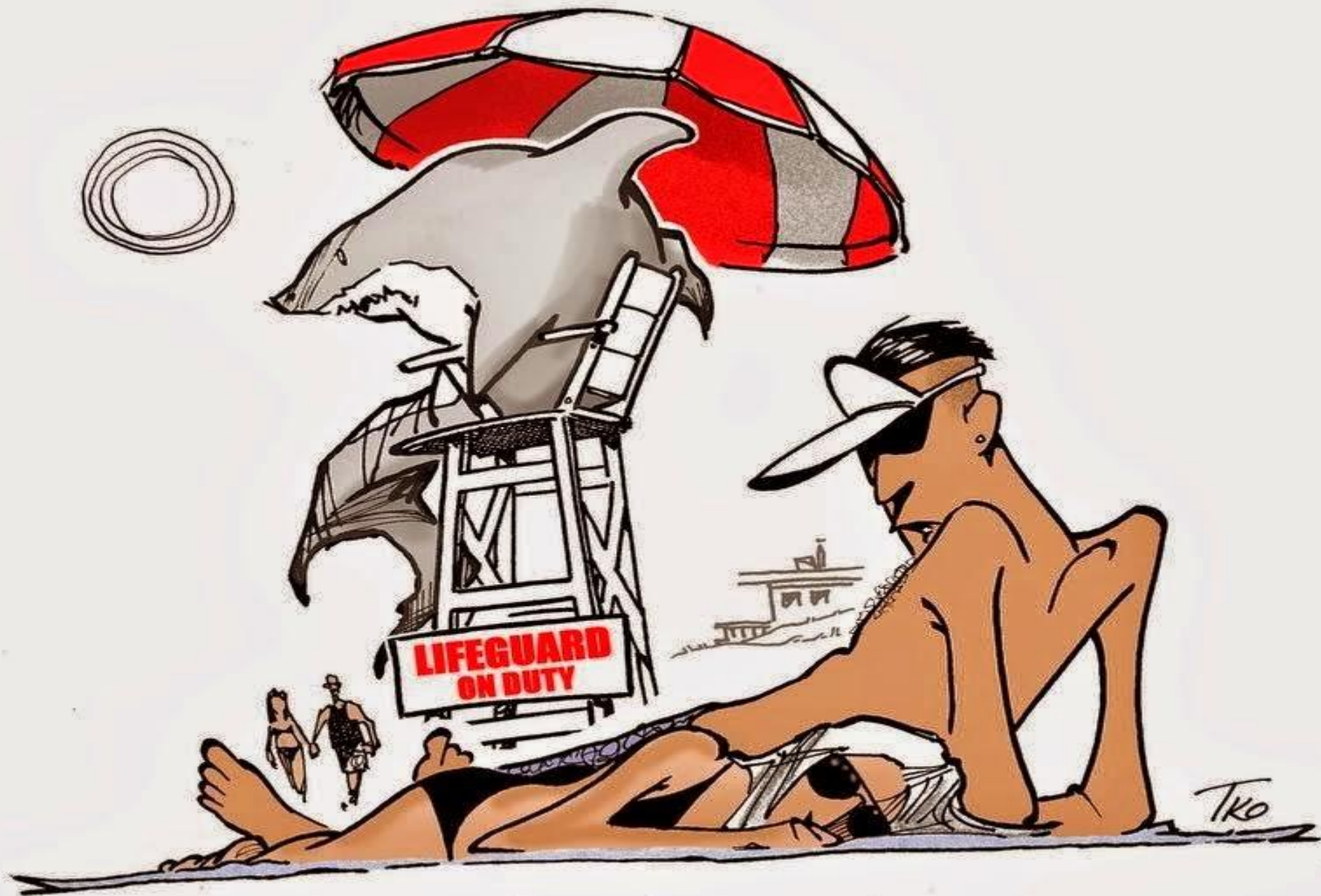
Blackmailing

CORRUPTION IN PROCUREMENT

Before clear breach of procurement norms and procedures. NOW trend toward sophisticated manipulations of tender procedures

Norms are formally met but in a way that brings discriminatory and uneconomic results

Indicators (red lights) - more often than direct evidence and proofs



*“So, I’m the only one who sees a
conflict of interest here?”*



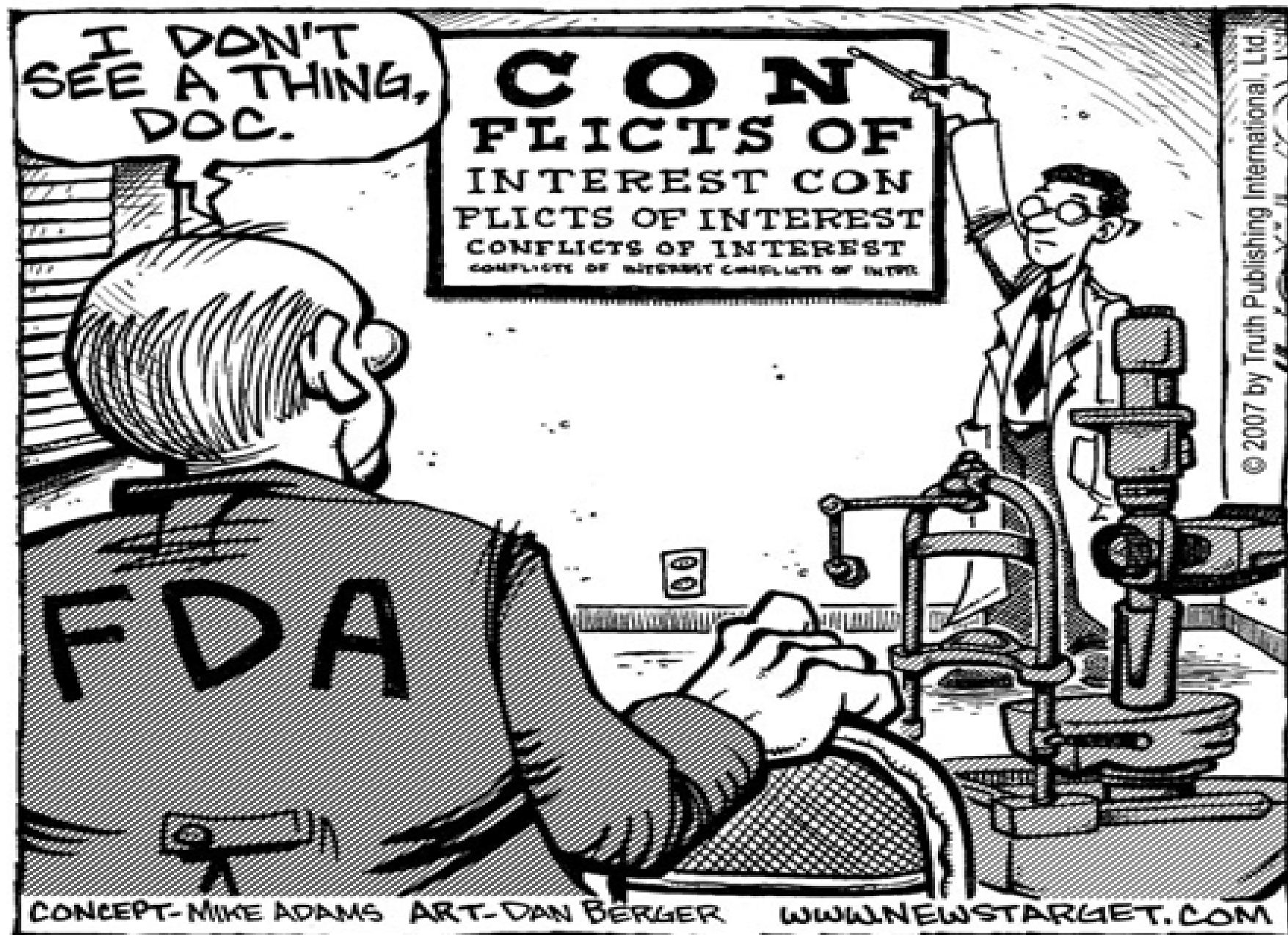
PROCUREMENT PROBLEMS: GOVERNMENT SIDE

- ❑ Non-participatory planning phase (badly designed, unwanted projects)
- ❑ Specification of technical details favours particular bidders
- ❑ Manipulations with choice of tendering procedure (limited procedures prevail)
- ❑ Selection criteria (often very subjective)
- ❑ Selection committees (political and economic pressures)
 - Expert committee ranks bids, govt. often changes ranking without explanation
- ❑ Artificial dividing of contracts - to avoid open tenders
- ❑ Non-transparent allocation of below-threshold contracts
- ❑ Contracts are signed NOT in line with tender conditions

PROCUREMENT PROBLEMS: BIDDERS SIDE

- ❑ Shift in power between contractor and bidder
- ❑ Blacklisting and debarment might be solution
- ❑ Bidders pressure to discredite some govt. officials
- ❑ Cartellization, collusion (no real competition, silent agreements between bidders)
- ❑ Problematic role of middlemen (consulting companies - tenders organizers)

COUNTERTHINK "FDA VISION TEST"



INDICATORS OF CORRUPT CONTRACT

- ◉ Low numbers of bidders (what to do with one bid tender)
- ◉ Too strict qualification criteria
- ◉ Extra-costs (additional works)
- ◉ Contract fines and their enforcement
- ◉ Prolongation of deadlines
- ◉ Appendixes to contracts

PROBLEMS

- Planned contract does not meet real needs (IT, legal or economic advisory, acquisitions)
-
- Subject of the contract is very narrowly defined
- Limited number of cases go through open tenders (limited tenders are used more often). Contracts are divided to meet threshold

PROBLEMS II.

- Problem of subjective (uneconomic)
- criteria:
- Often government choses multi-criteria competition instead of price only - without explanations
- Unusual qualification requirements
 - Basic
 - Professional
 - Economic and financial
 - Technical
 - Certificates
 - References

PROBLEMS III.

- ⦿ Price for bidding documentation
- ⦿ Short deadlines for submitting bids
- ⦿ Composition of committees - members are not experts, how to ensure their independence
- ⦿ Any justification of criteria is missing

TOOLS AND INSTRUMENTS

Integrity Pacts – public control

Debarment – Blacklisting

Auditing – external, internal

Transparency, Accountability

Involve all stakeholders

Preventing of conflict of interests

OPEN QUESTIONS

- ◉ What to do with one-bid contracts?
- ◉ What to do with small (non-competitive) contracts?
- ◉ How to ensure efficiency and economy of projects?
- ◉ Can debarment work?

LEGISLATIVE DRAWBACKS IN EU COUNTRIES

- ❑ Modern, but complicated and detailed legislation
- ❑ Frequent ammendments of legislation
- ❑ Focus on large contracts only, insufficient rules for below-thresholds contracts
- ❑ Focus on modern, but marginal issues (electronic auctions, ...)
- ❑ Limited disclosure - not legally binding
- ❑ Possibility to exceed contracts costs („extraworks“)

ACCESS TO INFORMATION, TRANSPARENCY

- ❑ Fol Act - information still suppressed
- ❑ Very limited disclosure - minimum is to make contracts public
- ❑ Stock companies owned by local govt. - no information provided
- ❑ Business secrecy clause - abused in contracting
- ❑ Bidders do not request information - fear of worsening relations with contractors
- ❑ Protection of personal data
- ❑ Monitoring in real time is very difficult

CONTROL INSTITUTIONS

☐ Antimonopoly Office {Review

- Formal control of law infringements only
- Office reacts on received complaints only - bidders tent not to file complaints
- Sanctions are low (no prevention)
- No methodical guidance

☐ Supreme Audit Office

- No control of local govt. spending
- No enforcement mechanisms

PPP - Public Private Partnership

DEFINITION & ORIGIN

- ◉ Public sector delegates the production of certain goods and services to private sector (contract, concession)
- ◉ Private sector:
 - is paid by the public sector or consumers, and can make profit
 - usually receives a monopoly over the production
- ◉ Anglo-saxon concept (New Public Management), used in Western Europe

BASIC ELEMENTS OF PPP PROJECTS

- ◉ PPP x Public Procurement
- ◉ Duration of contracts (several dozens of years)
- ◉ Volume of contracts (tens/hundreds of million USD)
- ◉ Ownership (production unit usually owned by the private sector, BUT: often ownership divided)

◉ Reasons for Using PPP Projects 1

PPP BASED ON ASSUMPTION THAT THE PRIVATE SECTOR
IS MORE EFFICIENT THAN THE PUBLIC ONE IN
PRODUCING GOODS AND SERVICES, BECAUSE OF HARD
BUDGETARY CONSTRAINT PROFIT-MAKING

INFRASTRUCTURE DEVELOPMENT ACCELERATION
INCREASED SPEED OF IMPLEMENTATION
REDUCTION OF OPERATION COSTS
BETTER RISK MANAGEMENT

VALUE FOR MONEY

◉ Reasons for Using PPP Projects 2

IMPROVED QUALITY OF PUBLIC SERVICES

GENERATION OF ADDITIONAL INCOME

IMPROVED QUALITY OF PUBLIC SECTOR

MANAGEMENT

BUT: INSTITUTIONAL ENVIRONMENT AND QUALITY
OF PROJECTS MATTER

PPP PARAMETERS

- ◉ Design & construction
- ◉ Financing
- ◉ Operation & maintenance
- ◉ Contact with clients
- ◉ Ownership of assets
- ◉ Duration of contracts
- ◉ Type of payments

The more private sector participates in the project, the more risk bears (incentive to transfer the risk to the public sector, or increase profit).

CONTEXT OF PPP

- Extreme pressure of private money (secured investment)
- In globalized world partnerships seem natural
- EU (and many IFIs) support this concept (green paper)
- Enormous hunger for public sector infrastructure investments in CEE region



CORRUPTION IN PUBLIC-PRIVATE- PARTNERSHIP-VENTURES

- **WHAT CAN AND WHAT CANNOT BE CONTRACTED OUT? 1**

Entry into the sector - Measurability of outputs	Easy	Difficult
Easy	(A) Measurable market services (+) - waste disposal - towage service	(B) Measurable monopoly services (++) - electricity, gas supply
Difficult	(C) Immeasurable market services (++) - public healthcare	(D) Immeasurable monopoly services (+++) - police - prisons

IV. PUBLIC PRIVATE PARTNERSHIP (PPP) NEW CHALLENGE

❑ Profesionality of public administration

- Low ability to divide project risks adequately and transfer some of them on private investor

❑ Length of contracts period realization

- Political accountability for unsuccessful projects very questionable

❑ Complexity of contracts

- Impossibility of public control

❑ Risk of excessive indebtedness of public administration in future

- Unrealistic expectations of public sector

RISKS I.

Political hazard

- ◉ Duration of contracts exceeds the political life of any public official (no accountability, constraints laid upon successors)

Costs

- ◉ Risk of excessive public indebtedness in future, unrealistic expectations of public sector
- ◉ PPP can be used to hide public sector debt
- ◉ PPP is NO extra money, NO cheap money, usually projects are more expensive

RISKS II.

Profesionalism of public administration

- low ability to divide project risks adequately
- incentives on part of the state officials
- asymmetric information
- the state is responsible for the provision of the goods and services, even if the private entity goes bankrupt
- regulation of private monopolies

RISKS 1

- ◉ Regulation of private monopolies
- ◉ Setting of the quality standards in contracts (grounds for possible litigation)
- ◉ Selection of contractor
- ◉ Division of risk between the public sector and private contractor, but:
 - incentives on part of the state officials
 - the state is responsible for the provision of the goods and services, even if the private entity goes bankrupt

CONCLUSIONS

- ⦿ PPP can save public finance, BUT
- ⦿ is highly risky in a transition economy, for it requires accountable politicians, and professional civil service
- ⦿ Recommendation: reforms first, PPP second

RISKS III.

Complexity of contracts

- Impossibility of public control

Selection of contractor

- 2 tenders (consultants and contractor)
- potential corruption
- critical stage: selection of procurement method

**Setting of the quality standards in contracts
(grounds for possible litigation) +
Enforcement**

RESEARCH: PUBLIC FUNDS LOSSES - WHY?

- ❑ Attractive way to draw decision-makers attention and set reform political agenda
- ❑ to prove inefficiency with relevant numbers
- ❑ to meet general media demand for numbers

AIM: to quantify amount of unnecessary costs of public contracts due to inefficiency, opacity and corruption

CONTENT OF PRESENTATION

Description of forms of govt. spendings – procurement, PPP and concessions, national subsidy programs, EU funds, others

Public procurement: intro, principles, institutional set-up, project cycle, corruption risks and cartels, penal accountability

PPP – introduction of financial concept, risks, examples
2 selected case studies

What can watchdogger do to monitor government expenditures – tools, mechanisms, tricks, data mining, open data, integrity pacts

Political dimension of government spending: political priorities vs efficiency and accountability

Discussion – thought provoking questions

RESEARCH: PUBLIC FUNDS LOSSES HOW?

- ❑ Preparation
- ❑ Quantification of procurement market
- ❑ Develop methodology:
 - I. Assessment of the volume of economic losses at the central level
 - II. Assessment of the volume of economic losses at the municipal level
 - III. Total estimate
- ❑ RESOURCES: Supreme Audit Office, Ministry of Finance, public services provided at local level

RESEARCH: PUBLIC FUNDS LOSSES

Results:

- 14.7% losses at central level
- > > > 17.4 billion CZK (590 milion €)
- 12% losses at local and regional level
- > > > 15 billion CZK (510 milion €)

Total losses:

- 32.4 billion CZK (over 1.1 billion €) per year

SPECIFIC CASE STUDY: DEFENSE PROCUREMENT

- ❑ Legal exceptions for „hard“ purchases (with military components) is used for all kinds of „soft“ purchases (uniforms, ...)
- ❑ Recent case of truck cars acquisition: armour-plate fronts will be attached (military component) - to avoid open tender and award local company with contract
- ❑ TIC monitored Ministry of Defense contracts (in 2002-2004) > >
 - > only 6% through open tenders, 94% no tender procedures (contracts awarded directly to one company)

PART I.

What is Public-Private Partnership
(PPP)?

PART II.

Benefits of PPP Projects

REASONS FOR USING PPP PROJECTS 1

- PPP based on assumption that the private sector is more efficient than the public one in producing goods and services, because of
 - hard budgetary constraint
 - profit-making

REASONS FOR USING PPP PROJECTS 2

- ◉ Infrastructure development acceleration
- ◉ Increased speed of implementation
- ◉ Reduction of operation costs
- ◉ Better risk management
- ◉ Improved quality of public services
- ◉ Generation of additional income
- ◉ Improved quality of public sector management

BUT: institutional environment and quality of projects matter

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WHAT CAN AND WHAT CANNOT BE CONTRACTED OUT? 2

- ◉ (A) Most suitable for contracting out
- ◉ (B) Private entity tends to abuse its monopolistic position - regulation necessary, BUT:
 - how *effective*, and *costly* is regulation?
- ◉ (C) Key problem: monitoring of quality
 - How to *monitor* quality? How to set quality *standards* in the contract?
- ◉ (D) Unsuitable for contracting out

Thank you for attention

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