



# PUBLIC PROCUREMENT AT THE CROSS-ROAD OF DIFFERENT POLICIES

SESSION 4 (COMPETITION & PROCUREMENT)

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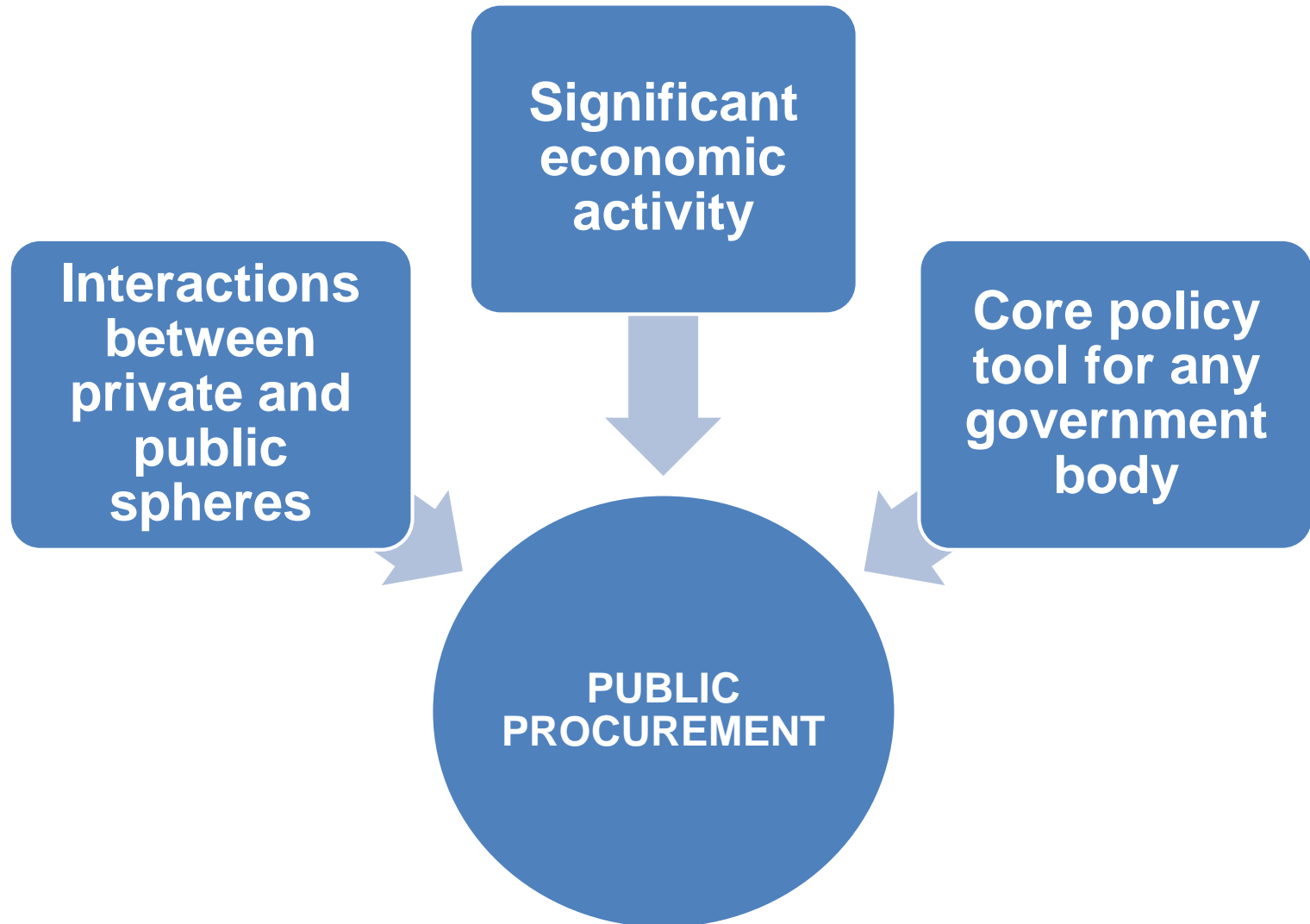
# MY PRESENTATION

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- Procurement matters
- Procurement is exposed to many risks
- Procurement pursues several policy objectives
- The central role of procurement officials
- Challenges in reconciling competition and procurement
- Solutions? The OECD approach ...

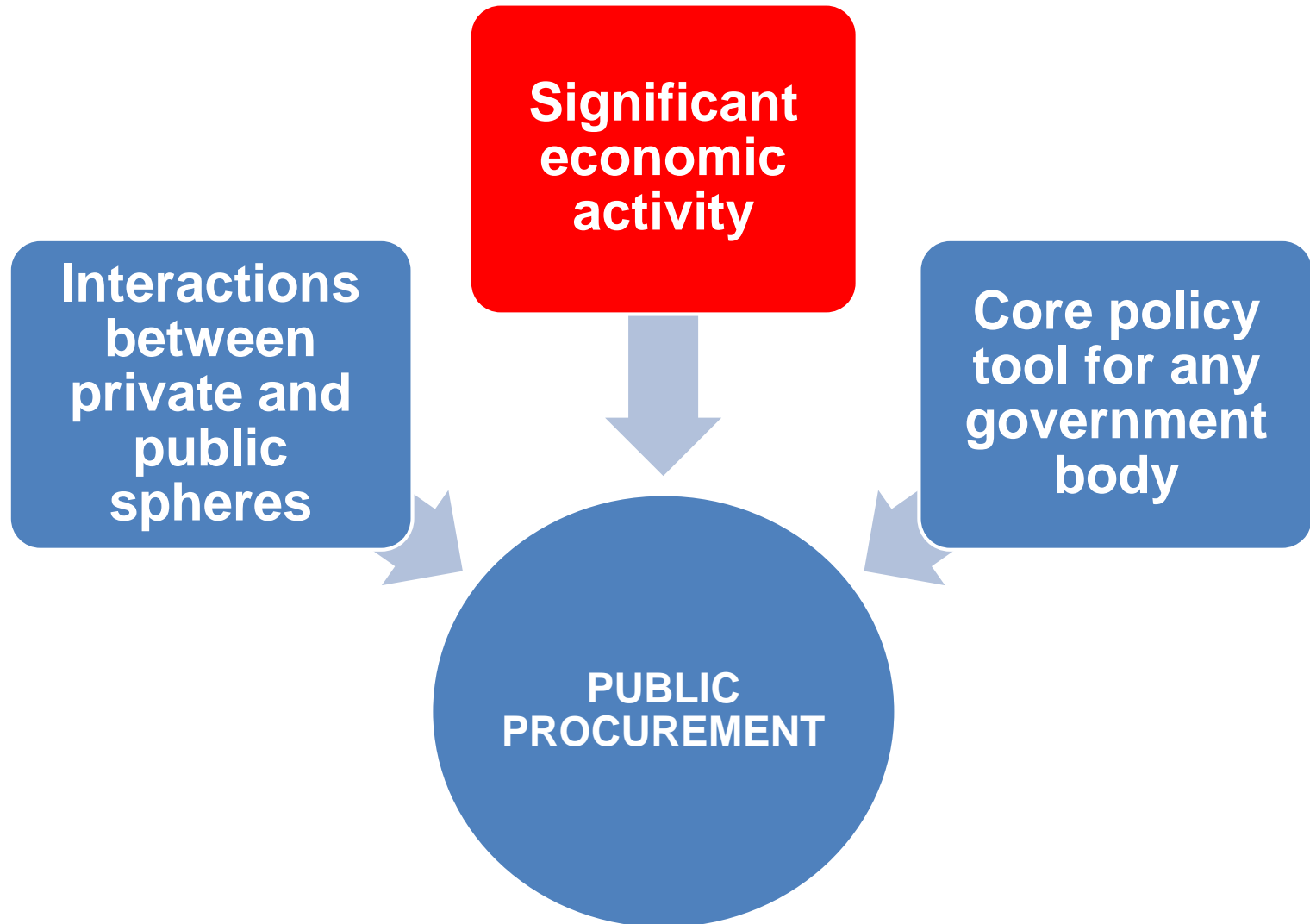


# WHY DOES IT MATTER?





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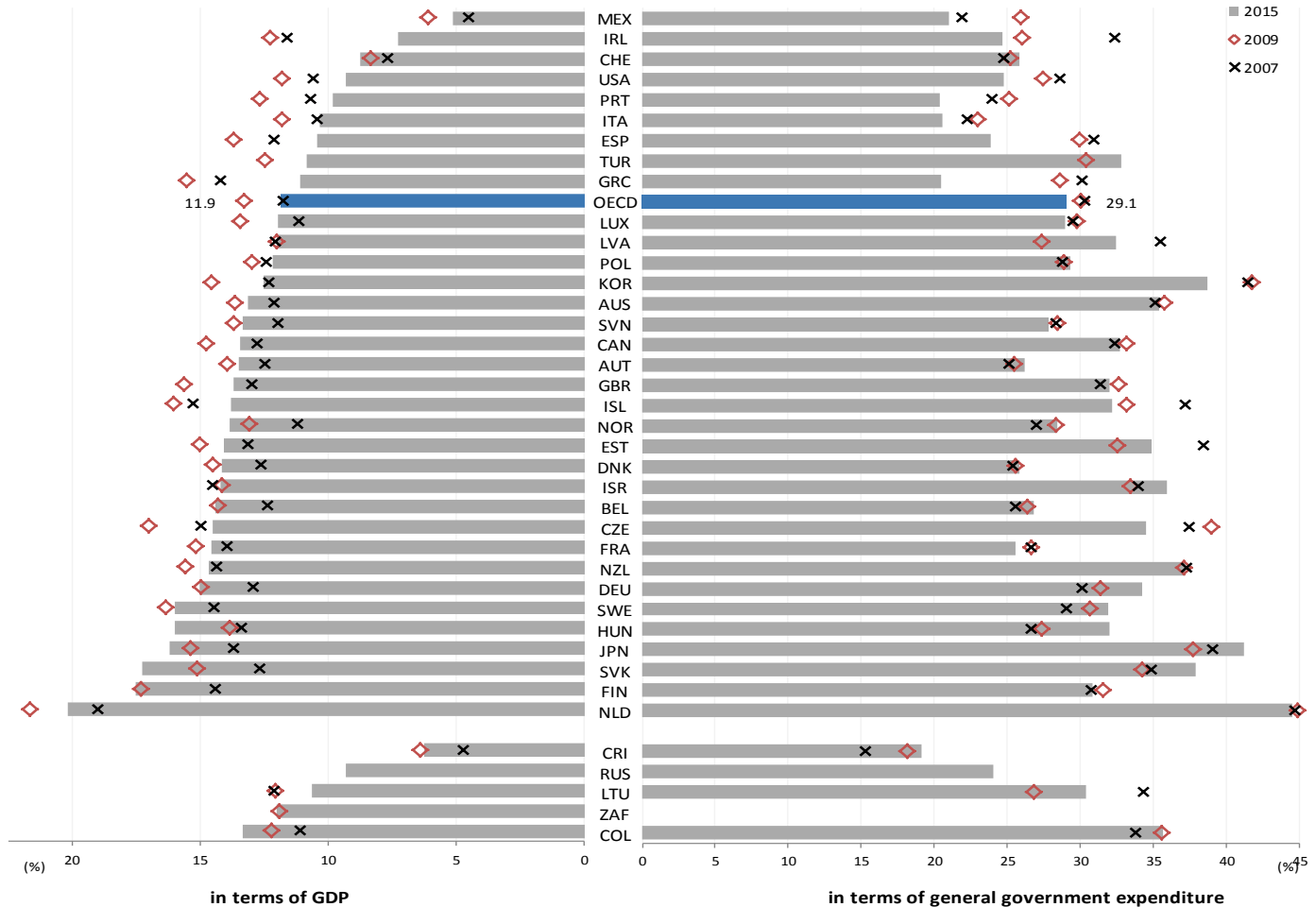




# ...VOLUME AND SHARE

(6.4 trillion EUR spending per year in OECD)

## Government procurement as share of GDP and of total govt. expenditures





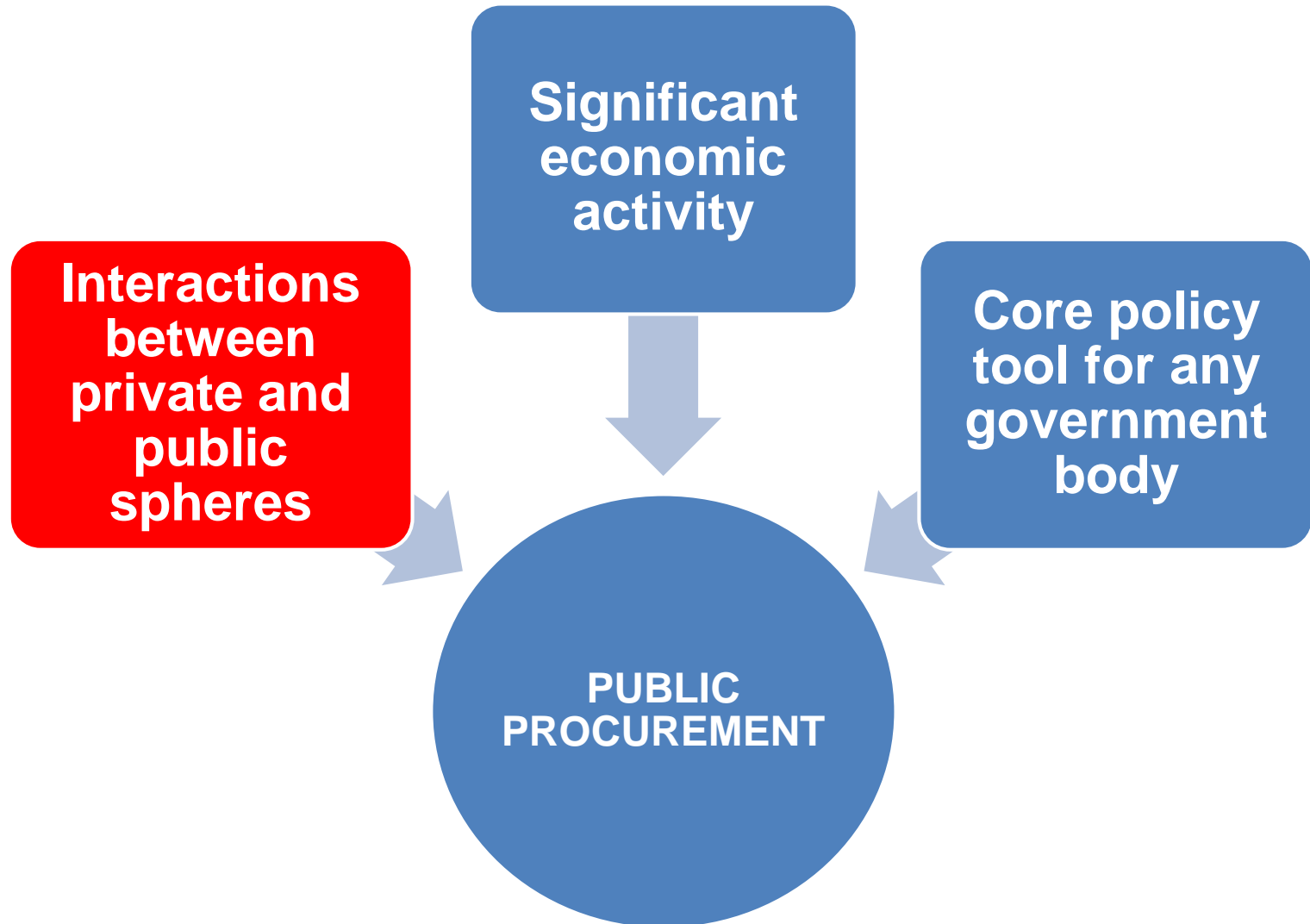
# PUBLIC PROCUREMENT MATTERS ... GLOBALLY

On a global scale public procurement  
estimated at US\$ 9.5 trillion/year





# WHY DOES IT MATTER?





# PROCUREMENT – A RISKY ACTIVITY

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Integrity of public procurement can be at risk because of:

- Corruption including bribery, 'kickbacks', nepotism, cronyism and clientelism;
- Fraud and theft of resources;
- Conflict of interest in the public service and in post-public employment;
- Collusion;
- Abuse and manipulation of information;
- Discriminatory treatment in the public procurement process; and
- The waste and abuse of organisational resources.

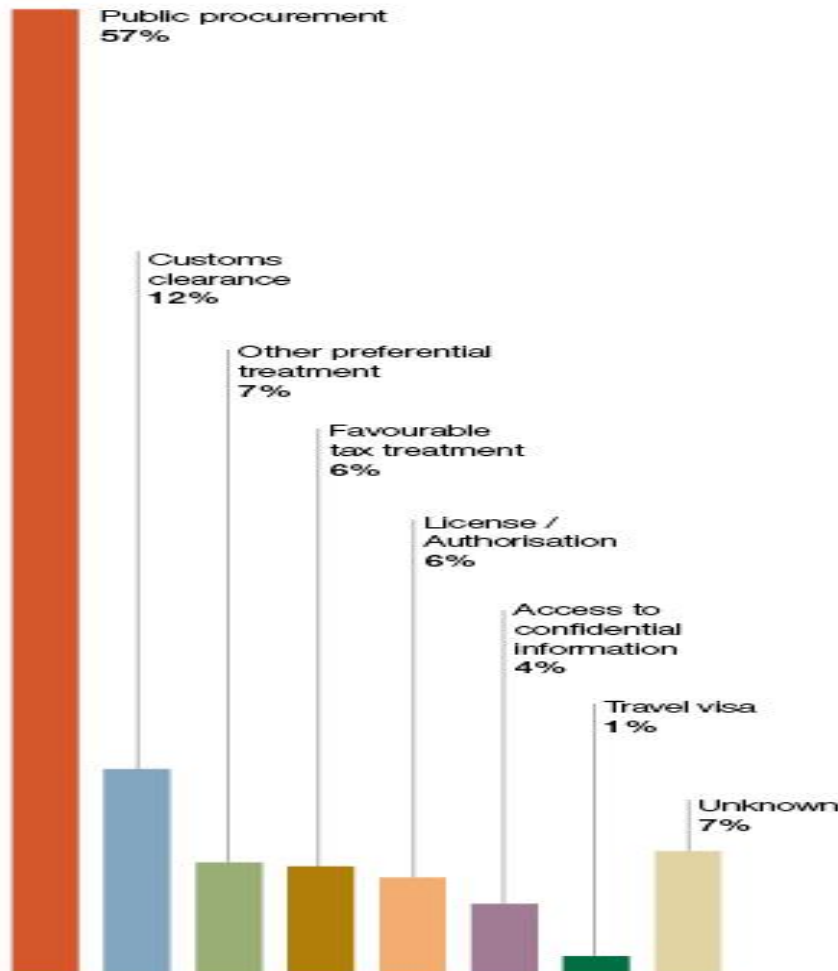
(OECD Recommendation on Enhancing Integrity in Public Procurement (2008))





# 2/3 OF FOREIGN BRIBERY RELATES TO PUBLIC PROCUREMENT

Figure 20. Purpose of the bribes



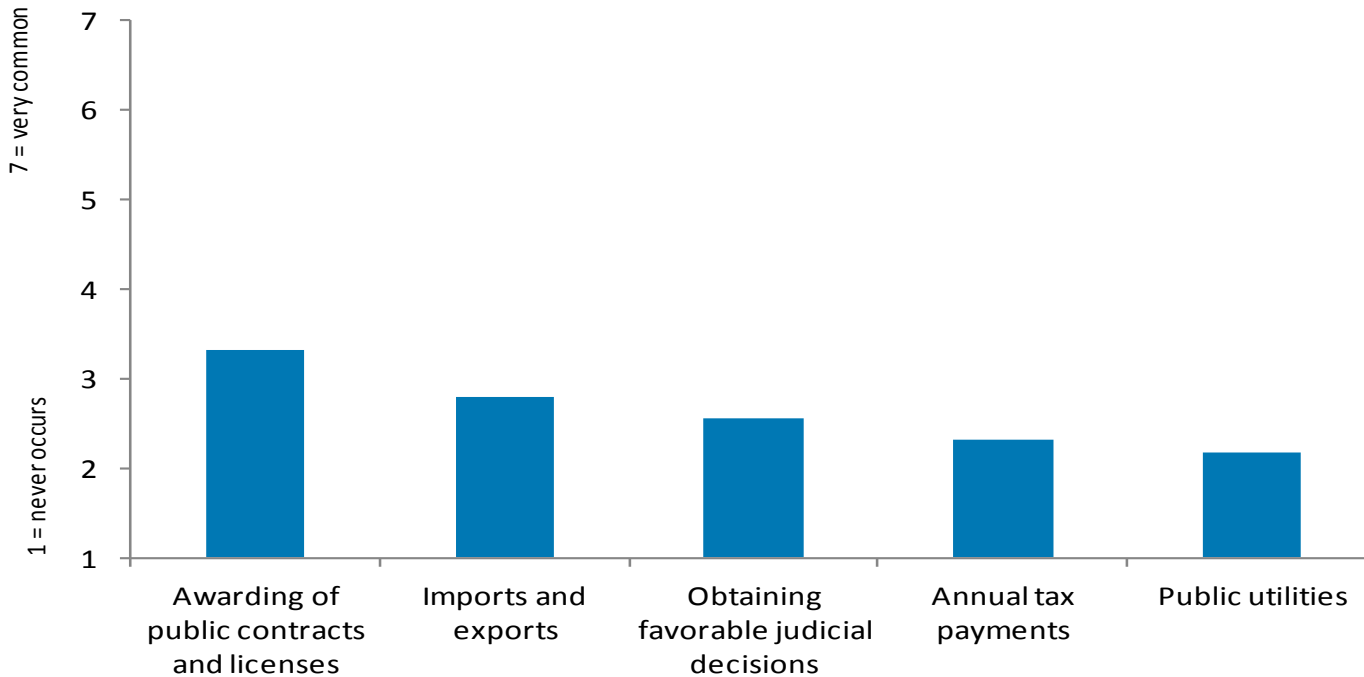
Source: OECD analysis of foreign bribery cases concluded between 15/02/1999 and 01/06/2014.

Data available in the  
**OECD Foreign Bribery  
Report 2014**



# PERCEIVED LEVEL OF BRIBERY

Public procurement is the government activity most vulnerable to waste, fraud and corruption due to its complexity, the size of the financial flows it generates and the close interaction between the public and the private sectors.

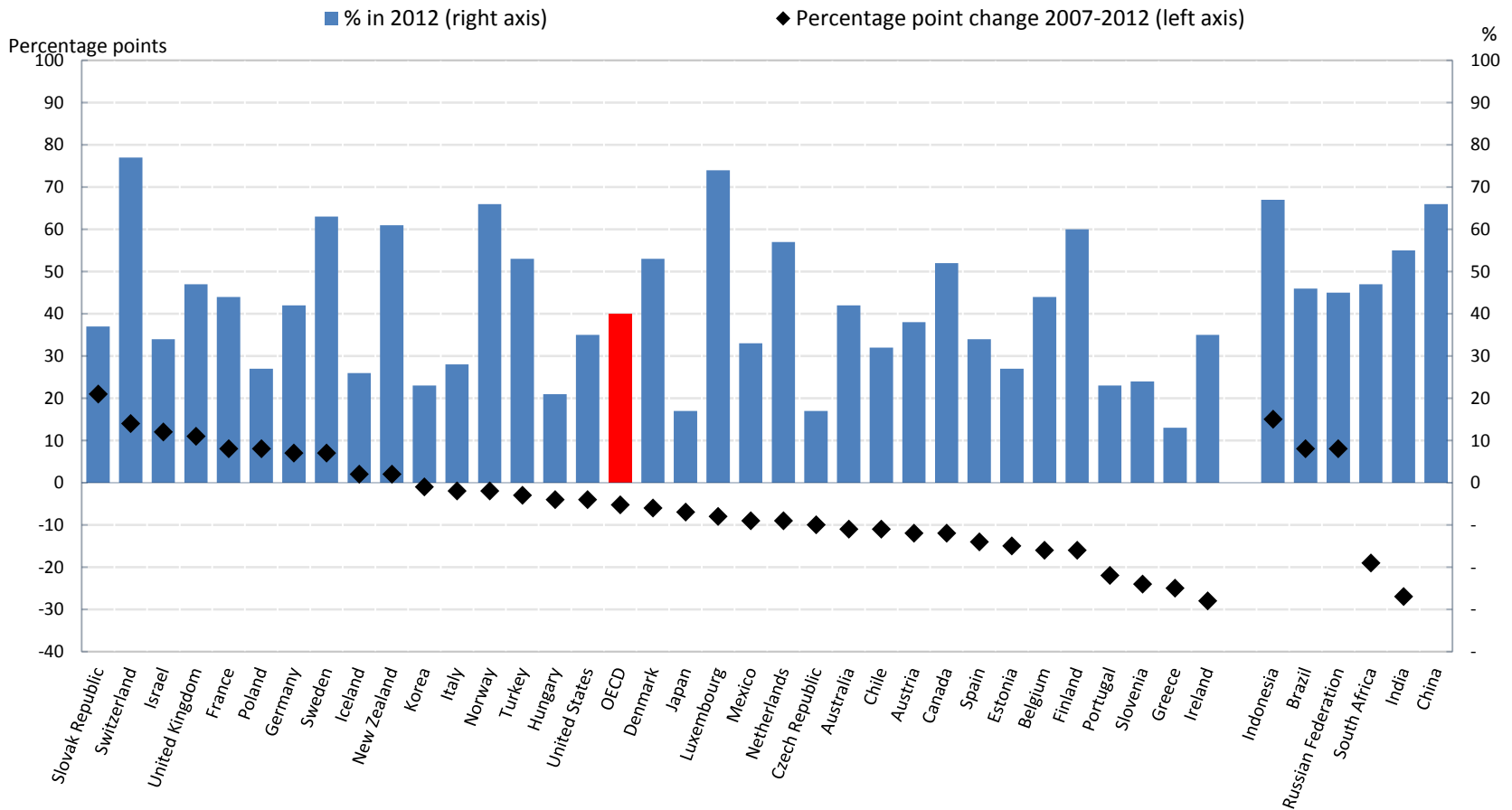


Source: 2012-2013 Executive Opinion Survey from the World Economic Forum for the Global Competitiveness Report



# CONSEQUENCE: DECLINING TRUST IN GOVERNMENTS

## Confidence in national government in 2012 and its change since 2007





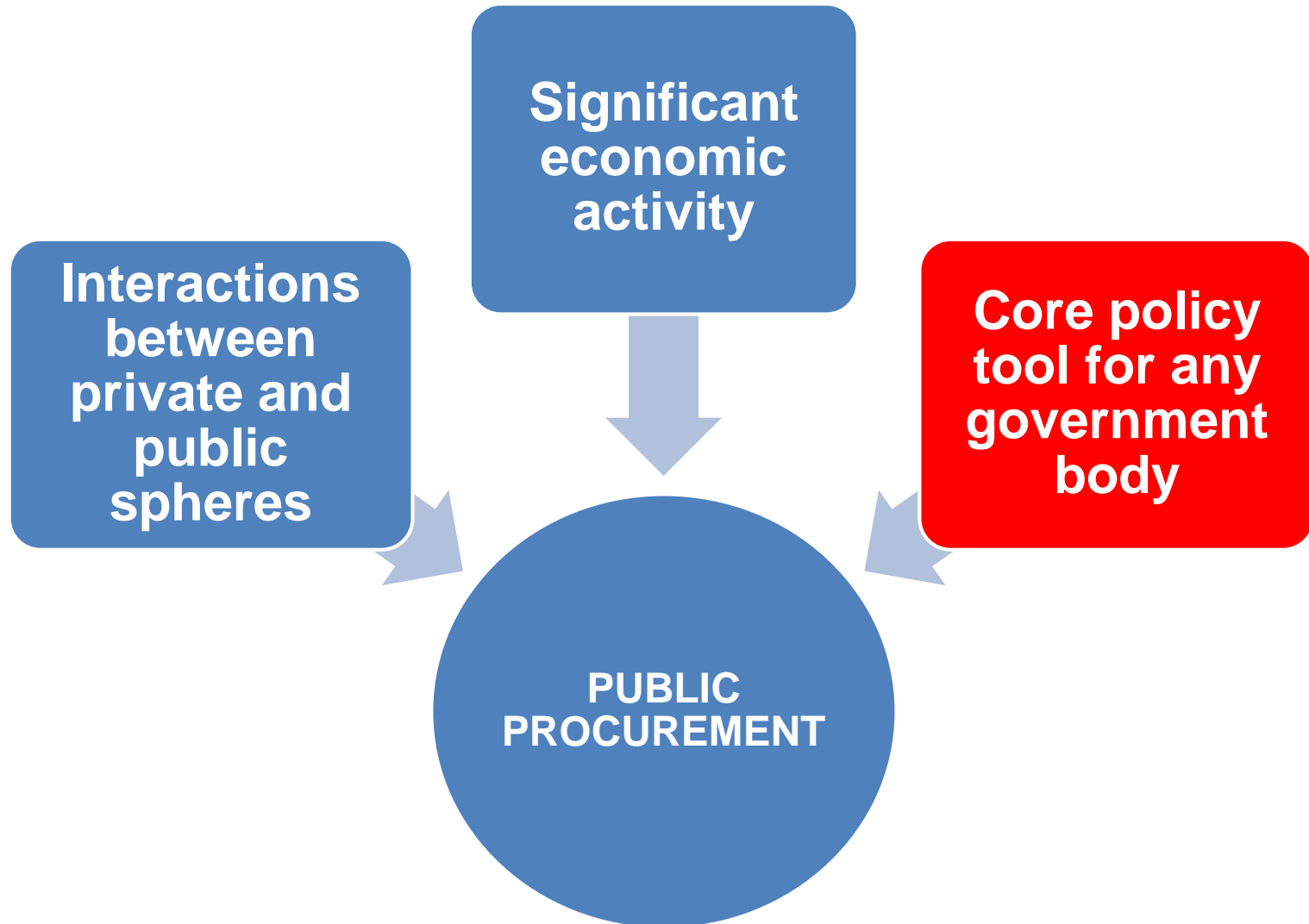
# IMPORTANCE OF COMPETITIVE PROCUREMENT

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- A competitive procurement system will:
  - Drive prices to marginal costs
  - Will minimize costs for firms and the government
  - Will drive innovation, as firms learn from one another and thereby to continuously improve products.
- And competitive public procurement system will accrue benefits to the whole economy as public procurement often involves key infrastructure (highways, railways, electricity, etc.) for other industries.



# WHY DOES IT MATTER?





# MULTIPLE OBJECTIVES OF PROCUREMENT

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- Primary objective
  - Value for money
- Secondary objectives:
  - Security of supply
  - Standardization
  - Environmental policy
  - Social sustainability
  - Innovation
  - Infrastructure policy
  - Opportunities for SMEs
  - More...



# PROCUREMENT OFFICIALS - WHY ARE THEY IMPORTANT?

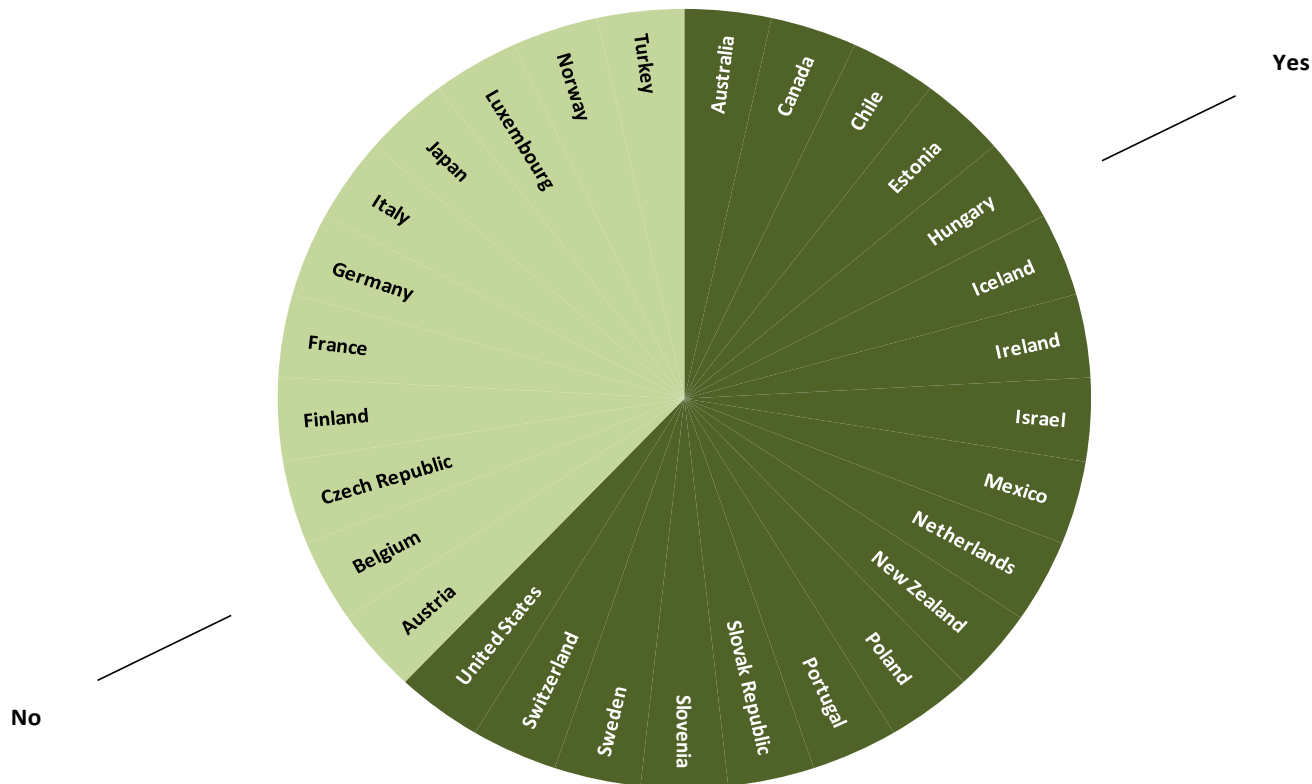
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- Procurement officers can exercise influence on all stages of the procurement process
  - Technical specifications and requirements
  - Definition of products and services
  - Tender notification/publication
  - Selection process and award
  - Post-award period



# LACK OF PROFESSIONALISATION OF PROCUREMENT FORCE

Over 1/3 of OECD countries do not recognise procurement as a specific profession







# PROCUREMENT OFFICIALS – A CHALLENGING FUNCTION

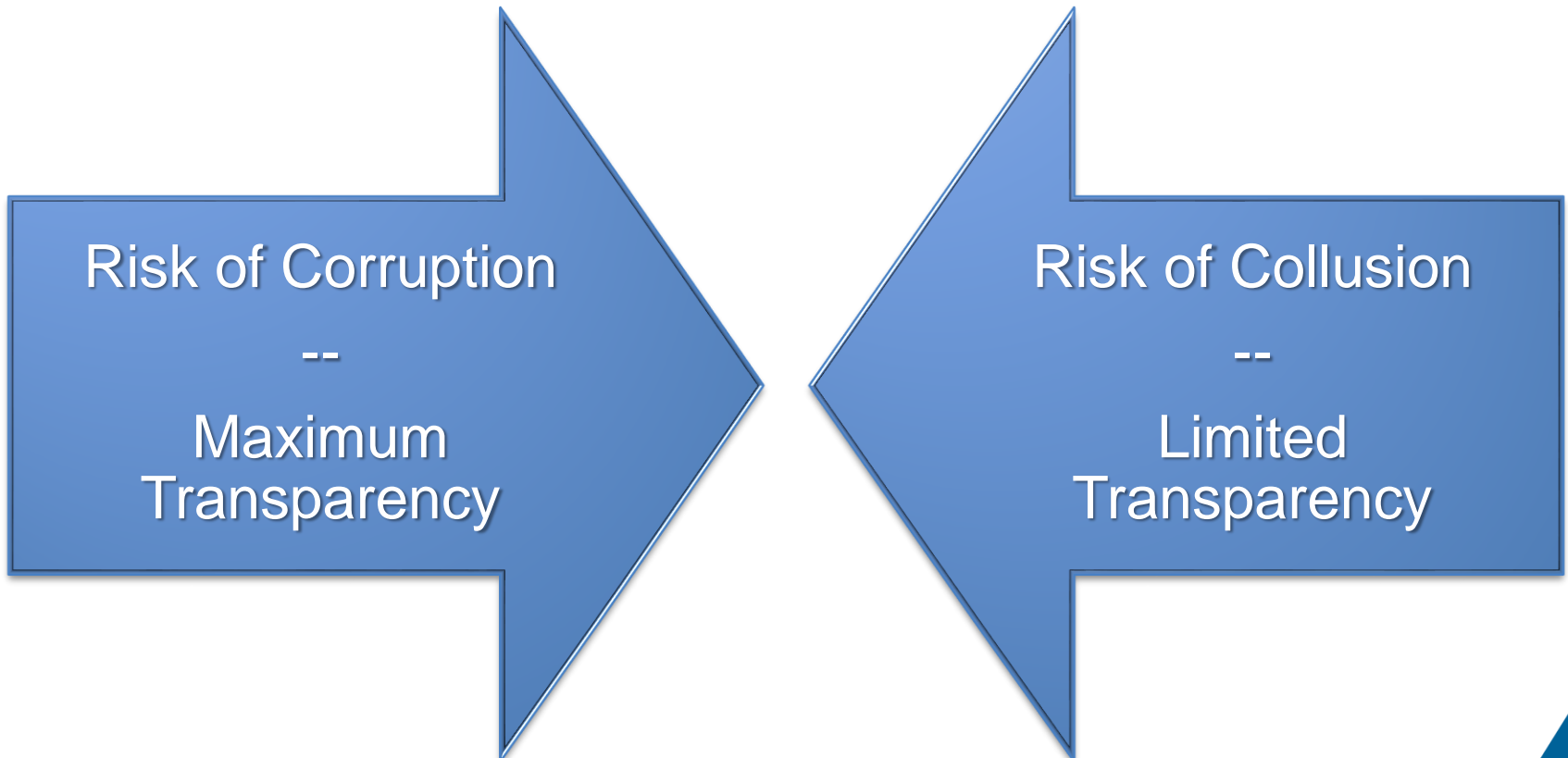
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- They are subject to rigid procurement regimes
- They are focussed on process
- ... and not necessarily on output
- They are not managing their own resources
- Buying is more important than creating value
- Incentives are not always aligned
- The procurement system may lead to weakened competition



# TRADE OFF – AN EXAMPLE

Traditional approach to fighting corruption and collusion may lead to trade-offs





# TRANSPARENCY OR CONFIDENTIALITY?

“Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”

Louis Brandeis, 1914



“The system of sealed bids, publicly opened with full identification of each bidder’s price and specifications, is the ideal instrument for the detection of price cutting”

George Stigler 1964



# CAN TOOLS BE CONFLICTIVE?

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## Transparency - procurement:

- Essential to fight against corruption
- Increases fairness and openness of process
- Makes bidders and procurement officials accountable and facilitates detection and punishment of corruption/bid rigging

## Transparency – competition:

- Prior publication of volumes, weights in evaluating bids may facilitate agreements between suppliers
- Publication of procurement outcomes and, in particular, other bidders/ rankings/prices can facilitate the policing of cartel agreements by participants

⇒ **Need to find the optimal transparency level**



# OECD SUPPORTS A COMPREHENSIVE APPROACH TO PUBLIC PROCUREMENT

**Regulatory policy**  
**Sound public financial management**  
**Judicial practices**  
**Competition**



**Whistleblowing,**  
**Money laundering**  
**surveillance,**  
**Investigative media**

**Conflict of interest**  
**Public procurement**  
**Corporate integrity**  
**Lobbying**  
**Tax transparency**  
**Export credits**

**Criminalising bribery**  
**Asset recovery**



# WHAT DOES IT MEAN IN PRACTICE?

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## Procurement Rules

- Coordinated efforts to develop best practices

## Advocacy

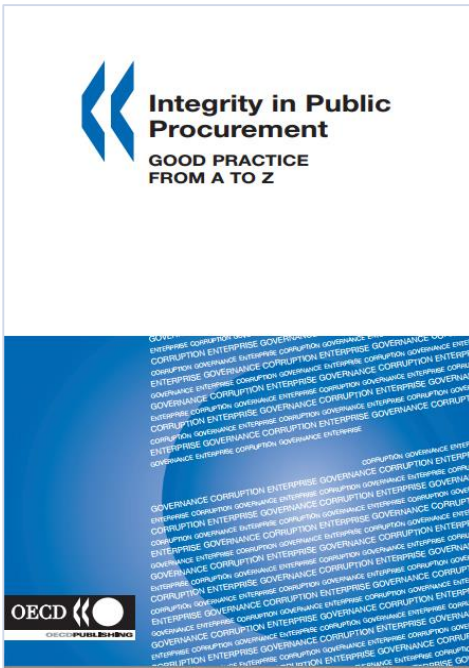
- Education of officials, business, media
- Advocacy to government and legislators

## Enforcement

- Strong sanctions
- Inter-agency co-operation



# OECD WORK ON INTEGRITY



2007

<http://www.oecd.org/gov/ethics/integrityinpublicprocurement.htm#Principles>



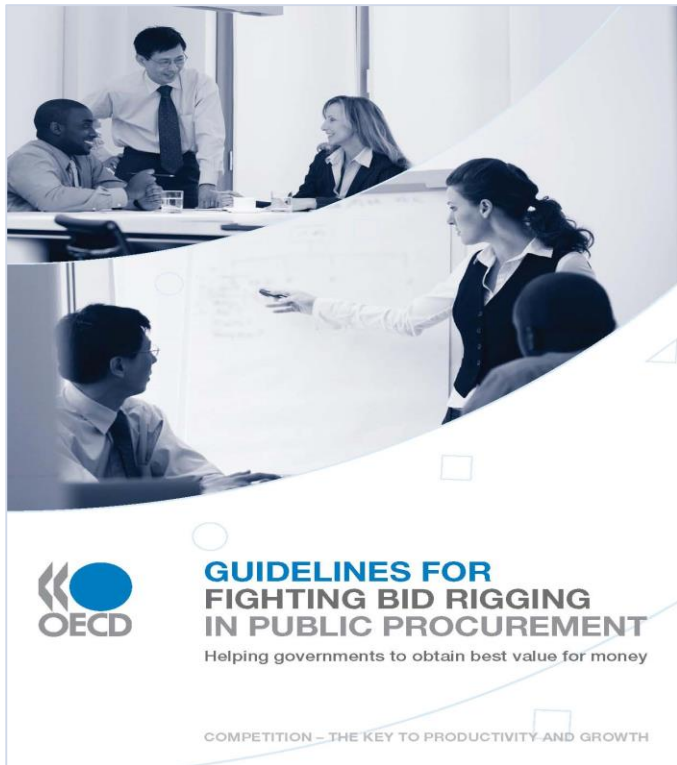
2009







# OECD WORK ON COLLUSION



2009

<http://www.oecd.org/daf/competition/fightingbidrigginpublicprocurement.htm>



2009 - today







# 2009: OECD GUIDELINES FOR FIGHTING BID RIGGING IN PUBLIC PROCUREMENT

Translated in 27 languages



**LIGNES DIRECTRICES  
POUR LA LUTTE CONTRE  
LES SOUMISSIONS CONCERTÉES  
DANS LES MARCHÉS PUBLICS**

Pour une dépense optimisée des fonds publics par les gouvernements

CONCURRENCE – LA CLÉ POUR LA PRODUCTIVITÉ ET LA CROISSANCE

COMPE...



**LINEAMIENTOS PARA COMBATIR  
LA COLUSIÓN ENTRE OFERENTES  
EN LICITACIONES PÚBLICAS**

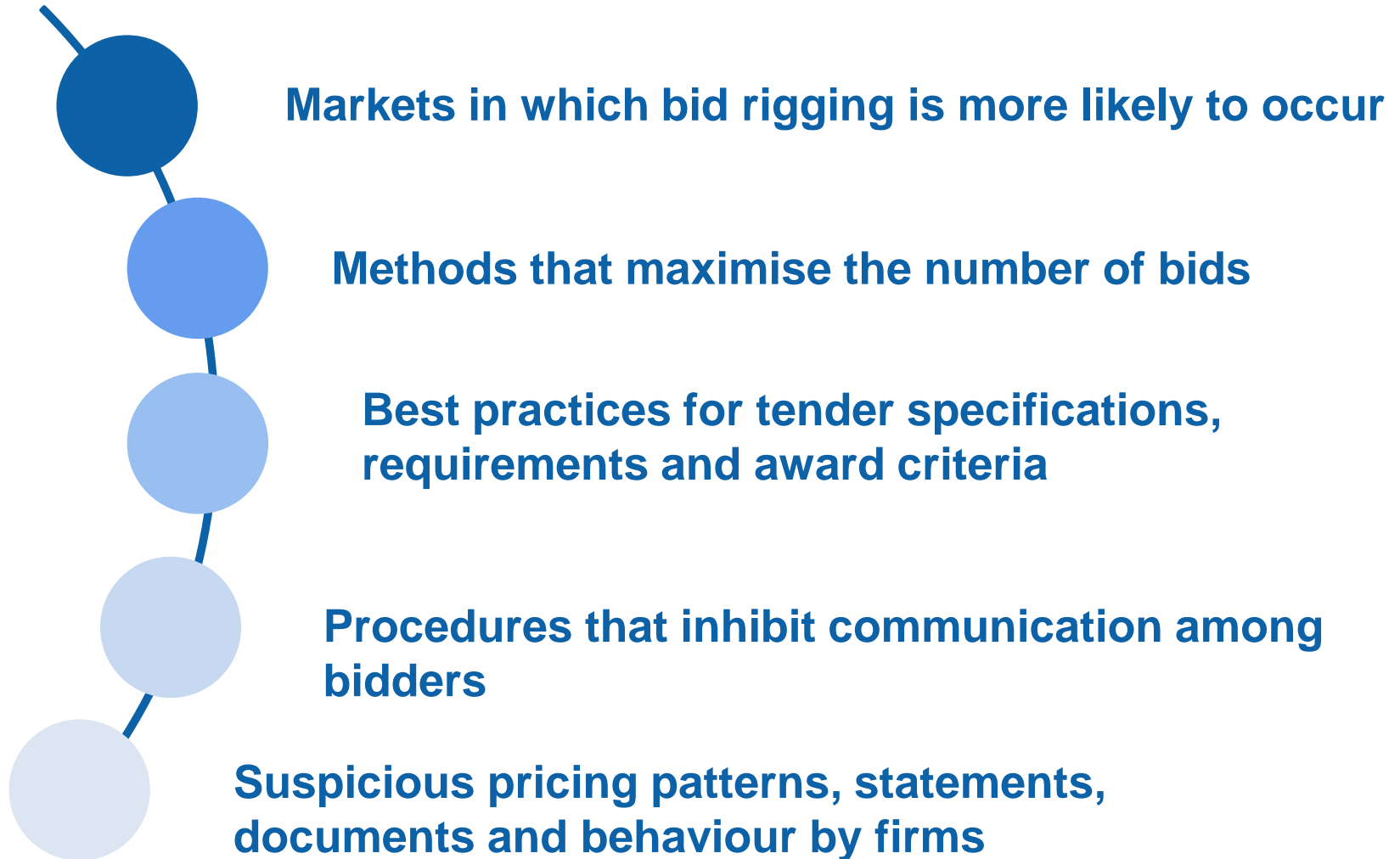
申通投标

إرشادات عامة لمحكمة  
بين مقدمي العطاء  
في المناقصات العامة



# THE GUIDELINES FOR FIGHTING BID RIGGING HELP TO IDENTIFY

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# CHECKLIST FOR DESIGNING TENDERS

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- Learn about the market and about your suppliers
- Maximize participation of potential bidders
- Define requirements clearly and avoid predictability
- Reduce communication among bidders
- Raise awareness of the risks of bid rigging, provide training



# CHECKLIST FOR DETECTING BID RIGGING

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Procurement officials should be alert for:

- Opportunities that bidders have to communicate with each other
- Relationships among bidders (joint bidding and sub-contracting)
- Suspicious bidding patterns (e.g. ABC, ABC) and pricing patterns
- Unusual behavior
- Clues in documents submitted by different bidders



# 2012: OECD COUNCIL RECOMMENDATION FOR FIGHTING BID RIGGING



## Recommendation of the OECD Council on Fighting Bid Rigging in Public Procurement

As approved by Council on 17 July 2012  
[C(2012)115 - C(2012)115/CORR1 - C/M(2012)9]

### THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council concerning Effective Action Against Hard Core Cartels, which invites "Member countries [to] ensure that their competition laws effectively halt and deter hard core cartels", which include "an anticompetitive agreement, anticompetitive concerted practice, or anticompetitive arrangement by competitors to fix prices [or] make rigged bids (collusive tenders)" [C(98)35/FINAL];

HAVING REGARD to the Recommendation of the Council on Enhancing Integrity in Public Procurement, which lists collusion among the "integrity violations" in the field of public procurement and recognises that efforts to enhance good governance and integrity in public procurement contribute to an efficient and effective management of public resources and therefore of taxpayers' money [C(2008)105];

HAVING REGARD in particular to Principle 1 (Provide an adequate degree of transparency in the entire procurement cycle in order to promote fair and equitable treatment for potential suppliers) and Principle 7 (Provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly) of the Council Recommendation on Enhancing Integrity in Public Procurement;

HAVING REGARD to the Third Report on the Implementation of the Council Recommendation concerning Effective Action Against Hard Core Cartels, which lists the fight against anticompetitive behaviour in auctions and in procurement among the enforcement priorities that Members should pursue in their fight against hard core cartels [C(2005)159];

RECOGNISING that public procurement is a key economic activity of governments that has a wider impact on competition in the market, both short term and long term, as it can affect the degree of innovation and the level of investment in a specific industry sector and the overall level of competitiveness of markets, with potential benefits for the whole economy;

## 2012 Recommendation

Governments should assess public procurement laws and practices at all levels of government in order to promote more effective procurement and reduce the risk of bid rigging in public tenders.

**Guidelines become an integral part of Recommendation.**



# FROM 2009 TO TODAY





# OECD FIGHTING BID RIGGING PROJECTS...

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- › Mexico (IMSS x 2, State of Mexico (GEM), ISSSTE, CFE x 2, PEMEX) – 2011 to 2018
- › Colombia – 2014
- › Argentina – 2018 – 2019
- › Brazil, Peru and Ukraine – Forthcoming in 2020

## Main components:

- Recommendations for changes in procurement regulations and practices
- Training and capacity building
- Manuals and train-the-trainers



# COMMON ISSUES AFFECTING COMPETITION IN TENDERS

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- Market studies are critical for competitive tenders
- Consolidation of tenders can reduce collusion but watch out for supply concentration
- Limitations on bidders by regions or nationality reduce competition and may facilitate collusion
- Transparency rules may facilitate collusion
- Joint awards, splitting contracts and sub-contracting may facilitate collusion





# OECD RECOMMENDATIONS ABOUT LEGISLATION

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- Remove provisions that discriminate against certain suppliers
- Limit the use of non competitive procurement procedures
- Eliminate the requirements to hold clarification meetings and to publish a reference price
- Ensure disclosure requirements are not excessive
- Require suppliers to submit signed certificates of non-collusion
- Check legal framework regarding guarantees and penalties, which may make it difficult for SMEs to bid



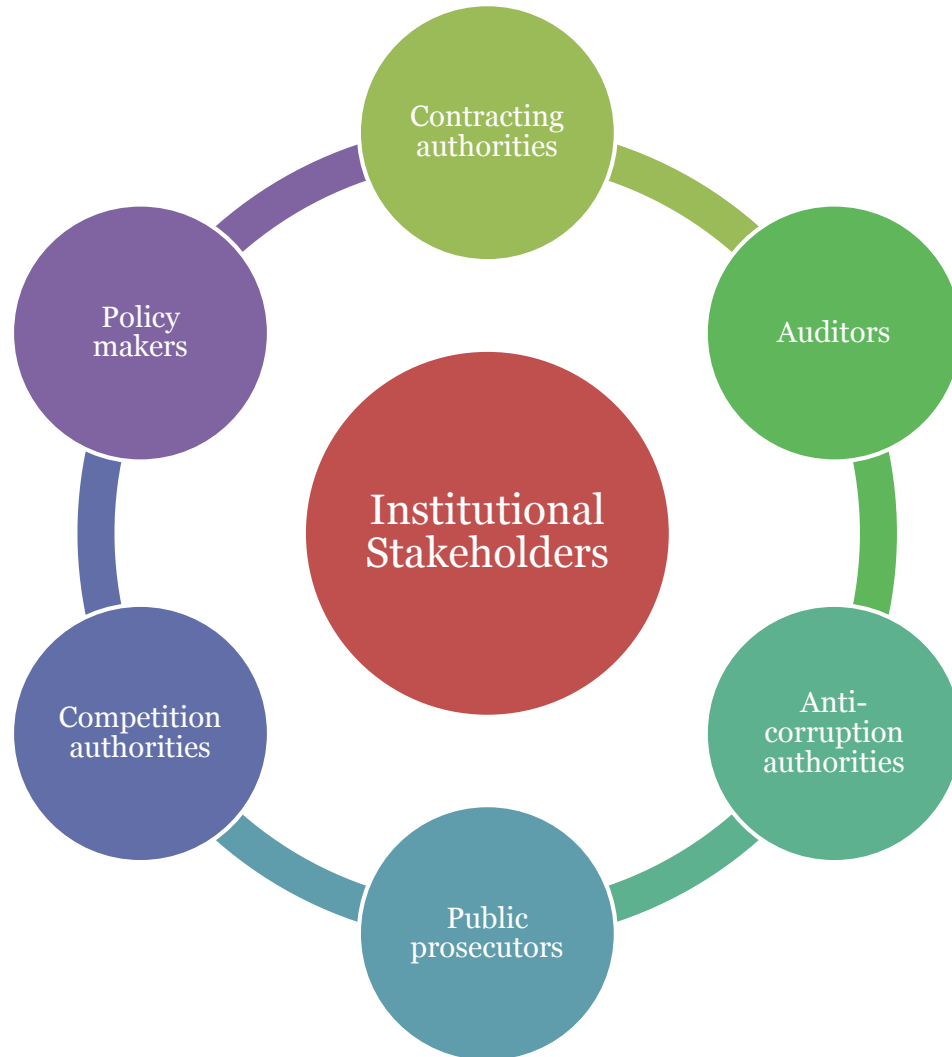
# LESSONS LEARNED

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- Successful collaborations require high-level commitment, sufficient resources and a willingness to be open and candid
- Training and education of public procurement officials is absolutely necessary and pays immediate dividends
- Procurement officials demonstrate an eagerness to be a part of the solution
- Recommendations in procurement studies/reports must be tailored to the specific department/agency and commitments must be long-term
- Implementation plans are critical

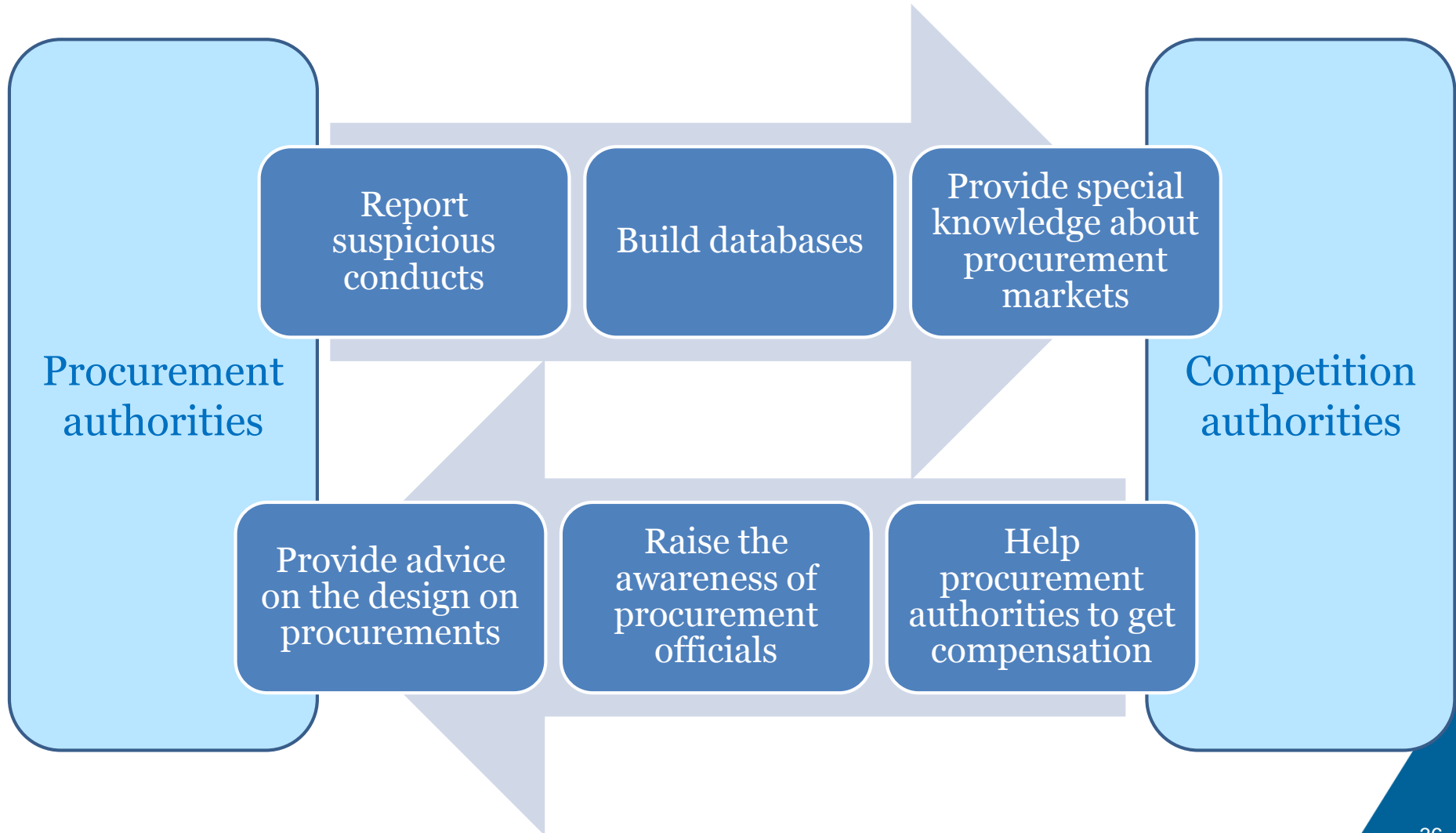


# MULTI-STAKEHOLDERS APPROACH





# RELATIONSHIP BETWEEN PROCUREMENT AND COMPETITION AUTHORITIES





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# Thank you!

For questions: [antonio.capobianco@oecd.org](mailto:antonio.capobianco@oecd.org)

More on OECD competition work at <http://www.oecd.org/daf/competition/>





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