

IACA Procurement Anti-Corruption Training

Professor Christopher Yukins
April 2025

Riyadh, Saudi Arabia

Introductions

Christopher Yukins

- Lynn David Research Professor in Government Procurement Law, George Washington University Law School, Washington DC
- GW Law Government Procurement Law Program founded in 1960
- Advisor to U.S. delegation to revise UNCITRAL Model Procurement Law
- Decades of practical experience, in government and private practice, including in investigations and compliance
- Lecturer and visiting professor – University of Turin & University of Paris - Nanterre



Resources

Public Procurement International

A resource on public procurement practice, policy and law, from around the globe.

Saudi Arabia: International Anti-Corruption Academy (IACA) Training in Public Procurement

National Defense Authorization Act for Fiscal Year 2025 – Procurement Summary

Webinar — *Kolin* and the New Protectionism: EU/US

Trump and the Inspectors General: An Assessment

Webinar — The New U.S. Rule on Reverse Auctions: A Critical Assessment

Webinar: Government Procurement After Loper Bright Enterprises



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Saudi Arabia: International Anti-Corruption Academy (IACA) Training in Public Procurement

<https://publicprocurementinternational.com/saudi-arabia-international-anti-corruption-academy-iaca-training-in-public-procurement/>

**The IACA Tailor-Made Training on
Effective Ways to Counter Corruption in Procurement
for the Oversight and Anti-Corruption Authority
of the Kingdom of Saudi Arabia
23 - 24 April 2025
Riyadh, Kingdom of Saudi Arabia**

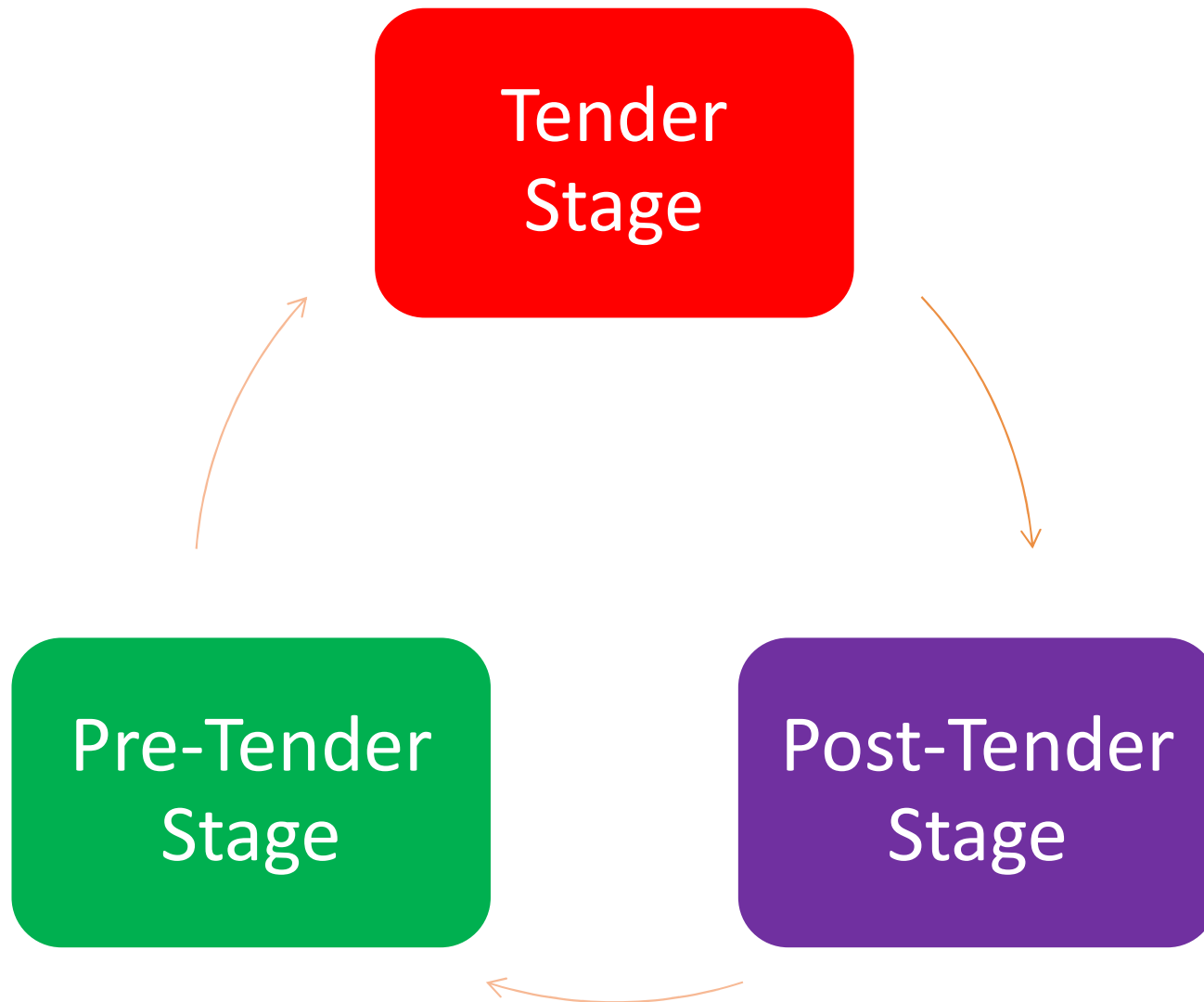


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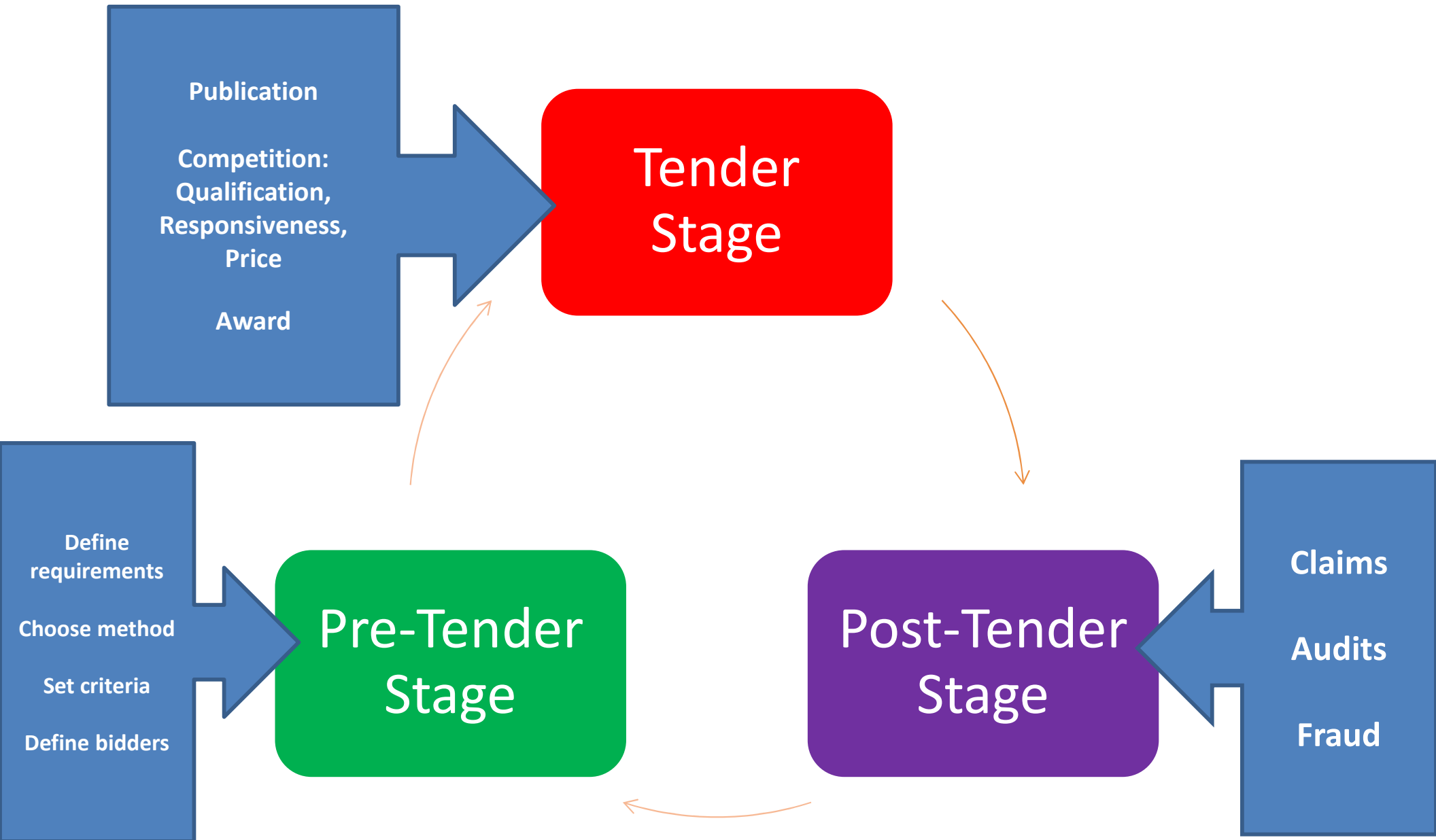
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SESSION 1 - PROCUREMENT CYCLE AND CORRUPTION RISKS

The Procurement Cycle



The Procurement Cycle



*Stakeholder
Management in
Public Procurement:
Rethinking the
Engagement
Strategy for Co-
Financing in Rivers
State, Nigeria*

Soala Warmate

On ssrn.com



© Source – TrackaNG twitter page

Figure 6: A Multi-million Naira Primary health care facility in Delta State, Nigeria, abandoned since 2016



© Source – TrackaNG twitter page

Figure 7: Rural electrification project in Oyo State. Awarded at 100 million Naira in 2020 but abandoned.

Figure 3: Abandoned monorail project in Port Harcourt



© Source – Ymonitor¹³⁴

The Government Tenders and Procurement Law aims to:

- (1) regulate procedures relating to procurement, and to prevent abuse of power and conflicts of interest;
- (2) achieve optimal value in procurement, and implement procurements at fair and competitive prices;
- (3) promote integrity and competitiveness, maintain equality and fair treatment of bidders, in fulfillment of the principle of equal opportunity;
- (4) maintain transparency in all procurements; and
- (5) foster economic growth and development.

How Do
These Goals
of Saudi
Procurement
Law Relate
to
Corruption?

Major Methods of Competition

Open
Procedure

Restricted
Procedure

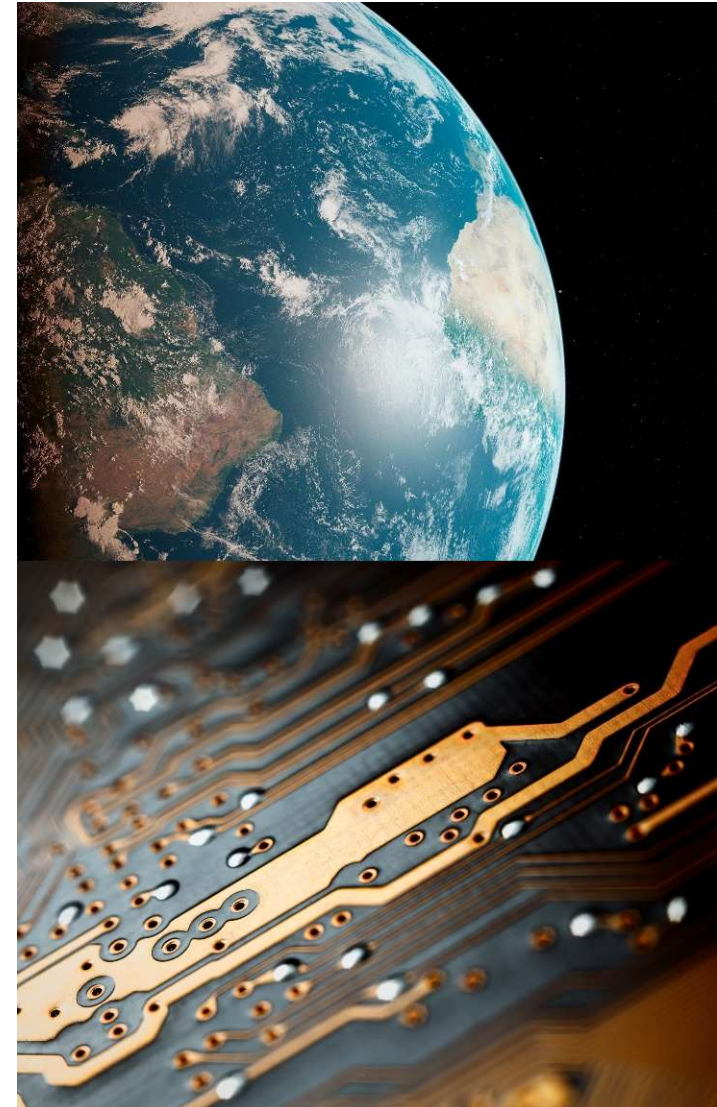
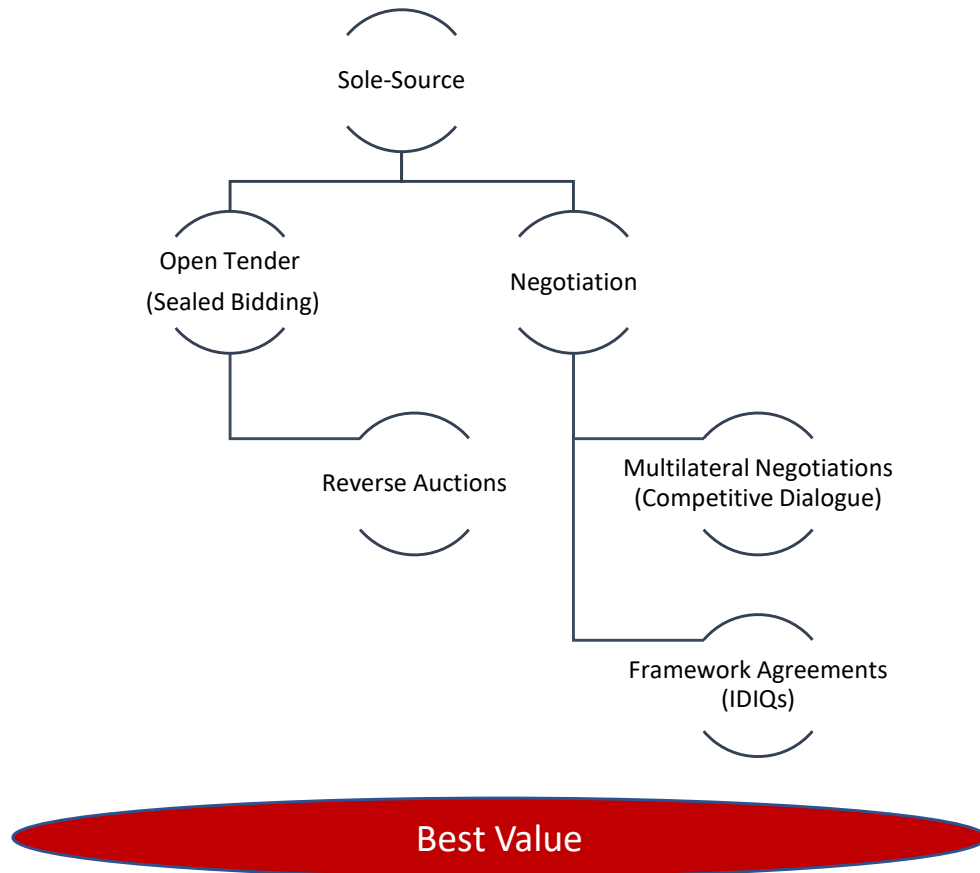
Negotiated
Procedure

Sole-
Source

Saudi Arabia's Allowed Methods

- Open Tendering
- Limited Tendering
- Two-Stage Tender
- Direct Purchase
- Framework Agreements
- Electronic Reverse Auctions
- Competition for Best Ideas

Evolution of Procurement



Sole source

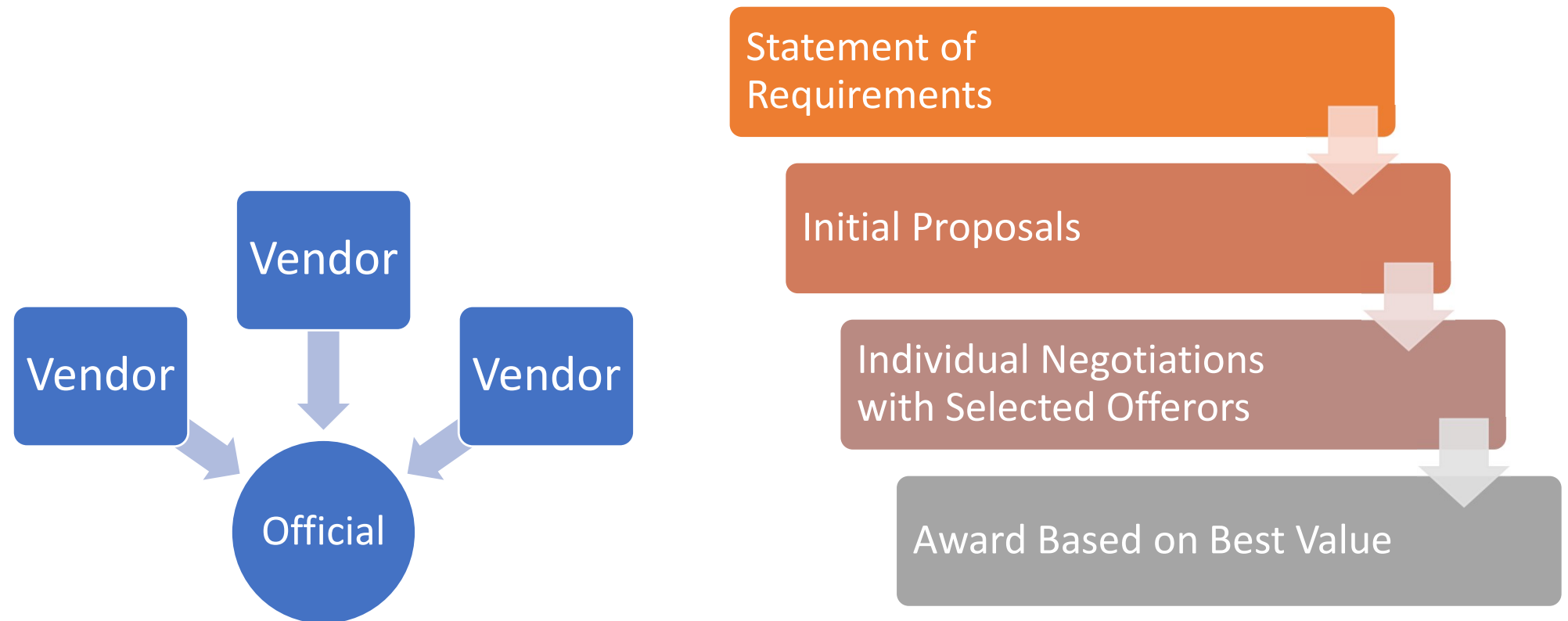




Open Tender – Sealed Bidding

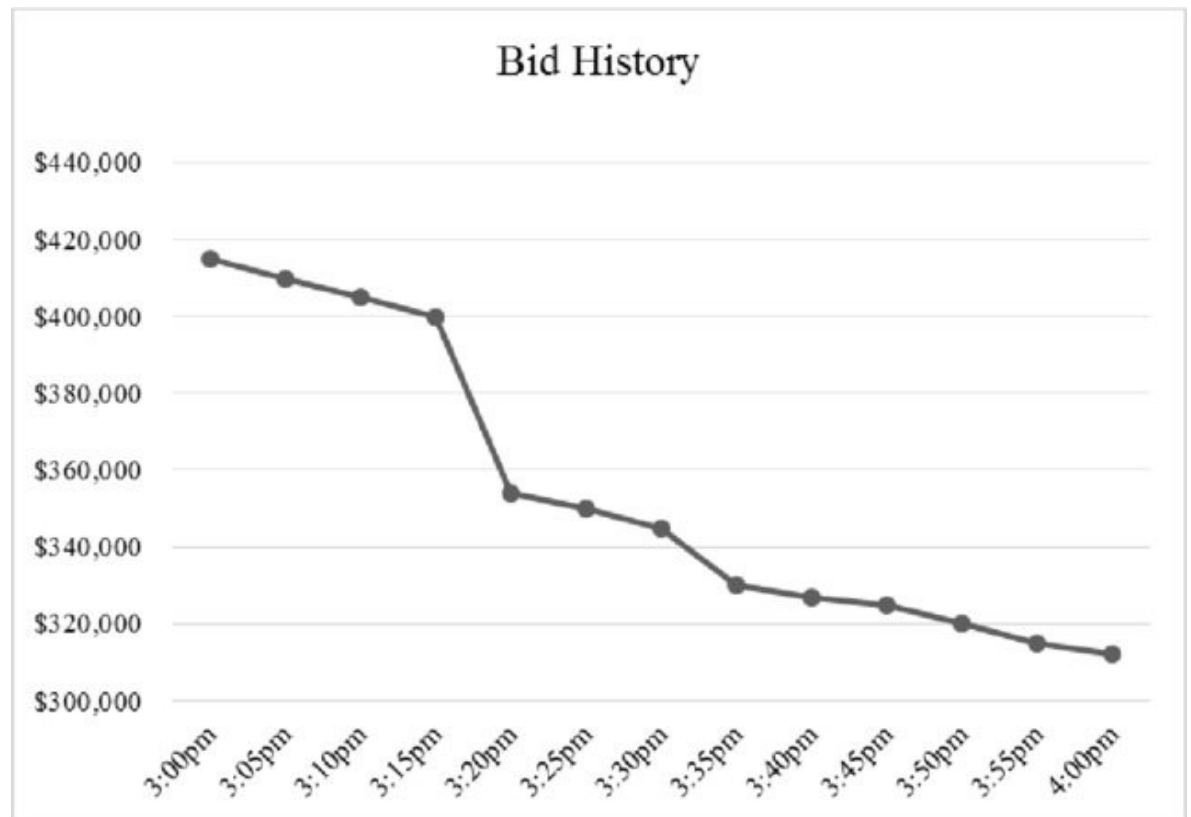
Multilateral Negotiations

- “Competitive Dialogue” or “Competitive Negotiations”



Does the Kingdom of Saudi
Arabia's Procurement Law Allow
Competitive Dialogue?

Reverse Auctions





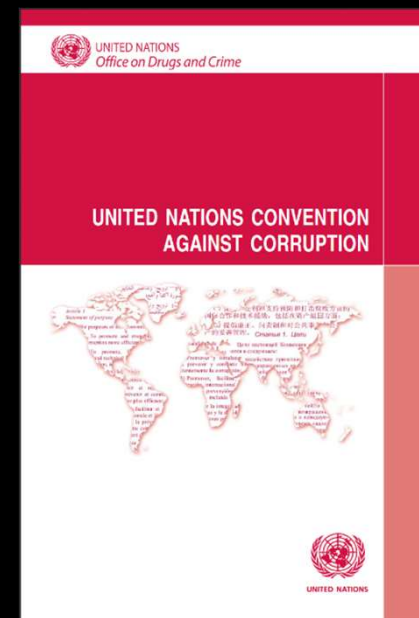
“Framework
Agreements” or
“Indefinite-Delivery /
Indefinite Quantity”
(IDIQ) Contracts

Convergence: Procurement Regulation



20	Federal Acquisition Regulation (FAR)	European Procurement Directive 2014/24/EU	World Bank Procurement Framework	WTO Government Procurement Agreement (2012)	ABA Model Procurement Code
Acquisition Planning					
Publication of Opportunities					
Electronic Reverse Auctions					
Sealed Bidding					
Competitive Negotiations					
IDIQs (Frameworks)					
Publication of Awards					
Bid Protests					
Suspension-Debarment					
Contract Administration					

SESSION 2 – UNCAC ARTICLE 9: FROM FUNDAMENTAL PRINCIPLES TO DECISION MAKING





UNODC

United Nations Office on Drugs and Crime

Guidebook on anti-corruption in public procurement
and the management of public finances

Good practices in ensuring
compliance with article 9
of the United Nations
Convention against Corruption

UN Convention Against Corruption (Art. 9)

Public Information

Advance award criteria and publication

Objective and predetermined criteria for award

Bid protest and appeal

**Measures to control procurement personnel –
e.g., rules and codes**

**Transparency, including in budgeting and
accounting**

KSA Procurement Law: a government agency “shall plan in advance its works and procurements,” and to coordinate with the Ministry of Finance “for the allocation of necessary appropriations.” At the start of each fiscal year, an agency “shall publish a plan consistent with its budget which includes key information about its works and procurements for the year,” though “without compromising the confidentiality considerations of national security.” The agency’s publication of its plans “shall not result in any obligation.”

Objective criteria in decision-making

Objective criteria in decision-making

UNCAC stipulates objectivity in connection with criteria for decision-making as one of its cornerstone principles.

Objectivity in decision-making in the context of public procurement refers to striving (as far as possible) to reduce or eliminate biases, prejudices, and subjective evaluations.



Integrity

Nondiscrimination

KSA: Committees are to be appointed by the agency, per Article 45, to review proposals. The committee may look to reports from technical experts. The Unified Procurement Agency may participate in the proposal review committees. The proposal review committee shall issue its written recommendations (and possible dissents). No person may both serve on the proposal review committee and decide on the contract award, nor serve on the proposal opening committee and the proposal review committee simultaneously.

Per Article 36, the proposal review committee shall review proposals “pursuant to the criteria in the tender documents.” If technical and financial proposals are submitted separately, only the technical proposal will be reviewed first. Financial proposals submitted with compliant technical proposals will then be considered, and the proposal review committee shall “submit its recommendations as to the best proposal, in accordance with the assessment criteria set out in the tender documents.”

Impact of UNCAC

Rules Published

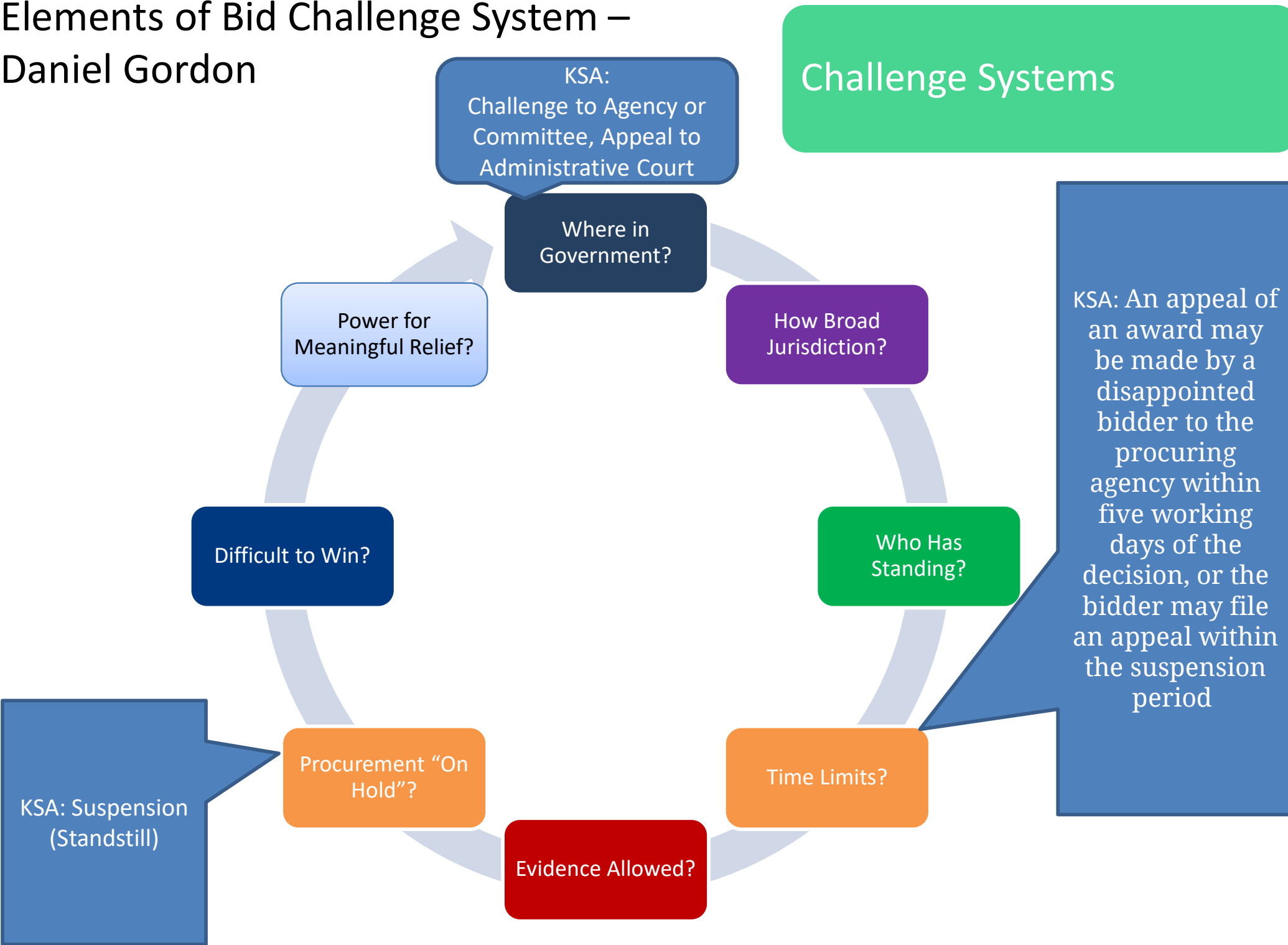
Challenge Systems

Codes of Conduct

Debarment

Workforce
Training

Elements of Bid Challenge System – Daniel Gordon



E-PROCUREMENT

Assessing Electronic Procurement

More efficient?

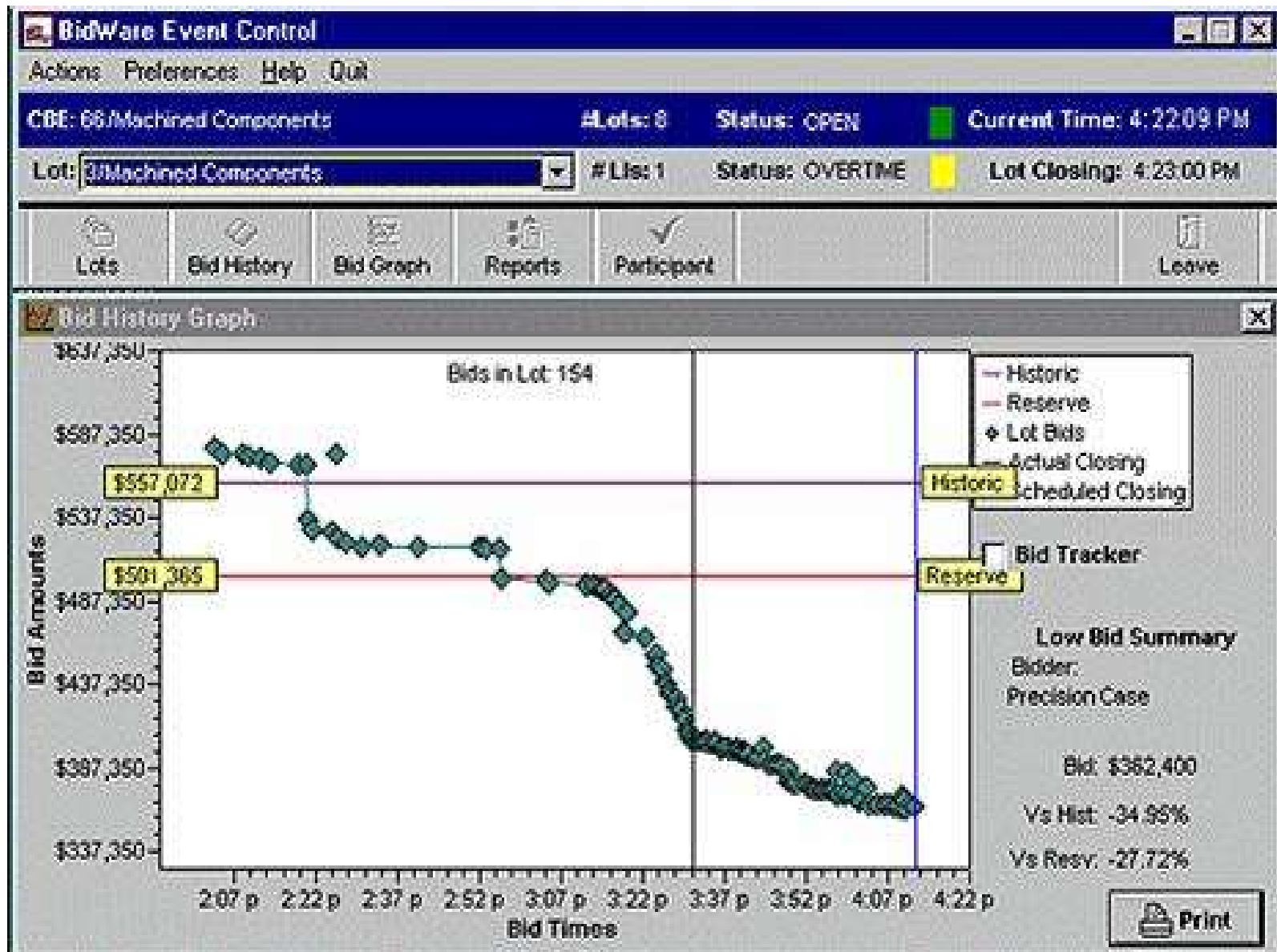
More transparent?

Discriminatory?

**Ready source of
comparative lessons?**

What Is a Reverse Auction?





**US Regulatory
Perspective**

Reverse Auctions

David A. Drabkin, Esq

Overview

- Not prohibited by law or regulation
- A pricing/ordering tool
- Commodities or commoditizable services
- GSA experience

**US Regulatory
Perspective**

Legal Authority

No specific authority for Reverse Auctions

FAR 1.102:

“In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority. “

**US Regulatory
Perspective**

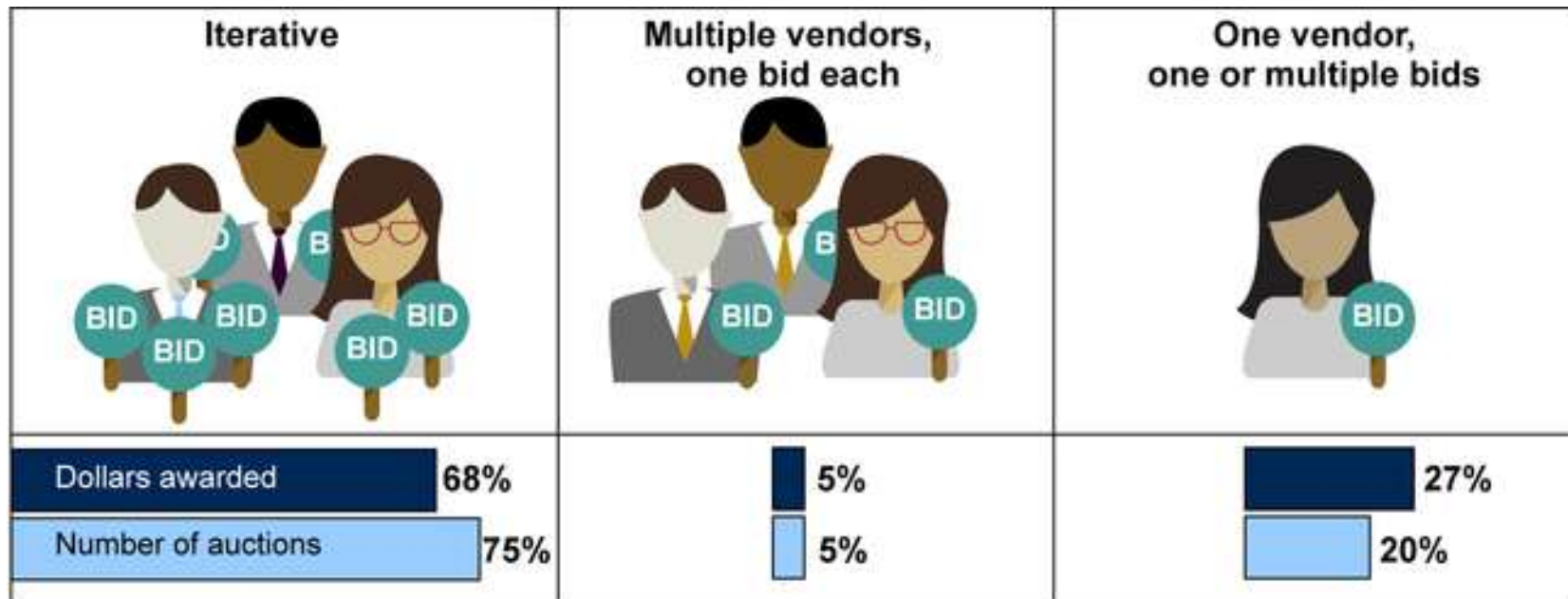
- Commodities
- Commoditizable services

**US Regulatory
Perspective**

Application

U.S. Lack of Governmentwide Rule Impaired Reverse Auctions

GAO's 2018 report showed that 1/3 of reverse auctions had only one bid or bidder



Source: GAO analysis of Compusearch, FedBid, and General Services Administration data. | GAO-18-446

Reverse Auction Taxonomy – Sue Arrowsmith

The electronic auction award shall be based:

- Solely on prices when the contract is awarded to the lowest price (Type 1),
- On quality assessment, then weighted price auction (Type 2)
- After price auction, weigh quality and best value subjectively (Type 3)

WTO Government Procurement Agreement (GPA) on Electronic Reverse Auctions

Revised GPA Defines Electronic Reverse Auction

Article I:

(e) **electronic auction** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

Article XIV Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

- (a) the **automatic evaluation method**, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) **the results of any initial evaluation of the elements** of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) **any other relevant information** relating to the conduct of the auction.

And GPA Regulates

...

Mock Auction Rules

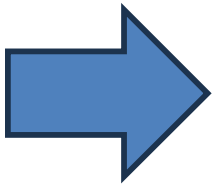
- Group descriptions drive bidding strategy
- Auction per mock solicitation
- Bids submitted to auctioneer; low bid posted
- Professor is both auctioneer and arbiter

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From PublicProcurementInternational.com

Materials for Training

Slides for Training – شرائح للتدريب



Mock solicitation for reverse auction – التماس وهمية للمزاد العكسي – (English)
(العربية – ترجمة آلية – Arabic – machine translation)

Compliance exercise – ممارسة الامتثال – (English) (Arabic – machine translation)
group exercise details (Arabic) – (العربية – ترجمة آلية – group exercise details)

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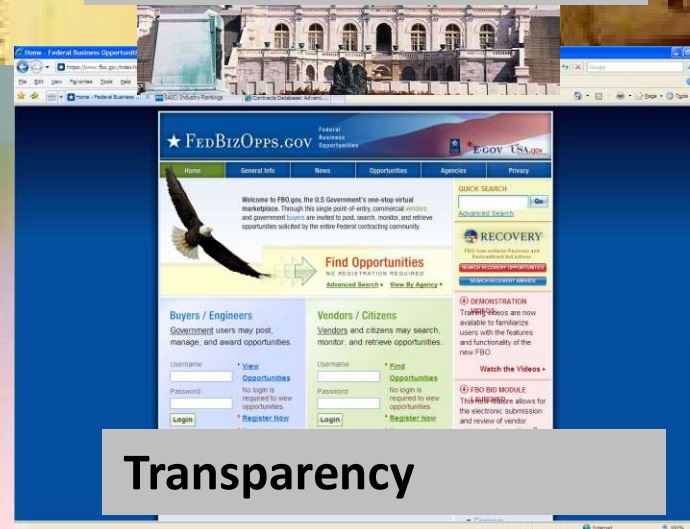


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CORRUPTION PREVENTION STRATEGIES IN PUBLIC PROCUREMENT

Tools for Fighting Corruption



Anti-Corruption Strategies

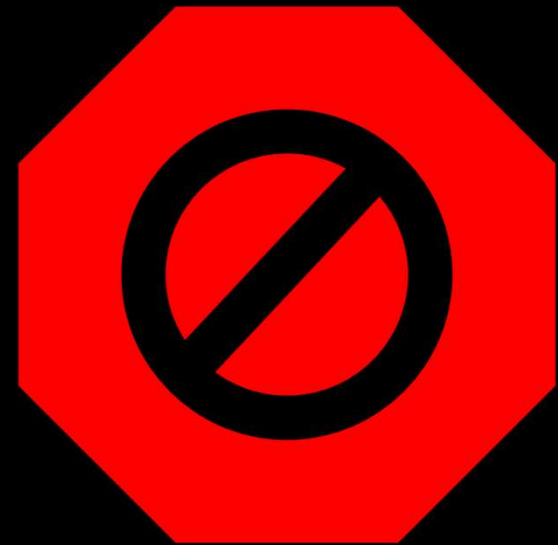






Debarment

- Expanding rapidly worldwide
- Extension of contractor (dis)qualification?
- Sanction or business decision?
 - Exclude based upon reputational and/or performance risk?
- Should other jurisdictions cross-debar?



Exclusion – KSA Law

Under Article 88 of the law, the Minister of Finance is to **appoint committee(s) of five persons**, which shall have the **authority to exclude bidders or contractors (per a published notice) for a period up to five years**. The committee may also **lower a violator's classification**, or (instead of banning the violator) **impose a fine** not exceeding 10% of a proposal (bid). Committee decisions may be **appealed to the Administrative Court**.



Criminal Prosecution

- Bribery
- Gratuity
- Kickback
- Conflict of Interest – Personal versus Organizational
 - Revolving door

A close-up, slightly blurred photograph of a judge's hand holding a wooden gavel over a wooden sound block on a courtroom table. The background shows other people in a courtroom setting, also blurred.

Bid Challenges

- Agency
- Independent agency
- Court

Goal: address wrong done losing bidder, or early-warning of system failure?



Ethics

- Address gifts, conflicts of interest, revolving door, etc.
- Are rules enough?
- Additional, harsher rules for procurement officials? For example, to address mishandling of confidential bidder information?

KSA law: Per Article 94, civil servants are subject to civil or criminal penalties for violations of law.



Oversight

- **Legislative**
- **Investigations**
- **Community**
 - **Planning, competition, post-award**

Compliance

- Corporate versus government
- Common standards globally



A group of five people (three women and two men) are seated around a wooden conference table in a modern office. They are engaged in a discussion. The office has large windows looking out onto a city street with buildings. There are white, cloud-like light fixtures hanging from the ceiling. To the left, there is a whiteboard on wheels with some papers pinned to it. The overall atmosphere is professional and collaborative.

Boards

More difficult to corrupt multiple decisionmakers

Audits

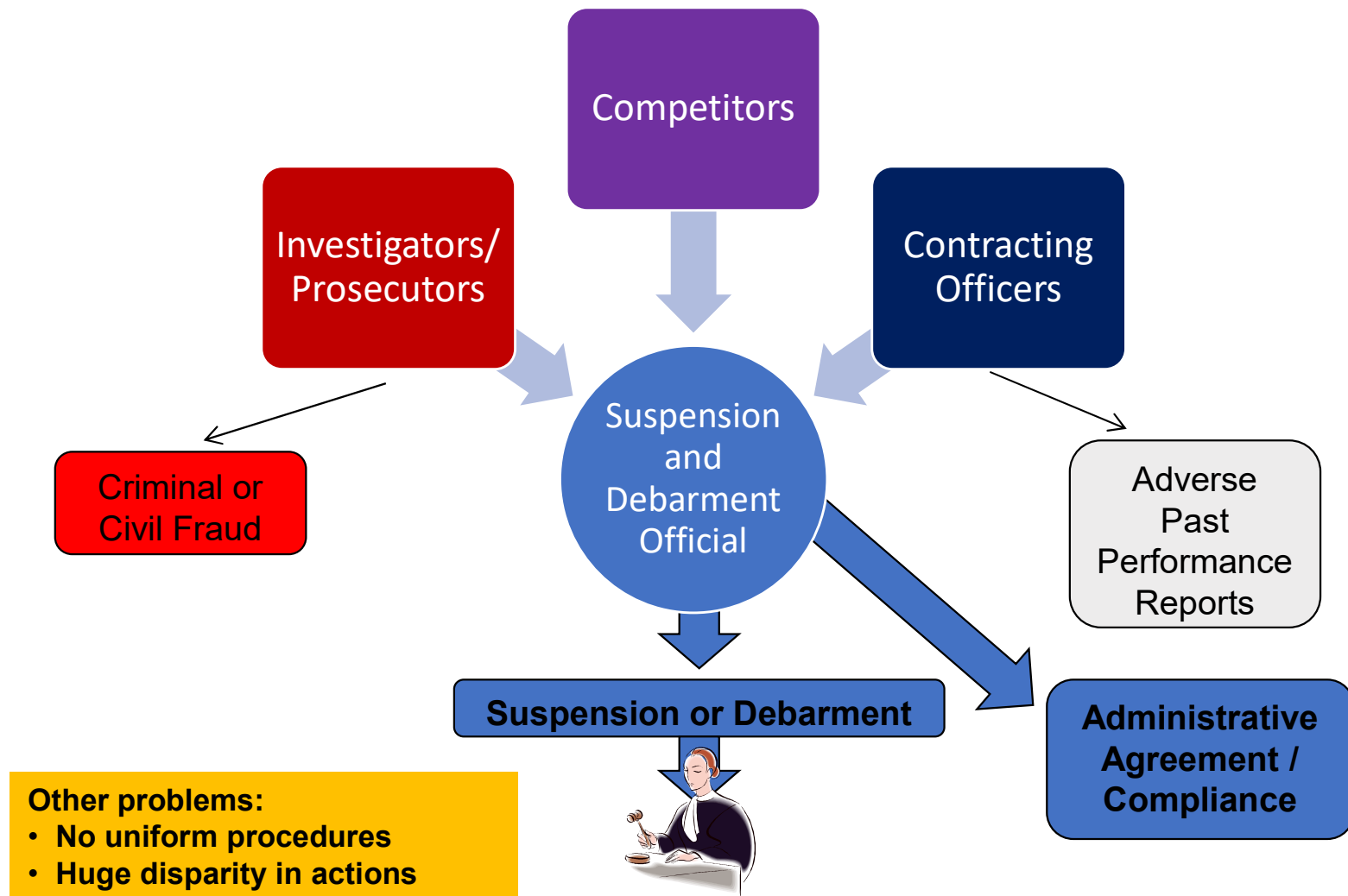
- After the fact
- Manual or electronic?
- Aberrations in context?
- Finding error or recommending management solutions?





Debarment

U.S. Federal Discretionary Debarment



World Bank Sanctions System

Compliance

Integrity Compliance
Officers (within INT)

- Monitors integrity compliance by sanctioned companies (or codes of conduct for individuals)
- Decides whether the compliance condition established by the SDO or Sanctions Board as part of a debarment has been satisfied.

Adjudicative

Sanctions
Board

- Comprised of 4 external members and 3 Bank staff
- Reviews case 'de novo'
- May hold a hearing with parties and witnesses
- Imposes sanctions (not bound by SDO's recommendation)
- Decisions are final and not appealable
- **39% of cases resolved at this level**

Suspension and
Debarment
Officer (SDO)

- Evaluates evidence presented by INT
- Issues Notice of Sanctions Proceedings to respondent
- Temporarily suspends respondent
- Recommends a sanction (becomes effective if respondent does not contest)
- **61% of cases resolved at this level**

Investigative

Integrity Vice
Presidency

- Investigates allegations of fraud, corruption, collusion, coercion and obstruction
- Prepares and submits a Statement of Accusations and Evidence (SAE) to the Office of Suspension and Debarment





EU 2014/24/EU: Self-Cleaning

Art. 57

6. Any economic operator that is in one of the situations referred to in paragraphs 1 and 4 may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure.

For this purpose, the economic operator shall prove that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered to be insufficient, the economic operator shall receive a statement of the reasons for that decision.

An economic operator which has been excluded by final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for under this paragraph during the period of exclusion resulting from that judgment in the Member States where the judgment is effective.

Recital 102

Allowance should, however, be made for the possibility that **economic operators can adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour.** Those measures might consist in particular of personnel and organisational measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of internal liability and compensation rules. **Where such measures offer sufficient guarantees, the economic operator in question should no longer be excluded on those grounds alone.** Economic operators should have the possibility to request that compliance measures taken with a view to possible admission to the procurement procedure be examined. However, **it should be left to Member States to determine the exact procedural and substantive conditions applicable in such cases.** They should, in particular, **be free to decide whether to allow the individual contracting authorities to carry out the relevant assessments or to entrust other authorities on a central or decentralised level with that task.**

Brazil



- Debarment list maintained
 - Sanction for poor performance or corrupt conduct
- Under certain circumstances, court may order debarment
- Exception to mandatory punishment:
 - Leniency agreements (similar to administrative agreements)
- Source: Cristiana Fortini, Mariana Avelar & Christopher Yukins, *A Comparative View of Debarment and Suspension of Contractors in Brazil and in the USA*, 66 Admin. & Const. L. Rev. 61 (Brazil 2016), available at <https://ssrn.com/abstract=3080396> or <http://dx.doi.org/10.2139/ssrn.3080396>.

Trinidad & Tobago – Sample Exclusion Provision

(3) The Office may add a supplier or contractor to the ineligibility list where the supplier or contractor—
(a) consistently fails to provide satisfactory performance;
(b) is found to be indulging in corrupt or fraudulent practices; or
(c) is convicted of an offence under this Act.



Four Paradigms: Debarment

62

Responsibility (Qualification) Only

- On a case-by-case basis
- In U.S. – done by contracting officer
- Allowed by new EU Directives

Discretionary Debarment – U.S. Federal

- Based on “present responsibility”: focus on present status
- Debarment is a cross-government “meta-qualification” determination

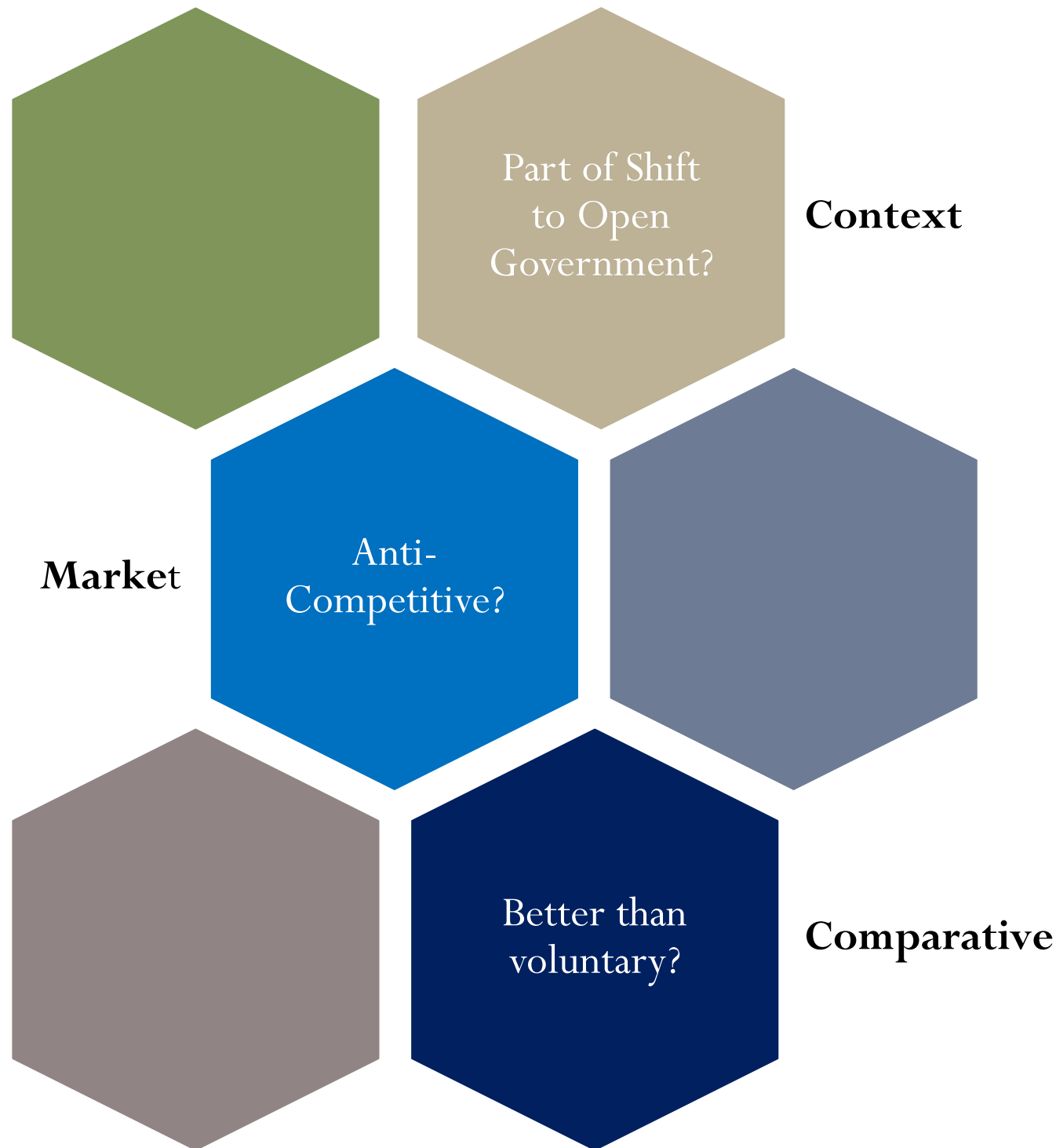
Adjudicative Debarment for “Bad Acts”

- E.g., World Bank

Court- Ordered Debarment, After Judicial Proceedings

**Performance
Risk**

**Reputation
Risk**



Open Questions on Mandatory Disclosure

Looming Issue: Cross-Debarment

Options:

- Automatic cross-debarment
- Listed debarments to be considered in other systems
- Adverse information regarding contractors to be considered
- Do nothing

Corporate Compliance (Governance)

What Is a Compliance System?

- 1. Standards and procedures**
- 2. Knowledgeable leadership**
- 3. Exclude risky personnel**
- 4. Training**
- 5. Monitor, evaluate, reporting hotline**
- 6. Incentives and discipline**
- 7. Adjust program to risk**
- 8. Victim compensation?**



1. Standards and procedures

✓

✓

✓

✓

2. Knowledgeable leadership

✓

✓

✓

✓

3. Exclude risky personnel

✓

✓

✓

✓

4. Training

✓

✓

✓

✓

5. Monitor, evaluate, reporting hotline

✓

✓

✓

✓

6. Incentives and discipline

✓

✓

**Victim
Compensation?**

7. Adjust program to risk

✓

✓

✓

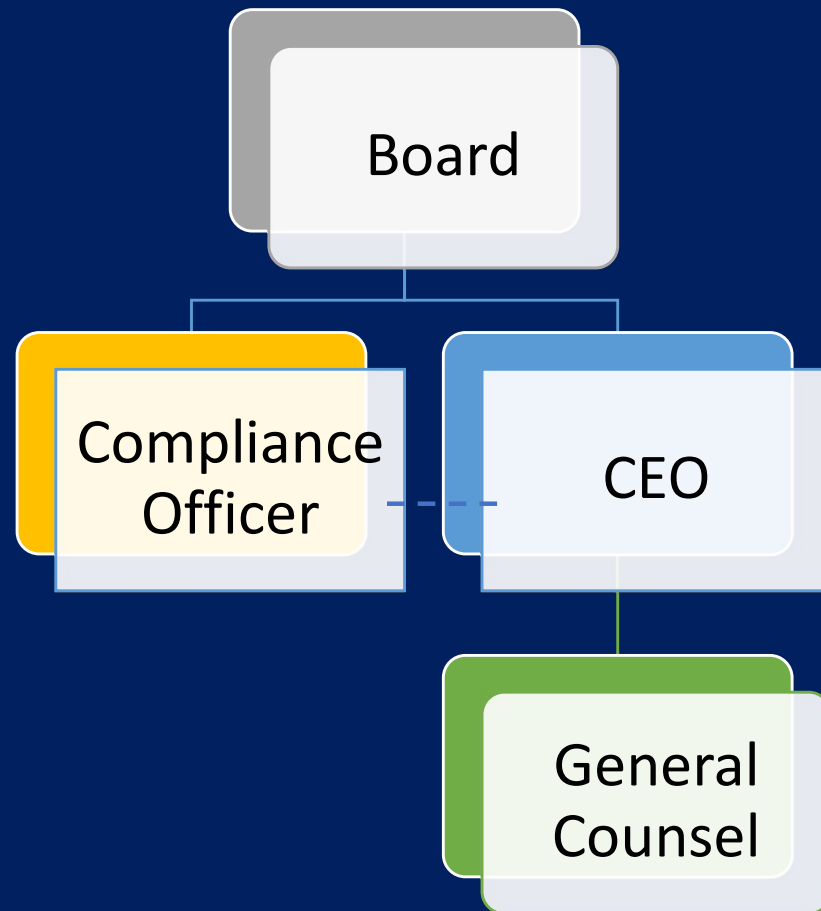


Code of Conduct

- Message from senior officer
- Outline of system
- Rules of conduct
- Market standard

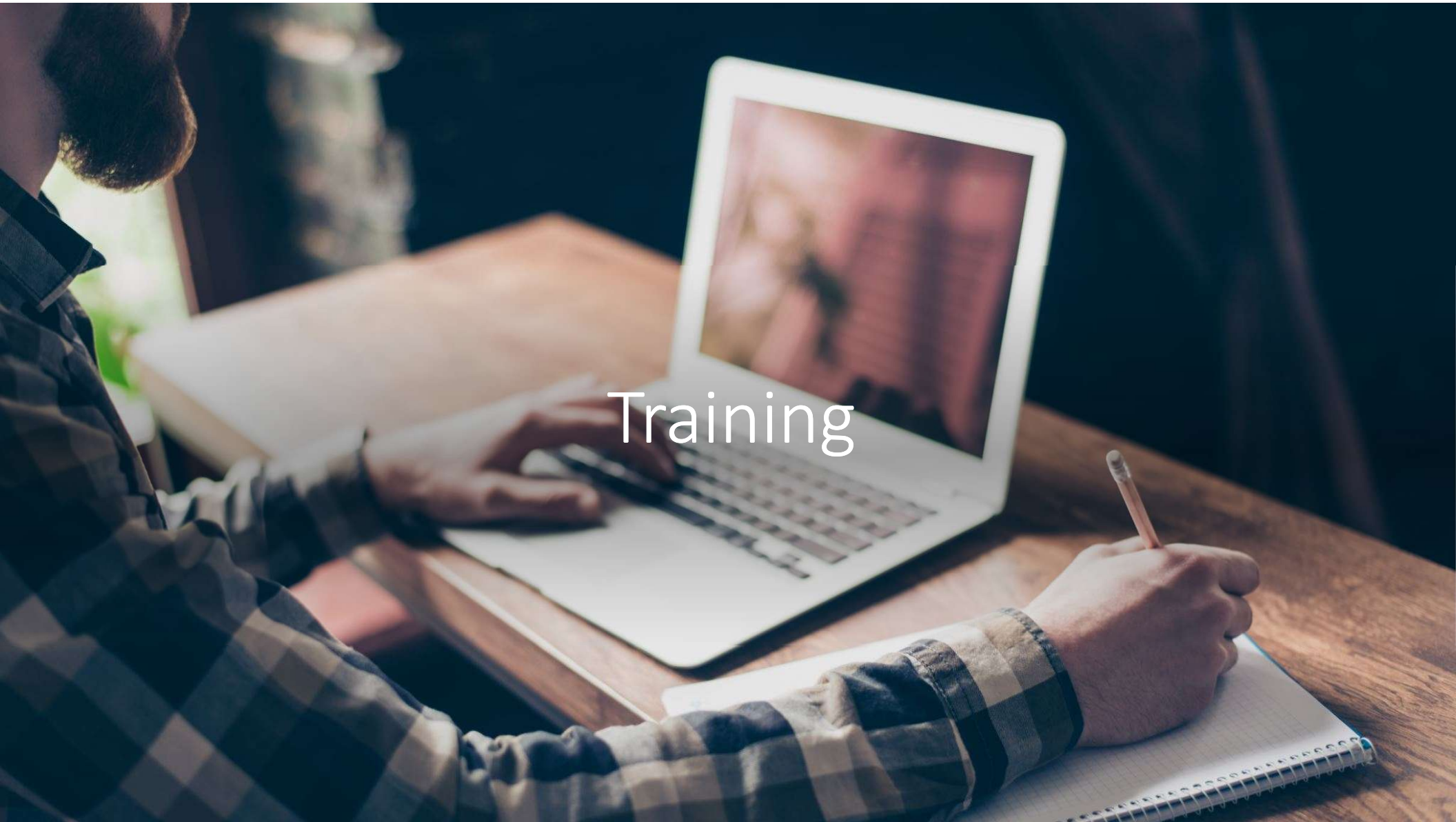


Knowledgeable Leadership





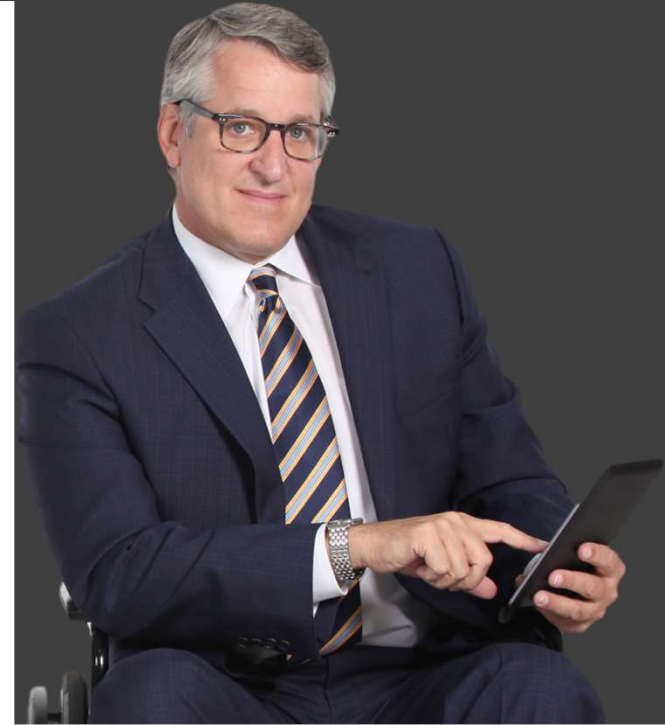
Exclude Risky Personnel





Reporting Hotline

- Whistleblower -- Protect and Encourage
 - No retaliation
 - Anonymity
 - Reward



Monitor and Audit





Incentives and Discipline

A dramatic photograph of an orca breaching the surface of the ocean. The orca's head and dorsal fin are visible, surrounded by a massive, high-velocity splash of white water that fills the upper half of the frame. The water is dark and calm, reflecting the light from the splash.

Adjust Program to Risk



Elements of An Effective Compliance Program

Steps to Building a Compliance Program

- Identify Risks to the Company
- Prepare policies that respond to the identified risks
- Implement policies with a specific compliance program tailored to company's risk areas



Victim Compensation



European Procurement Directive – 2014/24/EU – Art. 57

6. Any economic operator that is [excluded for corrupt acts] may provide evidence to the effect that **measures taken** by the economic operator **are sufficient to demonstrate its reliability** despite the existence of a relevant ground for exclusion. . . .

For this purpose, **the economic operator shall prove that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct**, clarified the facts and circumstances in a comprehensive manner by actively **collaborating with the investigating authorities** and taken **concrete technical, organisational and personnel measures** that are appropriate to prevent further criminal offences or misconduct.

Different Pathways to Compliance



Compliance Is a Affirmative Defense or Mitigates a Criminal Sentence

(e.g., US Sentencing
Guidelines; UK
Bribery Act; Brazil)



General Requirement to Establish Compliance System

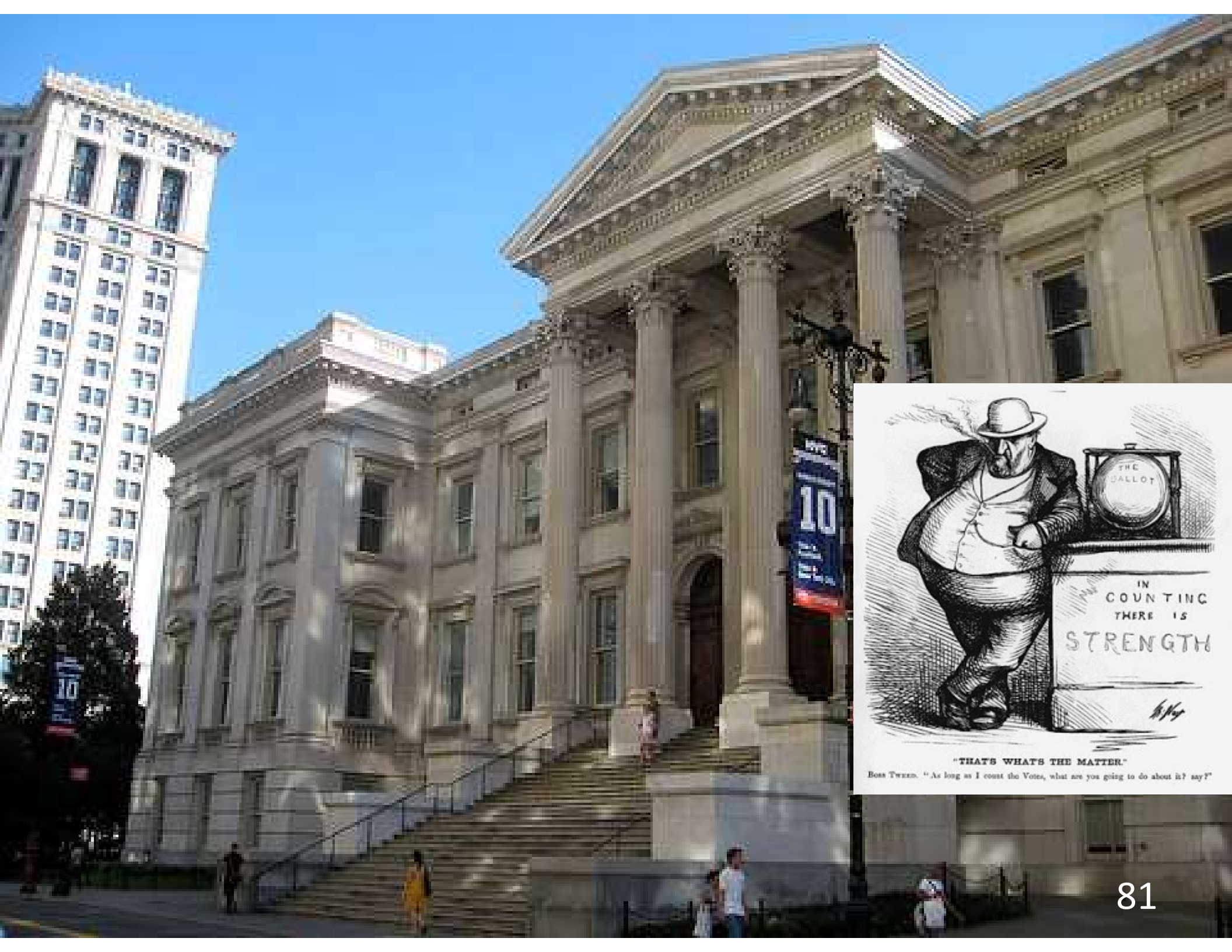
(e.g., Federal
Acquisition
Regulation; France's
"Sapin II" Law)



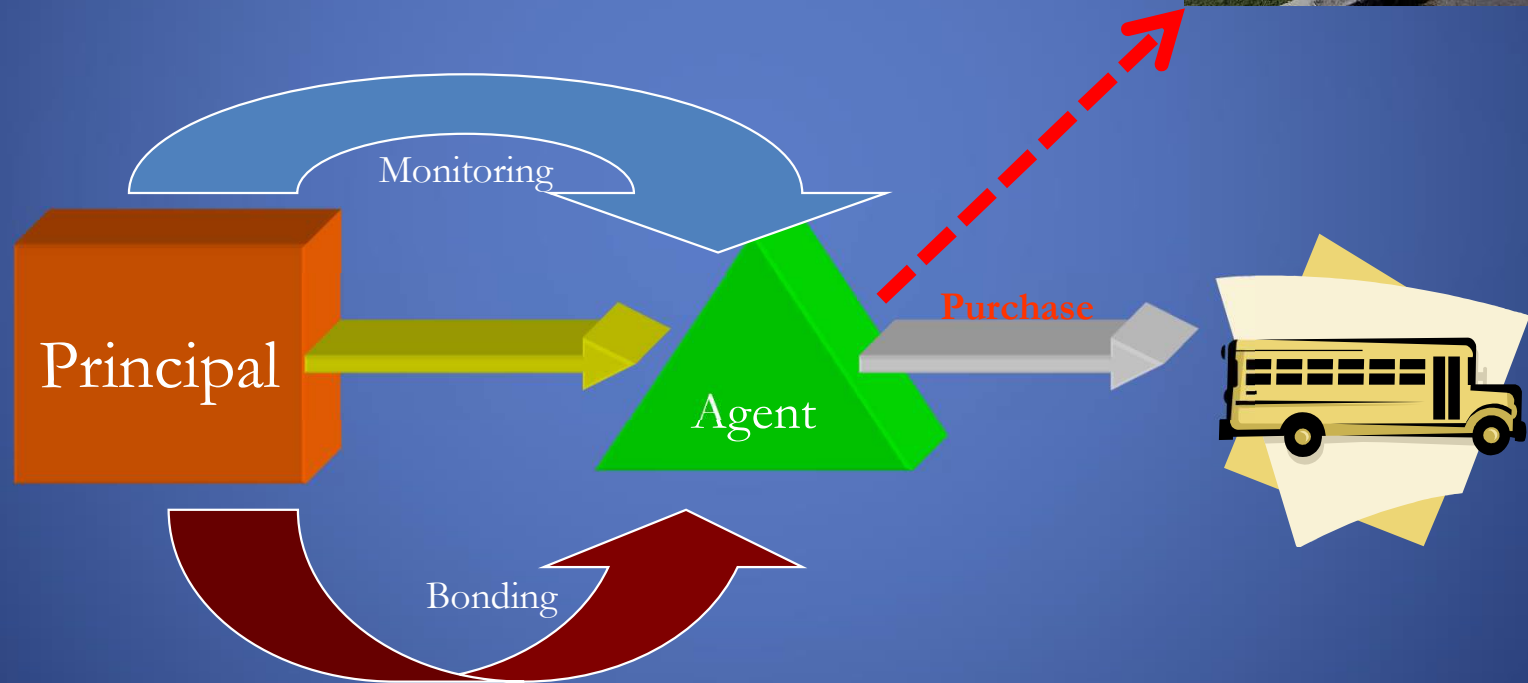
"Self-Cleaning" – Remedial Measures After Bad Act

(e.g., European
Procurement
Directives)

CONFLICTS OF INTEREST



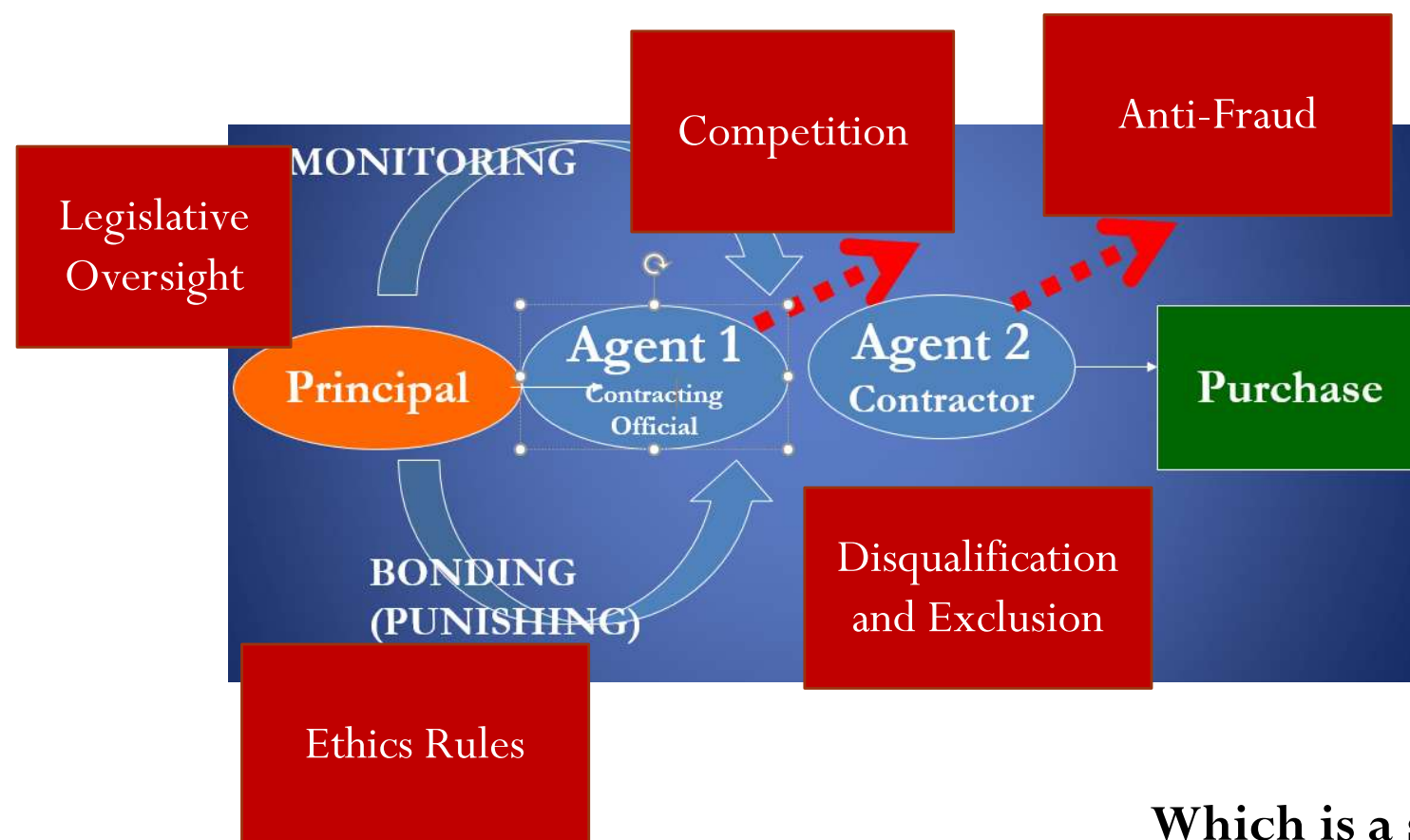
Principal-Agent Model



Principal-Agent Model



Anti-Corruption Tools: Assessing the Principal-Agent Model



Which is a surprising
anti-corruption tool?

KSA: Terminate if Bribery

A contract **must be terminated** (Article 76) if “it is established that the contractor has, personally or through others, directly or indirectly, bribed an employee of the agencies . . . , obtained the contractor through bribery, fraud, deceit, forgery, or manipulation; or engaged in any such acts in the course of executing the contract.”

KSA: No Committee Conflicts

Committees are to be appointed by the agency, per Article 45, to **review proposals**. The committee may look to reports from **technical experts**. The **Unified Procurement Agency** may participate in the proposal review committees. The **proposal review committee shall issue its written recommendations** (and possible dissents). **No person may both serve on the proposal review committee and decide on the contract award, nor serve on the proposal opening committee and the proposal review committee simultaneously.**

Per Article 17 of the KSA procurement law, the platform (or “portal”) is to “ensure the highest degree of privacy, confidentiality, safety, and transparency of information,” and is to “ensure integrity of procedures.”

KSA: Maintain Confidentiality

KSA: Corruption Ends Tender

A **tender may be canceled** if the solicitation documents contained substantial errors, an unlawful action is taken, if “there are clear indications of fraud, corruption, or collusion” among the bidders, if all proposals violate the tender requirements, or in the public interest (Article 51).

U.S. Rule Against Contingent Fees

- Contractor must certify
- No person or agency retained on a contingent fee
- To solicit or obtain contract
- Exceptions:
 - “Bona fide” employee or agency
 - “Commercial items”
 - Small contracts
- If breach: government may annul contract, or deduct contingent fee

Questions

- What is a contingent fee?
- Why must contractor certify?
- Why exception for “bona fide” employee or agency?
- Why exception for commercial item contracts?
- Why exception for small contracts?
- Why allow government to recover contingent fee, or annul contract?

Organizational Conflicts of Interest

- Principles of **organizational conflicts of interest (“OCI”)** – recognized under U.S. federal procurement law, European procurement law, the UNCITRAL Model Procurement Law and the WTO Government Procurement Agreement -- prohibit contractors from gaining an **unfair advantage**, such as by **designing systems that they will deliver**, or **using internal agency information**; they also prohibit organizational conflicts of interest that undermine the contractor’s duty of loyalty to the agency as a client.
 - But under U.S. law, if a contractor and a contracting officer **set up safeguards**, to ensure that the contractor doesn’t gain an unfair advantage or provide biased advice, **the OCI can be “mitigated”** – and, with the contracting officer’s consent, the contractor may proceed with follow-on work



KSA Law on Manipulation – What About an Organizational Conflict?

- A contract **must be terminated** (Article 76) if “it is established that the contractor has, personally or through others, directly or indirectly, bribed an employee of the agencies . . . , **obtained the contract through bribery, fraud, deceit, forgery, or manipulation**; or engaged in any such acts in the course of executing the contract.”



COLLECTIVE ACTION AND THE ROLE OF CIVIL SOCIETY IN MONITORING PUBLIC PROCUREMENT

Anti-Fraud





Anti-Fraud

- Key questions for fighting fraud in procurement
 - Whistleblower for inside information
 - Incentivize or protect?
 - Must government prove *knowing* fraud?
 - Penalties severe?
 - Contractual remedies – or civil or criminal penalties?



Whistleblower
Recovers 10-30%
Plus Atty. Fees

FALSE CLAIMS ACT: CIVIL (& CRIMINAL)

Basis for Liability

1. Submission of “claim for payment” to the federal government;
2. The claim is “false” or “fraudulent;” and
3. The defendant acted “knowingly.”

Does Not
Mean
Specific
Intent ...



DAMAGES:

1. Triple the amount of damages suffered by the United States PLUS
2. A civil forfeiture of between \$10,781.40 and \$21,562.80 per false claim; damages can be reduced in some cases from triple to double

1. Actual knowledge;
2. Acts in deliberate ignorance of the truth or falsity of the information; **or**
3. Acts in reckless disregard of the truth or falsity.

Other Means of Civil Society Involvement

Bid challenges?

Citizen reports
(Trinidad/Tobago)?

Community
involvement in
defining requirements
(Mongolia)?

Involvement in
contract formation
process (Nigeria)?

Open records?

Opposition
involvement in audit
process (UK)?

Open Data

Accessible

Machine-
readable

IACA Procurement Anti-Corruption Training

Professor Christopher Yukins

**The IACA Tailor-Made Training on
Effective Ways to Counter Corruption in Procurement
for the Oversight and Anti-Corruption Authority
of the Kingdom of Saudi Arabia
23 - 24 April 2025
Riyadh, Kingdom of Saudi Arabia**



IACA 2024 TCD-011401

	Wednesday, 23 April 2025	Thursday, 24 April 2025
08:45 - 09:00	Welcome Words	
9:00 - 10:30	Procurement Cycle and Corruption Risks <i>Christopher Yukins</i>	Conflicts of interest <i>Christopher Yukins</i>
10:30 - 10:45	Coffee Break	Coffee Break
10:45 - 12:15	UNCAC Article 9 <i>Christopher Yukins</i>	Group Work - Case study in compliance (available in English and Arabic) <i>Christopher Yukins</i>
12:15 - 12:45	Lunch Break	Lunch Break
12:45 - 14:15	Corruption Prevention Strategies <i>Christopher Yukins</i>	Participant presentations - case study <i>Christopher Yukins</i>

GROUP WORK: CASE STUDY AND EXERCISE IN REDUCING CORRUPTION RISK IN PROCUREMENT

Exercise posted:

<https://publicprocurementinternational.com/>

PRESENTATION OF GROUP WORK AND POTENTIAL SOLUTIONS

Exercise posted:

<https://publicprocurementinternational.com>

CERTIFICATES