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INTEGRITY GUIDANCE BOOK

**Integrity Guidance and Advisory Notes
on the World Bank's
*Guidelines: Selection and Employment of
Consultants by World Bank Borrowers***

Under contract to:
**World Bank, 1818 H Street, N.W.,
Washington, D.C. 20433, USA**

June 30, 2007

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Integrity Guidance Book
Promoting Integrity and Constraining Corruption
in the Selection and Employment of Consultants

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Foreword

This Integrity Guidance Book was written as a second stage to an earlier research project in 2006 that focused on professional ethics in Sub-Saharan Africa. Culminating in a Final Report of 28 November 2006, *Preparation of Guidelines on How to Prevent Corruption and Promote Integrity in the Selection and Employment of Professional Consultants*, the earlier research sought answers to important questions in public procurement: In the quest for improved performance on World Bank funded projects, is there scope for appealing to the ethical beliefs and ideals of experts and professionals? Is there a price to be paid for ignoring the aspirational ethical dimensions of procurement of expert services, and instead assuming the worst intentions and seeking only to limit the damage? If we design our procurement systems in such a way as to give greatest (and often sole) emphasis to constraining avarice, fraud, corruption, and other self-serving actions, are we effectively discouraging the honest, virtuous, or at least well-intentioned expert consultant or public sector procurement official from pursuing opportunities to provide quality services to the public sector? Do exclusively constraints-based procurement systems even work, given the growing gap in knowledge between the public sector and expert consultants?

This Integrity Guidance Book moves from that research reporting stage to offer now a set of recommendations for procurement policy and implementation of the World Bank's *Guidelines: Selection and Employment of Consultants by World Bank Borrowers*, bringing to light the many ethical issues of procurement and performance of consultants.

This Integrity Guidance Book owes its creation to the energy, vision, and guidance of Gian Enrico Casartelli, Consulting Services Adviser of the Procurement Policy and Services Group of the World Bank. The principal author of this Guidance Book, Chloe Schwenke, was assisted in its production and editing by the project Team Leader, Marianne Camerer, and by project team members Anders Pettersson, Johan Hattingh, Minka Vrba, Sarah Kihika, and Richard Mwongo. This team expresses gratitude for the many constructive inputs from the Interim Director of the Public Procurement Oversight Authority of Kenya, Robert Hunja. Mark Haas, Dan Guttman, and Alfonso Sanchez also provided very helpful insights and review comments.

List of Acronyms

ADB	=	Asian Development Bank
CSO	=	Civil society organization
CPAR	=	Country Procurement Assessment Report
FIDIC	=	Fédération Internationale des Ingénieurs-Conseils
IDB	=	Inter-American Development Bank
MDB	=	Multilateral development bank
PA	=	Public sector procurement agency
QCBS	=	Quality and Cost Based Selection
RFP	=	Request for proposal
TOR	=	Terms of reference
WB	=	World Bank

Chapter One ~ Quality, Value and a Rational Basis of Trust

About the Integrity Guidance Book

This Integrity Guidance Book has been written to highlight integrity as a central and essential element of effective procurement. It is the premise of this Integrity Guidance Book that integrity is achieved through ethical performance, and that acceptable standards of ethical performance depend on a combination of constraining corruption and fostering positive ethical behavior.

The Integrity Guidance Book is organized in three chapters. Chapter One provides a very brief overview of the challenges confronting public procurement of consulting services in developing countries, and provides – through text and diagrams – some key principles in this context.

Chapter Two addresses the policy, market, and professional environments, and the incentives and disincentives for integrity in procurement. It describes appropriate measures for each of the various key roleplayers to pursue in order to foster integrity in procurement of consultants, in a balanced manner that embraces both compliance-based and aspirational approaches.

Finally, Chapter Three provides detailed Integrity Advisory Notes, which comprise an annotated guide to compliment the current World Bank’s *Guidelines: Selection and Employment of Consultants by World Bank Borrowers* (the “Guidelines”). Specific commentary is provided on all relevant clauses from Part One of the Guidelines, to advise readers on the most effective ways in which the current provisions of the Guidelines can be interpreted to strengthen integrity, and where such provisions can be complimented by additional measures.

Procurement ~ A Broken System

It is well known that there are many shortcomings and failures in public sector procurement of consulting services. While corruption takes a heavy toll, particularly where corruption is deeply embedded and systemic, many procurement problems have little or nothing to do with corruption or conflicts of interest. The procurement system itself is too complicated and too slow, and getting more so on both counts. In several other regards, the established procurement system also demonstrates dysfunctional characteristics, with final procurement choices frequently being arrived at on the basis of cost instead of quality, precipitating a race to the bottom in fierce cost-cutting and quality-poor competition. When consulting fees are forced to unrealistic low levels by such competition, and the normal incentives for quality are stripped away, the negative toll on professionalism is inescapable.

Not all of the current problems with public procurement derive from the public sector or the donors. The consulting industry shares in many procurement problems, and as such, the consulting industry should play a role with the public sector and the donors in

resolving these problems. For example, many firms will argue that a selection process is unfair when in fact the decision of that firm to bid on that particular projects was ill-advised. Firms must take responsibility to assess the competition and determine if they are in fact competitive, given the comparative advantages of those on the short list. There are many cases where excellent firms are able to compete at very low cost while still maintaining quality, and competing firms are wise to respect these capacities of their competitors even if their own economic and professional context precludes them from competing on equivalent terms. In practice, competing firms who are unable to offer similar high quality at similar low costs are prone to complain that the procurement system is to blame for their lack of success in achieving the contract award.

Whether attributable to the consultants, the public sector, the donors, or others, the consensus is strong that the current system of public procurement on projects funded by loans from the Multilateral Development Banks is not working as it should. How do we unravel the complex puzzle that seems to have engulfed public procurement of consulting services? How do we rebuild consultant procurement policies and practices so that they perform efficiently, fairly, rapidly, professionally, and ethically?

In tackling these challenges, the Multilateral Development Banks and their Borrowers face diminishing choices, but largely it is a trap of the MDB's and Borrower's own making. Most of the problems arise from a foundational premise that has rarely been challenged until recently: that the "rules of the game" of the market mean that the behavior and performance of expert and professional consultants – individuals, firms, and the larger consulting industry – is influenced overwhelmingly or even exclusively by pursuit of their own narrow self-interest.

This generalized premise of the narrow self-interest of consultants leads to an obvious outcome: *consultants are not to be trusted*. To protect the public against these knowledgeable but – by definition – untrustworthy consultants, our current consultant procurement strategies and systems have become complex, time consuming, labor intensive, and heavily compliance focused – yet they still fail to produce consistently good outcomes. There is ample blame to distribute; some of these bad outcomes are also attributed to self-interested, untrustworthy, or incompetent public sector procurement officials.

In addressing the state of expert and professional consultant procurement by Multilateral Development Bank Borrowers, the following problems must be tackled:

- *Competence is a problem.*

Particularly in developing countries, government procurement agencies and their staff are becoming progressively less able to identify sophisticated technical and management problems, describe the desired solutions, write terms of reference that will control how the professionals and experts are expected to perform to achieve the desired solution for a project or assignment, and monitor the integrity of the entire process of consultant procurement and performance.

- *Trust is a problem.*

Public sector clients and the consulting industry must be challenged as never before jointly to formulate measures to create a sustainable, credible, and rational trust mechanism building on the desire of both public sector officials and the consulting professionals and experts to serve the public, to exemplify high professional and consulting industry standards, and to take pride in their respective important roles in development. This aspirational characteristic of human nature demands recognition and nurture; for this to happen, the premise of the untrustworthy, incompetent, and self-interested consultant and the similarly ethically troubled public sector procurement official must change.

- *Vision is a problem.*

Even in the most economically developed countries with sophisticated democratic traditions, there is largely a policy vacuum when it comes to viewing the consulting industry – which is a major component of the knowledge economy – as a valuable resource to be nurtured, directed toward the public interest, and to be respected.

- *Integrity, ultimately, is a problem.*

As noted perceptively by Luis Alberto Moreno, president of the Inter-American Development Bank, there is “no development without integrity”.¹ Integrity has many meanings. Integrity means wholeness – being true to one’s values, and acting consistently in accord with these values in a wide variety of circumstances and relationships, while remaining free from conflicts of interest. Procurement is instrumental to development, and the demands of integrity as argued by IDB President Moreno apply without exception to procurement.

Public procurement involves many different notions of integrity. Most often interpreted in the context of integrity failures – fraud, collusion, coercive or obstructive practices, corruption, and misrepresentation – integrity also should be understood as a positive and integrating concept with significant motivational force to drive ethical performance.

Integrity as wholeness even goes beyond virtue and ethical performance; the linkage between *public procurement* and *service in the public interest* should not be forgotten. Integrity also offers the justification for a rational basis of trust between client and consultant – a trust in which a client relies upon the advice, independence, and competence of the consultant, and the consultant relies on the competence, fairness, and overall legitimacy of the public procurement agency (the client). Consultant and client both must possess and demonstrate consistent integrity to achieve and sustain a level of partnership sufficient to meet the complex demands of modern procurement and performance.

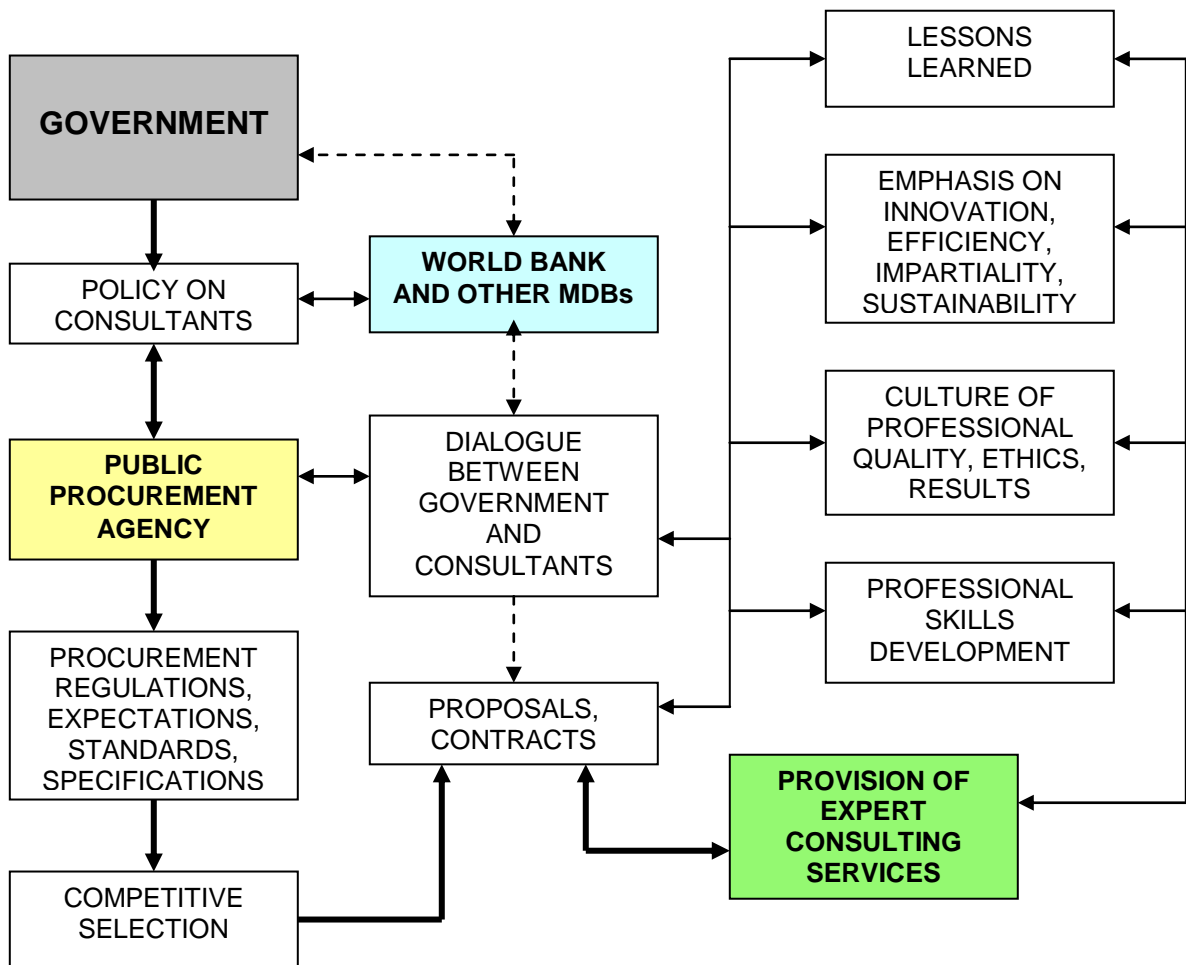
¹ Office of Institutional Integrity, The IDB Group: Annual Report 2006.

Key Concepts of Consultant Procurement Integrity

The following diagrams provide a quick synopsis of some of the most important concepts and relationships in the assessment of consultant procurement, particularly from an ethics perspective.

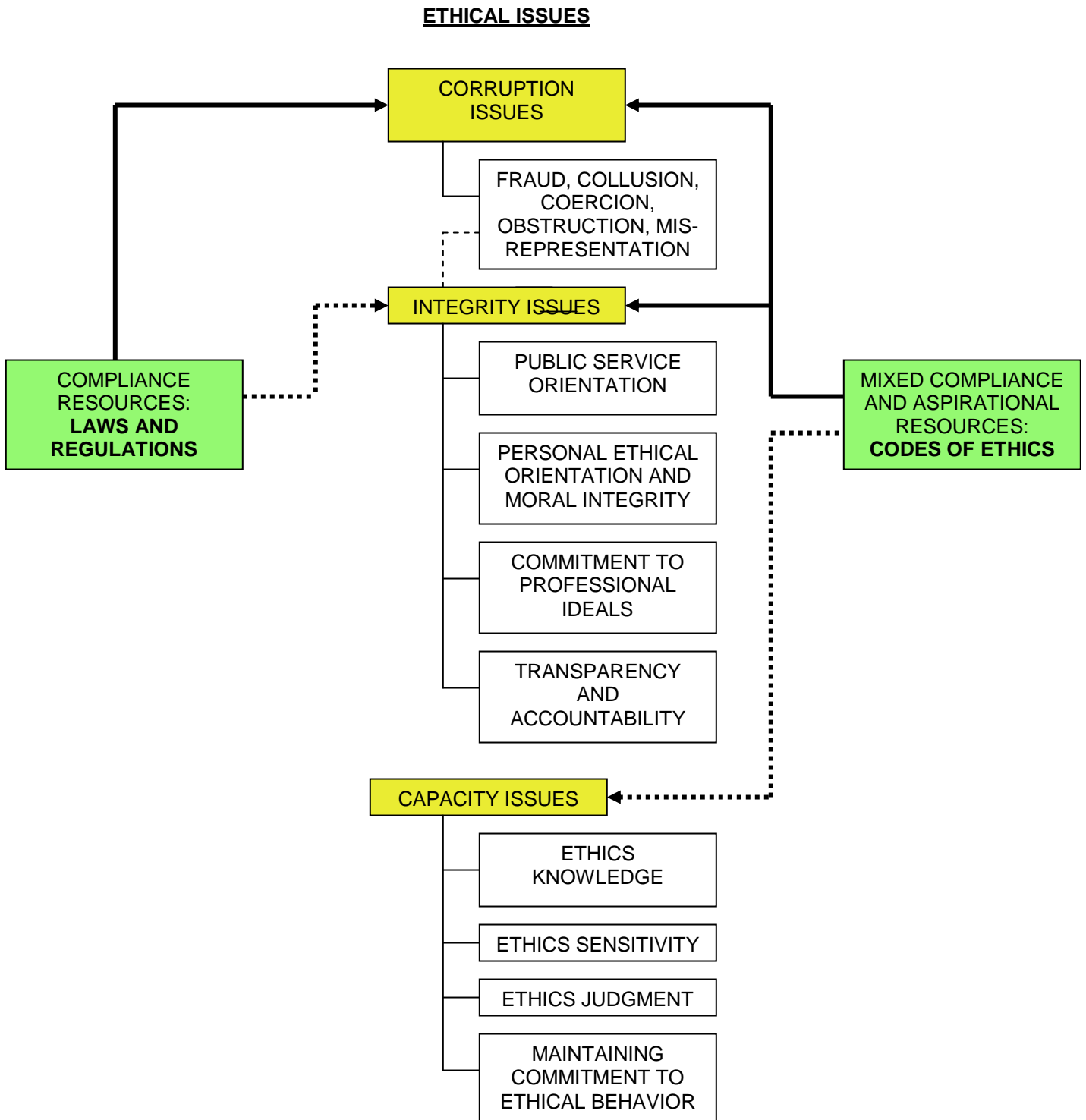
Consultant Procurement is Dynamic

In an ideal system, government is guided in its procurement of consultants by a policy framework intended to strengthen the constructive role that consultants play in a nation's development. The consultants, in turn, are guided by their professional values, their well-developed competence, and their orientation to quality. The public sector procurement agencies engage in a mutually respectful and constructive on-going dialogue with consultants to improve the quality of public sector procurement, through policies and procedures that demonstrate consistent fairness and effectiveness.



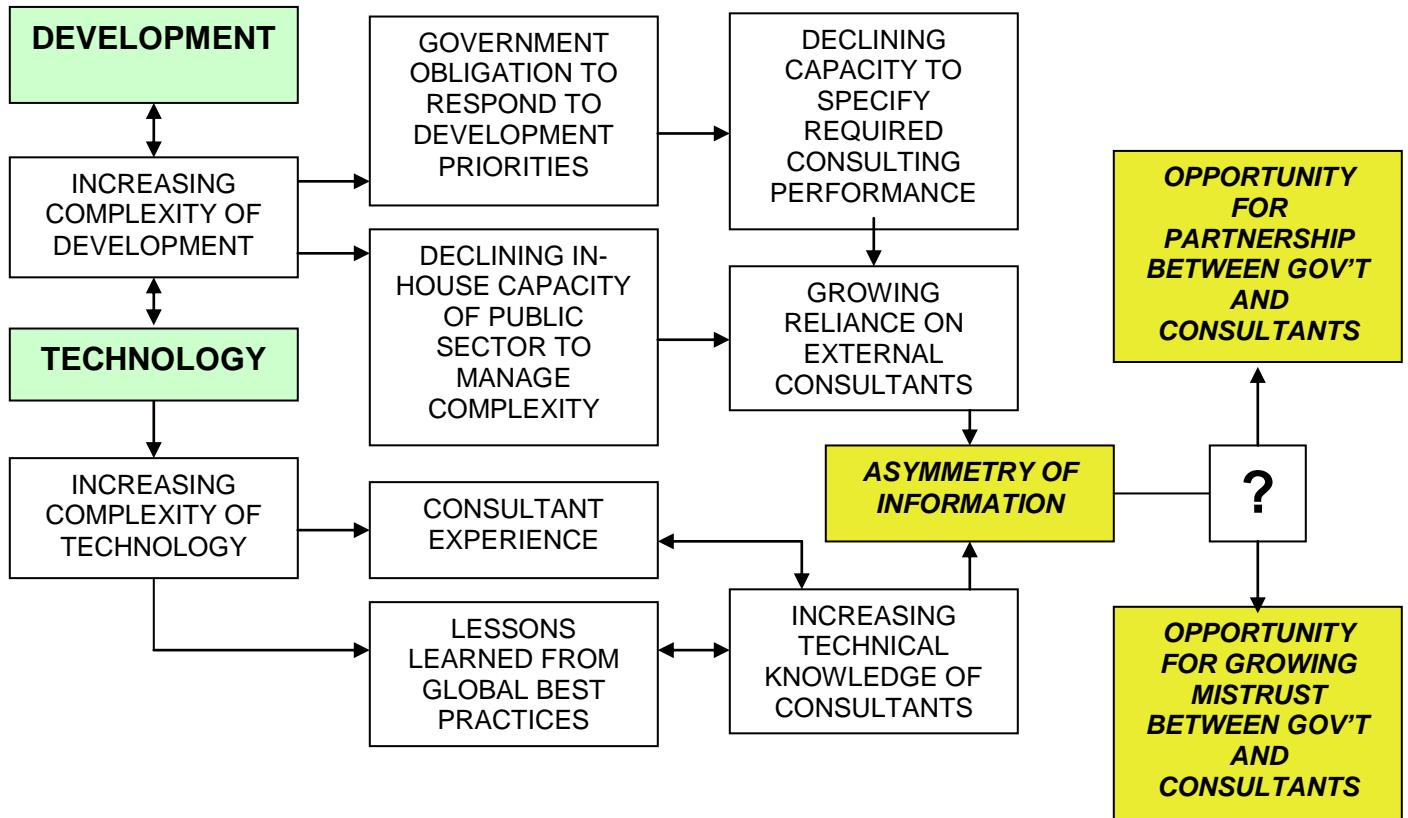
Ethical Issues in Procurement

Many issues that arise in the course of consultant procurement and performance have important normative content, and hence can be described as “ethical concerns” or “ethical issues”. Many of these issues are already addressed – to varying degrees of effectiveness – by laws, or by codes of ethics. Many other ethical issues, however, are less easy to resolve through the application of formulaic answers; in such cases only a well developed sense of ethical awareness coupled with appropriate capacity in ethical reasoning will suffice to resolve the issue.



Effective Government Performance Depends on Responsible Partnership

The overwhelming challenge facing public procurement in developing countries is to manage complexity. Through a pragmatic partnership between the technical experts and the public sector procurement agencies, asymmetry of information can be mitigated in many cases. The application of integrity management systems² can help in this process.

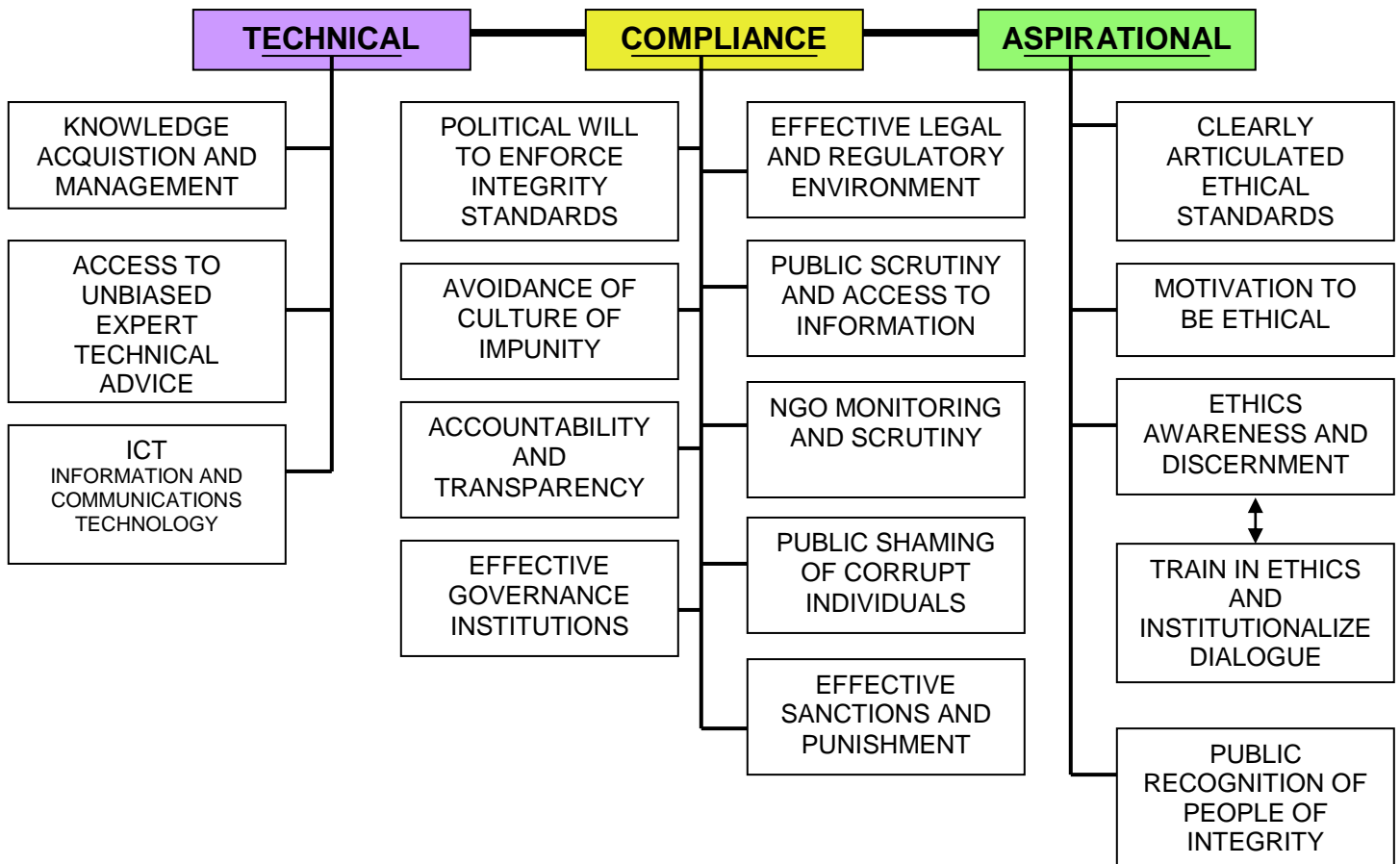


² An excellent example of an integrity management system is the Government Procurement Integrity Management Systems (GPIMS) of the FIDIC (see <http://www1.fidic.org/resources/integrity/>), although arguably no existing integrity management systems give adequate weight to the aspirational components of integrity, focusing instead on compliance.

The Balanced Approach to Integrity Management

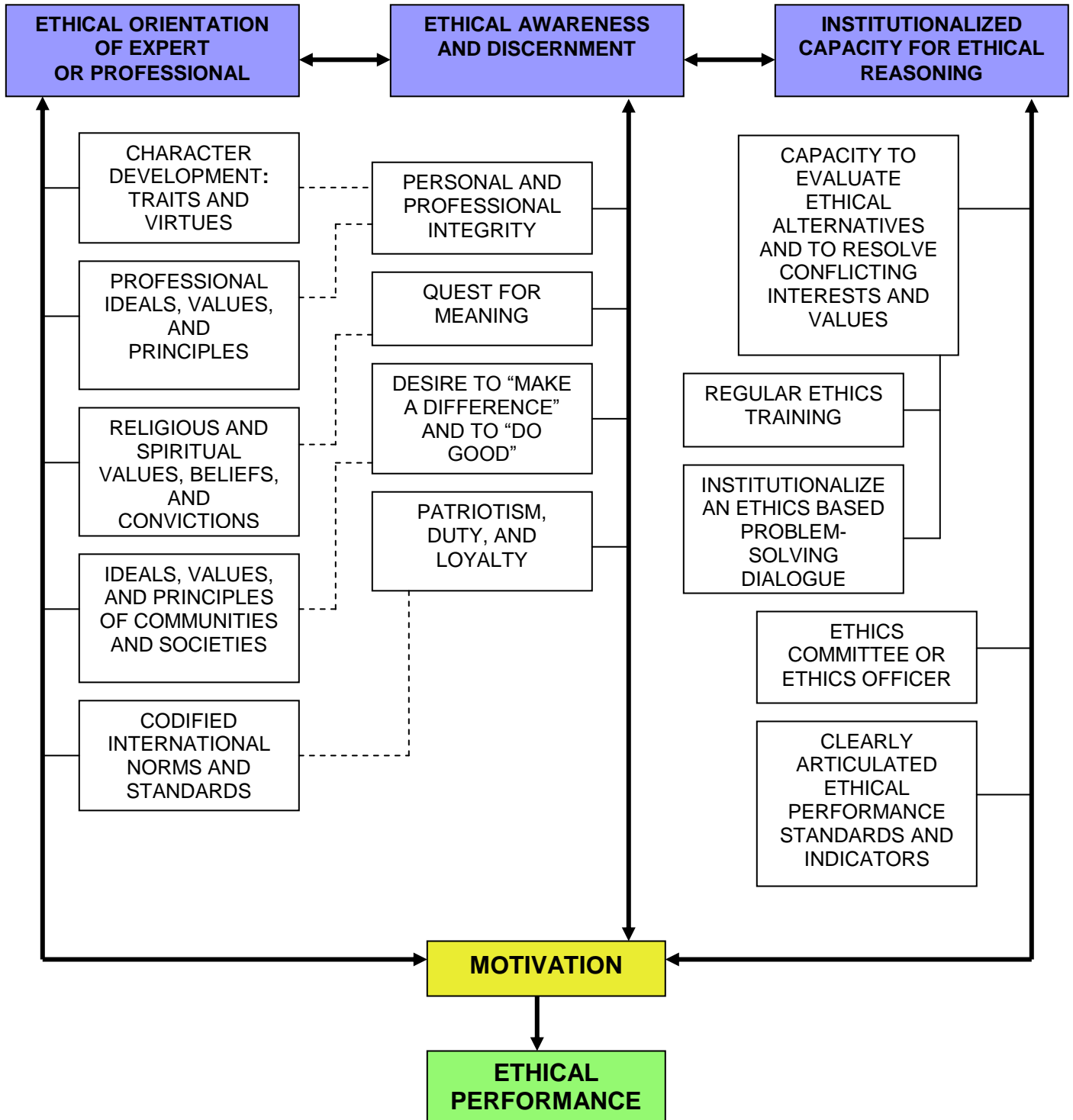
The international focus in the fight against corruption in public procurement in developing countries has focused almost exclusively at making the rules tighter and the enforcement more effective. While maintaining and improving appropriate compliance-based safeguards is essential, the optimal approach involves also appealing to the aspirational resources that exist, and that can be fostered.

The combination of technical (knowledge) resources, compliance-based (control) techniques, and aspirational (moral and ethical) approaches creates a balanced approach to integrity management.



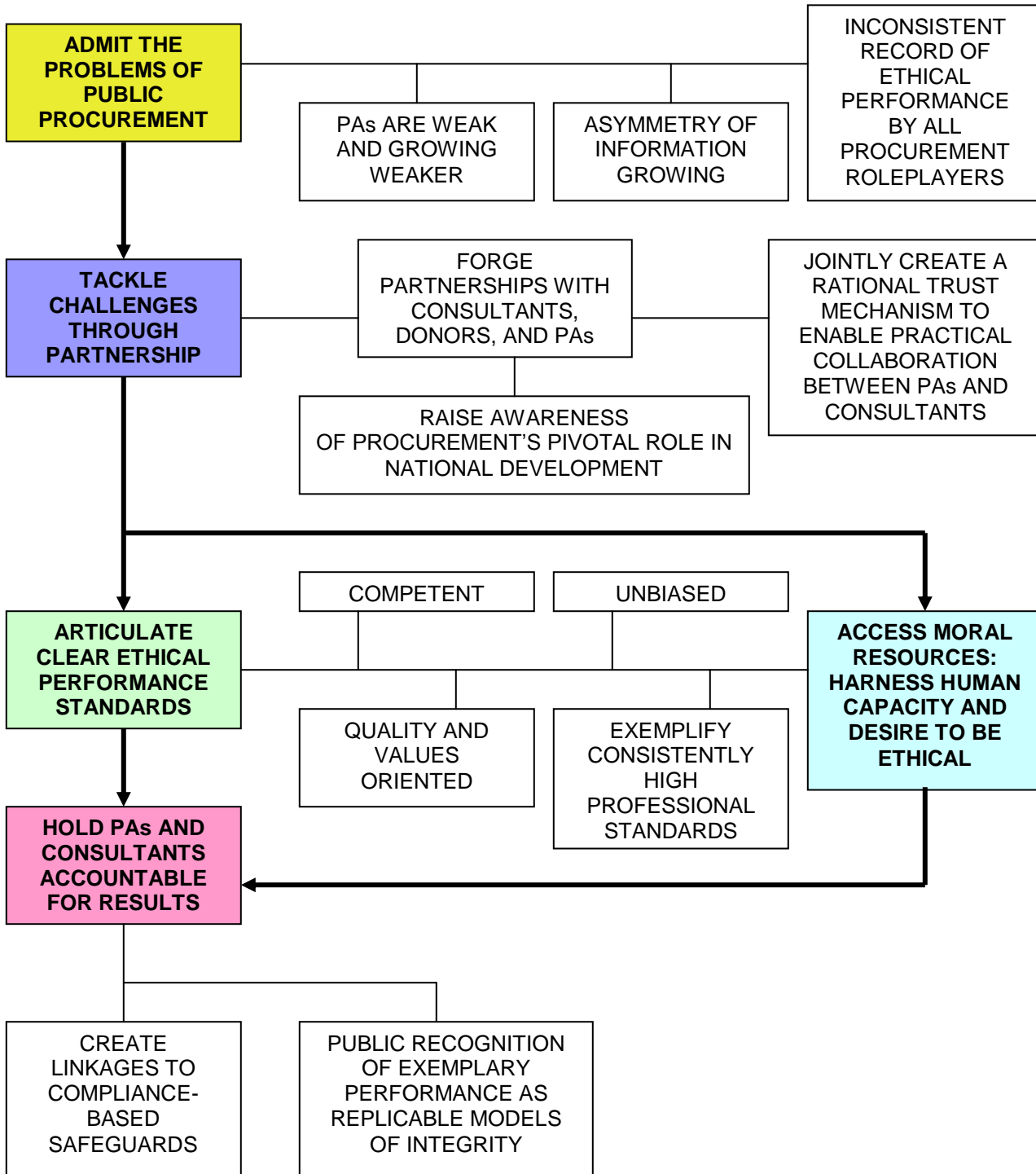
The Aspirational Model

There are many factors that are critical to the effectiveness of the aspirational model, beginning with the moral resources, orientation, and motivation of the individual roleplayers in procurement. Being ethically aware, able to discern the most ethical choice among the available options, and having access to outside ethics resources are all needed.



Implementing an Aspirational Approach

There are many stages to implement and sustain an aspirational approach, beginning with an acknowledgement of the current negative trends affecting public procurement. New forms of partnership and dialogue are needed as well, which will be a challenge for those procurement institutions mired in a traditional view of the various roles of consultants and clients. A new and positive view of ethics as a motivational resource is also needed.



Challenges and Principles in Procurement Integrity

As demonstrated in the previous diagrams, public procurement faces many challenges. Procurement is a dynamic and complex process involving many roleplayers, many changing relationships and lines of accountability, and many expectations. The stakes are high – a nation’s sustainable development and the welfare of its citizens.

The public sector faces particular challenges in establishing and implementing a policy framework conducive to integrity, and effective institutional mechanisms to sustain those policies into practice. The public sector must attract, train, and retain competent and professional staff able to manage procurement with fairness and efficiency, and it must find and institutionalize ways to raise ethical awareness and bring ethical reasoning into daily decision-making.

The consulting industry – the many professional and expert consultants and their associations – is similarly challenged to maintain a principled approach within a competitive market, not losing sight of their important role in satisfying the needs and often urgent priorities of the public. They must remain competitive without sacrificing quality, stay abreast of rapidly changing technologies, and demonstrate in their services the professional ideals that they articulate in their codes. They must demonstrate a new sense of leadership in addressing development challenges, and in collaborating with the public sector to make consultant procurement and performance fair, ethical, and effective.

The Multilateral Development Banks are challenged to use their influence and vast experience to best possible purposes, helping Borrowers to create a fair and effective policy environment for procurement. The MDBs, through their loan processes and their country procurement assessment reports (CPAR) processes, are well positioned to introduce both aspirational and compliance based approaches to consultant procurement and performance starting from the earliest stages of project identification, and lasting through to project completion and the assessment of project results.

All roleplayers in consultant procurement and performance face the integrity challenge. Corruption must be curbed, scarce public resources must be used to achieve the best possible results, and a vibrant, authentic public service ethos must be cultivated and sustained. The challenge is both anti-corruption and pro-integrity.

Chapter Two ~ The Conducive Environment for Procurement Integrity

Managing for Complexity, Procurement, and Development

The trajectory of any country's path to improved standards of development entails the management of ever-increasing levels of complexity. Public sector managers and technical staff are challenged to stay abreast of improvements in technology, best practices from around the world, and sophisticated knowledge management skills, while not losing sight of the fact that despite the complexities of growth and technological change, many of the important outcome measures remain essentially unchanged: poverty alleviation, improved quality of life, better education, healthier people, and economic growth.

Civil society and the electorate also hold the public sector to account to demonstrate improved results and effectiveness, and authentic responsiveness to the public. Achieving public sector performance of this standard depends upon visionary leadership and effective management supported by robust monitoring and evaluation expertise, strategic planning, integrated financial management, sophisticated IT capabilities, and effective communications.

These are ambitious performance goals, unattainable by the public sector alone. With growing complexity comes an expanding market for outside experts to advise and assist the public sector. These experts are procured as consultants by public sector procurement agencies (PAs) on the basis of their demonstrated expertise – which provides the basis for their inclusion on the short list of approved bidders – and the quality and/or cost of their proposed services. As these services become more sophisticated to cope with increasing complexity, the public sector is less able to specify the scope and standards that consultants are asked to respond to and satisfy. This disparity between the increasing knowledge and sophistication of expert and professional consultants and the more static (and sometimes declining) level of training and competence of public sector PA personnel is generating what has become known as an *asymmetry of information*.

Asymmetry of information is disadvantageous to all roleplayers in consultant procurement. Public sector PAs find it increasingly difficult to specify the detailed technical scope of work upon which consultants' bids are to be based, or to evaluate those bids once received. Consultants in turn lack the confidence that the technical approaches that they are proposing will be understood by the evaluators, or that the costs associated with the introduction of new technologies and methods will be evaluated in cost-benefit terms that are fair and appropriate.

One obvious policy response to mitigate the negative impacts of this growing asymmetry of information is to “professionalize” public sector PAs. This recommendation to date has met with only limited success, due to the challenges of generating the requisite institutional reforms in public sector institutional schemes of service, so that public service employees (civil servants) who become trained as procurement professionals are adequately compensated for their increased knowledge, competence, and responsibility.

In many instances, there is also a lack of political will to designate procurement as a special professional (or advanced technical) category, despite obvious longer term cost control (and savings potential) implications arising out of such capacity strengthening.

The Consulting Industry and National Development

From Profession to Industry

Typically, the public sector procures its needed expertise through the competitive mechanisms of the market. Consultants – as individuals, firms, or non-profit organizations – compete with each other for a limited number of project opportunities to assist government to pursue public interest objectives. Historically, most expert services were provided by a more constrained competition limited to established professions, with the selection of an individual professional or firm being based primarily on quality and trust. These formal professions established and maintained well-articulated, reliable standards of competence as the entry qualifications, and often augmented these with requirements for continuing professional development training. These same professions established scales of payment for categories of services performed, so that professionals were not competing on the basis of least-cost. Given that all professional services would cost the same no matter which professional provided them, clients selected professional consultants who they trusted, and who possessed reputations for quality performance.

With growing market pressures within professions, and competition from experts who were not part of recognized professions, the traditional and monopolistic patterns of professional procurement have largely passed away. The cost of expert services has come to be a more decisive factor in nearly all consultant selection, except in the relatively rare cases where a particular consultant possessed unique qualifications essential to the needs of the client. While traditional professions still provide many important services, their members (firms or individuals) now act more as autonomous agents in the market, with less professional solidarity and without any effective consensus on mutual adherence to a scale of fees. Consulting – by professionals and other experts – has become an industry, and a very

Professionalism is a thriving concept in Kenya. The Association of Professional Societies of East Africa (APSEA), founded in 1961, is demonstrating a strong leadership role as a champion of integrity for its 30 different professional association corporate members (representing over 20,000 individual professionals). Through its Professional Integrity and Ethics Committee, and despite constrained resources, APSEA is engaged in a variety of ethics training, mentoring, and outreach activities intended to strengthen the ethical awareness and judgment of its members, and demonstrate integrity-based advocacy on relevant public interest issues. APSEA professions include several engineering disciplines, architects, landscape architects, land surveyors, real estate agents, valuation experts, many types of medical and dental practitioners, geologists, accountants and auditors, secretaries, clerks of works, food scientists, quantity surveyors, radiologists, bankers, builders, management experts, planners, veterinarians, marketing experts, purchasing agents, and arbitrators.

competitive industry at that. The traditional stereotype of the trusted professional advising the respected client has transformed into a more routine commercial relationship of buyer and seller of services. As such, there are few instances where governments or the public still view those who comprise the consulting industry – the individual experts or professionals, or firms of experts and professionals – as “partners” in development. The consulting industry is treated as an integral and undistinguished part of a developing nation’s economy and market; little or nothing is done from a policy perspective to treat this part of the market in any special or distinctive manner, such as policy measures to strengthen professionalism or to nurture a domestic consulting industry. Arguably, this lack of differentiation and the absence of a policy focus on nurturing domestic expertise are not in the public’s interest.

Expertise Serving the Public Interest

The move from the historical model of monopolistic professions who dictate their own uniform fees to the current system of free market procurement of such experts certainly has reduced the costs that such experts are able to charge, so how is the public interest not well served by this free market, cost-savings orientation? And given that these experts and professionals are private sector actors, why should the public sector allocate public time and resources to nurture domestic expertise and professionalism?

The simple answer is that the public has a vital stake in the quality and integrity of expert and professional consulting services. The toll of this commoditization of expert consulting services on both quality and integrity has been profound. Citizens and senior political leaders hold accountable the delegated public sector “clients” – the public sector procurement agencies (PAs) – for achieving maximum value for public monies spent. That value consists of quality, cost, and ethical performance; yet PAs find quality and ethical performance much more difficult than cost to measure and report on. These pressures tend toward making the cost of services the more decisive factor. Ethical performance is seldom focused on in any systematic manner, and even where clients make an intentional effort to focus on quality, it is often difficult to evaluate and rank the comparative quality of competing proposals from expert consultants. This is particularly so when consultants adopt differing technical approaches or competing technologies. When quality becomes a complex measurement, and when standards for ethical performance are notable by their absence, the simplicity of looking at the bottom line can become persuasive. As competing consultants become aware that their proposed costs are increasingly the decisive element, they seek cost-cutting measures, and occasionally even compromise their integrity to distort the selection process, resulting in a progressive decline in quality – known commonly as a “race to the bottom”. This is a classic lose-lose phenomenon; the public receives poor value for public funds spent, the experts and professionals derive progressively less satisfaction and economic viability in their chosen careers, and distrust grows between the various roleplayers in public procurement.

Alternative Consultant Selection Approaches

Public sector procurement agencies (PAs) have yet to focus on methods to foster high ethical performance, choosing instead an exclusive preoccupation with constraining unethical or corrupt performance. On the balance between cost and quality, PAs have

sought to mitigate the tendency of favoring cost over quality by adopting often complex evaluation procedures linked to similarly complex equations so that the results of any evaluation give appropriate weight and rational balance to factors of quality and cost. To this end, the World Bank's *Guidelines: Selection and Employment of Consultants by World Bank Borrowers* sets forth six basic consultant alternatives, although it lays particular emphasis on one selection method: Quality and Cost Based Selection (QCBS). In principle, QCBS limits the weight of cost typically to not more than 20% of the overall evaluation aggregate assessment. In reality, extensive recent research by the World Bank³ has demonstrated that even with the QCBS formula, cost may exert a far greater influence in selection than otherwise anticipated, arguably with a consequent decline in quality.

Other consultant selection alternatives include:

- QBS ~ Quality Based Selection, used for complex or highly specialized assignments where quality is the paramount goal, where specifications are difficult for the client to generate, where proposers are likely to rely on a variety of significantly differing approaches, or where projects have a high downstream impact.
- FBS ~ Selection under a Fixed Budget, used when the assignment is simple and easily described in the request for proposals, and where funds are strictly constrained.
- LCS ~ Least Cost Selection, used when engaging consultants for routine duties (even if sophisticated), such as audits. Even in LCS, there is generally a minimum threshold established for quality, and proposals are evaluated accordingly.
- CQS ~ Selection Based on the Consultant's Qualifications, typically used only on small assignments that do not warrant the cost and time of a more comprehensive proposal evaluation process; the consultant (firm or individual) is selected based on comparing the qualifications of all competitors, and not on the basis of an evaluation of detailed technical proposals and associated cost proposals.
- SSS ~ Single Source Selection, used only in exceptional circumstances, does not involve competition, and is subject to complaints of lack of transparency or fairness; SSS is used when dangerous conditions (e.g. a natural disaster) require an immediate response, when continuing the work of a consultant from an earlier assignment, where assignments are very small, or where a firm or individual consultant has unique qualifications needed for the assignment.

While recent research makes a strong case for the MDBs and the public sector procurement agencies of the Borrowers to give much greater consideration to alternative forms of selection before simply defaulting to QCBS, these many alternative approaches for consultant selection allow little or no scope for clients to select consultants based on the one factor that most often influences the attainment of quality when the private sector selects its expert and professional consultants: trust. With asymmetry of information growing, quality depends on trust.

³ See March 2007 World Bank report, *World Bank Policy on Selection and Employment of Consultants: Study of its Effectiveness*.

To the contrary, the public sector's relationship with expert and professional consultants typically begins with the premise that consultants are not to be trusted, and that systems are needed to constrain their widespread tendencies towards unethical behavior. This built-in bias against valuing the integrity and trustworthiness of the consultant may be a factor in the decision by many leading, well-established consulting firms not to pursue projects or assignments with the public sector. While pragmatically guarding against the possibilities of unethical behavior is both sensible and an obligation of PAs (and arguably also in the mutual interest of professions and other organizations of expert consultants to take an active role in), the extreme of a PA beginning a consulting relationship on the basis of mistrust and in the expectation that expert and professional consultants will be unethical or incompetent unless actively constrained, is neither sensible nor productive.

Enforcing Compliance

The cost of corruption and its corrosive impact on development and government legitimacy is now much discussed, and the subject of extensive empirical studies. Significant efforts are underway throughout the world to detect, measure, and combat corruption, and to find effective methods by which the public sector can assure compliance with its laws, values, and standards. Public procurement is at the center of this effort. Governments are establishing a variety of compliance institutions and mechanisms to strengthen procurement integrity, from more effective police investigative and prosecutorial capacities to improved accounting and auditing practices (including e-procurement), coupled with sanctions of increasing severity. NGOs are becoming more effective at monitoring procurement, and articulating the development priorities and values of the public. All of these efforts, strategies, techniques, and policies are making the risk of engaging in corruption much greater for anyone considering such actions. This applies to procurement: greater risk of detection and punishment creates greater disincentives for corrupt and unethical behavior in public procurement, yet the incentives associated with potential financial gains remain immense.

Some of the most effective compliance-based measures include improved sophistication in detecting, measuring and analyzing corruption in any given country, the use of integrity management systems⁴, and more effective codes of ethics and conduct linked to ethics training. Barring consultants who have been found to have been corrupt or unethical from future participation in procurement proposal actions is also effective when applied fairly.

Despite these many innovations and techniques, the overall effectiveness of compliance-based approaches to public procurement functions has limits. Transparency issues are difficult, as experts and professionals deem many of the documents involved in proposals to be proprietary and hence confidential, and bureaucratic tendencies towards secrecy discourage PAs from publishing copies of contracts or publicly disclosing the results of evaluations of consultant performance. Transparency measures also have largely been

⁴ For example, the Government Procurement Integrity Management System (GPIMS) of the FIDIC (see <http://www1.fidic.org/resources/integrity/>).

focused mainly on the “supply” end of the equation – the consultants – without comparable demands for accountability and transparency on the part of the “demand” end – the public sector procurement agencies and their political masters. Transparency must also be sufficiently muscular, able to see through such notional promises of compliance as a consultant’s reference to a code of ethics that may never be properly internalized, implemented or enforced.

In addition to transparency concerns, the preponderant focus on compliance brings with it an attitude that many would argue is inappropriately cynical and may even be negatively self-fulfilling in its consequences for integrity. If the assumption is that human nature is such that *people will be unethical* to the extent that the rules allow them to be so, then two logical consequences follow. First, it can be assumed that only the presence of an extremely high risk of detection and punishment will be sufficient to deter corrupt procurement practices. Second, those involved in procurement come to believe that unethical behavior effectively is permitted *up to the threshold* of what is considered unacceptable. In this view, “integrity” becomes a rule (or set of rules or standards) that the “winner” learns how to navigate around. The challenge shifts from being “principled” (being ethical, being accountable for the proper use of limited public resources, or being a responsible partner in a nation’s development) instead to being “clever” in the marketplace. In short, the material rewards of success in procurement (arguably on both the supply and demand sides) encourage an orientation that accentuates the self-serving, greed-driven nature of human beings (finding the loopholes, “misbehaving” up to the limit of the line of what is permitted by the rules, maximizing profit at others’ expense, believing that some rules are meant to be broken, and regarding public monies as a legitimate source for excessive self-enrichment). In such a view, the notion that a consultant might actually *want* to be ethical is nonsensical. Such a negative view of human nature is deeply corrosive of any orientation of loyalty and obligation to one’s people and country, and leaves an impression that anyone operating from an ethical basis or from a perspective of being a responsible partner in one’s nation’s development is naïve, foolish, or doomed to economic failure.

When the focus becomes one of how best to get around or “bend” the rules of procurement to serve self-interest at the cost of the public, society is put to the costly task of extensive monitoring of such behavior and reaching judgments on when bending a rule becomes breaking a rule. Procurement competition is reduced to a contest of how to “beat the game” instead of being about offering the best proposal in quality and cost, and the cost and complexity of monitoring such behavior is expensive, time-consuming, and increasingly necessary. Those experts and professionals who are driven by an orientation towards quality and a concern about their nation’s development will soon leave such a procurement game behind, and concentrate on sectors of the economy where clients truly value them as partners, and value the quality of their services. Already these trends – the well-established firms of experts and professionals abandoning the public procurement marketplace – are substantiated by recent research.⁵

⁵ See March 2007 World Bank report, *World Bank Policy on Selection and Employment of Consultants: Study of its Effectiveness*.

Fostering Integrity

While no rational, informed observer would argue that a compliance-based approach to integrity in public procurement ought to be abandoned, there is a growing awareness that *the focus on compliance alone* is inadequate and possibly even counterproductive. To foster integrity in public procurement, we need to provide powerful and effective disincentives to those who are inclined towards unethical behavior, but we also need to provide strong incentives for those who genuinely want to approach their respective procurement roles with an ethical, public service orientation. This pro-integrity approach is referred to as *aspirational*, and the best approach to improving integrity in public procurement is a combination of compliance-based and aspirational strategies. A combined compliance/aspirational approach has implications for all roleplayers in public procurement.

Key Roleplayers in Procurement

The most important roleplayers in public procurement by Borrower countries under Multilateral Development Bank loans include the MDB itself, the Borrower, the consultant, civil society, and the public. Each of these roleplayers are discussed below from the context of operationalizing a combined compliance/aspirational approach to public procurement, followed by a description of specific policy recommendations addressed at each roleplayer group.

Multilateral Development Banks (MDBs)⁶

As the source of the loan funding to the borrowing country, MDBs clearly specify their legal obligations in the loan agreement with the Borrower. The MDBs' legal and ethical responsibilities extend beyond that loan agreement, however, as the MDB and its staff have an obligation to all MDB members and the public to ensure that the limited available resources of the MDB is utilized in a responsible and effective manner. Morally there is an opportunity cost attached to such loans – loan monies that are poorly used and that fail to achieve the important development goals expected, represent funds that might have been better applied elsewhere to satisfy urgent development needs. Since much of the loan funding by the MDBs is intended to alleviate poverty and spur development, the inefficient or unethical use of such limited funding has both direct and indirect negative consequences on the quality of life and the satisfaction of human rights claims of large numbers of poor and vulnerable persons, and brings discredit to the efforts of the MDBs.

The moral obligations between the MDB and the borrowing countries in this context are clear. Although less obvious, it can be argued that the MDB has a moral obligation also to take reasonable proactive measures to foster the most conducive environment for

⁶ For the purposes of this Integrity Guidance Book, references to the World Bank apply equally to all multilateral development banks and their Borrowers who apply the World Bank's *Guidelines: Selection and Employment of Consultants by World Bank Borrowers*. (The ADB's procurement procedures differ to some extent from those of the WB, but the observations and recommendations of this Guidance Book still pertain).

effective, ethical procurement of professional and expert consultants by Borrowers through a combined compliance/aspirational set of measures.

Through its role as a provider of loan funds and as a reviewer of procurement performance⁷, the MDB is positioned to exert significant positive influence in the ethical use of such funds, within constraints of respecting the Borrower's sovereignty. Unfortunately, however, the exercise of this strategic advantage is constrained by many MDBs' declining numbers of staff with the requisite technical knowledge in procurement⁸, by the inability of MDBs to reduce the extremely long time involved in the procurement oversight process, and by demands commonly made by MDBs for arguably onerous requirements, such as bid bonds. The MDBs capacity to be proactive in this context is similarly constrained by a common policy emphasis on fighting corruption, without a similar commitment to finding and taking advantage of opportunities to foster the aspirational elements of integrity.

Borrower Country

Public sector procurement officials act through their procurement agencies (PAs) in the capacity of "client", although the true client – as with any public service function – can be deemed to be the public, or the elected government.⁹ For this reason, the Bank considers public sector procurement agencies to be "agents" of the government, and the government is considered as the "principal". As agents operating in the public interest, the procurement officials are tasked to arrange for a consulting service to be performed in a timely, cost-effective, competent, and ethical manner. Their reasonable expectation is to find appropriately qualified and ethically oriented expert or professional service providers to satisfy this service need. Once such consultants are found and selected through a fair and appropriate process, these public sector procurement officials will bind the government into a legally enforceable contractual relationship with the selected consulting service provider on terms that will facilitate the successful and satisfactory provision of the service. That contractual relationship, and the results of the services provided under it, ought to demonstrate to the public that the service delivery parameters were met or exceeded, that the public received good value for money spent, and that the public interest was served in a timely manner. The orientation of the procurement agency (or, specifically, the evaluation committee) will be to pursue both quality and cost-effectiveness, in such a way that the expectations as to the desired level of quality and

⁷ The Country Procurement Assessment Report (CPAR) process often leads to recommendations that are incorporated in the Country Strategy that is agreed with the Borrower.

⁸ The World Bank and other MDBs have reduced their complement of engineering and other technical staff over the past 20 years, so they are now in a weaker position to oversee loans and to offer meaningful comments on specialized procurement tasks. This decline in numbers means that MDB task team leaders have difficulty in communicating with MDB procurement specialists at critical junctures in a project's development, such as in the selection of the consultant procurement method, and in procurement planning generally.

⁹ In the United States, the law has been interpreted that public contracts are for the benefit of the government – not the public. This has led to considerable debate and no small degree of confusion, as many will argue that the interests of the public as beneficiary of the contractor's work are of the essence and may be legally enforceable. It is also noteworthy that "the government" is not a monolith; many varied and often conflicting interests are contained within the institutions of formal government. Deciding who the principal is and who the agent is can therefore be quite a challenge.

functionality are clearly articulated (in the terms of reference and specifications), and that costs are contained up to the point where the achievement of that level of quality and functionality are not threatened.

This process is straightforward in principle. In practice, the results vary enormously, affected by such variables as: a) the degree of imposed distortion on the consultant selection process due to political influence, corruption, or non-participation by quality-focused consultants; b) the technical competence of the PA officials fairly and efficiently to carry out short-listing, write adequate terms of reference, and evaluate the proposals received in a technically competent and ethical manner; c) the administrative capacity of the PA to manage the many stakeholders involved in the procurement and award processes; and d) the public service orientation of all of the stakeholders involved.

In addition to their critically important technical, administrative, and managerial roles, public sector procurement officials – and the evaluation committees that they staff – are subject to a variety of ethical obligations. First, as public servants, they are obliged to perform their duties in the public interest, with integrity, objectivity, impartiality, and professionalism. They must willingly hold themselves open to the public’s examination of their performance in this context, recognizing that transparency and accountability to the public are instrumental elements of integrity. The MDBs argue that transparency should go even further, when they recommend that all candidates serving on an evaluation committee should be required to declare any perceived, potential, or actual conflict of interest that can affect their objectivity. MDBs place considerable store in the impartiality of the evaluators selected by the Borrower, claiming that this impartiality is as important as an evaluator’s technical and professional expertise. Without this impartiality – and without the public confidence that this standard of impartiality actually exists (i.e., that the “rules of the game” are fair, explicit, and adhered to in a stable process) – the consultants and other stakeholders will quickly lose their belief in the legitimacy, objectivity, and fairness of the procurement process. In such cases, consultants who are committed to quality and high ethical standards will choose to pursue other opportunities outside the public sector, leaving the Borrower with less than desirable consultants competing for the award.

While procurement officials are agents to their principals – the government – they also contractually act as principals or clients to the consultants, who become their agents. To their agents – the professional or expert consultants engaged under contract (or grant) – the procurement officials as principals have an ethical and legal obligation to be fair, reasonable, and objective. As client, they have a duty to specify all contract terms and expectations clearly and fully, to meet all of their commitments as specified in the contract (or grant). As clients, they also have both an ethical and legal obligation to try to avoid conflicts and disputes with their agents (consultants), to act promptly to mitigate conflicts when they do arise, and to resolve all disputes with their agents (consultants) in a fair and prompt manner. They should treat their agents (consultants) with respect, and seek to cultivate a professional client-agent relationship characterized by trust and good communications that engenders loyalty and commitment to serve their mutual interests and ultimately benefit society.

This set of goals is often frustrated in practice. The current *Guidelines* are not oriented towards aspirational factors, making it very difficult for the Borrower to form a trusted relationship with consultants – indeed, consultants are expressly instructed to perform their services “without any consideration for future work”.¹⁰ The intent of this instruction is to discourage expert or professional consultants from making themselves “indispensable”, or otherwise feathering their nests by becoming a privileged “insider”. Borrowers have an interest in being careful about allowing consultants intentionally to set up situations in which follow-up work will be required and for which these consultants will have a strong competitive advantage. While these are important considerations for the Borrower to guard against, there are other interests to be balanced in cultivating a relationship in which a client knows – on the basis of a long and exemplary record of performance – that a particular consultant will almost certainly achieve or surpass performance expectations, on assignment after assignment. Under such a scenario, a consultant will have a vested interest in maintaining their reputation for quality, reliability, and trustworthiness.

Borrowers are obligated to manage the entire public procurement process in harmony with the terms of the loan agreement and in keeping with local laws and regulations. These obligations represent significant management undertakings, and they depend for success on sophisticated management skills, knowledge of laws and regulations, a detailed understanding of and commitment to the terms of the loan agreement. Much recent emphasis has been directed at managing the compliance approach to achieving integrity in procurement, and almost no focus has been given to Borrowers implementing and managing the aspirational elements of procurement.

This lack of balance must be redressed. Borrowers can only achieve quality performance (technical and ethical) from consultants when the Borrower retains adequate capacity within the civil service to engage effectively with consultants throughout all stages of the process – from procurement through performance – in *both* compliance-based and aspirational contexts. This entails retaining procurement and management capacity within the civil service to be able to:

- a) Conceive of technical (and appropriately sophisticated) cost-effective approaches and solutions to development needs,
- b) Develop technical specifications, identify technical performance and results criteria, and articulate aspirational ethical performance standards in sufficient detail to formulate robust terms of reference for consultants to bid on,
- c) Supervise and monitor the technical and ethical performance of consultants, and
- d) Evaluate and approve, where justified, the results achieved by consultants.

As Borrower governments increase their reliance on consultants, it is important to highlight the limitations of that reliance. The growing disequilibrium of information between consultant and client, and the decline in partnership relationships between client and consultant, are both trends that are exacerbated by ignoring the need to foster trust.

¹⁰ See Clause 1.9 of the World Bank’s *Guidelines: Selection and Employment of Consultants by World Bank Borrowers*, revised edition of August 2006.

When Borrowers as clients fail to retain adequate in-house (civil service) technical capacity and ethical awareness so as effectively and knowledgeably to manage the procurement and performance of outside consultants (domestic or international) as noted above, the resulting increasing disequilibrium of information and knowledge between client and consultant, and the diminishing trust between client and consultant, leads the client to feel insecure and vulnerable.

Internationally, there are clear trends that governments who rely heavily on consultants but who face diminishing civil service technical capacity to manage the procurement and performance of such consultants tend progressively to do two things to limit their vulnerability. First, they tighten both the compliance-based requirements of procurement procedures, and the compliance-based terms of consultant contracts. This “tightening up” is an administrative response devoid of aspirational balance, emblematic of a technical weakness on the part of the client, which strains the quality of the relationship between client and consultant.

The second measure commonly adopted by governments who face the growing disequilibrium of knowledge and diminishing trust between their in-house technical staff and their consultants is to limit risk (and simplify procurement procedures) by breaking down contracts into smaller components, bidding each component separately. This downsizing of contracts is clearly noted in recent trends evaluated by the World Bank and others; as the contract size diminishes, the financial incentives for the well-established and quality-oriented consulting firms to bid for such fragmented procurements also declines. Smaller sized contracts often qualify for simplified procurement processes, but when larger contracts are intentionally divided to limit risk and simplify the PA’s evaluation, the risks of poor performance may actually increase.

Consultant

The Consultant roleplayer group comprises a diverse set of individual experts, individual professionals, professional and expert consulting firms (or, in some instances, NGOs or other non-profit institutions that operate in this capacity), professional associations and registration boards, societies or associations of experts, and consultant industry organizations.¹¹ The standards, performance expectations, and basis of relationship between such consultants with each other and with the public sector client cannot be generalized; such factors are influenced to a considerable degree by the manner within any given socio-economic setting in which consulting services are organized, competed for, regulated, and held accountable. Both compliance and aspirational elements exist and are influential in varying degrees within the constituent members of this roleplayer group.¹²

¹¹ Examples of prominent consultant industry organizations at the international level include the International Federation of Accountants (IFAC), the Institute of Management Consultants (IMC), the International Union of Architects (UIA), International Consulting Economists’ Association (ICEA), the International Federation of Landscape Architects (IFLA), and the Fédération Internationale des Ingénieurs-Conseils (FIDIC).

¹² While all international professional associations, and nearly all domestic ones, address the compliance-based issues in their performance through their codes of ethics, few address the aspirational dimensions. One notable exception is the International Accounting Education Standards Board of the International

Professions and Other Experts

In terms of their stated principles, professions as institutions are aspirational. Even individual experts who are not within the framework of traditional professions often operate – at least to some degree – from a public position of ethical commitment to public service ideals. Such professionals and experts are positioned to offer leadership based on important ethical values, to advocate for important social goods, and to display a responsible level of autonomy in which the conduct and quality of all professional and expert services is monitored and corrected internally – professionals and experts holding each other accountable to shared technical and ethical values and practices. In principle, the public sector benefits from a trusting partnership with such consultants, although PAs have good reason to balance such an aspirational approach with compliance safeguards.

As the range of experts who are subject to Borrower procurement grows, the number of consultants under the jurisdiction of state-regulated and enforced professional registration boards diminishes.¹³ Many expert consultants are not part of formally state-recognized professions, and even where expert consultants do seek to organize themselves into professional bodies or to acquire the status that comes with “professional” standing reinforced by law, they often prefer to be self-regulating instead of being subject to government imposed licensing (or registration) and legal controls.¹⁴

Both those experts who enjoy the designation of a legally recognized profession, and those many other experts who are not so recognized or constituted, constitute the consulting industry, and serve as agents to the public sector client (PA). They have ethical and legal obligations and, to varying degrees, an aspirational inclination to be competent and proficient in their capacity to deliver sophisticated services within their discipline in a timely manner and at a fair cost. To the extent that they are members of a profession that is state regulated and which enjoys professional autonomy and some monopoly privileges in the market, they arguably have an overriding ethical obligation to articulate and then serve the public interest in a way that aligns closely to the values and ideals of their profession (e.g. lawyers serving the cause of social justice) that does not exploit the public, and that is accountable to public scrutiny.¹⁵ Identifying these public

Federation of Accountants (IFAC), who have recently published *Approaches to Developing and Maintaining Professional Values, Ethics and Attitudes* (September 2006)

¹³ Many doubts exist as to the efficacy of such state-mandated registration and licensing boards in many developing countries to exercise any positive influence in consultant quality or professionalism.

¹⁴ This is particularly the case with firms of such experts. An example of this is seen in the United States, where the Association of Consulting Management Engineers (ACME) – an organization of member firms but not individual experts – actively opposed any form of registration board or government licensing, viewing this as unwarranted government intervention in their own affairs. See *The World's Newest Profession: Management Consulting in the Twentieth Century*, by Christopher D. McKenna, Cambridge University Press, 2006.

¹⁵ Some ethical obligations apply to the traditional professions as well as to the newer forms of expertise among consultants. Members of the traditional professions, and arguably all specialized providers of expert services, have an ethical obligation to stay abreast of developments in their discipline, to apply best practices, and to serve their clients with diligence and care. To the extent that their services are essential to the public welfare, they are also in a position of elevated public trust. Many professionals – particularly those in the traditional professions – have their own codes of ethics (or codes of conduct), which they have

service ideals and achieving any strong consensus on a unified social mission is more straightforward for a traditional profession than for the many other experts not organized into professions (e.g. some management consultants, economists, or IT specialists), but for all consultants this values orientation and awareness-raising is essential to the success of an aspirational dimension of procurement.

Both professionals and other experts have ethical obligations to compete for work in a way that is honest, fair, and in compliance with their respective codes of ethics. Offering inducements to obtain an unfair advantage in a procurement process, misrepresenting one's capacities and experience, or otherwise distorting the procurement process is unethical and often illegal, as well as costly in terms of efficiency, and must be constrained by compliance-based safeguards as well as discouraged by fostering an aspirational orientation.¹⁶

Professional Associations

Professional associations are in most cases voluntary membership organizations in which membership is limited to those who possess recognized qualifications in an area of expertise, as in a traditional profession. Professional associations were originally established as a place for professionals to gather, to share best practices, to enforce and monitor the monopoly status accorded them by the state, and to seek advice from peers. Over time, such associations also sometimes took on an advocacy role to represent the interests of their members, and in many instances they have become active in articulating standards for professional qualification and conduct. Historically, professional associations were active in fostering an aspirational orientation, and in regulating their members' behavior with self-policing compliance-based measures. The MDBs accept that professional associations have an important function in the establishment of standards and norms from the best practices that develop in their specific fields. The MDBs further view these norms as being typically expressed in codes of ethics, and they argue that professional associations have an obligation to supervise the observance of these codes – even while acknowledging that many professional associations in developing countries lack the capacity to accomplish this. The MDBs draw particular importance to this oversight role in countries where the rule of law is weak, or where clients have little experience in engaging consultants.

Professional Registration Boards

The state arguably has an interest in regulating the professions, particularly given the fact that professions enjoy monopoly status (to varying degrees) in the marketplace. In most

a duty to adhere to and to promote. Professionals also have an ethical obligation to hold their fellow professionals accountable to maintaining a high standard of performance and a uniform corporate adherence to their stated values, and to respecting their fellow professionals when they maintain and exemplify these high standards.

¹⁶ According to the Inter-American Development Bank's recent research, most of the fraud that occurs in procurement happens during the bidding and proposal phase (39%), and in the execution phase (41%). Fraud in the evaluation phase only accounts for 18% of incidents examined by the IDB's investigations department (based on 52 cases in their survey sample). This data is from the IADB-DEV/PRM & PRE/OII presentation to the Biennial Meeting of International Lending Agencies and Consulting Industry on May 11, 2007 at the IADB in Washington.

developing countries, professional registration boards have been established under law to oversee the accreditation of professional training institutions, the administration of licensing examinations, the handling of complaints or grievances from the public, and facilitating collaboration between boards of related professions (e.g. medical doctors and pharmacists). Boards are generally constituted under legal statute, but the membership and administration of the boards is typically left to the professions, with little or no direct state intervention. Registration boards do have an obligation to offer advice to the government on all matters pertaining to that profession, when called upon to do so. In most cases, boards also are vested with a public service mission, although this may be stated in very general terms.¹⁷

Such boards have an important compliance role, if applied properly. They are empowered to remove professionals from the ranks of licensed professions in specific, well-defined instances, for example in cases of serious ethical misconduct, incompetence, or criminal offenses. While some registration boards engage in some aspirational activities – for example, some public education and outreach as to the scope of a profession and the appropriate public expectations (technical and ethical) of the professionals they engage, their primary role has been a compliance-based one. In exchange for enjoying a degree of monopoly power in the market, the state tasks professional registration boards to ensure that acceptable technical, ethical, and legal standards are uniformly maintained by all who claim this professional status, to prevent the misuse of the professional title by those whose qualifications are not formally recognized, and to monitor the education and training of those who aspire to professional status.

The Public

The role of the public with respect to the public procurement of private sector professional and expert consultants is imprecise and wide ranging, and is best described as a “stakeholder”, since they have entrusted the state as their roleplayer (through their elected representatives, and through the PAs) to represent and protect their interests. Of course, members of the public frequently are roleplayers in private sector procurement of consultants. They engage expert and professional consulting services in the marketplace as regulated by the state and on terms as may be negotiated (or, in some cases, as established under law¹⁸), and members of the public apply these consulting services to further their own projects and goals. Yet private and public interests converge in ensuring excellence in consulting, as members of the public (not only in their private sector transactions) have a strong interest in the state ensuring that doctors, engineers, accountants, auditors, and other expert providers of essential and complex consulting services are qualified, competent, and ethically oriented. The government (acting in a compliance mode through the rule of law and ideally in both compliance and aspirational modes through public policy) has a similar interest to ensure that the needs of economic growth, public safety, and integrity of transactions are protected by expert and

¹⁷ In Kenya, for example, the medical board is also tasked: “to establish and improve standards of health care within the Republic”, or to carry out public policy, such as prohibiting doctors from performing abortions in Kenya (except when the life of the mother is threatened).

¹⁸ Since many professional and expert consulting services have enormous potential to help or to harm the interests of individuals, the state has a duty to ensure that those areas of expertise with significant potential to cause either benefit or harm are carefully regulated.

professional consulting services also of the requisite qualifications and ethical orientation.

The extent to which the public is well served by the government acting on its behalf, and by the professionals and experts procured and contracted by the government using public funds in pursuit of public interests, is an appropriate matter for public scrutiny. In many cases, members of the public have established civil society organizations (CSOs) to monitor government performance, orientation, and effectiveness, and the manner in which the government makes effective, fair, and judicious use of professional and expert consulting services certainly features prominently in such scrutiny. Government, in turn, has an obligation to be transparent in its procurement and contracting, so that members of the public are able to establish that the government is using the public funds well, and that the public interest is being properly pursued.

The challenges that the public faces in holding the consulting industry under scrutiny are twofold: technical and ethical. The public on its own lacks the technical competence to evaluate the performance of consultants in anything but the most general sense, and the public has not articulated clear ethical standards of how they expect consultant services to be performed. To varying degrees, civil society organizations (CSOs)

Ethics and integrity are concepts that resonate in all societies. While significant differences exist in local moral values, cultures, and faith traditions, there remains a strong and extensive body of universal morality common to all. This includes respect for the human dignity of all persons, respect for human rights, the pursuit of justice, seeking to do no harm, beneficence, providing care to those in need, and honoring the essential elements of integrity: honesty, trustworthiness, wholeness, and virtue.

advocate on behalf of the public interest in these two regards, although often the technical assessments are focused on specific areas of interest to that CSO (e.g. environment), and they generally lack capacity in terms of facilitating a public dialogue about anything more than the most basic ethical standards appropriate to the provision of consulting services.

The elected representatives of democratic governments obviously have a key roleplayer position with respect to protecting, advocating for, legislating on, and otherwise securing the interests of the public in the public procurement of consulting services. This is delegated to the PA to achieve on a daily basis, but elected representatives are under an on-going obligation to oversee the performance of PAs and report to constituents on the degree to which the PA is meeting the public interest through its activities. Unfortunately, there are many instances where politically powerful individuals view the PA as a mechanism to distort the procurement process to achieve self-interested goals, and many PA officials are under enormous pressure to consent to such influences from their political masters. There have been many compliance-based and transparency-focused measures introduced to constrain and punish inappropriate, unethical, or illegal tampering by politically powerful interests with the public procurement processes, but to date the aspirational dialogue about public service orientation by all concerned – politically powerful interests and civil servants within the PAs – is poorly developed.

Policy Recommendations ~ Improving the Procurement Role of the MDBs

The MDBs exercise a powerful influence in shaping the procurement environment in Borrower countries through the provisions of loans, in the context of the MDB's own policies and priorities on integrity and corruption, and in the MDBs' periodic assessment of procurement in Borrower countries (through the CPAR process). To date, the MDB's concentration has been on the fight against corruption, with much less emphasis on how best to foster integrity. For this reason, the balance between compliance-based and aspirational approaches to strengthening of integrity has yet to be struck.

Part of the challenge is conceptual. The World Bank and the other multilateral development banks have come to a consensus on what constitutes "corruption", but no such consensus exists (or has been attempted) on what constitutes "integrity" or "ethical behavior". In this vacuum of definitions, integrity is often interpreted simply as following the rules, or the lack of corruption, instead of its more robust and positive definition as the wholeness of actions and attitudes aligning with ethical values and virtuous character, leaving no room or inclination for corruption. The MDBs should be advocating the more comprehensive definition of this important term.

In a similar conceptual shortcoming, many officials within the MDBs have yet to reflect on the role and importance of consultants, seldom viewing them as a distinctive and essential part of a nation's development policies, programs or initiatives, or as an integral component in the strengthening of the Knowledge Economy. The MDBs should engage in some strategic policy thinking on the consulting industry, and take a strong policy position in encouraging Borrowers to support the flourishing of strong domestic consulting capacities.

The most important, far-reaching recommendations for the MDBs therefore are as follows:

- 1) Strike the appropriate balance between compliance-based and aspirational approaches in the strengthening of public procurement, and
- 2) Recognize the consultant industry as a critically important resource for development that must be nurtured and strengthened – and not merely regulated.

Other recommendations for the MDBs include measures to strengthen the capacity of key domestic roleplayers in public procurement through training or policy support, so that they become more effective in constraining corruption, in fostering integrity, and in building a rational basis of trust between PA and consultant.

To be more effective in leading policies that support aspirational components of integrity, the MDBs must demonstrate their own leadership and capacity in this context. The MDBs should develop their own policy position on the application of development ethics to public procurement, similar both to the Organization of Economic Co-operation and Development's principles for managing ethics in the public service¹⁹, and to the

¹⁹ See *Integrity in Public Procurement: Good Practice from A to Z*, by OECD Publishing, 2007.

aspirational elements of the UN's Convention against Corruption. Understanding the aspirational components of development ethics, and their embodiment in procurement ethics, will require capacity building within the respective MDBs themselves. MDB staff should be trained in development ethics, and MDBs should institutionalize an in-house ethics specialization, so that this awareness can come to influence policy and decision-making.²⁰ Only when the MDB has internalized an ethically robust position on the aspirational side of the integrity concept that begins to balance its well-developed compliance orientation will it be an effective advisor to Borrowers in their own efforts to achieve this balance.

The World Bank's *Guidelines: Selection and Employment of Consultants by World Bank Borrowers* is used to some degree by all the MDBs. These Guidelines favor the use of the QCBS consultant selection method, and during the loan agreement negotiations many Borrowers are not advised about the relative merits of alternative selection methods. The choice of which selection method for consultant procurement to apply can have significant downstream consequences for quality, ethical performance, and overall fairness in the procurement process. MDBs should therefore reconsider the emphasis placed on QCBS within the World Bank's *Guidelines*, and provide appropriate advice to the Borrowers on the full range of alternative consultant selection methods.

Finally, after the MDB has developed its own consensus on the aspirational and compliance-based balance to integrity, the MDB ought to use its influence to engage with other public, professional, private sector, and CSO roleplayers in public procurement, so that through such engagement these roleplayers may become more effective in their own pursuit of integrity goals. Through support to Borrowers in training and capacity strengthening, the Bank can be instrumental in achieving improvements in procurement, e-procurement, procurement monitoring and accountability, the quality and ethical orientation of consulting services and performance, PA services and performance, and in empowering the oversight role of civil society.

The MDBs have already begun efforts in this direction. They have close contact and regular interactions with international professional associations (such as FIDIC), and the MDBs support several of their initiatives and programs. The MDBs, however, have yet to foster similar relationship or contacts with national professional associations in Borrower countries nor do they, at this stage, explicitly encourage the lending government to establish such relationships.

Policy Recommendations ~ Improving the Procurement Role of the Borrower

More than any other roleplayer, the Borrower is best positioned to exercise leadership in shaping and improving the procurement environment to be conducive to integrity. The Borrower's effectiveness in achieving such improvements depends however on

²⁰ In terms of institutional training in ethics, see the exposure draft of the International Federation of Accountants (IFAC), *Approaches to Developing and Maintaining Professional Values, Ethics and Attitudes*, September 2006. While directed at professionals, this also has relevance to ethics training for Bank staff, Borrower institutions, and all roleplayers in procurement.

improving its own capacity and in engaging the consulting industry in a collaborative effort to achieve these mutually beneficial goals through a new partnership.

Borrowers must invest in strengthened capacity and embrace an explicitly ethical public-service orientation in both the demand and supply ends of consultant procurement. At the demand end, Borrowers must professionalize their public sector procurement agencies, so that PAs are able to manage the procurement process effectively, to keep abreast of the sophisticated demands of specifying technical requirements and evaluating technical performance, to learn the best methods of specifying and evaluating ethical performance, and to use the latest IT technologies and methods.²¹ At the supply end, Borrowers must take proactive policy and practical measures to engage with the consulting industry so that there can be collaboration and mutual commitment to creating a competent, ethical, and sustainable domestic consulting industry in each developing country.

The PA also must develop and retain well-trained and highly professional staff, competent to manage the complex demands of consultant procurement, to develop linkages between consultant procurement and proven consultant performance (technically and ethically) over time, and to mitigate the asymmetry of information between the PA and the consultants. This entails hiring and retaining procurement staff with well-developed technical skills in leading sectors of technology and in the professions, improved training of current PA staff in management and procurement techniques (compliance-based and aspirational), changes to the civil service schemes of service to allow higher rates of compensation and professional accreditation of these procurement specialists, and changes in procurement policy to encourage new partnership relationships between the PA and proven consultants of integrity.

Borrowers must also learn to apply the current World Bank Guidelines more carefully, particularly at the early stages of negotiating the loan agreements. It is at this stage that the choice of which selection method for consultant procurement is finally agreed upon, and this decision can have significant downstream consequences for quality, ethical performance, and overall fairness in the procurement process. The current situation, in which the QCBS selection method is almost always selected without due consideration to the particular characteristics of the assignment for which consulting services are being performed, must be opened up so that the existing range of consultant selection alternatives is judiciously used, and quality given appropriate weight.

The PA must also apply the same standards of transparency and accountability to itself that it demands of consultants. One significant improvement in this context would be to create a pool of independent professionals who would serve as third party observers in the evaluation committee process, reporting back on the integrity of the evaluation process.

In addition to strengthened capacity, policy reform is also important. Despite the progressively increasing reliance of developing countries on consultant services,

²¹ E-procurement and integrated financial management systems, reliant on IT applications, are examples of new and potentially high-value techniques that require training and investment.

developing countries have yet to create a policy framework that would recognize the important role of the domestic consulting industry to the nation's development, and work towards making this industry economically sustainable, ethical, and technically proficient. The Borrower, through policy, legislation, and the articulation of clear technical and ethical expectations, is able to guide the domestic consulting industry towards higher and more consistent standards of competence and quality, and towards an orientation more overtly focused on the public interest. This policy challenge must be addressed as a priority in all developing countries.

Borrowers must also find effective ways, in collaboration and dialogue with the consulting industry and professions, to mitigate or reverse the decline of their existing domestic consulting capacity where this applies – particularly the diminishing quality and number of expert and professional consultants that threatens most developing countries.

Ultimately, PAs in developing countries are challenged as never before to achieve systems of procurement that are demonstrably fair, openly transparent (while protecting confidentiality where appropriate), and ethically oriented to serve the public interest.

Policy Recommendations ~ Improving the Procurement Role of the Consultant

In many developing countries the consulting industry is fragmented and generally weak, and often dominated by a few large and well-connected local firms, or by branches of well-resourced international consulting firms. The regulatory frameworks of established professions often are only marginally effective in securing uniform standards of technical competence and ethical performance, and few professions in developing countries take any active role in advocacy on public interest issues associated with their professional values. Expert consultants who are not organized into recognized professions are even less likely to be cohesive in providing services to any clear set of standards of quality, effectiveness, or ethical performance.

The way that the consulting industry is structured in most developing countries is largely reactive; consultants respond to requests for proposals, and compete for project assignments once they have received the terms of reference from the client. The concept of consultants taking an active role in collaboration with PAs to improve procurement processes (generally, or for any specific procurement), or the notion that consultants have an obligation to be involved in some degree of public interest advocacy activities, are almost entirely absent in public sector procurement. Consultants will argue, with some persuasive force, that their current financial sustainability is so insubstantial and insecure that any expansion of their role not linked to generating revenue is not viable. Yet while consultants plead that they have no resources to revise their role, the quality of life and the pleasure of engaging in professional or expert consulting careers in developing countries diminishes under the force of market competition in which cost often trumps quality.²²

²² In many instances, the World Bank's Country Procurement Assessment Reports (CPARs) paint a bleak picture of weakening domestic consulting industries, and of individual consultants giving up their careers or pursuing their careers abroad.

Transforming the consulting industry from a passive roleplayer responding to the public sector procurement procedures and policies, to an active and engaged partner in a nation's development, is an ambitious but necessary goal. Such a transformation must first start with dialogue; consultants seldom engage with the PAs, the MDB, or even their consultant colleagues in addressing the overall quality or integrity of public procurement, and how it might be improved. In many instances, the consulting industry in developing countries is so fragmented, small, or weak that it lacks any representative, credible voice in such a dialogue, and it is therefore necessary first to intervene to strengthen the professional or expert associations so that they are able first to articulate and then represent the values, concerns, and experiences of their membership as they engage in a constructive dialogue on the theme of creating an effective partnership between consultants and the public sector, to the benefit of national development, and to the fostering of integrity.

Once professions and expert consultants are able to cohere into an industry with clearly articulated values, and a capacity to regulate its own membership around issues of fair competition, reliable levels of technical competence, and high but appropriate standards of ethical performance, then the prospect of a constructive engagement between consultants, the PA (and the government generally), and the MDBs becomes more achievable.

Given the potential role of consultants to drive the economic development of a nation, the stakes are high. The public looks to the consulting industry to demonstrate its expertise not only in technical applications, but in the challenging task of balancing efficiency and cost with quality and consistently high ethical performance.

Integrity depends on pursuing a more balanced approach combining compliance and aspirational components, achieved through such measures as: a) introducing integrity awareness (as expressed in the Advisory Notes in Chapter 3) into the earliest stages of project identification, appraisal, and loan agreement negotiations; b) inculcating through training the notion of "ethics as good business"; c) identifying existing and potential institutional moral resources to support improved ethical performance through training and continuing professional development; d) facilitating the collaborative support to currently weak professional bodies in developing countries from stronger professional and expert associations in the more developed countries, and from international professional organizations; e) providing appropriate model codes to enable client institutions and professional bodies to create or update their codes of ethics, incorporating both compliance and aspirational dimensions; f) facilitating a collaboration and partnership-building dialogue between public sector procurement agencies and representatives of professions (or other fields of expertise), so as to begin to transform the client-consultant relationship into a relationship based more on mutual trust; g) creating an institutionally safe environment to empower those public servants of integrity to resist pressure and interference from less ethical political masters; h) exploring feasible methods by which professionals and experts – or their professional associations – would be able to advise procurement evaluation panels at the early stages, so that terms of reference are clear, concise, and correct; i) publicly recognizing and rewarding exemplars of fair and effective procurement; j) supporting opportunities for professional associations to focus on public-interest advocacy; k) requiring in the Terms of Reference that consultants indicate which code of ethics they will commit to adhere to (or in the absence of any formal code, which specific ethical performance standards); l) the routine use of an independent expert ("third party") observer in Evaluation Panels (on projects of a certain value or complexity); and m) encouraging the voluntary use of Integrity Pacts that embrace both compliance and aspirational factors.

Chapter Three ~ Integrity Advisory Notes on the World Bank Guidelines

Introduction

The previous two chapters introduced the concepts of ethical orientation, ethical performance, and the balance that should be achieved between compliance-based and aspirational factors in consultant selection and performance. The challenges confronting procurement in developing countries were reviewed, with specific attention to procurement of consultants by Borrowers under Multilateral Development Bank loans. Specific recommendations were offered for all of the key roleplayers in such procurement, so that the policy environment might be made more conducive to achieving integrity in consultant procurement and performance.

The following Integrity Advisory Notes are now provided as an interpretation of the existing policies and procedures for selecting, contracting, and monitoring consultants as articulated in Part One (Introduction) of the World Bank’s Guidelines. These Integrity Advisory Notes are intended to foster opportunities for strengthening integrity and cultivating a procurement environment that makes a rational basis of trust between all parties more feasible.

The Integrity Advisory Notes encompass a broader scope than is covered in the Guidelines, by offering recommendations that apply not only to the consultants – the primary focus of the Guidelines – but also to Borrowers, professional associations, registration boards, civil society, and similar stakeholders and roleplayers.

The Integrity Advisory Notes appear in the text on the right below. They offer comments on the Guidelines, which are copied (August 2006 revision) on the left, in the shaded areas (footnotes from the Guidelines are omitted).

<p>1. Introduction</p> <p>Purpose</p> <p>1.1 The purpose of these Guidelines is to define the Bank’s policies and procedures for selecting, Contracting, and monitoring Consultants required for projects that are financed in whole or in part by Loans from the International Bank for Reconstruction and Development (IBRD), credits or grants from the International Development Association (IDA), or grants from the Bank or trust funds administered by the Bank and executed by the beneficiary.</p>	<p>{1.1}</p> <p>Purpose</p> <p>These Integrity Advisory Notes do not supplant, amend, or otherwise revise the current version of the Guidelines (August 2006). Instead, they offer recommendations on how the current Guidelines might best be interpreted to strengthen integrity.</p> <p>Monitoring</p> <p>It is recommended that monitoring of consultants should extend throughout the whole procurement and project execution process, with a consistent focus on integrity and ethical issues of public service.</p>
<p>1.2 The Loan Agreement governs the legal relationships between the Borrower and the Bank, and the Guidelines apply to the selection and employment of Consultants for the</p>	<p>{1.2}</p> <p>Ethical obligations</p> <p>a. It should be recognized that as a consequence of the legal relationship</p>

<p>project as provided in the Agreement. The rights and obligations of the Borrower and the Consultant are governed by the specific Request for Proposals (RFP) issued by the Borrower and by the Contract signed by the Borrower with the Consultant, and not by these Guidelines or the Loan Agreement. No party other than the parties to the Loan Agreement shall derive any rights therefrom or have any claim to Loan proceeds.</p>	<p>between the Bank and the Borrower which arises from the Loan Agreement, there are inherent ethical obligations that also arise and which should be articulated, understood, and responded to by both parties.</p> <p>b. The ethical obligations identified and articulated in “a” above should be reflected during the Contract execution stage.</p>
<p>1.3 For the purpose of these Guidelines, the term <i>Consultants</i> includes a wide variety of private and public entities, including consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, United Nations (UN) agencies and other multinational organizations, investment and merchant Banks, universities, research institutions, government agencies, nongovernmental organizations (NGOs), and individuals. Bank Borrowers use these organizations as <i>Consultants</i> to help in a wide range of activities—such as policy advice; institutional reforms; management; engineering services; construction supervision; financial services; procurement services; social and environmental studies; and identification, preparation, and implementation of projects to complement Borrowers’ capabilities in these areas.</p>	<p>{1.3} Definition of Consultants There are two well recognized categories of consultants appropriate to these Guidelines:</p> <p>a. “Professional Consultants”. These are members of state regulated and legally recognized professions; they have codes of ethics and an articulated position on at least some issues within the public interest.</p> <p>b. “Expert Consultants”. These are consultants who are typically not members of recognized professions and are neither state regulated nor self regulated and may or may not have articulated codes of ethics.</p> <p>c. When procuring the services of “Expert Consultants” who do not formally subscribe to a code of ethics, it should be a requirement for them to specify the ethical basis or code upon which their services would be rendered, and the indicators by which their ethical performance would be monitored.</p> <p>d. In articulating the ethical basis mentioned in “c.” above, the execution of voluntary Integrity Pacts (involving both aspirational and compliance components) between the Borrower and the consultants should be encouraged to ensure commitment on the part of the consultants to meet their ethical obligations</p>

	<ul style="list-style-type: none"> e. Models of Integrity Pacts should be incorporated by the Borrower in the Request for Proposals issued to the consultants by the Borrower, to facilitate subsequent negotiations as to the choice and final form of Integrity Pact to be used. f. When procuring services of consultants from recognized professions, it is advised that the Request for Proposal require the consultants to provide a copy of their code of ethics and a statement confirming adherence to this code. g. In the case of both professional consultants and expert (non-professional) consultants, it is advised that a process of evaluation against adherence to the codes of ethics or Integrity Pacts should be established. h. Where professions confer annual “in good standing” certification, it is advised either to require or encourage that a copy of such certification be provided by the consultant as an annex to the Proposal.
<p>General Considerations</p> <p>1.4 The Borrower is responsible for preparing and implementing the project, and therefore for selecting the Consultant, and awarding and subsequently administering the Contract. While the specific rules and procedures to be followed for employing Consultants depend on the circumstances of the particular case, five main considerations guide the Bank’s policy on the selection process:</p> <ul style="list-style-type: none"> (a) the need for high-Quality services, (b) the need for economy and efficiency, (c) the need to give all qualified Consultants an opportunity to compete in providing the services financed by the Bank, (d) the Bank’s interest in encouraging the development and use of national Consultants 	<p>{1.4}</p> <p>Relationship between “Quality” and “Integrity” in the selection of consultants</p> <ul style="list-style-type: none"> a. The relationship between quality and integrity being a close one, it is advised that all role-players conceive integrity not simply as the adherence to compliance-based regulatory and performance standards, but also as adherence to clearly articulated ethical aspirations, standards of ethical performance (with appropriate indicators of such performance being proposed by the consultant within the Proposal), and a public service orientation. b. The evaluation of consultants in regard to quality should take into consideration their ethics knowledge and sensitivity, and their demonstrated orientation to ethics and integrity.

<p>in its developing member countries, and</p> <p>(e) the need for transparency in the selection process.</p>	<ul style="list-style-type: none"> c. The pursuit of economy and efficiency should not be interpreted as a requirement to sacrifice integrity. d. In arriving at a short list of consultants, it is advised that the determination of “qualified” consultants should take due recognition of their demonstrated history of ethical performance, and their orientation to the public interest, as well as their technical competencies. e. It is advised that the nationality or origin of the consultants should not affect the Borrower’s expectations of consistently high standards of ethical performance. f. It should be noted that transparency is not an end in itself. Its object is to ensure fairness in competition during the proposal stage, and ethical performance during the contract stage, and should reflect procedural due process. <p>It is advised that save for circumstances where confidentiality is necessary, transparency and accountability should prevail in all stages of procurement and performance.</p>
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<p>1.5 The Bank considers that, in the majority of cases, these considerations can best be addressed through competition among qualified short-listed firms in which the selection is based on the Quality of the proposal and, where appropriate, on the cost of the services to be provided. Sections II and III of these Guidelines describe the different methods of selection of Consultants accepted by the Bank and the circumstances in which they are appropriate. Since Quality- and Cost-Based Selection (QCBS) is the most commonly recommended method, Section II of these Guidelines describes in detail the procedures for QCBS. However, QCBS is not the most appropriate method of selection for all cases, therefore, Section III describes other methods of selection and the circumstances in which they are more appropriate.</p>	<p>{1.5} Integration of integrity standards in the Quality and Cost based selection of consultants.</p> <ul style="list-style-type: none"> a. It is advised that the Borrower’s evaluation committee possess appropriate competence to evaluate all constituent and relevant factors of quality, also taking into account the consultant’s demonstrated integrity over time as evidenced by reliable character references and similar sources, and by evidence of institutionalized ethics management processes within the consultant’s firm. b. It is advised that evaluation points be used to reward firms that have established and institutionalized internal ethics and integrity management processes and systems
<p>1.6 The particular methods that may be followed for the selection of Consultants under a given project are provided for in the Loan Agreement. The specific Contracts to be financed under the project, and their method of selection, consistent with the provisions of the Loan Agreement, shall be specified in the Procurement Plan as indicated in paragraph 1.24 of these Guidelines.</p>	<p>{1.6} Orientation towards quality and integrity in initial stages of the procurement process</p> <ul style="list-style-type: none"> a. It is advised that the orientation towards quality and integrity in the procurement process should be addressed by the Bank in the earliest stages of the project preparation and appraisal. b. It is further advised that this orientation should feature in the discussions and final drafting of the Loan Agreement, and thereafter should be transited into the Request for Proposal. c. Clear standards of ethical performance should be articulated by the Borrower in the selection of the most appropriate quality-sensitive method of consultant procurement and performance under the subsequent Contract.
<p>Applicability of the Guidelines 1.7 The consulting services to which these Guidelines apply are of an intellectual and advisory nature.</p>	<p>{1.7} Application of advisory notes on other types of procurements</p>

<p>These Guidelines do not apply to other types of services in which the physical aspects of the activity predominate (for example, construction of works, manufacture of goods, operation and maintenance of facilities or plant, surveys, exploratory drilling, aerial photography, satellite imagery, and services Contracted on the basis of performance of measurable physical output).</p>	<p>It is advised that the ethical considerations raised in these Integrity Advisory Notes should also apply to the procurement of other services listed in guideline 1.7 of the Bank’s Guidelines on the selection of consultants.</p>
<p>1.8 The procedures outlined in these Guidelines apply to all Contracts for consulting services financed in whole or in part from Bank Loans or grants or trust funds implemented by the beneficiary. In procuring consulting services not financed from such sources, the Borrower may adopt other procedures. In such cases, the Bank shall satisfy itself that (a) the procedures to be used will result in the selection of Consultants who have the necessary professional qualifications, (b) the selected Consultant will carry out the assignment in accordance with the agreed schedule, and (c) the scope of the services is consistent with the needs of the project.</p>	<p>{1.8}</p> <p>Relationship between “Surrounding Contracts” and World Bank funded Contracts</p> <p>It is advised that the linkage between contracts that are wholly or partly funded by the Bank and those that have inherent “surrounding” linkages to such contracts should be made clearer in the Bank’s Guidelines for selection of consultants, so that conflicts of interest may be avoided.</p>
<p>Conflict of Interest</p> <p>1.9 Bank policy requires that Consultants provide professional, objective, and impartial advice and at all times hold the client’s interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Borrower. Without limitation on the generality of the forgoing, Consultants shall not be hired under the circumstances set forth below:</p> <p>(a) Conflict between consulting activities and procurement of goods, works or services (other than consulting services</p>	<p>{1.9}</p> <p>Conflict of interest</p> <ol style="list-style-type: none"> a. It is the ethical obligation of the consultant to disclose any perceived conflict of interest circumstances to the Borrower to enable the Borrower to determine whether the conflict of interest will compromise the performance of the consultant and whether the consultant is eligible for hiring. b. The Borrower and the Bank should put in place appropriate mechanisms that facilitate disclosure of conflict of interests by consultants. c. The consultant is obligated to pursue quality regardless of any prospects of future work. Conversely the Borrower is under obligation to clearly state in the Request for Proposal

<p>covered by these Guidelines): A firm that has been engaged by the Borrower to provide goods, works, or services (other than consulting services covered by these Guidelines) for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services (other than consulting services covered by these Guidelines) resulting from or directly related to the firm's consulting services for such preparation or implementation.</p> <p>(b) Conflict among consulting assignments: Neither Consultants (including their personnel and sub-Consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultants. As an example, Consultants hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and Consultants assisting a client in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, Consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.</p> <p>(c) Relationship with Borrower's staff: Consultants (including their personnel and sub-Consultants) that have a business or family relationship with a member of the Borrower's staff (or of the</p>	<p>any contemplated or potential follow up work.</p> <p>d. Conflict of interest should in all circumstances be described in the Guidelines and be defined to include not only legal but also ethical conflicts. It is incumbent on the Borrower, consultant, and Bank to foster the capacity to discern and resolve both ethical and legal conflicts of interest by exercising sound legal and ethical judgment.</p>
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<p>project implementing agency's staff, or of a beneficiary of the Loan) who are directly or indirectly involved in any part of: (i) the preparation of the TTOR of the Contract, (ii) the selection process for such Contract, or (iii) supervision of such Contract may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Bank throughout the selection process and the execution of the Contract.</p>	
<p>Unfair Competitive Advantage 1.10 Fairness and transparency in the selection process require that Consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Borrower shall make available to all the short-listed Consultants together with the request for proposals all information that would in that respect give a Consultant a competitive advantage.</p>	<p>{1.10} Fairness and transparency Expectations of fairness and transparency should apply equally to both the Borrower and the consultant throughout all stages of procurement and contract performance.</p>
<p>Eligibility 1.11 To foster competition the Bank permits firms and individuals from all countries to offer consulting services for Bank-financed projects. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the Contract in question. However, (a) Consultants may be excluded if (i) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with the Consultant's country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the procurement of the consulting services required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country</p>	<p>{1.11} Eligibility a. Final approved shortlists of competitors should contain competitors of the same general character as opposed to placing different categories of consultants on the same list (e.g. placing private firms to compete against government aided agencies). b. The procuring agency should not confuse proposal participation criteria with consultant selection criteria, as each relates to different scenarios and depends on different evaluation factors. c. With reference to paragraphs "c" and "d" of the Guidelines, where civil servants or Government-owned enterprises are to be hired as consultants, it is necessary for such consultants to clarify which set of ethical</p>

<p>prohibits any payments to any country, person, or entity. Where the Borrower's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.</p> <p>(b) Government-owned enterprises or institutions in the Borrower's country may participate only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the Borrower or Sub-Borrower.</p> <p>(c) As an exception to (b), when the services of government-owned universities or research centers in the Borrower's country are of unique and exceptional nature, and their participation is critical to project implementation, the Bank may agree on the hiring of those institutions on a case-by-case basis. On the same basis, university professors or scientists from research institutes can be Contracted individually under Bank financing.</p> <p>(d) Government officials and civil servants may only be hired under consulting Contracts, either as individuals or as members of a team of a consulting firm, if they (i) are on leave of absence without pay; (ii) are not being hired by the agency they were working for immediately before going on leave; and (iii) their employment would not create a conflict of interest (see paragraph 1.9).</p> <p>(e) A firm declared ineligible by the Bank in accordance with subparagraph (d) of paragraph 1.22 of these Guidelines or in accordance with the World Bank Group anti-corruption</p>	<p>obligations and performance standards are applicable to them and how their ethical conflicts of interests would be resolved</p> <p>d. The procuring agency should facilitate the disclosure and resolution of ethical conflicts identified by civil servants and Government-owned enterprises who are hired as consultants.</p> <p>e. In order for a consultant firm that has been previously declared ineligible to become eligible again for consulting contracts with the Borrower, the burden of proof should remain with that consultant to demonstrate that it has taken clear measures to reform its ethical orientation and performance.</p>
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<p>policies shall be ineligible to be awarded a Bank-financed Contract during such period of time as the Bank shall determine.</p>	
<p>Advance Contracting and Retroactive Financing 1.12 In certain circumstances, such as to accelerate project implementation, the Borrower may, with the Bank's approval, wish to proceed with the selection of Consultants before the related Loan Agreement is signed. This process is referred to as advance Contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Guidelines, and the Bank shall review the process used by the Borrower. A Borrower undertakes such advance Contracting at its own risk, and any "no objection" issued by the Bank with regard to the procedures, documentation, or proposal for award does not commit the Bank to make a Loan for the project in question. If the Contract is signed, reimbursement by the Bank of any payments made by the Borrower under the Contract prior to Loan signing is referred to as retroactive financing and is only permitted within the limits specified in the Loan Agreement.</p>	<p>{1.12} Advance Contracting It is advised that the contents of these Integrity Advisory Notes should apply in cases where advance contracting is necessary.</p>
<p>Associations between Consultants 1.13 Consultants may associate with each other in the form of a joint venture or of a sub-consultancy Agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, to offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If the Borrower employs an association in the form of a joint venture, the association should appoint one of the firms to represent the association; all members of the joint venture shall sign the Contract and shall be jointly and severally</p>	<p>{1.13} Associations between Consultants a. It is advised that a clearly defined set of ethical performance standards should apply equally and uniformly to all associating consultants. b. It is advised that the procurement agency should at all times be keenly aware of the potential risk of collusion that may be engendered by permitting associations between consultants. c. Permission to associate should be granted only after due attention has been given to considerations of fairness, open competition and transparency. Notification of a request to associate should be given to all</p>

<p>liable for the entire assignment. Once the short list is finalized, and Requests for Proposals (RFP) are issued, any association in the form of joint venture or sub-consultancy among short-listed firms shall be permissible only with the approval of the Borrower. Borrowers shall not require Consultants to form associations with any specific firm or group of firms, but may encourage association with qualified national firms.</p>	<p>competitors to avail them an opportunity to object to the association. This however should not be interpreted as conferring a veto power to the protesting consultants.</p>
<p>Bank Review, Assistance, and Monitoring 1.14 The Bank reviews the Borrower's hiring of Consultants to satisfy itself that the selection process is carried out in accordance with the provisions of these Guidelines. The review procedures are described in Appendix 1.</p>	<p>{1.14} Bank review assistance and monitoring.</p> <ul style="list-style-type: none"> a. In reviewing the process used by the Borrower to hire consultants, the Bank should take into consideration the contents and recommendations of these Integrity Advisory Notes. b. The Bank is also advised to seek appropriate interventions to strengthen the capacity and competence of members of the Borrower's evaluation committees, to enable them effectively to assess ethical performance.
<p>1.15 Under special circumstances, and in response to a written request from the Borrower, the Bank may furnish to the Borrower short lists or long lists of firms that it expects to be capable of undertaking the assignment. The provision of the list does not represent an endorsement of the Consultants. The Borrower may delete any name or add other names as it wishes; however, the final short list shall be submitted to the Bank for its approval before the Borrower issues the RFP.</p>	<p>{1.15} Furnishing of short lists of eligible consultants by the World Bank</p> <p>It is advised that the ethical and integrity performance criteria contained in these Integrity Advisory Notes should be taken into account during the selection of consultants who are to be placed on the Bank's list of recommended consultants.</p>
<p>1.16 The Borrower is responsible for supervising the Consultants' performance and ensuring that they carry out the assignment in accordance with the Contract. Without assuming the responsibilities of the Borrower or the Consultants, Bank staff shall monitor the work as necessary to satisfy themselves that it is being carried out according to appropriate standards and is based on acceptable data. As appropriate, the Bank may take part in discussions</p>	<p>{1.16} Supervision of performance</p> <ul style="list-style-type: none"> a. In supervising the consultant's overall performance, ethical performance standards should be proposed by the consultant in the Proposal, finalized and agreed with the Borrower in contract negotiations, and applied by the Borrower during contract performance. b. It is advised that the ethical performance

<p>between the Borrower and Consultants and, if necessary, may help the Borrower in addressing issues related to the assignment. If a significant portion of project preparation work is being carried out in the Consultants' home offices, Bank staff may, with the Borrower's Agreement, visit these offices to review the Consultants' work.</p>	<p>and monitoring standards should be clearly articulated to manage subjectivity and bias.</p> <p>c. The Bank and the Borrower should enhance the capacity of their staff to enable them effectively to monitor and assess ethical performance. To facilitate this, training on assessment of ethical performance should be developed and applied on an on-going basis.</p>
<p>Misprocurement 1.17 The Bank does not finance expenditures for consulting services if the Consultants have not been selected or the services have not been Contracted in accordance with the agreed provisions of the Loan Agreement and the Procurement Plan approved by the Bank. In such cases, the Bank will declare misprocurement, and it is the Bank's policy to cancel that portion of the Loan allocated to the services that have been misprocured. The Bank may, in addition, exercise other remedies provided for under the Loan Agreement. Even once the Contract is awarded after obtaining a "no objection" from the Bank, the Bank may still declare misprocurement if it concludes that the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower or that the terms and conditions of the Contract had been modified without Bank's approval.</p>	<p>{1.17}</p> <p>Misprocurement</p> <p>It is advised that in instances where there is a clear potential for ethical violations, harm, or irreconcilable ethical conflicts of interest, misprocurement should be declared.</p>
<p>References to the Bank 1.18 The Borrower shall use the following language when referring to the Bank in the RFP and Contract documents: "<i>[Name of the Borrower]</i> has received <i>[or, 'has applied for']</i> a [Loan] from the [International Bank for Reconstruction and Development] (the Bank) in an amount equivalent to US\$____, toward the cost of <i>[name of project]</i>, and intends to apply a portion of the proceeds of this [Loan] to eligible payments under this Contract.</p>	<p>{1.18}</p> <p>No comment.</p>

<p>Payments by the Bank will be made only at the request of <i>[name of Borrower or designate]</i> and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the [Loan] Agreement. The [Loan] Agreement prohibits a withdrawal from the [Loan] Account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than <i>[name of Borrower]</i> shall derive any rights from the [Loan] Agreement or have any claim to the proceeds of the [Loan].”</p>	
<p>Training or Transfer of Knowledge 1.19 If the assignment includes an important component for training or transfer of knowledge to Borrower staff or national Consultants, the TOR shall indicate the objectives, nature, scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall be included in the Consultant’s Contract and in the budget for the assignment.</p>	<p>{1.19} Training and transfer of knowledge</p> <p>It is advised that ethical competence should be incorporated as part of the content matter of training and transfer of knowledge, in the promotion of integrity and ethical performance.</p>
<p>1.20 The RFP and the proposals shall be prepared in one of the three following languages, selected by the Borrower: English, French, or Spanish. The Contract signed with the winning Consultant shall be written in the language so selected for the RFP, and this language shall be the one that governs the Contractual relations between the Borrower and the selected Consultant.</p>	<p>{1.20} No comment.</p>
<p>1.2.1 In addition to being prepared in English, French, or Spanish, as indicated in paragraph 1.20 of these Guidelines, the RFP may, at the Borrower’s option, also be prepared in the national language of the Borrower’s country (or the language used nation-wide in the Borrower’s country for commercial transactions).</p>	<p>{1.21} No comment.</p>

If the RFP and bidding documents are prepared in two languages, Consultants shall be permitted to submit their proposals in either of these two languages. In such case, the Contract signed with the selected Consultant shall be written in the language in which its proposal was submitted, in which case this language shall be the one that governs the Contractual relations between the Borrower and the winning Consultant. If the Contract is signed in a language other than English, French, or Spanish, and the Contract is subject to Bank's prior review, the Borrower shall provide the Bank with a translation of the Contract in the internationally used language in which the RFP was prepared. Consultants shall not be required nor permitted to sign Contracts in two languages.

Fraud and Corruption

1.22 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank Loans), as well as Consultants and their subContractors under Bank-financed Contracts, observe the highest standard of ethics during the selection and execution of such Contracts. In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

(iii) "collusive practices" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) "coercive practices" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(v) "obstructive practice"
(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt,

{1.22}**Positive definitions**

- a. In addition to the definitions pertaining to fraud and corruption, it is advised that the roleplayers involved in procurement seek to arrive at an agreed consensus as to what would constitute a full range of positive and negative ethical performance and integrity standards under the Contract. It is on the basis of these standards that the consultants should be procured and their performance under these Guidelines assessed.
- b. Avoidance of fraud should not be the only ethical obligation that roleplayers are expected to observe. Other obligations to be considered include, but are not limited to, obligations against: prevention of harm, violation of human rights, disrespecting the norms cultures and practices of communities, environmental stewardship, and general obligations of good citizenship

fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under para 1.22(e) below will reject a proposal for award if it determines that the Consultant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the Contract in question;

(b) will cancel the portion of the Loan allocated to a Contract if it determines at any time that representatives of the Borrower or of a beneficiary of the Loan were engaged in corrupt, fraudulent, collusive, or coercive practices during the selection process or the execution of that Contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur;

(c) will sanction a Consultant, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed Contract if it at any time determines that the Consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for, or in executing, a Bank-financed Contract; and

<p>(d) will have the right to require that, in Contracts financed by a Bank Loan, a provision be included requiring Consultants to permit the Bank to inspect their accounts and records and other documents relating to the submission of proposals and Contract performance and to have them audited by auditors appointed by the Bank.</p>	
<p>1.23 With the specific Agreement of the Bank, a Borrower may introduce, into the RFP for large Contracts financed by the Bank, a requirement that the Consultant include in the proposal an undertaking of the Consultant to observe, in competing for and executing a Contract, the country's laws against fraud and corruption (including bribery), as listed in the RFP. The Bank will accept the introduction of such a requirement at the request of the Borrowing country, provided the arrangements governing such undertaking are satisfactory to the Bank.</p>	<p>{1.23} No comment.</p>
<p>Procurement Plan 1.24 As part of the preparation of the project, the Borrower shall prepare and, before Loan negotiations, furnish to the Bank for its approval, a Procurement Plan acceptable to the Bank setting forth: (a) the particular Contracts for consulting services required to carry out the project during an initial period of at least 18 months; (b) the proposed methods for selection of Consultants services; and (c) the related Bank review procedures. The Borrower shall update the Procurement Plan annually or as needed throughout the duration of the project. The Borrower shall implement the Procurement Plan in the manner in which it has been approved by the Bank.</p>	<p>{1.24} No comment.</p>