Anticorruption in Public Procurement

A Qualitative Research Design

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Corrupción es pagar para que las cosas salgan mal.

(Ronaldy Navarro, Cologne September 2011)
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Chapter One

I. The importance of anticorruption in public procurement

"Obtaining optimal procurement outcomes through efficient procedures is of crucial importance in the context of the severe budgetary constraints and economic difficulties in many EU Member States. In the face of these challenges, there is a greater need than ever for a functioning and efficient European Procurement Market that can deliver on these ambitious goals".

(European Commission 2011: 3)

I.1. It is a tough nut to crack

In the year 2011, the European Commission published a green paper on the modernization of public contracting policy with the goal to enhance the efficiency of the European procurement market and foster the expedient use of public money. The Commission defines public procurement as the major tool to achieve key targets of European Union’s growth strategy *Europe 2020*\(^1\) over the next decade. This growth strategy aims at increasing the competitiveness in the European economic area and supports common social goals such as minimizing greenhouse gas emissions, supporting a high level of education or increasing employment rates.

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\(^1\) For more details on the growth strategy of the European Union *Europe 2020* see http://ec.europa.eu/europe2020/index_en.htm (last accessed on 27 December 2011).
Public procurement, or also referred to as public contracting, includes all activities of the public sector buying goods and services in the markets. The public sector covers about 40 to 45 percent in most developed economies. Increasing the spending bill by only one percent, be it either as a consequence of corrupt behavior or as a result of legitimated waste, already creates huge amounts of public money that could have been invested otherwise (Knight et al. 2007: 1). The green paper of the European Commission explicitly addresses anticorruption in public procurement as a topic that was not sufficiently considered so far and that needs to be taken serious (European Commission 2011: 3-6). Corruption control is required in order to protect Community funds, to support freedom, security and justice of member countries and to foster competition on European markets (Williams 2006: 713-715).

But as important and topical the subject matter of anticorruption in public procurement is, as intricate and challenging it can be. Public procurement is a complex business that often involves high investment sums. Docking sides for corruption, as the misuse of public power for private benefit², seem to be unlimited (Trepte 2005: 4; Wiehen and Olaya 2006: 7). Having said this, regulations that define rights and responsibilities of public agents and private parties are necessary to provide a level playing field and impede biased decision-making. At the same time, policies that intend to prevent biased contracting decisions in many cases impede other targets such as efficient proceedings (Andvig and Todorov 2011: 25; Wiehen and Olaya 2006: 17).

Public and private practitioners often claim that the application of procurement legislation requires an enormous amount of administrative efforts. Regulations create bureaucratic burdens that diminish or even outweigh the additional benefit of anticorruption policies. A maze of rules makes the system intransparent and hinders competition (Portz 2007: 355). In the worst case defined rules simply relocate a risk of corruption from one stage of the procurement cycle to another or create new possibilities for malfeasance (Anechiarico and Jacobs 2002: 254). For instance, disclosing bid information to increase transparency supports the prevention of corruption because competitors as well as public citizens obtain the possibility to understand and monitor the process of decision-making. But making relevant information public may appear to be time-consuming and costly (Wiehen and Olaya

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² For the definition of corruption see for instance Lambsdorff (2007: 1).
Furthermore, transparency can help cartel members to organize collusion as they can control whether members of a bidding ring stick to the illegal agreements (Andvig and Todorov 2011: 24; Lengwiler and Wolfstetter 2006: 4).

Another example for the challenges in public procurement refers to the evaluation of bids. Prices, mostly being the crucial evaluation criteria, allow an objective comparison of bids and therefore prevent biased bid assessments (Lengwiler and Wolfstetter 2006: 5-6; Weber Abramo 2003: 5). However, a tough price competition increases the incentive to gain access to confidential information of other bidders to find out about their calculations and risk measurement. Practices to obtain restrictive, sensitive information and data frequently include corrupt payments to public agents. (Andvig and Todorov 2011: 25; Lengwiler and Wolfstetter 2006: 2). Besides, criteria other than prices, such as performance, quality or adaptability are of importance in public projects. It may improve the outcome of public procurement when giving contracting agents more discretionary power to take qualitative criteria into account (Klitgaard 1988: 137).

Pure price competitions aiming to ensure objective bid assessments often waste public money without even breaking the law (Trepte 2005: 14). But evaluating bids by quality criteria requires a bid assessment based on more subjective grounds that can also be manipulated.

Similarly, anticorruption policies often do not allow bidders to cooperate with the public party when planning a project. Thus, the public entity cannot profit from the expertise of the bidders. Suppliers have no chance to integrate their knowledge into the solution of a public need. Improvements for the specified demand cannot be suggested and a discussion of innovative solutions becomes impossible (Trepte 2005: 3). Furthermore, in a strict rule-bound procurement regime, the procuring entity commonly cannot consider past performance. In such an environment, contractors do not have an incentive to adhere to their best performance during the execution of the work. Therefore, Kelman (1990; 2002) appeals to loosen the excessive rigidity of traditional procurement systems and assign the role of anticorruption to public prosecutors and criminal law. In this context, Pashev et al. (2006: 76) conclude that economic efficiency results from competition but in many cases it also requires greater discretionary power than most advanced legal framework provide.
However, deregulation of public activities also fails to curb corruption and may even increase it (Lambsdorff 2011: 25). A complete abolishment of rules and the total detachment of anticorruption from public procurement is not an alternative (Rose-Ackerman 1999: 59). Rules serve as decision guidelines and support agents to act in line with public interests. Without rules agents cannot be made responsible for their activities and monitoring public spending becomes impossible. Defrauding public funds would be an easy task without procurement regulations (Bannenberg and Schaulenstein 2004: 56; Blackburn et al. 2008: 3-4; Maravić 2006: 55; Trepte 2005: 3).

On one hand, a legal framework is necessary to prevent corrupt behavior. On the other hand, the involvement of complex rules creates an obscure institutional environment where malfeasance can be disguised (Della Porta and Vannucci 2002: 72-73; Wiehen and Olaya 2006: 7). Andvig and Todorov (2011: 14) point out the crux of the matter as follows, “[P]romote competition while maintaining confidentiality and often secrecy; be cost-efficient but as open and as transparent as possible; apply no preferences or discretion while pursuing a wide range of accompanying policies which require flexibility [...] furthering competition while at the same time providing against bribery may need a little extra policy ingenuity.”

The crucial question is: How can regulations curb corruption in public procurement in an effective way without compromising efficient proceedings? In this context, rigid processing and waste are due to both the way in which legal frameworks are designed and the way rules are applied to the process. In order to minimize the drawbacks of an advanced regulatory system, the implementation of rules has to be managed in an appropriate way. In this context, a legal code allowing for increased discretionary power does not endanger fair contracting conditions when it is complimented with effective monitoring mechanisms (Weber Abramo 2003: 20). The study at hand suggests that administrative bidding management systems that organize and monitor the implementation of rules in an efficient way allow for diminishing the trade-off between effective anticorruption and efficient public contracting.
I.2. The construction sector

Curbing corruption in public procurement is especially challenging when contracts for complex goods are awarded. Public works are often the scene where corrupt behavior is most widespread (Wiehen and Olaya 2006: 76). This is true for developing as well as for developed countries (Stansbury 2003: 6). Owing to the intricate nature of construction projects, it is nearly impossible to keep track of the entire network of actors involved in a project and it is a major challenge to control the process of money spending. At the same time, the construction industry forms a very important sector where high amounts of public money are spent and which normally involves many public agencies (Andvig and Todorov 2011: 53). Projects often go along with one-off long-term contracts involving complex supply chains. The sector requires customized goods and services where no cost benchmarks exist. This makes corrupt behavior more likely (Klitgaard 1988: 89). Because of the strong competition on the construction market together with the lack of transparency, corruption can occur easily and be hidden relative effectively. The high investment sums and the small risk of exposure may more likely convince agents to trespass their moral threshold and engage into corruption (Stansbury 2005: 36-37).

The latest report on the Bribe Payers Index published by the civil society organization Transparency International, in November 2011 once more attested the eminent problem of corruption in the construction industry. By means of this index, Transparency International analyses the supply side of international bribery for the fifth time since 1999. It consistently identifies public works contracts and construction as the sector where the likelihood of bribing is expected to be the highest. The Global Economic Crime Survey published by PriceWaterhouseCoopers (2010) shows that the problem of corruption in the construction and engineering industry has become even worse in the years 2008 and 2009. One explanation for this development refers to the economic downturn which resulted in a temporary decreasing number of orders on the construction market and a stronger competition. In such an environment suppliers of construction services are under a notably high pressure. Unlike other industries,

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3 The Bribe Payers Index and the accompanying reports were published in the years 2011, 2008, 2006, 2002 and 1999. A copy of the latest study is available online: http://bpi.transparency.org/in_detail/ (last accessed on 4 November 2011)

4 A copy of the study is available online: http://www.pwc.be/en_BE/be/publications/pdf/GECS-Engineering-construction-summary-PwC-2010.pdf (last accessed on 26 October 2011)
constructing companies cannot build up stocks. Due to the nature of produced goods and services, they have to continuously gain contracts in order to sustain their business. In economically difficult periods this characteristic creates a particular high pressure to gain a contract by all means (Bayerischer Bauindustrie-Verband 2002: 7-9).

I.3. Case studies on anticorruption in public procurement

The work presented here is a response to the intricate circumstances of curbing corruption in public procurement, specifically focusing on the highly corruption prone construction market. While being aware of the important impact of corruption on a political level, the work at hand mainly concentrates on corruption at a bureaucratic level where public agents award contracts on behalf of the state. In the framework of two research projects, it considers the adverse conditions in public contracting and elaborates on policy recommendations with a focus on the reconciliation of anticorruption and expedient, efficiency procurement proceeding. In order to examine the complex remits emanating from anticorruption in public procurement, an in-depth, case-based research design is seen as adequate. Considering the contextual environment where procurement rules are applied allows diagnosing risks of corruption when awarding public contracts. Strengths and weaknesses of anticorruption policy measures become clear and suggestions for reform can be made.

Up to now little is known on how to collect and evaluate qualitative data in the field of anticorruption and good governance (Maravić 2009). Even though qualitative approaches of research have been applied in the field of anticorruption and good governance, investigators in most instances fail to include descriptions and instructions of how to collect and evaluate qualitative data (e.g. Cartier-Bresson 2002; Della Porta and Vannucci 2002; Heywood 2002). This is of disadvantage for two main reasons at hand: First, a lack of information concerning the applied methodological approach impedes readers to challenge the results of a study critically. It prevents a comprehension of the scope of validity of the findings (e.g. Gibber et al. 2008: 1466-1486). Second, researchers cannot take into account the experiences made when planning and conducting future research projects in the highly challenging field of anticorruption in public administration. Maravić states in his paper on empirical research methods to study integrity of the public administration (2009: 22), “The rather
infrequent use of interview techniques makes it especially interesting to know how researchers approach interviewees and in what fields. Are there special techniques?“

Taking this gap in the methodological literature into account, chapter II develops a qualitative approach to anticorruption research and presents it in detail. This method enables researchers to describe and explore the application of regulatory systems aiming to induce policy recommendations for anticorruption measures in public administration. It is based on a case oriented design that applies in-depth, open-guided expert interviews as the main data collection tool and that examines the data by means of a qualitative content analysis. The explanation of the method starts with the definition of the research questions including the elaboration of findings. The chapter offers advice on how to enter and succeed in the field when researching sensitive topics. In order to get rigor results out of the field, the method is drawn on the concepts of external validity, construct validity, internal validity and reliability. The presented research approach can serve as a roadmap for conducting future research projects in the field of anticorruption and good governance in public administration. It is being applied to conduct the two studies presented in chapter III and IV. While chapter II introduces the main concept of the research method, chapters III and IV shortly provide some further information about specific characteristics of the respective approach to fieldwork of each project.

An important tool to address the risks of corruption in public contracting is the application of a mature procurement procedure that defines clear proceedings as well as rights and responsibilities of the actors involved (Williams 2006: 715-716). Often, open competitive tendering is seen as the procedure least prone to corruption (Heggstad and Frøystad 2011: 13; Klitgaard 1988: 136-137; Trepte 2005: 13; Wiehen and Olaya 2006: 62). It is a procedure where an unlimited number of bidders is able to submit sealed offers for a pre-specified public demand without getting into contact with public officials. But the strict rules of this procedure often impede expedient contracts that result in best value for the money paid (Anechiarico and Jacobs 2002: 272-273). Besides, open competitive tendering curbs corruption during the actual bidding but it does not equally succeed to prevent malfeasance during pre-bid and post-bid activities. It is a common practice of a corrupt public administration to tailor the public demand to a specific supplier in order to create a competitive advantage before a project is even announced. Change orders and supplementary claims during contract implementation
may be misused to cover the expenses of paying bribes (Anechiarico 2006: 27; Anechiarico and Jacobs 2002: 256-258; Della Porta and Vannucci 2002: 61).

Against this background chapter III analyzes the impact of the competitive dialogue, as the youngest European procurement procedure, on the risks of corruption in public procurement. The competitive dialogue is a procedure that repeals certain procurement regulations with the aim of saving public funds and realizing expedient solutions for public demand. For the purpose of an in-depth analysis, I conducted 23 open-guided, in-depth interviews with suppliers, procurement agents and consultants of the German construction sector. The analysis of the collected data produces four main conclusions. First, the close cooperation between public and private parties can improve the expediency of a project. If the competitive dialogue is properly applied, it allows the realization of a project within the predefined time lines and budget plans. Second, the application of the procedure minimizes important risks of corruption during the demand determination and planning stage. Third, a competitor’s incentive to manipulate the evaluation of bids increases. Fourth, public procurement entities often lack effective control mechanisms.

The definition of a procurement procedure alone cannot guarantee success in the fight against corruption. Regulations are necessary to decrease the risks of malfeasance but they will not discard them (OECD 2005: 106). In this context, Wiehen and Olaya (2006: 52) state, “[t]he best procurement law is the one that is effectively applied.” In order to ensure compliance with rules, they have to be complemented by well functioning implementation mechanisms that ensure the adherence of rules without creating an enormous administrative burden (Arrowsmith et al. 2000: 50; Cao 2003: 80). Telgen et al. (2007: 21) point out that the determination of a reliable system that fosters compliance with regulations is an important development stage of public procurement. But up to now little is known about public purchasing management systems (Knight 2007: 1). Referring to Kelman, improving contracting management is a matter of importance in many procurement agencies in the twenty-first century (2002: 2).

To meet this challenge, a solution called the “Tangible Construction Market” (in the following referred to as “the TCM”), was introduced to the Chinese construction market. The TCM is a unique approach to organize public procurement. It is a bid invitation
management system for construction projects offering one-stop purchasing services supported by electronic facilities to avoid personal contact (Zou 2004: 184). The TCM offers strong institutional support useful to implement not only open procurement procedures, where an unlimited number of suppliers can take part in a bidding process, but also restricted procurement procedures, where the number of accepted bidders is limited. The TCM helps to manage and monitor bidding activities and aims at providing an efficient and transparent market environment. Considering its economic success so far, the TCM appears to be an effective mechanism to reduce corruption in public bidding for construction projects.

Therefore, the study presented in chapter IV depicts the organizational structure and working process of the TCM. In order to comprehend the structure and functions of this one-of-a-kind institution, I conducted 20 open-guided, semi-structured, face-to-face interviews with public agents from Beijing and Dalian. The analysis of the data illustrates how the TCM works out and depicts its specific resistance to corruption in public procurement. The section concludes with a discussion of the challenges in trying to transfer the TCM to countries other than China.

Lessons learned from the case studies of the work at hand suggest that the combination of less rigor procurement rules with a reliable bidding management system can help to diminish the dilemma between anticorruption and further policies in public procurement: While the competitive dialogue eases some public procurement regulations, it supports expedient and innovative public contracting. The procurement approach integrates the determination of public needs into the procedure and allows the public sector to gain from the expertise of the private sector. Manipulation of pre-bid activities becomes more difficult to hide and therefore less likely while the risk of corruption especially during the evaluation stage increases. Having said this, a great advantage of the TCM is the organization of the evaluation activities. Technological support and strict supervision mechanisms makes undermining the bid assessment very difficult. Besides, the TCM is able to organize public bidding and effective monitoring without creating enormous administrative burdens. Combining both approaches of regulating and managing contracting activities offers great potential to improve existing procurement systems.
Chapter Two

II. Investigating Risks of Corruption in Public Procurement

“One of the things the (explorative) multiple case study methodology allows us to do is advance the field by expanding our understanding of the way in which corrupt officials become corrupt.”

(De Graaf and Huberts 2008: 650)

II.1. Challenges of empirical research on corruption

In order to appraise the suitability and quality of anticorruption measures, empirical research is important. But how can causes of corruption and measures against it best be studied? Empirical research concerning topics of corruption is not an easy task. Secrecy and illegality are typical characteristics of corrupt transactions. Protagonists have good reasons to conceal their wrongdoings. Unlike in other crimes, bribery often does not involve direct victims who could impeach illegal transactions. The nature of corruption makes it an unobservable variable and the access to the field is very difficult. Therefore, researchers have to find oblique ways to do empirical analysis on issues concerning corruption (Della Porta and Rose-Ackerman 2002: 9-11).

Common instruments used in quantitative research on the causes and consequences of corruption are based on experts’ perceptions. These experts are players directly involved in the business world who have considerable experience in the fields where
corruption potentially takes place. Their subjective knowledge on corruption serves as an indicator for the real level of corruption. Indices based on this data are often used for cross-country analysis and studies on the macro-level (e.g. Mauro 1995, 1998; Tanzi and Davoodi 2002; Wei 1999). The many quantitative studies on corruption are suitable to get an impression of different variables that correlate with corruption. A review of these studies helps to understand under which circumstances corruption is more likely to occur\(^5\). But quantitative research on corruption seldom produces clear advice on how to establish and appraise anticorruption policies on the micro-level (de Graaf and Huberts 2008: 640-641). For instance, while it is known from quantitative research that corruption correlates with pervasive government regulations, the causality of both variables remains unclear and explicit policy advice on how to establish a regulatory system cannot be derived (Mauro 1995: 684-685, 1997: 11-12).

An attempt to find a more objective approach to examine corruption refers to in-depth examinations of court cases (e.g. Bannenberg 2002; Cartier-Bresson 2002; de Graaf and Huberts 2008; Della Porta and Vannucci 1997, 2002). Applying such a contextual research design allows focusing not only on the problem of corruption itself. It also enables researchers to analyze contributing factors of corrupt transactions (de Graaf and Huberts 2008: 640). However, the description of the case is highly influenced by the prosecutors and may include discrepancies (Della Porta and Rose-Ackerman 2002: 10).

Still, case study research realizes the observation of the entire institutional environment. Therefore, a research design based on case studies was seen as suitable for the projects presented in chapters III and IV that study anticorruption in public procurement. Considering not only the procurement rules but also the contextual environment where rules are executed allows for diagnosing risks of corruption. Strengths and weaknesses of anticorruption policy measure become clear and recommendations for reform can be established.

However, it is little known about qualitative methods on how anticorruption, integrity and governance in public administration are actually studied. In this context, Maravić (2009: 24) points out that “[d]oing field research in administrative ethics is not easy. [...] But knowing which methodology works best under which circumstances is a

\(^5\) Lambsdorff (2006) provides a good review on the different quantitative studies based on the perceived level of corruption from a cross-section of countries.
precondition for the systematic and cumulative development of scientific knowledge and, in the end, sound policy advice". Motivated by this, the following chapter presents the qualitative approach to research in detail designed to conduct the projects presented in chapter III and IV. Even though the research framework was developed to examine public procurement systems, it is suitable to conduct field research in various areas of public administration and public integrity.

Instead of considering real cases of corruption, the research approach focuses on the application of rules and arising conditions that may lead to corruption. Examining real cases of corruption is only possible when corruption has already taken place. In other words, the door can only be locked after the horse has bolted. Besides, many corruption cases are never brought to the court and information is kept secret and very difficult to access. Focusing on risks of corruption in regulatory systems instead of real cases of malfeasance allows elaborating potential for improvement in public regulations without the need to access sensitive data on real cases of corruption. It advocates preventing corruption in public administration.

The chapter attempts to offer a blueprint for conducting anticorruption research by means of reconstructing case studies. Data collection is based on in-depth expert interviews and evidence is produced through a qualitative content analysis. The application of rules is reconstructed in order to analyze regulatory systems ex post in terms of anticorruption in bureaucratic system. The chapter combines theories on anticorruption in bureaucracy and specifically in public procurement (e.g. Andvig and Todorov 2011; Heegstad and Frøystad 2011; Klitgaard et al. 2000; Maravić 2007; Maravić and Reichard 2005; Lengwiler and Wolfstetter 2006; Wiehen and Olaya 2006) with the body of literature on research methodologies including case study designs (e.g. Andersen and Kragh 2011; Eisenhardt 1989; Yin 2003), reconstructing research designs (e.g. Gläser and Laudel 2006), expert interviews (e.g. Meuser and Nagel 1991, 2005) and qualitative content analysis (Mayring 2000, 2002, 2007).

The chapter is structured as follows: Section II.2 underlines the function of a research question when designing a research project. In order to consider relevant theories that provoke the research design, section II.3 highlights the theoretical foundation on basis of which the method is established. It explains the role of rules and regulations when curbing corruption in public administration with a special focus on public procurement.
Section II.4 introduces theoretical sampling as a typical characteristic of case study research. The chapter continues with explanations on how to prepare for the field (section II.5), on how to select interview partners (section II.6) and on how to enter the field (section II.7). Section II.8 depicts a model to evaluate the data based on Mayring’s qualitative content analysis. Requirements to a rigor research design are discussed in section II.9. Section II.10 concludes this chapter.

II.2. How to get started?

Every research project begins with the establishment of a research question in at least broad terms. Although the research question will be further developed and specified throughout the research process, it has to be well defined from the beginning what to analyze in order to ensure a systematic data collection (Flick 2005: 76-77). Gephart (2004: 460) states, “It is important for qualitative research to have a clear focus and basis on which to proceed.” The research question underlines the knowledge gap that should be closed and helps to select the relevant data for the project. It arises from an analysis of the body of literature that deals with the topic of interest (Eisenhardt and Graebner 2007: 26). It is an openly defined question ensuring that results of an investigation follow exclusively from the data collected (Gläser and Laudel 2006: 60-61).

The method presented in this paper is suitable to conduct a spectrum of different research project that focus on the analysis of applied sets of rules in terms of their vulnerability to corruption. In this scope, the method aims at examining three types of questions: First, are existing rules implemented in a specific public institution and if so, how are rules implemented? Second, which effects of implemented rules appear why? Third, how do theses effects influence anticorruption approaches?

Research questions determine the research design (Flick 2005: 76). Having said this, case studies are particularly suitable to find answers to questions on how and why (Gläser and Laudel 2006: 31, 67; Gray 2009: 247; Yin 2003: 22). Therefore, a case-based approach to research is appropriate to examine the above questions. According to Eisenhardt (1989: 534), “The case study is a research strategy, which focuses on understanding the dynamics present within single settings”. Case study research is applied to explore topics with an uncertain or ambiguous relationship (Gray 2009: 247).
It consists of detailed investigation to gain insight into the phenomenon to be studied (Lamnek 2005: 300-301). Exploring the field, a case study summarizes the data within its real-life context (Eisenhardt and Graebner 2007: 25; Hartley 2005: 323; Yin 2003: 13). It describes the unit of analysis that helps to understand organizational processes and patterns (Gephart 2004: 458). The design can either include one single case or a small number of different cases.

With the aim to analyze risks of corruption in public administration, the phenomenon at the core of the case can be for instance the application of a procurement procedure, a public project, a state owned company or a particular administrative organization. A case study is adequate to find out if and how rules are implemented. It produces descriptions of the effects of rules. Attention can be paid to the agent within their institutional environment and administrative mechanisms can be studied within their context. For instance, do existing rules serve as guidance for public servants or does regulatory system rather create mistiness? Based on this information the effects of certain rules on anticorruption become apparent.

In order to get started, an intensive study of the literature on anticorruption in the respective field of administration under consideration is important to avoid unstructured research. The observation of existing theories might seem a contradiction to the inductive nature often assigned to case study research. But in accordance with Andersen and Kragh (2011: 151) the pure inductive perspective often postulated in case study research is seen as unrealistic and unsound. Researchers neither could nor should ignore the theories of their respective area of expertise. In the research design presented in this chapter, a strongly theory-driven deductive preparation of a research project aims at serving as a formal training essential for the researcher to collect the necessary data in the field.

II.3. Considering existing theories

The vast body of literature on corrupt behavior in bureaucracy stresses the design of a regulatory system as a prominent factor of anticorruption and good governance6 (e.g. Barnerjee 1997; Lambsdorff 2008; Rose-Ackerman 1975, 1978; Schleifer and Vishney

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6 Other important factors of governance are for instance political stability, social order, or the rule of law
Anticorruption in bureaucracy requires rules that define precise operation instructions and areas of responsibilities. Those who violate rules and misuse public power for private benefit have to fear sanctions (e.g. Trepte 2004: 77; Rubinstein and Maravić 2010: 32-34; Ware et al. 2006: 298).

This idea of fighting malfeasance goes back to Becker's (1968) research on crime and punishment. Since Becker, it has become standard to analyze fraudulent behavior in a calculus that opposes the expected benefits to the penalty multiplied by the probability of detection. Only if the expected returns from corruption exceed the expected sanctions, will a risk-neutral agent engage in a criminal deal. According to Becker's formula, rules work as an anticorruption tool when they either unfold a repressive effect or when they limit the discretionary power of public agents.

On one hand, rules may decrease the expected pay-off from corruption by limiting the area of responsibility. In these cases, it is no longer worth for officials to misuse the public power delegated to each of them and it becomes difficult to influence an entire workflow. Accordingly, anticorruption in public procurement could employ separation of power of important functions such as determination, planning, awarding, implementation and control of a project. Other approaches to limit discretion include for instance rotations of influential positions, the involvement of more than one stakeholder when making important decisions or the conduct of regular and irregular controls (Klitgaard 1988: 87-88; Lambsdorff 2008: 2-3).

On the other hand, rules hinder corrupt behavior if the expected sanctions are accordingly high. The probability of detection increases when rules and regulations support accountability. In this context, standardization and documentation of working flows make the process of decision-making traceable (Trepte 2005: 3). Clear assignments of responsibilities together with unexpected controls and high penalties could have daunting effects. Further deterrent impacts emanate from the installation of whistle-blower hotlines, the existence of ombudsmen or leniency programs (Lambsdorff 2008: 2-3).

However, a strict rule-bound system supporting repression and limiting discretion might also backfire (Anechiarico 2006: 23-24; Klitgaard et al. 2000: 129-130). Consequent supervision and consistent monitoring could destroy the intrinsic motivation of actors to support the system and maintain its integrity (Demmke
2005: 135). In fact, strict rules might even create incentives to actively search for the unintended omission in the regulatory system allowing a public agent to circumvent rules. A very tight corset of rules could motivate public agents to avoid the application of the procurement law if somehow possible. This is one explanation why public officials prefer awarding contracts directly or through restricted procedures instead of conducting non-restricted competitive tendering where the burden of rules is the highest7.

Public and private practitioners often claim that German procurement legislation requires an enormous amount of administrative efforts. These efforts render the system itself intransparent and hinder competition. In the maze of rules and regulations manipulation becomes attractive and is easy to hide (Portz 2007: 355). In order to conceal a lack of compliance with rules, officials will simply stop to prepare complete memorandums with the only purpose to make monitoring and control of their activities difficult (Lambsdorff 2008: 2-5).

Corruption in public procurement in general results in contracts awarded to bidders who do not deliver best value for the money paid. According to Kelman (2002, 1990), the same is true for strictly rule-bound procurement procedures that aim at minimizing discretionary power. Rules designed to encourage competition and prevent corruption normally forbid the private and public party to cooperate. Consequently, the public party cannot profit from the expertise of the bidders. Suppliers under such legal circumstances have no opportunity to integrate their valuable knowledge into the solution of a public need. They cannot suggest improvements for the specified demand.

The ambiguous role of bureaucratic regulations in anticorruption also becomes apparent in the old discussion about the impact of corruption on economic growth. In the twentieth century some researches still shared the opinion that corruption can be instrumental in overcoming inefficiencies and distortions caused by badly working institutions (Bardhan 1997; Beck and Maher 1986; Huntington 1986; Leff 1964; Leys 1965). This hypothesis was disproved and nowadays it is no longer recognized among economists (Mauro 1995; Kaufman and Wei 1999; Méon and Sekkat 2005; Mo 2001; Stapenhurst and Langseth 2002: 234). A core question in this debate is

7 see: http://www.dabonline.de/2011-03/verhandlungsverfahren-dominieren/ (last accessed on 11 November 2011)
whether corruption is a cause or a consequence of bad governance with bureaucracy being an outstanding influencing factor (Méan and Sekkat 2005: 70-71). Mauro (1995: 684-685, 1997: 11-12) shows that the level of pervasive government regulations highly correlates with the level of corruption even though the causality of both variables is not clear. This could imply that either bribes might be offered to overcome unnecessary rules or, to the contrary, that unnecessary rules might be established to create a source to demand bribes.

The benefits and drawbacks of rules in anticorruption are not straightforward. Regarding to the role of regulations in public procurement Blackburn et al. state (2008: 13), “Even if red tape had some positive social value, the fact remains that too much of it may be produced as public officials use it as an instrument in their rent-seeking activities.” There are various aspects of a strictly rule-bound bureaucracy that set incentives for corruption in public procurement. In a slowly working administration clients might attempt to bribe public officials to speed up the proceedings (Klitgaard 1988: 32; Leys 1965). They might offer bribes trying to overcome onerous rules (Huntington 1968). Rules are contra-productive should too many of them exist so that they help public agent to extract rents on their own accounts instead of compiling with public interest (Blackburn et al. 2008: 12; Klitgaard 1988: 43-44).

Too rigid rules set incentives for corrupt behavior. Exactly the same is true when public officials have too much discretionary power and are not made responsible for their decisions. On one hand, corruption clearly prevails where no regulations are in existence. On the other hand, overruled bureaucratic systems might foster corruption and go along with inefficiencies (Rose-Ackerman 2010: 52, 1999: 59). Corruption is an almost inevitable result of the existence of public administration (Blackburn et al. 2008: 3). At the same time, a deregulation of public activities also fails to curb corruption and it might even increase it (Lambsdorff 2011: 25). A complete abolishment of rules and the total detachment of anticorruption from public procurement is not an alternative (Rose-Ackerman 1999: 59). Rules that support anticorruption in bureaucracy may still serve as guidance in decision processes and support public agents to obtain the legally desired results. Such guidelines also can be instrumental in sorting out and archiving essential information and thus might contribute positively to the outcome (e.g. Blackburn et al. 2008: 3-4). Legal codification of procedures is welcome when regulations are clearly defined and justified, when they make bureaucratic
decisions simpler and less arbitrary (e.g. Bannenberg and Schaupensteiner 2004: 56; Maravić 2006: 55; Rose-Ackermann 1999: 45). In contrast, rules are prone to encourage corruption if they create a new monopoly power such as a regulator, if they hinder bidders and public society from getting access to information and if they are vague and require discretion to determine their applicability and timing (Klitgaard et al. 2000: 130).

A similar debate exists in a set of literature on the impact of New Public Management reforms on risks of corruption in public offices (e.g. Janett 2000; Löffler 2000; Maravić 2007; Maravić and Reichard 2005, 2003). New Public Management supports a strategy of “marketize and minimize” in the public sector. According to this point of view, the efficiency of the administration should be improved by diminishing rules and regulations. Scholars in this field present two different points of views on whether a decreased number of regulations increases or decrease risks of corruption. On one hand, the cutback of redundant rules can improve transparency which is an essential element of anticorruption. Following and understanding public workflows becomes easier, an aspect that proves to be particularly helpful during supervision and control. Hiding corruption results to be more difficult and structural corruption could even be destroyed by reforms. Accountability in such an environment gains importance and thus it should become more difficult to justify deficient results caused by mismanagement and corruption. On the other hand, the dismantling of rules and the bureaucratic system leads to a commingling of private and public interests. Areas of responsibility and corresponding competence increase and monitoring loses importance. The meeting of targeted goals in this environment might matter more than the strict adherence of bureaucratic procedures and standards. This might easily create new docking sites for corruption (Maravić 2007).

It is not the size of a regulatory system that prevents corruption. It is the way in which rules are designed and implemented. In this context, Andvig and Todorov (2011: 15) summarize, “Easy as anticorruption is as a policy slogan, it could become discouragingly tricky when measures against it need to be squared with other key consideration.” To cope with this tricky task when examining procurement regulations, an in-depth reconstructing analysis, is seen as an adequate approach to examine inherent challenges and chances for anticorruption. Considering the entire contextual environment where rules are executed renders the establishment of policy recommendations possible.
II.4.  How to select cases?

The nomination of a population is an important part of the research process because from this population the research sample is drawn. It determines the scope of validity of derived findings (Eisenhardt 1989: 536-537). For instance, a set of procurement rules when contracting in a certain market could limit the validity of the result to that specific market. If a broader population is selected, for instance a set of procurement rules when contracting in two different markets, it will be possible to control the findings with respect to variations. But extraneous variations have to be avoided to clarify the domain of the findings.

A typical characteristic of a qualitative approach to research is the way, how the sample is drawn. Case studies do not rely on random sampling. Samples are determined by means of theoretical considerations. It is not the aim of such a sample to provide statistical evidence but to allow analytical generalization. It is more important that the process of interest and relevant patterns are well observable (Eisenhardt and Graebner 2007: 27; Flick 2005: 102-103; Lamnek 2005: 384-385). According to Schrank (2006: 173), “[l]arge-n researchers have to compromise nuance for generalizability; small-n researchers compromise generalizability for nuance.” If more than one case is selected, it might be valuable to control how the selected cases contrast each other. Polar type of cases may be chosen to analyze extreme situations (Eisenhardt 1989: 537; Robson 2011: 140). For instance, chapter IV presents a case study of an institution that organizes public procurement on the Chinese construction market. This kind of institution exists in branches all over China but the one in Beijing was seen as appropriate for the case study because it is the one that is the most advanced. It was expected that best lessons could be learned from the prime example in Beijing.

Finally, not all members of a population are accessible and it has to be ascertained that agents of a specific case are willing and permitted to participate in a research project. Limited access to the field and the resistance of important players to participate in a study are a special concern when doing research on sensitive topics (Maravić 2009: 24-25). But a reluctance to go out and give it a try is simply not an alternative. There are many directions from which a field may be entered. If the first attempt to gain access will not succeed, it is worth to reconsider the strategy and seek entry from another direction (Lee 1993: 119).
In this context, it is essential to identify the gatekeepers and get in contact with them. They can offer crucial help in trying to enter the field (Hartley 2005: 327). Gatekeepers are often high-ranking insiders who have the power to offer the researcher access to a field. For instance, while first trying to conduct the mentioned research project in China in the year 2005, it was not possible to enter the field. This changed with the acquaintance of a representative from the Chinese Ministry of Supervision some years later whom I got to know during the international lecture *The Economics of Corruption*, annually held at the University of Passau. The highly ranked public official supported the idea of the project and offered help to get in contact with the relevant people. Still, under usual circumstances it is not possible to plan the entire sample before entering the field. Fieldwork is not a linear process. It is an iterative process of designing, collecting data, pre-analyzing and redesigning (Flick 2005: 69-71; Gray 2009: 173, 180; Miller et al. 2009: 329).

From the experience gained during the preparation of the case studies presented in chapter III and IV, it is recommendable to contact the people of interest directly in writing briefly explaining the research project and the benefit of the study. A written request is more promising than a telephone call because it gives the potential participant the opportunity to take the time and read the letter of inquiry. Calling the person of interest more likely results in a denial of participation because people may feel blindsided. Or they are simply not sure if they are able to participate in such a research project. Besides, contacting a person via e-mail, including details on the aim of the project, serves as an alternative to signing a consent agreement. These agreements are normally applied in empirical research projects ensuring that participants’ enrollment decision is based on a clear understanding of the aim of the research project. But according to Dickson-Swift et al. (2008: 97-98), signing consent agreements is not recommended when doing research related to illegal or stigmatized topics. It may negatively affect the atmosphere of communication and may alienate an interviewee. A written request of participation helps to make the topic of the project plain to the participant even when forgoing consent agreement.
II.5. How to prepare for the field?

Various data collection methods are available to collect the information for a case study, including interviews, observation or document analysis (Eisenhardt 1989: 537; Gray 2009: 252; Schrank 2006: 169). Yin (2003: 89) suggests interviews as the most important source to collect information when conducting case study research. Data collection through interviews is particularly suitable when very little information about the considered phenomenon is available (Eisenhardt and Graebner 2007: 28). Interviews allow for finding out important facts about processes and patterns. They offer the information needed to understand how a specific set of rules is applied (Hopf 1995: 180).

Different types of interviews exist. For the objective of the method research presented here, open-guided, in-depth expert interviews are expedient. Experts are people who are directly involved with the phenomenon of interest. Through their direct participation they have a particular and unique knowledge of the circumstances and facts needed (Gläser and Laudel 2006: 9-11; Meuser and Nagel: 2005: 73-74). A sample may include public agents of different ranks as well as private parties such as consultants, company representatives or citizens who interacted with the public agency of interest. Concentrating on such insiders avoids selecting incompetent interviewees (Meuser and Nagel 1991: 443-445). From this internal point of view unexpected effects can be discovered (Miller et al. 2009: 328). Besides, these highly knowledgeable informants are capable to consider the phenomenon of interest from different perspectives. Therefore, expert interviews limit bias in the collected data (Eisenhardt and Graebner 2007: 28). In addition, in-depth interviews as the tool for data collection are of advantage when doing research on sensitive topics (Dickson-Swift et al. 2008: 7; 19-20). According to Lee (1993: 104), “Such interviews provide a means of getting beyond surface appearances and permit greater sensitivity to the meaning contexts surrounding information utterances”.

Establishing expert interviews on basis of an open interview guideline supports an open and flexible communication and offers the opportunity to find out about aspects not considered during the preparation of data collection. At the same time, it helps to keep the communication partner on the right track and prevents the expert from explaining

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8 For an overview on the main types of interviews see for instance Gray (2009: 371-375), Doing Research in the Real World.
topics in detail that are not in the focus of a project (Gläser and Laudel 2006: 40-41; Meuser and Nagel 2005: 76-77; Schaffer 2002: 89; Wrona 2006: 193). In addition, unplanned questions allow for a follow-up on interesting aspects of the interview (Robson 2011: 280). Thus, conversations based on the same guideline can develop in various ways and differ from each other (Hopf 1995: 177).

The body of literature on anticorruption in the respective field of public administration specifically plays an important role when preparing the interviews. This is the case mainly for two reasons. First of all, it helps to understand the topic that is considered in the case study and it supports establishing a guideline. It fosters the interviewer's competent poise in the field and enables the investigator to ask questions to the point (Meuser and Nagel 2005: 77-78; Yin 2003: 28). According to Wrona (2006: 197), it is not possible to conduct a targeted investigation without taking into account the theoretical background of a research topic. Andersen and Kragh (2011: 147) point out that, “qualitative researchers should embrace and understand how theory and data interact in their sense-making efforts during theory building”.

Second, according to Maravić (2009: 25), doing fieldwork on ethical topics requires a strategy in order to get access to the data needed to examine a research question. The strategy established here is theory-driven. Many faces of corruption in public procurement are known and well documented (Williams 2006: 716). Scholars have discussed sensitive areas to corruption in different administrative environments and have defined measures against it. The literature depicts organizational characteristics that support the fight against corruption in public institutions. Keeping the sensitive areas to corruption in mind while preparing for the interviews allows an investigator to collect data without directly talking about corruption. Explicitly mentioning the word corruption during a conversation may alienate the interview partner. Instead, asking how a specific set of rules is implemented, with a special unexpressed focus on sensitive areas to manipulation, leads to the collection of the relevant data and at the same time it creates a more convenient atmosphere of conversation. It enables the interviewer to ask questions in a friendly and non-threatening way and helps to prevent interviewees from giving biased answerers. By reconstructing processes and patterns, the collected information then can be analyzed ex post in terms of inherent risks of corruption.
For example, in regard to the undertaking of a project on anticorruption in public procurement a broad body of literature exists that closely deals with the topics of anticorruption. Docking sides for corruption in public procurement are manifold. Scholars and policy makers often discuss the risks of corruption along a standard procurement process existing of various phases. Thus, it is convenient to establish the interview guideline along a standard process, too. It is helpful to gain an overview over the different activities that are part of public contracting and it supports the investigator to keep the existing rules and regulations in mind. At the same time, each stage goes along with specific risks of corruption (Wiehen and Olaya 2006: 18-21). The questions based on the process allow the collection of data on the applied procurement process step by step. How are rules implemented? How are specific scopes of activities organized? How are contracting activities documented? How can people get access to the data? Who is involved in a procedure? Questions like these lead to the collection of data to reconstruct applied procurement procedures and at the same time it is possible to focus on anticorruption matters, such as the separation of power or monitoring mechanisms, without directly talking about corruption. Strengths and weaknesses of a procurement procedure in terms of its vulnerability to corruption can be examined afterwards.

An investigator uses the interview guideline during all interviews though the order in which questions are asked is not of importance (Schaffer 2002: 8). It is neither required to ask each interviewee exactly the same questions since the comparability of data is already given by the fact that all the interviews concentrate on the same phenomenon (Meuser and Nagel 1991: 453). Instead, the guideline provides the investigator with a certain freedom of articulation. It gives the interviewer the opportunity to keep the conversation on the right track avoiding the risk of missing important information by asking overly standardized questions. At the same time, it allows each interviewee to put an emphasis on his particular knowledge and expertise. It furthermore supports the interviewer in the role of being a competent interlocutor for the expert (Meuser and Nagel 1991: 448). By addressing general procurement topics, the selected instrument enables the interviewer to focus the conversation upon even more detailed subject matters and conduct an in-depth investigation. The structure and functions of a phenomenon can be investigated gradually.
In the methodical framework presented here, interviews may serve either as the primary or as the only approach to collect information. A case study can employ further tools to collect additional information such as observations or analysis of documents. For instance, on-site visits of public offices or attendance at meetings may improve the understanding of an organization. Brochures, film-material or supporting documents may offer additional information on activities and processes. The integration of multiple sources improves the rigor of the results from a case study because it enriches the process of collecting evidence and increases substantiation (Eisenhardt 1989: 537-538; Della Porta and Ackerman 2002: 10). Especially unobtrusive measures of data collection such as records, media or observations\(^9\) that do not influence the behavior of research participants may be of avail when researching sensitive topics. They help to uncover biased answers made by interviewees who changed their behavior trying to provide desirable data (Diekmann 2007: 628-629; Lee 1993: 49-50; Webb et al. 2000: 2). Still, not all sources may offer accurate and unbiased information and each source has to be carefully used and scrutinized (Yin 2003: 85, 96-97).

II.6. How to acquire experts?

Selection of interview partners can be done gradually during the period of interviewing (Flick 2005: 140; Lee 1993: 122). It is not an easy task to establish contact to experts that are willing to take part in a research project (Flick 2005: 89-93). According to the experience gained during the preparation of the case studies presented in chapter III and IV, it is less difficult to find interview partners in the public sector than in the private sector. This was true for the case study conducted in Germany as well as for the one conducted in China. But the situations confronted with in both countries still differed.

In Germany two aspects are seen to be pivotal. First of all, contact information of public agents is more easily accessible than contact information of key players in private companies. Websites of public institutions offer a lot of valuable information, including organization charts and contact details of important agents. For instance, procurement announcements are usually available through the Internet. They do not only include information on a project to be procured but also list contact details of a person in charge

\(^9\) For an overview on the various types of unobtrusive measures see Webb et al. (2000) *Unobtrusive Measures*. 
of the project. Second, contrary to expectations, it was observed that many public entities contacted in Germany answered promptly on emails asking them to participate in a research project on anticorruption in public procurement. A reason for the prompt answers might be that public agents did not want to be suggestive of not taking anticorruption serious. Other experts even expressed their appreciation that researchers address the serious problem of corruption in public procurement. A relatively high number of public agents agreed to take part in the study by giving an interview. Others at least wrote an email or even called to give an explanation why they could not take part in the study. Only very few public officials did not reply to a letter of inquiry at all.

In contrast, it required considerable more efforts to find key players from the private sector willing to participate in the study conducted in Germany. First of all, it is very challenging to establish contact details of private market players and get in touch with the right people. Asking respondents from previous interviews for suggestions turned out to be the easiest way to establish contacts to main players from the private sector. Diekmann (2007: 400) refers to this technique as snowball sampling. Besides, visiting trade fairs or participating in symposiums where relevant market players meet may help to get to know important actors. But private market players are often very busy and have tight schedules. Arranging appointments with representatives from private companies required patience.

For the case study conducted in China, the situation was more complicated, especially because I am from Germany and do not know any Chinese. If an investigator knew Chinese, similar arguments may prove to be true as the ones given for Germany. But a researcher from a western country incapable of speaking and reading Chinese will rely entirely on the support of a gatekeeper who will be crucial in the arrangement of interview appointments. For the case study presented in chapter IV, the above-mentioned official of the Chinese Ministry of Supervision helped to organize most of the interview appointments with public agents. In spite of the considerable efforts to find a gatekeeper from the private sector, the search was unsuccessful. Without a gatekeeper only one person from the private sector could be found who was willing to take part in the study on anticorruption in China’s Tangible Construction Market. I got to know this constructor when I visited an architectural guide in Beijing organized by an art
association where I tried to get in contact with local people who were familiar with the Chinese construction sector.

It is always revealing in every empirical research project to participate in expert conferences, symposiums, lectures or further events where key player from a sector of interest meet. It is recommendable to contemplate beforehand how potential interview partner might react when the explanation of a sensitive research topic in conjunction with a solicitation for support is brought to their attention. Such a solicitation is much easier to execute while conducting research in a home country than while doing research abroad. A certain understanding of different players’ perspective on the topic of anticorruption is very valuable to persuade a person to participate in a study as a valued interview partner.

II.7. How to enter the field?

Reflecting possible problems that may arise in the field before starting to conduct interviews offers time to establish strategies on how to handle them. A special difficulty emanates from the sensitivity attached to the topic of corruption. The framework presented here avoids to the mentioning of the term corruption in order to create a comfortable atmosphere of conversation. Putting the focus instead on applied procedures, technical characteristics or organizational matters demonstrates that it is the expert knowledge on a specific topic that is of interest and not specifically a persons’ experience with corruption.

Further strategies to handle the sensitivity attached to the topic include the careful explanation of the intention of the research project. Showing the exclusively scientific interest in the topic helps to establish confidence. Besides, informing interviewees about the aim of the research can arise their interest and demonstrates a certain level of competence (Meuser and Nagel 1991: 450). Guaranteeing interviewees that they will remain anonymous and subsequently treating all information as confidential is an additional strategy that relieves tension during the conversation (Lee 1993: 171). Neither knowing any personal detail of the interviewee nor mentioning ones name in a study allows interviewees to talk openly about the subject and reveal any information known to them without fearing consequences (Lamnek 2005: 285; Schaffer 2002: 90-91).
Besides, omitting judgments on corrupt behavior is of importance in order to adopt a neutral position in the communication (Lee 1993: 97-98).

In case these strategies should enable the interviewer to earn a certain level of confidence during the interview, it might also be considered to enhance the research strategy and ask questions directly relating to corruption at the very end of a conversation. Whether the achieved level of confidence is seen as sufficient to discuss highly sensitive topics of illegal behavior depends on the investigator’s subjective appraisal. It might be the easier to handle the situation the more experience a researcher has in undertaking fieldwork on sensitive topics. Interview partners are more likely willing to relate their experiences in regard to corruption if the focus of the conversation is moved away from a concrete project to a general point of view on the topic of corruption. Accessing real stories about corrupt behavior is not necessary to derive policy recommendations from investigations based on the method presented in this section. But anecdotes of corruption can still be very interesting to enhance the understanding of corruption in a specific field. They might even provide material for future research projects. Still, the method applied here allows analyzing anticorruption mechanisms without talking directly about corruption.

Recording the conversations is the most reliable way to save the obtained data for the evaluation and analysis (Schaffer 2002: 87). But taping the interviews could cause a particular distortion of the given information as it compiles evidence of the interviews. The investigator is obliged to ask the interview partners for permission to record the conversation. Giving them detailed information about the methodological advantage of recording data allows interviewees to understand the background and helps to decrease skepticism (Lamnek 2005: 393-394). Still, some interviewees prefer investigators to take notes instead of recording a conversation. Others yet might agree to record the main part of the interview but ask to switch off the recording machine for a few minutes when talking about highly sensitive issues. In these cases, the preparation of a report of the conversation serves as an alternative to recording. Yet, it is recommended to ask interviewees for inspection of the respective reports in order to ensure their completeness and correctness.

Writing down a memo immediately after an interview helps to retain impressions about the interview situation and the course of the conversation. The memos can also include
special challenges of a conversation and lessons learned. Taking these memos into consideration during the preparation for subsequent interviews assists to find additional topics that appear to be of interest. In addition, the memos can be a valuable source when selecting new interviewees with the aim to accomplish a complete gain of information at the end of the investigation. Besides, the preparation of memos allows for overlapping data analysis with data collection which could result in slight alteration of the research design. In qualitative approaches to research small amendments or extensions often help to achieve in-depth insights and improve the results (Eisenhardt 1989: 538-539).

II.8. How to evaluate the data?

Mayring’s (2007, 2000) qualitative content analysis is a comprehensive technique that is suitable to evaluate interviews. It is a clearly defined method that analyzes the data step by step using a system of categories. These categories are developed based on theoretical considerations and are enhanced and revised during the analysis of the data. The system of categories serves to extract important paragraphs from the data to conduct the examination for a research project. Qualitative content analysis can be applied in various forms and can be adjusted to the focus of a research design10 (Mayring 2002: 114-121).

As the evaluation of qualitative data is a highly complex procedure the application of computer software is of advantage. Common software programs are atlas.ti, maxqda or nvivo. They offer many functions that facilitate the analysis of the interviews. Complex coding systems can be applied and working with the coded data becomes much easier. Besides, memo- and analysis functions help to examine research questions (Kuckartz 2004: 13-15). This kind of software can be applied for any method of qualitative data analysis11. For the research design presented here a process following four main steps is suggested to evaluate the data.

In a first step, a system of category dimensions is determined to structure and analyze the data. These deductive dimensions are defined *a priori* based on relevant theories

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10 Mayring (2000) *Qualitative Content Analysis* offers a short overview of the main types of content analysis.

11 Kuckartz (2010) published a comprehensive textbook on computer based qualitative data analysis that offers detailed instructions in German language.
while keeping in mind the focus of a research project. The category system allows the evaluation of the data against the established body of theory that offers observable implications for anticorruption. Coding rules are clearly specified ex ante in order to clarify which kind of information falls in a specific category (Mayring 2000: 13-15). For instance, category dimensions can be established based on a considered set of rules to find out how these rules are being implemented. Besides, the categories can focus on specific areas sensitive to corrupt behavior or on characteristics of anticorruption. Usually, a similarity between the table of categories and the interview guideline does exist. This is a logical consequence as both follow an examination of relevant literature when preparing a research project (Meuser and Nagel 1991: 454).

Second, a written résumé of each single interview has to be prepared. This could either be a transcript or a paraphrase of the conversation. While the transcript ensures an exact replication of the interview, a written summary helps to save time and may be sufficient in some cases. According to Meuser and Nagel (2005: 83), transcribing the conversations word by word is not compulsive when conducting expert interviews nor is it the standard proceeding in those cases. Referring to Flick (2005: 263), it makes only sense to prepare a precise transcription of a conversation in case certain details of a statement are relevant to examine a research question. The preparation of a paraphrase can be seen as the first evaluation step as the investigator already selects relevant information from the data, keeping the focus of the project in mind. It is however very important that the content of the interview is not being falsified. For this purpose, it is recommended that summaries follow the chronology of the interview, still transcribing crucial aspects word by word (Meuser and Nagel 1991: 455-457; 2005: 83-85).

Third, the category dimensions serve as selection criteria. The investigator reads the data line by line. Those aspects and sequences of each interview which fit thematically into each particular category dimension are selected and listed under the appropriate category (Mayring 2000: 7). Every time important information is found in the transcription which does not fit into an already existing category, a new category has to be defined. This inductive enhancement of the category system guarantees that all aspects concerning the focus of the paper but unknown ex ante can be observed (Mayring 2000: 10). It preserves the openness of the examination for new findings. During this process, the category system is reviewed several times in order to guarantee
the logic and correctness of the subsumptions made (Flick 1991: 165).

Fourth, the adherence to this system results in a table of categories with subordered codes to which important information from the interviews can be attached systematically. By analyzing the completed category system in terms of the focus of the paper and the related theory, the research questions can be discussed and policy recommendations for reform can be established. Basically, the analysis of the table of categories consists of two parts. In a first step, a positive examination based on evidence from the data focuses on the description of how the regulatory system under consideration has been executed. In a second step, policy recommendations are established by means of a normative analysis.

If more than one case are part of the research project, starting with examinations of single cases serves as a strategy to handle a great amount of data. It allows the interviewer to get familiar with characteristics and structures of each case. In addition, cross-case analysis focuses on consistency and contradictions across cases within different categories. It prevents investigators to overrate a statement of one single expert and to challenge initial impressions. (Eisenhardt 1989: 539-541). If contrarities or uncertainties are discovered, they can be subjected to further clarification using additional materials or interviews (Meuser and Nagel 1991: 466-467). For example, conducting the investigation on China’s Tangible Construction Market, presented in chapter IV, it was a great challenge to pinpoint whether the interviewees provided complete information on the structure and functions of this institution or whether euphemisms were given. If contradictions in the different conversations were discovered, further interviews were held to reach clarification. If coherence could not be achieved, this was explicitly discussed in the study.

Figure II.1 summarizes the model to evaluate the data and to examine the research question. From this analysis patterns and concepts of an implemented set of rules in certain settings are being exposed. It is an iterative process where data is compared with anticorruption theories to appraise a public institution in terms of its capability to handle risks of corruption. Strengths as well as potential for improvement become observable and policy recommendations can be established. Applying an evolutionary approach to research for coincidences of overlapping data collection and data analysis discloses the point when a saturation of data collection is reached. Conducting
interviews can be stopped when no more need for clarification exists and when additional interviews offer a minimum of new insight.

II.9. How to perform rigorous case study research?

Four criteria are commonly used to ensure the rigor of case study research, namely internal validity, construct validity, external validity and reliability (Yin 1989: 40-41). While reliability refers to random errors in a study, the three types of validity include systematic errors (Kvale 1995: 427). The following section explains research measures that help to avoid both types of errors in order to boost rigor case study research (Gibbert et al. 2008: 1466-1468).

II.9.1. Construct validity

Construct validity focus on the quality of the measurement of theoretical concepts (Kvale 1995: 427). A method that bears construct validity is based on accurate
operationalization of the underlying concepts of a study. Construct validity plays an important role in regard to the collection of the data. It includes measures that ensure a targeted investigation and help to observe the reality in an accurate way (Gibbert et al. 2008: 1466). It is particularly difficult to ensure construct validity in case studies because the understanding of the construct that is under investigation may differ among members of a research project (Yin 1989: 41-42). For instance, it is not given that all experts of a sample think of the same activities when referring to public procurement nor is it given that they have the same idea of public procurement in mind as the investigator.

Crucial concepts have to be clarified at the beginning of an investigation to avoid misconceptions and misunderstandings. Appropriate tools for data collection help to cope with the characteristics of a research question. Combining different tools of data collection, such as interviews, observations or document analysis, compensate for possible imprecision caused by the application of one tool (Yin 1989: 42). The description of selected measurements and tools allows readers of a study to understand the approach to data collection. Establishing a chain of evidence supports an investigator to stay on the right track. Disclosing this chain of evidence enables the reader to follow an investigator from the initial research question to the definition of important findings (Gray 2009: 260-261). Furthermore, a review of transcriptions by key informants or research peers prevents inconsistencies in a research project (Gibbert et al. 2008: 1466-1468; Yin 1989: 42).

II.9.2. Internal validity

Internal validity refers to the logical relationship between observations and results (Kvale 1995: 427). It plays an important role in the phase of data evaluation. It only has to be considered when conducting causal and explanatory analysis and can be disregarded when describing and exploring a phenomenon (Gibbert et al. 2008: 1466; Yin 1989: 43). Internal validity requires the consideration of a complete set of the variables that play a role when analyzing a phenomenon. It exists when presented inferences are backed up with logical chains of evidence. In case the actual relationship cannot be found in the data, the derivation of wrong conclusion from the data has to be avoided (Gray 2009: 261; Yin 1989: 42-43). For instance, when investigating the effect
of a set of rules on the risk of corruption in a public entity, the challenge is to find associations between a rule and its impact on an institutional landscape. Does it help to clarify the precise application of relevant workflows? Or does it more likely constipate the jungle of rules so that it becomes even more difficult to understand, to follow and to control activities.

A crucial measure that supports internal validity is the establishment of a precise research framework. The framework explains relevant coherences as analyzed in the respective body of literature and forms the fundament of the analysis. Matching patterns in the data with patterns observed in the literature helps to develop and discuss findings. The triangulation of different bodies of literature when preparing the research framework or when interpreting the findings allow the researcher to consider a problem from different perspectives. For example, in order to discuss the impact of rules on a public body, findings from quantitative research, from institutional economics, from a juridical body of literature or from researches on *New Public Management* could be taken into account to ensure a broad understanding of a specific setting. Such a wide approach prevents the researcher from omitting relevant variables (Gibbert et al. 2008: 1466-1467; Gray 2009: 261; Yin 1989: 43).

**II.9.3. External validity**

External validity refers to the generalizability of established findings from a research project (Kvale 1995: 428; Wrona 2006: 206). As already mentioned above, it is not the aim of case study research to produce significant statistical results. Case studies rather focus on drawing conclusions from analytical generalization. This means that findings result from different observations that are combined to establish policy recommendation. They do not result from populations (Gibbert et al. 2008: 1468; Yin 1989: 43-44).

In order to ensure external validity, it is recommended to analyze more than one case. In this context, different cases can either be grouped within one organization or within different organizations. Explaining why a specific case is part of the sample allows the reader to understand the origin of the results and the nature of the sample. Additional information on the context of the case studies, such as certain characteristics of a market
or the sector of interest improves this insight knowledge and helps to understand the ambit of a research project (Gibbert et al. 2008: 1467-1468).

II.9.4. Reliability

Reliability requires the absence of random errors in a study, meaning that a replication of a research project results in the same findings as the first implementation (Gray 2009: 263; Yin 1989: 45). It is hardly possible to repeat the same project several times when doing case study research (Flick 2004: 47). For example, an open in-depth interview conducted twice based on the same interview guide-line and held with the same expert may still develop in a different manner in a replicated project. Or it might be very hard to persuade exactly the same sample of experts to conduct a research project twice.

Still, measures exist that support the reliability of case study research. This mainly refers to tools that document the research process to increase the transparency of the proceeding (Flick 2005: 320-322; Wrona 2006: 207). It includes the preparation of interview transcriptions or a case study database existing of documents that are relevant for the preparation of a case study (Yin 1989: 45). The description of the research procedure or the mentioning of the name of the focused institution while the interview partners stay anonymous also may persuade readers to rely on the conclusions of a study (Gibbert et al. 2008: 1467-1468).

Acting in accordance with the proposed measures of validity and reliability ensures rigor case study research. In this context, it is worth to note that the three types of validity relate to each other. External validity can only be achieved if a study is based on a coherent and logical theoretical framework (internal validity) and if the theoretical framework is carefully linked to empirical observations (construct validity). This means that construct validity and internal validity are necessary conditions to achieve external validity. Furthermore, only if external validity exists, can a case study be reliable (Gibbert et al. 2008: 1468).
II.10. Conclusion

Even or just because it is not easy to conduct empirical research on anticorruption, the methodological literature lacks precise description of research designs that focus on public integrity. Therefore, this chapter introduced a qualitative approach to research suitable to analyze regulatory systems in public bureaucracy. Focusing on the application of rules instead of considering real cases of corruption is recommended to allow the establishment of policy advice even before malfeasance has taken place.

For two main reasons case studies are seen as suitable to conduct a research project on anticorruption in public administration. First, by taking into consideration the entire contextual environment, the approach is suited to address the ambiguous effect of rules on the risks of corruption. Second, a qualitative approach to data collection is especially pertinent when doing research on sensitive topics because prior knowledge on the participants’ experience is not needed to prepare a research projects. The flexible nature of case study research allows responding to participants in an appropriate way.

The chapter offers advice on how to organize, conduct and evaluate expert interviews in the context of case study research. Gaining access to the field is one of the greatest challenges investigators are confronted with when doing research on anticorruption. Advice on how to enter the field as well as how to get rigor results out of the field has been presented. Following the described research design based on expert interviews as the primary tool for data collection combined with Mayring’s qualitative content analysis supports the establishment of clear chains of evidence to maintain construct validity. Triangulation of the interview data with information form document analysis or with data from observations improves the quality of the data set. In addition, the deductive approach that requires the consideration of existing theory and that triangulates different bodies of research helps to meet the requirements of internal validity. It asserts the derivation of the research framework from the literature and allows matching patterns found in the data with patterns form the literature. The application of the presented research tools during in case analysis as well as during examinations across cases supports analytical generalization to establish research findings that compile with external validity. Furthermore, reliability can be satisfied when preparing memos and transcripts of the collected data while the publishing of
names of organizations has to be carefully scrutinized due to the sensitivity attached to the topic of corruption.
Chapter Three

III. The Competitive Dialogue:

A Challenge or a Chance for the Fight Against Corruption in Public Procurement?

“[L]imiting the discretion of contracting authorities for certain aspects might make it more difficult to put into practice decisions which are not justified on objective grounds and thereby prevent favoritism [...]. However, such measures must not hamper the necessary room for maneuver that contracting authorities require in order to purchase goods and services adapted to their specific needs”.

(European Commission 2011: 51)

III.1. Corruption in the German procurement system

As it is common in modern industrialized countries, public procurement in Germany is bound to a comprehensive set of rules and regulations. The German procurement legislation is based on the fundamental principles of transparency, non-discrimination, economic efficiency and competition (§ 97 section 1 and 2 GWB). These principles demonstrate that the prevention of corruption is an important objective of the German procurement legislation (Portz 2007: 356). The contracting regulations Vergabe und Vertragsordnung für Bauleistungen (VOB) and Vergabe und Vertragsordnung für Leistungen (VOL) provide a set of rules designed to ensure the compliance with procurement principles. These rules explicitly forbid unfair and discriminatory behavior
(§2 VOB/A and §2 VOL/A). Under the terms of VOB and VOL public agents have to adhere to legally defined procurement procedures and have to document the process of contracting in written procurement records. The rules pledge procurement agents to keep suppliers informed on equal terms about bidding details or relevant information such as deadlines or contact details of responsible public agents. Bidders are eligible to receive an exhaustive description of all technical specifications demanded. At the end, all submitted bids have to be evaluated in an objective way according to predefined criteria. Bidders have the right to submit administrative appeals at the Chamber of Procurement to apply for a revision of decisions made. The comprehensive body of procurement legislation together with the high standard of the institutional landscape and an established judicial system suggest that corruption should not be a problem in the German public procurement system.

But recent studies about the problem of corruption and white-collar crime in Germany indicate the exact opposite. According to a position report about corruption in Germany, published by the German Federal Criminal Agency *Bundeskriminalamt*, the police authorities conducted 1,904 investigations on corruption involving 6,354 criminal offences in the year 2009 (BKA 2009: 5-6). The report shows that most corruption cases in Germany occur in the public administration sector. 57 percent of all corrupt agents paid a bribe aiming at being awarded contracts in the public sector as a *quid pro quo*, followed by eight percent trying to obtain licenses. Further categories carry much less statistic weight (BKA 2009: 15). The report indicates that public contracting in Germany goes along with the existence of significant incentives to offer a bribe.

Another research project conducted among potential bribe takers confirms the vulnerability of public contracting to corruption. The study presents the results of a survey on corruption and white-collar crime conducted between May and July 2010. In this survey, 500 local, federal and national public officials stated that attempts of corruptive influence are most frequently noted during public contracting, followed by licensing procedures and bribing attempts by private citizens (Bussmann 2011: 14). These studies denote that even in a highly developed country such as Germany the procurement system is confronted with a problem of corruption that cannot be neglected.
The work of Britta Bannenberg and Wolfgang Schaupensteiner (2004) draws a more detailed picture of the various faces of corruption in Germany. Their comprehensive studies show that many cases of corruption involve manipulation of public contracting. In particular, industry sectors that mainly serve public demands are vulnerable to corruption (Herbig 2002: 83, 86; Trepte 2004: 72). This includes public procurement of construction projects, such as parks, public swimming pools, hospitals, roadwork and other public works (Bannenberg and Schaupensteiner 2004: 50-51, 93; Portz 2007: 355). Osebold and Heublein (2010: 394) conducted a survey among 133 German construction companies inquiring after their experiences with corruption in public administration and their perception of existing malfeasance. This study also confirms corruption to be a particular problem in the construction industry.

All this research findings suggest that an important approach to deal with the risks of corruption in public contracting is the definition of a procurement procedure that provides clear proceeding as well as rights and obligations of all stakeholders involved. A procurement procedure should effectively respond to public needs in the expedient way (Ware et al. 2006: 297-298). The legal framework for common public contracting procedures is strictly rule-bound. It specifies a clear mandate and strictly limits discretionary power along the entire working process. If a public agent does not adhere to the defined rules, he has to fear legal sanctions. But rules that strictly regulate the contracting process often hinder expediency when satisfying public demand. They go along with rigid workflows that produce contracts with adverse terms and conditions.

From an economic perspective the efficient use of public funds is the most important criterion to appraise a procurement procedure. An efficient procedure results in the best value for the money paid. It generates the lowest price for a certain level of quality. Efficiency decreases either because of licit mismanagement or because of illegal corrupt behavior. It is not always easy to distinguish erroneous from unlawful behavior (Klitgaard et al. 2000: 124; Wiehen and Olaya 2006: 17). Both sources of undesirable outcome have to be avoided to ensure successful public contracting. (European Commission 2011: 7).

In recent years, expediency in public procurement has gained much importance. For this purpose, the main focus of reforms was placed on the abolishing of unnecessary administrative burdens (Pashev et al. 2006: 6). The introduction of the competitive
dialogue is part of this development. It is the youngest European procurement procedure that was introduced to the German procurement law in 2005. The competitive dialogue repeals certain procurement regulations with the aim to save public funds and find expedient solutions for public needs. For this purpose, the procurement entity is able to invite a restricted number of tenders to a phase of dialogue prior to the submission of bids. It repeals the strict separation of public and private parties. At the same time, it does not allow participants to negotiate freely. The competitive dialogue may contribute to the realization of an improved procurement performance. But it also expands discretionary power given to public agents. This has an effect on the risk of corruption in public procurement because it assigns a greater area of influence to involved agents.

Against this background, the study in hand analyzes how the application of the competitive dialogue influences the risks of corruption in public procurement. It aims to establish whether the competitive dialogue provides a legal framework that fosters fair competition as the economic premise to counter corruption in public procurement. Doing this, the analysis focuses on the implementation of distinctive principles, concepts and ideas of the competitive dialogue while an in-depth discussion of all technical and legal details goes beyond the scope of this research project.

For the study in hand, I conducted 23 in-depth interviews with public officials, bidders and consultants who formerly took part in a competitive dialogue in the German construction sector. This sector was selected to conduct the study for two main reasons: First, due to its intricate nature, the construction market is most susceptible to corruption (e.g. Bannenberg and Schaupenstein 2004: 50-51, 93; European Commission 2011: 50; Portz 2007: 355; Stansbury 2005: 36-37). Second, the competitive dialogue was introduced for procurement of products of outstanding complexity (§ 101 section 4 GWB). Thus, the competitive dialogue is mainly applied for public construction projects (Burnett 2009: 17; Heiermann 2005: 767-768; Schwabe 2009: 41-43).

Yet so far, the competitive dialogue has been applied seldom in Germany. Apart from the fact that the scope of application is very narrow by law, the procurement entity hesitates to apply the competitive dialogue because of a lack of experience with the procedure. The field investigation presented in the following helps to fill this gap. It discloses
important expert knowledge about the application of this procurement procedure. At the same time, it depicts risks of corruption in the competitive dialogue and offers recommendations on how to handle them.

The organization of this chapter is as follows: Section III.2 introduces common corruption schemes in public procurement with a focus on the construction sector. Section III.3 summarizes the given legal framework of the competitive dialogue and outlines the relevant codes according to German law. Section III.4 depicts specific characteristics of the empirical approach to analyze the application of the competitive dialogue. Subsequently, section III.5 discloses the results of the field study. It contains a critical analysis of how the application of the competitive dialogue affects the risks of corruption in public procurement. It illustrates challenges and chances for anticorruption and defines best practice when using the competitive dialogue. Section III.6 continues with a discussion of the scope of application of the competitive dialogue. Section III.7 concludes the study.

III.2. Corruption and anticorruption in public procurement

Most public institutions are organized in a hierarchic way where principal-agent-client relationships exist. This is also true for public contracting agencies. Since Susan Rose-Ackerman’s pioneering work (1978) it is widely common to analyze corrupt transactions as the outcome of an interaction between a principal, an agent and a client. The agent has some discretionary power to fulfill a task delegated to him or her by the principal. The principal is not able to supervise the agent. Divergent objectives and asymmetric information between the principal and the agent may result in corruption. In the case of bureaucratic corruption the principal (e.g. the state) is always an honest player. The agent (e.g. the procurement entity) executes tasks on behalf of the principal and can be bribed by a client (e.g. a bidder) who is an external player. This also includes extortion of the client to pay a bribe. Or the agent may directly abuse his relationship with the principal for instance through embezzlement or fraud. Many corruption schemes involve more than one agent (Trepte 2004: 70-71, 119).

In order to focus more precisely on the various faces of corruption in public procurement, figure III.1 depicts a standard process of public procurement as defined by
Transparency International (Wiehen and Olaya 2006: 17). Depending on the particular procurement procedure applied, each stage includes certain activities. The exact sequence of the activities and stages may vary and some actions may chronologically overlap. But every step must be completed in every project sooner or later and every stage of the process goes along with specific risks of corruption. Without intending to be exhaustive, this standard process helps to identify common corruption schemes.

![Diagram of a standard procurement process](image)

Along this process corruption takes place in order to solve a selection problem, to generate increased profits, to influence the process of decision-making or to hide malfeasance (Ricks 1995: 212; Stapenhurst and Langseth 2002: 233). It is important to note that risks of corruption exist during the entire procurement process (Andvig and Todorov 2011: 22; OECD 2007: 21; Wiehen and Olaya 2006: 17-20). Still, most approaches to anticorruption mainly concentrate on the bidding activities in the third stage of the standard process. In this context, Heegstad and Frøystad (2011: 3) state about anticorruption in public procurement, “A common mistake is to focus only on the tendering and decision-making stage of the process, up to the point at which the contract is awarded and signed”.

Malfeasance can already occur, and often does, at the very beginning of the procurement process when a constructor already may bribe a public person to influence demand determination (Maravić 2006: 214-215; Paterson and Chaudhuri 2007: 168-169; Rose-Ackerman 1999: 59; Stansbury 2003: 13). For instance, in a typical corruption scheme at this early stage a supplier can try to induce an entire tender project which is not needed by the public but benefits the private entity (Andvig and Todorov 2001: 23; OECD 2007: 23; Weber Abramo 2003: 3). Figure III.2 depicts such a corruption scheme. A constructor (client) may bribe a politician (agent) who campaigns for a specific project in the council. If the politician is able to push the project through the council, he might provide a share of the bribe to the tendering manager (agent) so that he might prove
willing to support the enforcement of the corrupt deal. In similar schemes, politicians try to induce projects that serve as a source of campaign financing (Ware et al. 2007: 308-309).

Furthermore, public agents could try to split up projects into several small contracts in order to bypass the obligation of public bidding (Paterson and Chaudhuri 2007: 171; Ware et al. 2007: 311; Zou 2006: 24). The selection of the bidding design can be abused by favoring a certain party through the application of direct contracting. All corruption schemes at this early stage influence the allocation of public money even before a project is announced. This makes it particularly difficult to become aware of the conspiracy.

![Figure III.2 Inducement of an unneeded investment](image)

Corrupt transactions are arranged more easily between old business partners who have already built a relationship of trust in the past. Based on this confidence, partners perceive a smaller risk of failure of their corrupt arrangements. From previous experiences of legal or illegal contracts they know that their collaboration is likely to work out well (Lambsdorff 2000: 238; Lambsdorff 2007: 161). Knowing each other for a long period of time facilitates business partners to influence a project even before it becomes public. It facilitates the exchange of confidential information and the adjustment of a project to a supplier’s needs \textit{ab initio}.

Once an institution has identified public needs, the second procurement stage begins. During the preparation stage, projects may be tailored to a corrupt supplier’s needs in
order to provide him with a high chance of winning the contract (Paterson and Chaudhuri 2007: 163, 168-169; Portz 2007: 367; Søreide 2002: 15; Trepte 2005: 17; Weber Abramo 2003: 3; Wiehen and Olaya 2006: 18). According to the green paper on public procurement published by the European Commission, this is one of the most common corruption schemes (European Commission 2011: 50). Such a scheme is shown in figure III.3. This bid-rigging scheme may involve a consultant (agent) who designs the procurement documents on behalf of the procurement manager (agent). The consultant integrates components into the list of specifications that only one bidder can offer in a competitive way. Without outsourcing these tasks to a consultancy, the extensive planning activities normally involve various public officers who might require a share of the bribes themselves, who may blow the whistle or be led by other political interests. The involvement of one consultant company instead of many public agencies conducting the planning activities makes the organization of this corruption scheme an easier task (Andvig and Todorov 2011: 23).

![Figure III.3 Manipulation of specifications](image)

Another common form of corruption during the preparation stage is arranged by over-specifying expensive components of a procurement project from the start when consulting only one favored supplier (Bannenberg and Schaupensteiner 2004: 127; Klitgaard et al. 2000: 120-121; Müller 2001: 102; Portz 2007: 366; Weber Abramo 2003: 4). The pre-arranged selected winning bidder (client) offers these specifications for low prices as it was agreed with the public official (agent) in charge that he does not have to deliver high-quality components during the stage of contract realization. Once a
project has been implemented, it is very difficult to revise whether a realized project covers all the demanded specifications required in the project plan (Bannenberg and Schaupensteiner 2004: 127, 176; Maravić 2006: 214-215, 219). For instance, when the construction of a building has been terminated it is impossible to inspect the efforts put into the treatment of the underground or the quality of the basement of a building. Having information about impairments of the list of specifications allows a bidder to create a competitive advantage in the respective calculations of his bid (Portz 2007: 366). This way, he wins the bid and draws a profit from which a kickback is paid to the official. A kickback is a corrupt payment where the public agent receives a proportion of the profits made once a corrupt deal was completed successfully. The corrupt public official may have to share the kickback with further public agents who had to be incorporated in order to enforce or camouflage the corrupt deal (OECD 2006: 12; Wiehen and Olaya 2006: 21; Zou 2006: 27).

Another similar method to manipulate the project plan can be found in the literature. Agents may intentionally prepare an incomplete project plan, integrating mistakes and loopholes in the list of specifications. They provide this information to a bidder in exchange for a bribe. In case something is needed when implementing the contract that was not required in the list of specification of the project plan, the constructor has the right for supplementary claims. Knowing the loopholes and mistakes in the specific project plan a bidder can pretend to offer the best price in the submitted bid. Once the contract has been awarded, he appends high bills for the missing aspects in the list of specifications. This result in an increased project price after the contract has been awarded (Andvig and Todorov 2011: 47; Anechiarico 2006: 23- 24; Müller 2002: 106; Portz 2007: 365).

Furthermore, projects can be designed in a way to induce a failure of tender. Failure of tender means that not enough suppliers, or none at all, react on a procurement notice and therefore public bidding cannot be conducted. This situation is induced by setting up unnecessary, extraordinary requirements in the procurement notice or by insufficiently advertising the project using a limited media outreach. Thus, only a single preferred supplier can satisfy the demand and competitive tendering seems to be impossible (OECD 2006: 15-16).
In case a prequalification takes place, agents may have an incentive to manipulate the list of suppliers who are invited to submit a bid (Della Porta and Vannucci 2002: 62; Paterson and Chaudhuri 2007: 163). For instance, the procurement entity might mandate a consultant (agent) to prepare a short list including the best suppliers of a certain sector. One competitive supplier (client) might bribe the consultant so that the consultant suggests only moderate competitors besides the corrupt company. This is how the briber increases his chance to receive the contract award because the invited suppliers are not serious rivals. Figure III.4 illustrates this scheme. Basically, corruption during the preparation stage results in project designs, contract drafts and bidding documents that are not prepared on basis of public needs but in a way that gives a specific supplier a competitive advantage. Agents might try to induce unnecessary complexity of a project so that the concealment of corrupt arrangements can be organized easily.

Figure III.4 Manipulation of prequalification

During the selection of a bidder and the awarding of a contract, the competitors might try to influence the evaluation of bids. For this purpose, a supplier (client) offers a bribe to the public official (agent) who is evaluating the bid trying to convince him to conduct a biased bid assessment (Klitgaard et al. 2000: 121-122; Lengwiler and Wolfstetter 2006: 7). As figure III.5 depicts, this scheme often involves consultants (agents) who are well connected to the private as well as to the public parties. These agents help to organize corrupt deals even when public officials and bidders are legally prohibited from getting in touch with each other. The competitor might hire a consultant who offers
an intangible service and receives a commission. The commission is large enough so that the consultant can bribe the public official trying to convince him to distort the evaluation in favor of the respective bidder. Hereby, complicated and unpublished selection criteria help biased evaluators to hide the privileged treatment of one supplier. Confidential information might be misused by making it illegally available to a certain bidder before bid opening giving that bidder the chance to adjust his bid. Or important information, such as the results of an assessment, might be kept secret to hinder supervision and control (Wiehen and Olay 2006: 18-19; Zou 2006: 25).

Figure III.5 Manipulation of bidding

Apart from that, corruption often proceeds after the contract has been awarded (Ware et al. 2007: 315). Substantial changes of contract agreements and variations that take place during the realization of a project erode the role of the bidding process (Andvig and Todorov 2011: 23). This opens the door to corrupt activities and allows generating float to pay kickbacks to public agents who treated the agent preferentially (Paterson and Chaudhuri 2007: 171-172). A common corruption scheme during contract implementation is shown in figure III.6. Here, distortion occurs because less quality is delivered. The constructor (client) omits performance to compensate bribes paid to a bid inviter (agent) in advance in order to receive the contract award. The bid inviter forwards a share of the bribe to the supervisor (agent) who does not report the lack of delivered quality (Klitgaard et al. 2000: 122).
Due to the complex nature of construction projects, delays of delivery are very common for a lot of different reasons such as defective materials, subcontractors’ failures, variations, or unfavorable weather conditions. As those delays result in high cost increases, the one who causes the late delivery is liable for the consequences. In this context, the person (agent) who is responsible for deciding about the time and cost effects of delays is prone to corruption because the liable company (client) might try to influence the decision about compensation payments to be made (Andvig and Todorov 2011: 23, 47; Ware et al. 2001: 315; Weber Abramo 2003: 4).

A further risk of corruption lies in the misuse of the complaint mechanism. At this juncture, public agents can submit complaints about insufficient quality delivered even if there is nothing wrong with the product or service. As arranged in advance between the contract parties, the client accepts the fake complaint and pays a fine to the agent (Paterson and Chaudhuri 2007: 171-172; Stansbury 2005: 46; Wiehen and Olaya 2006: 19; Lengwiler and Wolfstetter 2006: 426). To prevent corruption, unbiased supervisors are essential and independent accountants have to conduct final audits (Trepte 2004: 76-77; Weber Abramo 2003: 3; Wiehen and Olaya 2006: 20; Zou 2006: 26-27). Nevertheless, it is always important to monitor and control the supervisors too, ensuring that their work is duly conducted and free from corrupt manipulation (Zou 2006: 26).

Unauthorized changes of the contract, overpriced delivery, substandard goods and services, distortion of competition, unnecessary or unfinished project can all result from corrupt activities. It is very difficult and often impossible to distinguish corruption form
real mistakes and waste. This is why efficiently working procedures are a fundamental component of anticorruption in public procurement. In this context, the definition of adequate rules is a lynchpin to prevent corruption in public contracting (Andvig and Todorov 2011: 22; Anechiarico and Jacobs 2002: 283). In order to cope with the challenges following from the principal-agent-client relationship under asymmetric information, regulatory systems and procedures must be defined carefully. They have to set the right incentives for agents to pursue the objectives of the institution instead of seeking out their private benefit.

III.3. The competitive dialogue according to the law

The competitive dialogue is a procedure during which a limited number of prequalified bidders take part in separately conducted dialogues to determine public needs before an auction takes place. The origin of the competitive dialogue goes back to the year 1996 when it was mentioned for the first time in a green book published by the European Commission (European Commission 1996: 33-35). It is the youngest European procurement procedure introduced as part of the fourth Generation of European Procurement Directives 17/2004/EC and 18/2004/EC.

From the very beginning, the aim has been the definition of a flexible procedure allowing a closer cooperation between the public and private sector. Its objective is to minimize formal regulations when awarding complex contracts (Basedow 2008: 69-71; Arrowsmith 2004: 1280). In order to adapt to European standards, Germany integrated the competitive dialogue into its procurement law as part of the ÖPP-Beschleunigungsgesetz, in the year 2005. In this law the competitive dialogue is defined as a procedure to purchase complex products of a contract value above the threshold where the international standards of the World Trade Organization Government Procurement Agreement apply. In the construction sector the competitive dialogue can be used when awarding contracts involving an investment sum of more than 4.85 million Euros\(^\text{12}\). For such projects the competitive dialogue forms the fourth

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\(^{12}\) Construction projects with an investment sum below the threshold of 4.85 million Euros are subject to national legal standards, which do not include the competitive dialogue
procurement procedure besides the open competitive tendering, restricted competitive tendering and negotiated competitive tendering (§101 section 1 GWB)\(^\text{13}\).

Whereas open competitive tendering is the standard procedure that takes priority when spending public money, the competitive dialogue may only be applied when the procurement entity is not able to specifically define the technical and/or financial solutions for the announced project (§ 3a section 4 VOB/A). The basic idea of the competitive dialogue is to find a third way between the very strictly formalized open and restricted competitive tendering and the much less regulated negotiated competitive tendering (Schenke 2008: 77-81; Beuter 2005: 7). It provides a more structured procedure than negotiated competitive tendering without being as strictly rule-bound as open competitive tendering (Arrowsmith 2004: 1280-1283).

While applying a competitive dialogue is more common in other European member states, the procedure has been rarely used in Germany (Schwabe 2009: 31). According to the database Tenders Electronic Daily\(^\text{14}\) provided by the European Union, procurement entities used the competitive dialogue for 61 construction projects between January 2006 and August 2011. During the same period of time, they awarded 3,433 construction projects through negotiated competitive tendering from which 169 were procured without a public announcement, 61,740 through open competitive tendering and 2,013 projects through restricted competitive tendering. While the scope of application of negotiated competitive tendering is not clearly separated from the one of the competitive dialogue, these numbers show that procurement entities prefer the application of the former over the later (Schenke 2008: 86; Trautner 2006: 90).

According to the online platform competitononline, the application of negotiated competitive tendering takes place even more often than the numbers in Tenders Electronic Daily suggest. From the analysis of 2,894 announced projects in Germany, 52 percent were announced based on a negotiated procedure\(^\text{15}\). From an anticorruption point of view the frequent application of negotiations is seen as critical, especially when

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\(^{13}\) Non-restricted competitive tendering is an open procedure during which an unlimited number of bidders are accepted to take part in an auction. Restricted competitive tendering limits the auction to a pre-defined set of qualified companies. In negotiated competitive tendering negotiations with one bidder or a limited small number of bidders replace the conduct of an auction.

\(^{14}\) see: http://ted.europa.eu/TED/main/HomePage.do (last accessed on 12 January 2012)

\(^{15}\) see: http://www.dabonline.de/2011-03/verhandlungsverfahren-dominieren/ (last accessed on 11 November 2011)
a contract is awarded without a public announcement (e.g. Klitgaard et al. 2000: 120-121; OECD 2006: 12; Rose-Ackerman 1999:59; Wiehen and Olaya 2006: 35). The legal codes only barely define the structure of negotiated competitive tendering. Legal scholars often claim that the application of negotiated competitive tendering swiftly goes along with a lack of transparency, nondiscrimination and competition. These circumstances in turn open the door to malfeasance (Schwabe 2009: 135-136, 228-229).

From the legal text of the German Procurement Law one can deduce three main procurement stages that are part of a competitive dialogue (§ 3a section 4 VOB/A; Heiermann et al. 2008: 102-104). First, the procurement entity has to conduct a pre-qualification. In the procurement announcement the public entity has to define the goals to be achieved, the selection criteria of pre-qualification and the evaluation criteria. The procurement entity only admits suppliers as dialogue partners who can prove sufficient expertise, reliability and performance as a dialogue partner. Second, an unspecified number of dialogues take place in several phases with the pre-qualified candidates. The aim of the dialogues is to meet the goals specified in the procurement announcement. The dialogue phase ends when a solution to the public needs could be found or when the parties are not able to define a solution. Third, if a solution was found, the selected suppliers are subsequently invited to submit their bids according to the concepts discussed during the dialogues. After bid submission the parties have the opportunity to clarify certain aspects as long as they do not change elementary parts of each bid. The bids have to be evaluated according to the pre-defined evaluation criteria. Again the procuring entity possesses the opportunity to clarify certain aspects with the best bidder as long as they do not change the content of the offer fundamentally.

The unique character of this procurement procedure is the opportunity to conduct dialogues during which the public entity invites bidders separately to present a solution to the announced problems and needs (§ 3a section 4 number 3VOB/A; Mösinger 2009: 697; Galla and Palgen 2007: 34). Unlike in other European procedures, public agents do not have to prepare detailed project plans before they announce the project. The procedure assigns the specific definition of a solution from the public entity to the suppliers (Schwabe 2009: 172-174; Meißner 2005: 89-91). While the dialogue phase is proceeding, the bidders retain the opportunity to fine-tune their offers and embrace the requirements and preferences of the public entity (Meißner 2005: 89-91).
The procurement rules in § 3a section 4 VOB/A that regulate the procedure do not specify the implementation of the dialogue phase in detail. The procurement entity is given the discretion to develop the dialogues in a way most suitable for the respective project. But they have to adhere to certain rules. The different parties are able to negotiate but price fixing is forbidden. Only cost estimations as a part of the suggested solutions are allowed. It may not be disclosed any information that would favor a particular bidder. All bidders have to be treated equally. Proposals of the parties must be kept confidential. During the dialogue rounds, the public bid inviter can discard those bidders that are not able to define a competitive solution to the defined problems. At the end of the dialogue phase there have to remain enough bidders to ensure real competition when calling for the final bid submission. The public entity has to treat all bidders equally. It has to keep all bidders informed about important decisions and results from the dialogue phase.

The openness of the competitive dialogue may help to find best solutions when a procurement entity is not capable to specify public needs in detail. Right from the start the public sector is given the possibility to learn from the suppliers’ expertise and profit from its innovations. This is why the competitive dialogue is seen as a procurement procedure able to help saving public money. (Schwabe 2009: 30; Gralla and Palgen 2007: 33; Pünder 2006: 24; Heiermann 2005: 767). However, legal scholars often claim that the competitive dialogue is not sufficiently defined in the respective ordinances. This can result in legal uncertainty and detain procurement entities from applying the procedure (Mösinger 2009: 695; Trautner 2006: 90; Heiermann 2005: 766). Furthermore, the question arises whether the provided discretionary power inherent to the competitive dialogue forms a gateway for corrupt behavior. Or, can the structured collaboration within the competitive dialogue replace cronyism and favoritism in public procurement?

III.4. Characteristics of the empirical approach

In order to investigate the risks of corruption in the competitive dialogue, the research design follows two objectives. First, it concentrates on the role of the competitive dialogue to find out how the legal framework is applied in the German construction sector. Second, on basis of this information and by means of the relevant theories, it
aims at analyzing the competitive dialogue regarding inherent challenges and chances for anticorruption in public procurement. The approach shows whether the competitive dialogue is able to combine an effective fight against corruption with an expedient procurement process. The following explanations shortly illustrate specific characteristics of the survey design, the sample, the survey implementation and the evaluation method.

III.4.1. Survey design

Expert interviews are suited to provide an insight in the scarce knowledge about the practice of the competitive dialogue. They allow reconstructing the application of the phenomenon and serve as an appropriate tool to explore the unfamiliar field (Diekmann 2007: 30; Gläser and Laudel 2006: 9-14). Because of the lack of documented experience with the competitive dialogue the entire range of possible questions and answers was unknown ex ante. Thus, a partly standardized semi-structured questionnaire served as a guideline for each interview. In order to support internal validity, the sequence of questions was developed along the five stages of the standard procurement process (section III.2) also taking into account the legal framework of the competitive dialogue (section III.3). The guideline focuses on sensitive areas along the standard procurement process with the intention to find out how agents handle the various risks of corruption in a competitive dialogue. Besides, the guideline includes questions why the competitive dialogue was applied and if the procedure was considered to have served its purpose. The exact interview guideline can be found in the Appendix III.A.

III.4.2. Sample

According to the Database Tenders Electronic Daily provided by the European Commission16, 260 public projects were announced in a competitive dialogue in Germany since its implementation until August 2011. Within these 260 projects, 61 projects of 44 different procurement entities involved public works. All the 44 procurement entities were contacted via email to ask for an interview. Ten procurement

16 see: http://ted.europa.eu/TED/main/HomePage.do (last accessed on 8 September 2011)
entities were willing to participate in the study by agreeing to interviews or by suggesting further contacts of consultants and bidders. Besides, construction companies were contacted to request for interviews as well. Contacts were established during a visit of the trade fair Bau 2011 in Munich where important market players of the construction sector met. All in all, 23 representatives from twelve different construction projects were willing to grant an interview. These twelve projects present nearly twenty percent of all projects announced in a competitive dialogue in the German construction sector. Hence, the sample can be considered representative and is sufficient to provide a sophisticated insight view into the procurement practice of the competitive dialogue during contracting activities for public works in Germany.

The group of interviewees includes ten public officials, six consultants as well as seven suppliers. Out of the seven interviewed suppliers, one had already won a contract in a competitive dialogue, four took part in a competitive dialogue but did not obtain the contract award and two already took part in more than one competitive dialogue and had already won or lost such a competition. The different types of experts selected ensure a complete inside view of the market situation. In this context, it was seen as especially important to interview suppliers who had won a competitive dialogue as well as those who had lost such a competition. By sharing their experience and knowledge gained during the direct participation in the procedures, the experts could be considered insiders who could legitimately provide the information needed for the research project (Meuser and Nagel 2005: 73; Bogner and Menz 2005: 7-8).

III.4.3. Survey implementation

During February and June 2011, I conducted 23 semi-structured, in-depth expert interviews. From the very beginning, the interviewees were informed that the collected information would be treated confidentially and the interviews were to be kept anonymous. The interviews on average took about one hour time. If possible, the conversations were conducted face-to-face. For organizational reasons some interviews were conducted by phone. Eleven conversations took place directly whereas in twelve cases I called the experts for the interview. In all cases I asked the interviewee for permission to record the conversations to save the obtained data for the analysis (Schaffer 2002: 87). In order to establish understanding for the need of recording, I
explained clearly why it is of avail to record the conversation. I provided the interviewee with detailed information about the intention of the interviews and about the purpose of the research project. Even so, four interview partners preferred me to take notes instead of recording the conversation. One asked to switch off the recorder when he talked about illegal behaviour explicitly. In these cases a report of the conversation was prepared and inspected by the interviewees in terms of completeness and correctness. After the 23 interviews were conducted, the provided answers and explanations included more and more recurrences and the report of new details became very seldom. Therefore, it was seen as appropriate to stop the interview phase at this point. Appendix III.B provides a list of the interviews conducted.

While interviews served as the primary approach to collect relevant data, further important information was gathered during the participation in a symposium on the competitive dialogue where public and private agents met to discuss strengths and weaknesses of the competitive dialogue. Besides, procurement announcements published in the Internet and supporting material provided by the public procurement entities was considered. The triangulation of resource supported the maintenance of construct validity.

III.4.4. Evaluation

As explained in chapter II, the data was evaluated by accomplishing Mayring’s qualitative content analysis (2007: 83-89, 2002: 114-117). First, all interviews were transcribed. Second, the deductive system of categories was prepared based on the relevant theories presented in chapter II.3 and III.2 also taking into account the legal codes that define the competitive dialogue. Third, one by one each interview was analyzed. The employed computer software maxqda facilitated this procedure. Fourth, during this process, the established category system was reviewed several times in order to guarantee the logic and correctness of subsumptions applied and to ensure internal validity (Flick 1991: 165). Fifth, by analyzing the completed category system in terms of the focus of the paper it was possible to reconstruct the procurement practice of the competitive dialogue. Based on the theories presented above, the application of the competitive dialogue was examined revealing chances and challenges for anticorruption in public procurement. Keeping in mind the concept of internal validity, I
focused on within-case analysis to understand the dynamics within single settings coupled with a cross-case search for patterns (Eisenhardt 1989: 539-540). The results of the investigation are presented in the following sections.

III.5. Challenges and chances when curbing corruption

The analysis of the collected data is developed along the five stages of the standard procurement process (demand determination, preparation, bidding, contract implementation and final audit). Each subsection starts with the presentation of the data from the sample. This first step summarizes main patterns of the twelve cases and alludes to distinctions of the different cases. As the interviews' were held in German, most of the time experts are cited indirectly. But I also translated some direct quotations and added them to the section aiming to illustrate the development of the findings in a more immediate way. In a second step, the data will be analyzed to discuss the risks of corruption in each stage. Finally, research findings are presented in form of propositions. The propositions underline challenges and chances of the competitive dialogue when fighting corruption and present policy recommendation on how to handle specific risks of malfeasance in the competitive dialogue.

III.5.1. Demand determination

Selection of a procurement procedure

Two main decisions are to be made by public agents in the demand determination stage: First they select the project to be realized. With respect to this, experts in the sample argued that a unique characteristic of the competitive dialogue is its public oriented approach to contracting that allows the integration of different stakeholders into the process of decision-making from the very beginning. The second main decision during demand determination refers to the selection of the procurement procedure to be applied. In this context, one public official explained, that in large complex construction projects procurement agents often try to circumvent rigid procurement rules, while the flexibility of the competitive dialogue motivates project owners to stick to the rules (Interview 11). Another procurement manager stated that with stricter legal practices,
the procurement entity tends to invest their efforts into applying the competitive dialogue instead of trying to circumvent procurement law. He added,

“In case the competitive dialogue had not existed yet, the procurement entity would have tried to find loopholes in the procurement law. We would have tried to establish a legitimate strategy of circumvention in order to avoid the rigidity of conventional procedures. In this case, it would be totally in our hands to structure the contracting process” (Interview 2).

According to the literature on anticorruption in public procurement, it is important to focus on these political decisions that precede a procurement process. The source of malfeasance often lies in the early stage of demand determination when political favors result in the selection of uncompetitive procedures or unnecessary and unjustified projects induced to favor a certain constructor (Heggstad and Frøystad 2011: 1, 3; OECD 2007: 21; Wiehen and Olaya 2006: 18, 32-42). The circumvention of procurement law not only forms a possibility to escape from rigid administrative formalism. It is also a way to camouflage illegal behavior. Strategies of avoidance are highly vulnerable to corruption because the process of decision-making is no longer based on standards and regulations at all. Malfeasance becomes an easy task in such an environment.

The application of procurement law forms the basis for fair competition because it provides principles and guidelines every participant can rely on (Portz 2007: 356). Therefore, it is seen as a chance for anticorruption in public procurement that the flexible nature of the competitive dialogue creates an incentive for contracting entities to apply procurement law. Furthermore, the public oriented approach of the competitive dialogue allows for integrating a relatively high amount of players into the procedure from the very beginning. The integration of many different parties into a project induces pressure to explain decisions made. It serves as an indicator that the procedure follows the interest of public society instead of particular personal interests of specific actors.

**Proposition 1:** Two important characteristics of the competitive dialogue contributing to anticorruption in public procurement are the inherent flexibility together with the feasibility to integrate many players into the process of decision-making from the very beginning.
Selection of the organizational setup

In the considered cases the competitive dialogue was typically organized in a project-based organization. Appointed project managers were responsible for coordinating a competitive dialogue and for ensuring the successful realization of the project. In addition to this, all the interviewed procurement entities hired consultants from the very beginning of the procedure. These experts assessed public needs and prepared the decisions to be made during demand determination. Besides, the same consultants offered advisory services in the subsequent procurement stages. One expert stated that the involvement of such a high number of consultants into the process is a special characteristic of the competitive dialogue (Interview 20). In order to avoid conflicts of interests, one procurement entity required a letter of acknowledgement to be signed by each consultant. They had to attest their economical or personal independency from any potential contractor. Furthermore, they committed themselves to announce changes to their status of independency (Interview 9). One typical explanation of a public official exemplifies the organization of the competitive dialogue:

“The city council formed a project team that was responsible to implement the competitive dialogue on behalf of the contracting authority. Among others, the project team consists of construction planners, [...] representatives from the Municipal Department of Urban Development, from the Municipal Department of Civil Service and from the Municipal Department of Urban Planning. [...] Mr X is head of the project team and supervises the project. Besides, the project team includes external experts” (Interview 5).

Anticorruption scholars warn that organizing public procurement on a project basis bears specific risks of corruption because some agents such as the project leader are involved in the entire procurement procedure and separation of power does not exist. Furthermore, in this form of organization it is common to hire a relative high number of external private parties to support the project realization. Intensive task sharing between public officials and external consultant may create divided loyalties and decrease the barriers to corrupt behavior (Andvig and Todorov 2011: 5, 38). Besides these aspects, the involvement of many external consultants increases the amount of cash transaction between external and internal entities. As a consequence, it becomes more difficult to monitor cash flows and the risk of embezzlement increases (Andvig and Todorov 2011: 53).
But to avoid malfeasance it is important to conduct an assessment of whether a need is real before requirements for the purchase are defined (Heggstad and Frøystad 2011: 3). Public agents often do not have the knowledge to determine the magnitude and quantities of needed investments by themselves (Klitgaard et al. 2000: 122). Especially in complex projects, such as public works, public entities depend on the expertise of external consultants to prepare bid assessments (Klitgaard et al. 2000: 132). In this context, anticorruption requires consultants who work independently from any potential constructor (Wiehen and Olaya 2006: 33). The written verification of independence that had to be signed in one of the considered cases is perceived as a valuable tool to prevent conflicts of interests (Portz 2007: 363). Still, it depends on honest self-reporting of each agent and it does not necessarily inhibit design bias (Paterson and Chaudhuri 2007: 168).

In order to decrease the risk of malfeasance, it is recommended to exclude consultants who are involved in decisions about demand determination from a subsequent process. The delegation of main activities along the entire procurement process to a private bureau moves a large part of procurement activities out of public scrutiny. In case one private bureau should be entitled to the entire bidding process, the organization of high-level corruption, where politicians and high-ranking public officials undermine the procurement process from the very beginning, is being facilitated by the system itself (Andvig and Todorov 2011: 23). Applying the concept of separation of power not only when organizing public offices but also during the process of hiring consultants supports the prevention of corruption.

**Proposition 2:** A risk of corruption in the procurement practice of the competitive dialogue is seen in the delegation of activities along the entire procurement process to one private bureau or to a leading public official. In order to prevent corruption, it is recommended to limit the scope of actions of consultants and project leaders.

**III.5.2. Preparation**

*Announcement and planning of the project*

The collected data shows that a project procured in a competitive dialogue is announced in a notably early status of the project plan. The project plans supporting the project
announcements avoided detailed specifications. It included only a minimum of required basic conditions and rough explanations of what was needed (Interview 2; Interview 9; Interview 17). The project description is not required to be complete at this stage (Interview 2; Interview 11). It is rather supposed to focus on identifying goals to be achieved (Interview 10). Based upon their expertise bidders were expected to provide suggestions on how to realize the objectives described in the procurement plan (Interview 1; Interview 6; Interview 19). Experiences with this procedure show that it requires a very flexible awarding authority open to new ideas and approaches. In this context, one supplier explained if the project approval procedure would ask for too strict operational facility requirements, the competitive dialogue would not develop its typical characteristics. It might even fail before a contract can be awarded (Interview 21). According to the interviewed experts, the competition started before participants even knew what they were expected to procure. The following statements are typical:

“...The crucial characteristic of the competitive dialogue is the fact that you can start the procedure earlier. You do not have to define a minimum of specifications to announce the project. In a competitive dialogue you are able to announce the project without making such decisions because you discuss those aspects with the bidders” (Interview 9).

“...Here [in the competitive dialogue] the competition already starts when planning the project. [...] This is a distinctiveness of the competitive dialogue” (Interview 5).

Scholars often argue that the precise planning of a project and the provision of a comprehensive list of specification prepared before announcing a project creates a level playing field for the bidding (e.g. Klitgaard et al. 2000: 123, 124; Maravić 2006: 214-215). It is suggested that the definition of explicit requirements allows suppliers to prepare their offers on a basis of clear conditions and the evaluation of bids becomes easy. However, conflicts of interests and distortion of competition often originate in particular in the period before a project is even announced when bribes are paid to manipulate the size and specifications of demanded goods and services (OECD 2006: 12; Portz 2007: 365; Rose-Ackermann 1999: 59; Wiehen and Olaya 2006: 35). It is common in public works that those agents who design a project also realize the construction. In known corruption cases this conjunction indicated and fostered malfeasance. Corruption cases in the past have shown that long lists of specifications instead provide

17 The preparation of a detailed list of specification before the announcement of a project is common standard in conventional procurement procedures.
plenty of room for manipulation. Klitgaard et al. (2000: 123) state, “Tight specification limit discretion but may also enhance monopoly power among vendors”. Thus, detailed list of specifications open the door to malfeasance.

Prevalently, public preferences are not common knowledge, in particular for complex goods such as construction projects. A high level of expertise is necessary to appraise the specific project plan in terms of its accuracy and expediency. This makes it relatively easy for insiders to influence the detailed requirements specified in the project plan in favor of a certain company (Klitgaard et al. 2000: 120-121; Rose-Ackerman 1999: 59). Referring to Bannenberg and Schauensteiner (2004: 54-56), in particular planning bureaus should be in the center of attention when fighting corruption in the construction sector. Consultants who help a bid inviter to prepare the project plans needed to announce a public project, often also work closely together with construction companies. At the same time, it occurs quite often that constructors offer their support to designers and architects to prepare the procurement plans without charge.

Therefore, a valuable intervention to prevent corruption is found to be the preparation of detailed plans by the competitive dialogue not before a project has been announced. Conducting the process in this manner allows many actors to contribute to this stage in an exposed way. Having said this, the focus of the administrative process on defined goals instead of long lists of specifications in the procurement announcement of a competitive dialogue makes it difficult to tailor lists of specifications to a certain bidder before a project is even published. At the same time, the competitive dialogue takes the burden from the public officials to explain experienced constructors how to build a project. In many projects it can be challenging to enforce a requirement to provide a thorough list of specifications. Public agents may unwillingly prepare insufficient project plans because of a lack of expertise in the field of the public demand. List of specifications consequently prove to be inadequate and actually inhibit the successful project implementation from the very beginning. The competitive dialogue officially assigns the specification of demand to those who build the project. They are expected to apply their technical expertise and realize a certain goal. In addition, the competition is able to unfold a positive effect on the quality of the list of specifications to be assembled in accordance with the feedback of several competing building constructors.
**Proposition 3**: The competitive dialogue turns a liaison between public and private parties into legitimate cooperation. It contributes to replacing conspiracy during the design of a project with open discussions already during the project-planning phase.

*Definition of evaluation criteria*

One supplier noted that despite these procedural precautions of the competitive dialogue, it is possible to create competitive advantages through offering bribes in the planning phase. Even though no preconceived list of specifications exists, agents still might try to adjust the evaluation criteria to the special needs of a constructor (Interview 8). In the considered cases the evaluation criteria were commonly disposed in different categories listed in an evaluation matrix. Various criterions were subordinated to each category. Categories concentrated either on economic aspects such as production-, maintenance- and operating cost or they focused on quality criteria such as architecture, workmanship, innovation or integration into the townscape. Another important category defined in many projects focused on the risk management (Interview 2).

According to the interviewees, it is one of the greatest challenges in a competitive dialogue to determine the evaluation matrix because the procurement entity has to strictly adhere to the criteria throughout the entire dialogue phase and evaluation of bids (Interview 4; Interview 8; Interview 11). The evaluation matrix was developed in two different ways in the analyzed projects. In some projects, the procurement entities only determined the main categories and their weighting before the announcement of the project whereas they elaborated on details later during the dialogue phase (Interview 3; Interview 8; Interview 11; Interview 12; Interview 14). Other project owners defined every single criterion of the evaluation matrix before the announcement of a project and did not change it anymore (Interview 2; Interview 3; Interview 6; Interview 8; Interview 10; Interview 13).

Some experts argued that the definition of weighted evaluation categories without detailed subordinated criteria is in line with the openness inherent to the preparation phase of the competitive dialogue (Interview 23). In contrast, others stated it as very important to prepare the matrix carefully because considerations taken into account
become verifiable (Interview 2; Interview 9; Interview 11). The higher the number of different criterions, the more likely it would be conspicuous when one participant of an evaluation team assigns high scores always to the same bid. In this context, one procurement manager reported that at the end of the bid assessment the entire team was very excited about the final result of the assessment. Due to the very high number of different criteria they assessed, the evaluation team had lost track and were not certain who would receive the bid until they summed up all scores at the very end of the bid evaluation (Interview 11).

From an anticorruption point of view the definition of the evaluation criteria emerges to be a weak link in the procurement process of the analyzed cases. Even though some project owners took the establishment of the matrix very serious, other procurement entities did not adhere to the legal standards and adjusted the criteria throughout the dialogue process. Anticorruption requires precise evaluation criteria to be defined a priori (OECD 2007: 22; Trepte 2004: 76; Ware et al. 2007: 314). Incomplete evaluation criteria or the amendment of the matrix throughout the process bear the potential of easily resulting in the adjustment of the criteria to the ideas and concepts of one certain bidder. Intransparent judgments during the subsequent dialogue phase are a predictable consequence of this. Therefore, it is recommended to specify the criteria in every detail in the procurement documents that support the project announcement (Wiehen and Olaya 2006: 42).

Proposition 4: The modifications and adjustment of evaluation criteria after the project announcement result in loose judgments during the dialogue phase and open the door to malfeasance. In order to create a level playing field for public contracting, it is recommended to define a very detailed evaluation matrix before the project is announced and make it available to all interested clients.

Prequalification

Suppliers have to pass a prequalification to take part in the dialogue phase. Interviewed experts confirmed that the prequalification in a competitive dialogue maintains the openness of the demand determination and preparation phase. Bid invters exclusively investigate suppliers' technical skills, financial capabilities and reference projects
(Interview 3; Interview 5; Interview 11). In the analyzed projects, three to seven companies have been able to prequalify for the dialogue phase (Interview 2; Interview 3; Interview 5; Interview 11; Interview 23; Interview 2). Only one procurement manager noted that in a pre-selection, procurement agents may misuse the increased discretionary power and select only preferred companies (Interview 15).

From sources in the literature about anticorruption in public procurement it is known that the smaller the number of prequalified candidates the higher the risk that one of them receives preferential treatment (Portz 2007: 363). Companies might offer a bribe to either pre-qualify or to hinder competitors from pre-qualifying. But when purchasing complex and large products it is reasonable to ensure that suppliers have sufficient financial and technical skills to implement a certain project (Ware et al. 2007: 310). A properly conducted prequalification may affect the outcome of the project in a positive way because bidders who are incapable of managing the realization of a project will not be able to pass it (Klitgaard 1988: 144). This contributes to the prevention of corruption during contract realization where suppliers may involve into corruption in order to camouflage their substandard performance (Lengwiler and Wolfstetter 2006: 10). Besides, in a competitive dialogue, the number of invited candidates cannot be very large because the required efforts to prepare complex bids and to participate in the dialogue phase are considerable. It would also become too expensive to evaluate a large amount of complex bids. Still, enough suppliers have to prequalify in order to ensure a certain competition (Andvig and Todorov 2011: 37). It does not make sense to conduct a dialogue phase with only one candidate.

In order to handle the risks of corruption during prequalification, it is recommended to publish the invitation to prequalification widely and give every candidate sufficient time to prepare the respective documents. The requirements to prequalify and the evaluation criteria have to be precise and concentrate exclusively on the capability of a company to realize a certain project. Minimal administrative efforts to prequalify may attract more suppliers to apply for the participation in a procedure. The documentation and archival storage of the decisions made ensure transparency and accountability of the pre-selection and hold public officials accountable for the decisions made (Trepte 2005: 3; Ware et al. 2007: 311).
**Proposition 5**: A prequalification of bidders is vulnerable to corruption but it is unavoidable in a competitive dialogue in order to limit the temporal and economical efforts necessary to organize the dialogues.

*Dialogue Phase*

The dialogue phase is a formal process. In the considered cases it existed of two to ten rounds of dialogues conducted within a period of nine to twenty months (Interview 4; Interview 5; Interview 23; Interview 19). In one round of dialogues the bid inviter meets with each candidate separately to discuss the candidate’s suggestions on how to achieve the goals defined in the procurement plan (Interview 5). The bid inviter has to organize the meetings in a manner that prevents candidates from getting in contact with their competitors. Several public agents who represented the project owner and various stakeholders representing the bidder attended the respective dialogue meetings. In addition, consultants from both sides were present to offer advice on different key aspects of certain dialogues, including estimators, accountants, technical, financial and juridical experts, representatives of special public departments, subcontractors, or police officers and firemen (Interview 18; Interview 23; Interview 19; Interview 21). Some project owners also invited future users of the project. The exact composition of the present players varied in each dialogue, depending on the main focus of a meeting (Interview 5; Interview 20). But a relative high number of players took part in every one of the dialogues and received the opportunity to ask questions and contribute to the solution of a problem (Interview 4; Interview 13; Interview 17; Interview 18).

The dialogue phase attempted to solve problems to satisfy public needs (Interview 11; Interview 19). One supplier explained that the private party would be required to offer in-depth solutions (Interview 18). According to another bidder, requirement would include explanations of general approaches as well as detailed descriptions of methods to tackle specific challenges (Interview 21). Suppliers will be encouraged to make suggestions regarding technical, operational or financial solutions for the public problem (Interview 3; Interview 7; Interview 9; Interview 21). The bid inviter can express his conceptions and ideas and can have an impact on a supplier’s bid (Interview 8; Interview 12; Interview 20).
It is the bid inviter’s duty to organize the dialogue phase and ensure suitable conditions for the competition. The specified procedure enables the bid inviter to adjust the exact structure of the dialogue phase to the purposes of a certain project. Interviewed project owners informed the invited suppliers in writing about the proceeding, about important timelines and the contents to be discussed in each step of the dialogue phase. They prepared records and continuously updated bidders in written form about the status quo of the dialogue phase and the specific requirements a certain investor would have to fulfill in the following rounds (Interview 5; Interview 11; Interview 23).

One procurement manager claimed that the procedure did not allow for the consideration of the public opinions in the dialogues because of the confidentiality required by law. In the related case this aspect had led to public resistance against the project after the contract was awarded and had periled the realization of the project\textsuperscript{18} (Interview 14). To prevent such a situation, another procurement entity formed a board of advisors existing of 140 citizens who voluntarily took part in the process of decision-making as consultants (Interview 5). The board was able to appraise the competitors’ plans, too and gave advice from the point of view of the citizens. It received full access to important information needed to monitor the process of decision-making. To protect the confidentiality of all information, the board members as all other consultants had to sign a letter of acknowledgement, stating their independence as well as the obligation to treat all information confidentially (Interview 5; Interview 9). The following explanations given by procurement agents are typical:

“Right from the start, the timetable was set. We scheduled a certain period of time to conduct the dialogue phase. We knew at which date we wanted to award the contract. Everybody knew the timetable. The competitors knew it. The public knew it” (Interview 14).

“Always a large team of different people attended the dialogue meetings. The public bid inviter was represented by several specialists of different municipal departments including the head of the Municipal Department of Public Construction, the head of the Municipal Planning Department, the head of the Construction Monitoring Authorities, the Municipal Building Construction Office as well as future user of the building […]. The bidder was also represented by five to six people. Besides, estimators attended the meeting” (Interview 11).
“During the dialogue phase it is the bidders’ task to develop concepts. It is the bidder who makes suggestions” (Interview 12).

Scholars in anticorruption on public procurement raise awareness to the fact that wherever public and private parties meet corruption might occur (e.g. Bannenberg and Schaupensteiner 2004: 60). Hence, participants in a dialogue might misuse the permitted contacts to informally award the contract to a corrupt bidder already before bid submission. They might provide a bribing supplier with confidential information and extra advices how to adapt the bid proposal. But in the dialogues a supplier can also respond on the project owner's wishes. In such a meeting valuable suggestions can be made that may contribute to the success of an investment. The one who delivers a good or service also specifies it. This reverse approach obviates mistakes in the project plan that may impair the contract implementation (Kelman 2002: 13-14).

Avoiding discretion and at the same time requiring flexibility is a trade-off policy makers are confronted with when regulating public procurement. The direct contact has an inherent potential to be abused but it also allows the public sector to profit from the experience of the private sector. This can unfold a positive effect on the economic expediency of the project. It allows “learning by doing” and supports innovations (Andvig and Todorov 2011: 25). In this context, one main organizational mistake made by some entities of the sample was the provision of too little time to conduct the dialogue phase. The analyzed projects show that if less than three dialogues were conducted, the agents tended to be unsatisfied with the outcome of the procedure. Only if sufficient time is scheduled to conduct a certain number of dialogue rounds, can the procedure unfold its special benefits. According to the analyzed projects, a minimum of three dialogue rounds is to be considered necessary, with the exact number depending on the size of a project. If sufficient dialogues rounds are being conducted, the direct meetings between public and private parties potentially increase the quality of the outcome of the procedure.

But meetings between public and private parties requires due diligence to ensure unbiased proceedings. As mentioned above, the many agents participating in the dialogues make the organization of conspiracy more difficult. In particular, the integration of citizens into the process of decision-making works as an additional control mechanism forcing public agents to justify their decision process. From an
anticorruption point of view, complete procurement memorandum and written reports about the dialogue phase play an important role to monitor the cooperation between public and private parties. Accurate written records serve as a trail to control procurement actions. In this context, computer based information management systems can help to ensure the preparation and archiving of complete records (Heegstad and Frøystad 2011: 18; OECD 2007: 89). Such system for instance requires standard information to be typed in a database for every step of a project in order to proceed.

Furthermore, a policy approach that establishes reliable process-independent anticorruption tools is seen as valuable to handle the trade-off between anticorruption and expedient project realization. Process independent anticorruption tools include for instance the installation of whistle-blower hotlines, the implementation of a code of conduct, unexpected and extraordinary controls, training to all agents on how to comply with the code of conduct, or the signing of a certification by all involved people stating that they refrain from corruption (Heggstad and Frøystad 2011: 21-22; Wiehen and Olaya 2006: 54-56). Indeed, in a public administration that misses process-independent anticorruption tools the increased discretionary power allocated to those who conduct the dialogue phase may be easily misused.

**Proposition 6**: If a sufficient number of dialogue rounds are conducted, a direct cooperation between public and private parties contributes to an expedient project realization. In order to support fair behavior, it is recommended to enhance reliable process-independent anticorruption mechanisms that set incentives for good conduct.

**Quality versus price competition**

According to the experts of the sample, most projects analyzed for this study first opened the dialogue phase with a discussion of existing plans exclusively talking about possible solutions, technical details, quality aspects and risk management (Interview 6; Interview 20). Once the parties specified how a goal should be reached, they started to talk about contract design and about financial aspects. (Interview 2; Interview 5; Interview 6; Interview 9; Interview 20). The different parties elaborated on the observed detail of their cases and suppliers revised and reworked their plans several times (Interview 1; Interview 17; Interview 20). At the end of the process, bidders could
take advantage of reconsidering their solution and sorting out redundant material, dispensable equipment and suboptimal construction techniques in order to reduce the price of the offered solution (Interview 11; Interview 17).

Referring to the conducted interviews, the contents discussed in the dialogue phase can be divided into a competition with price aspects and a competition with quality aspects (Interview 2; Interview 9; Interview 14). Interviewed experts explained that the competition with quality unfolds the better the more dialogue phases are conducted, the more open the project starts into the dialogue phase and the better the parties cooperate so that the procurement entity can learn from the private sector (Interview 1; Interview 6; Interview 13; Interview 14; Interview 18; Interview 20; Interview 21).

Only one interviewed supplier stated that a competition with quality is never possible in any public project. He offered the opinion that the competitor who calculates to provide his service at the lowest price and is willing to accept the highest risk will always receive a contract (Interview 16). Another constructor articulated the complaint that project owners often try to assign too many risks to the suppliers without accepting an increased contract price (Interview 18). This attitude can result in speculative prices and might affect the project implementation negatively (Interview 21).

In contrast, two public entities conducted the selection of the winning bidder dominantly based on quality criteria. Economic aspects only played a secondary role (Interview 14; Interview 22; Interview 23). Another procurement manager argued the competitive dialogue to be the only procurement procedure that realizes a competition with quality in practice (Interview 12). Still, the pressure to provide an economical offer remains high and even increases while the dialogue phase is proceeding (Interview 5). Throughout the whole dialogue phase the bid inviter can disqualify suppliers not complying with the requirements. In order to ensure transparency, disqualifications were conducted based upon the evaluation matrix (Interview 11; Interview 13). All decisions have to be documented in writing and put to the records. (Interview 2; Interview 5; Interview 11). The characteristic of the competition in the dialogue rounds is illustrated in the following statements:

“Apart from architectural quality which existed of seven groups of assessment criteria, each including a high number of sub categories, we also considered aspects such as urban development. Prices did not play a comparable important role” (Interview 23).
“Starting with a rough concept, the plans have been improved step by step. When can we realize what and where? Which dependencies exist with regard to contents and time management? Step by step new questions arose for which we needed to search answers” (Interview 5).

From the literature on public procurement it is known that a competition with quality is very seldom in public procurement. One can argue that a pure price competition encumbers the arrangement of corrupt deals as prices are easily comparable and support transparency (Della Porta and Vannucci 2002: 65-66; Weber Abramo 2003: 5). However, the exclusive competition with prices, commonly based on an ex ante very specific definition of demand, encourages the formation of cartels because bidders can rely on the fact that the cheapest offer will invariably be awarded the contract (Andvig and Todorov 2011: 24-25; Portz 2007: 370). Concentrating not only on a competition with price criteria but also on a competition with quality criteria makes the organization of cartels more difficult because technical information cannot be transmitted as readily as price information.

Even though collusion is not a form of corruption, it is worth to consider its implications in this discussion because cartels and corruption work as complements when members pay bribes in order to obtain access to confidential information needed to rig bids and control the cartel (Bannenberg and Schaupensteiner 2004: 57; Heggstad and Frøystad 2011: 10; Klitgaard et al. 2000: 121). Besides, cartels may be seen as an alternative way to manipulate a bidding where several bidders collude to undermine the bidding process (Andvig and Todorov 2011: 62-63). In any case, both types of fraud destroy the procurement mechanism and take a considerable influence on the outcome of the procedure in a negative way (Wiehen and Olay 2006: 16).

Still, it remains a true challenge to implement a quality competition and to conduct a fair comparison of quality aspects. The evaluation of quality criteria mostly requires a high level of expertise (Lengwiler and Wolfstetter 2006: 7). Due to the discretionary power allocated to the team of experts that appraise quality criteria, the risk of corruption is seen as especially high during quality assessments (Weber Abramo 2003: 5). This underlines the important role of the evaluation matrix in a competitive dialogue to be defined in detail from the very beginning. As shown above, a precise and very detailed evaluation matrix used by a team of evaluators is a valuable tool to uncover corruptive activities by a biased team member.
The quality competition as explained by the experts is a unique characteristic of the competitive dialogue. But the competition with quality can only develop if certain organizational measures are implemented. Important success factors to the dialogue phase can be induced from the data: It is recommended to schedule enough time to conduct the dialogue phase because its success is dependent on a sufficient number of intensive dialogue rounds. Besides, all bidders need the same time to overwork their proposals and have to be provided equal opportunity to do so. In case the evaluation matrix is finalized in detail \textit{ex ante} and serves as the basis for all decisions, the results of the dialogue rounds become traceable. Complete reports about the proceeding help to monitor the dialogues.

**Proposition 7:** A quality competition established during the dialogue phase encumbers the formation of cartels. In order to render the process of decision-making accountable and prevent corruption, it is recommended to make decisions on basis of a detailed evaluation matrix and to implement an information management system that supports the preparation of full records.

*Treatment of confidential information*

Experts of the interview sample pointed out that the project owner is not allowed to provide a supplier with confidential information from a competitor’s proposal. Cherry picking that combines the best ideas of different suggestions is forbidden (Interview 11; Interview 14; Interview 21). Still, some procurement entities tried to align technical proposals during the dialogues (Interview 2; Interview 6; Interview 11; Interview 14). Nevertheless, most suppliers do not fear the procurement entities intentionally informing a competitor about their plans to satisfy public needs. Only one supplier was more critical about this concern, especially because of the very high number of people attending a dialogue (Interview 18).

Besides, suppliers have the opportunity to ask general questions which will be answered duly by the procurement entities in between the different stages of dialogues. This is done formally in writing with a copy for information to all suppliers (Interview 23; Interview 19). This exchange does by its nature allow suppliers to form at least some general idea about the propositions made by their competitors (Interview 21). Bidders
accordingly state that they are able to infer some of the competitor’s basic ideas from the questions that were answered in writing to all bidders (Interview 16; Interview 20). Applicants harbor the legitimate fear that good ideas during the administrative process will unintentionally be revealed and leak out to competing participants (Interview 17; Interview 19; Interview 20). To address this concern, experienced competitors provide their ideas step-by-step only, holding back their most sensitive pieces of information for the last round of dialogues (Interview 18; Interview 20).

In contrast to the above described point-of-view, one supplier explained that after all the proposals of competitors could be expected to vary decisively from each other. She therefore considered information obtained through the legitimate proceedings of the dialogue about a competitor’s solution of a technical problem near to useless. It would in all likelihood not fit the unique approach every one of the competitors would offer. It seemed unlikely to this particular supplier’s view that adjusting the own proposal with technical plans and solutions similar to the competitor’s proposal would lead to a predictable pay off in winning the contract award. This supplier found it to be a more promising approach to carefully listen to the public officials during the dialogues in order to satisfy the articulated, legitimately provided requests and specifications (Interview 20).

The literature on anticorruption in public procurement describes the risks of misusing confidential information in public procurement. Companies might offer bribes in order to receive access to information on competitors’ proposals (e.g. Heggstad and Frøystad 2011: 23). In this context, financial and economic information can be provided more easily in comparison to technical information. The misuse of technical information requires industrial espionage which is very difficult to organize. The precise transmission of technical information is not an easy task and only few people have the knowledge to conceive the information and forward the details illegally (Andvig and Todorov 2011: 43).

A bidder’s incentive to gain access to their competitors’ calculations is particularly high in construction contracts. These complex projects are confronted with exogenous shocks when implementing the contract, such as extreme weather conditions, industry-wide

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19 In case industrial espionage does happen it may cause more serious damage than pure corruption. It destroys competitive advantages of a company on the long run.
strikes or variation in world market prices of basic materials. If a bidder behaves more risk-averse in measuring the financial effects of theses shocks than his competitor, his likelihood to win the bidding decreases. If he underestimates these risks, his chance to be awarded the contract increases but at the same time losses could occur during the implementation of a contract when an exogenous shock occurs. To handle this trade-off, bidders do have an acute interest to access a competitor’s calculations (Andvig and Todorov 2011: 40-41, 44).

The misuse of confidential information presents a very high risk of malfeasance in the dialogue phase and the organization of a dialogue phase therefore requires the highest degree of discretion from all participants. The many actors involved, their close collaboration and the long periods of time necessary to conduct a dialogue phase create a lot of opportunities during which confidential information can potentially be passed on to a favored candidate. The possibility of a misuse of confidential information cannot be completely avoided in a competitive dialogue. But an adequate emphasis on quality criteria in the evaluation matrix could reduce the misuse of confidential information in public procurement. It is recommended that project owners remain open to accept different proposals for the final bidding and do not try to align the different bids. Variety in the offers makes the misuse of confidential information less attractive. Besides, it is recommended to store sensitive documents at a safe place in between the different dialogue rounds and control the access to sensitive data.

**Proposition 8:** The misuse of confidential information presents a very high risk in the competitive dialogue procedure. An emphasis on a quality competition instead of a prices competition makes the organization of malfeasance more difficult and less attractive.

**Contract Design**

At the core of the dialogue phase lays the determination of the contract. In the considered cases private and public parties developed the contract cooperatively (Interview 6; Interview 7; Interview 20). The cases discussed involved a lump sum contract in which one amount for completing offered solutions was specified without a detailed cost-breakdown. In contrast to the very common unit price contract, a lump
sum contract abstains from requiring a fixed price for each unit of work (Interview 11). According to a procurement manager, choosing a lump sum contract allowed a certain leeway to both parties (Interview 2). Another procurement manager argued due to the fact that the contract was established cooperatively, it was likely to increase the intrinsic motivation of both parties to comply with the terms and conditions (Interview 11). In order to avoid disputes during the implementation of the contract, one procurement entity established a steering committee that was expected to convey the different point of views to each party in case of disagreements (Interview 9).

Scholars often argue that anticorruption in public procurement require contracts based on precise requirements (OECD 2007: 21-22; Wiehen and Olaya 2006: 35). A clear assignment of tasks and prices helps to prevent agents from misusing loopholes for the organization of corrupt transactions. But construction projects by their nature are incomplete. The product to be delivered does not exist at the time when the contract is established and unforeseeable challenges can influence the production process. It is impossible to anticipate all contingencies’ that may occur during the execution of the contract. Hence, a complete description of the goods and services to be delivered is not possible or would indeed go along with exorbitant transaction costs. Adjustments in the actual plans are to be considered unavoidable when contracting a public work. The high number of change orders which are common when executing unit prices contracts reveals the incomplete nature of construction contracts. This becomes an even more serious concern if one keeps in mind that change orders are often misused to organize and conceal corrupt deals. Besides, if the supporting documents and terms of references become unnecessary complex, camouflaging malfeasance becomes an easy task (Heggstad and Frøystad 2011: 20).

Procurement practice shows that trying to prepare a complete construction contract ahead of the execution phase of a project often results in suboptimal project realization. It is seen as a more promising approach for the contract execution when both sides work together to find an optimal solution to a public work instead of trying to complete a contract through the preparation of long lists of specifications. Contracts that are overly specific and detailed have adverse effects as they might set an incentive for each contract party to focus more on the personal advantage instead of the final goal to execute the contract in the best way (Bayerischer Bauindustrieverband 2002: 27-29).
Proposition 9: Developing an incomplete contract cooperatively during the dialogue phase rather than trying to demand a complete list of specifications fixed to unit prices contributes to the outcome of a procedure positively. Camouflaging corruption through long lists of specifications or change orders becomes difficult.

III.5.3. Bidding

Bid Opening

In order to finish the dialogue phase and start with the bidding, the bid inviters of the considered cases described the demand and the following proceeding in writing. Consecutively, they provided the invitation to submit a final and binding bid to the remaining competitors together with the description of what was demanded from each supplier, with important timelines and with information about the place to submit the bid (Interview 2; Interview 5; Interview 11; Interview 14; Interview 23). Normally, at least two suppliers remain at the end of the dialogue phase (Interview 2; Interview 5). In one case the procurement entity only invited one supplier to the bid submission (Interview 6).

Once the procurement entity has invited the remaining candidates to the bidding stage, the competitive dialogue continues with an ordinary submission. There are no strict regulations concerning the opening of a bid in a competitive dialogue. However, interviewed procurement managers confirmed that they act in accordance with the standards known from open and restricted competitive tendering (Interview 4; Interview 5; Interview 11; Interview 23). A typical remark made by a project manager is:

“This is a very classical approach to bidding. [...] The offers had to be submitted at a certain time. The sealed bids were stamped with date and time and we arranged a date to meet for bid opening [...]. We opened every offer and again stamped it and subsequently the bid evaluation started” (Interview 23).

In order to actually realize an advantage from an environment of competition, it is recommended to invite at least two bidders to submit a final bid. Besides, important aspects to be considered at the end of the dialogue phase that help to mitigate malfeasance include the provision of sufficient time to all firms to prepare their final offer (Portz 2007: 368). Furthermore, it is recommended to apply equal time frames and
provide all candidates with the same information allowing them to prepare the final offers under equal conditions (e.g. Heggstad and Frøystad 2011: 23).

It is perceived as valuable that public procurement entities conduct the bid opening in a very formal way even the procurement rules do not require it. It emphasize that now bids are binding and that crucial amendments of the bids are no longer possible. It helps to distinguish the dialogue phase during which only suggestion are made and improvement of the offers are deemed possible from the actual bidding phase based on binding offers. According to the body of literature on anticorruption in public procurement, it is recommended to established best practices for bid openings. These practices include reading out loud the bidders’ names, their submitted prices, the title of the submitted documents and the preparation of a written report of the bid opening signed by all bidders. Only if the procurement officials store the bid documents safely, can it be ensured that the bids are not changed anymore (Portz 2007: 368-369).

**Proposition 10:** It lies within the bid inviter’s discretion how to organize the bid opening. At this juncture, it is recommended to conduct the bid opening in a formal way to support an equal treatment of the bidders and to distinguish the work in progress during the dialogue phase from the actual bidding when offers are binding.

*Clarification of Final Offers*

After bids have been opened, public officials have the opportunity to require clarification referring to specific aspects of the bids. Another possibility of clarification exists after the evaluation of bids has taken place. At both stages, it is unlawful to change substantial contents of the offers (Interview 5). But as one expert stated, the line between acceptable clarifications and illegal amendments is to be considered very thin and leaves room for interpretation (Interview 6).

Scholars specialized on anticorruption in public procurement note that a strict prohibition of post-bid clarification cannot be expected of being obeyed in practice. Complex projects by their nature need some clarification of submitted plans and paper work (Andvig and Todorov 2011: 40). In this context, the clarification phase prior to the evaluation of the bids may help to avoid misunderstandings and ensure a precise evaluation. Still, in particular an opportunity for clarification after the evaluation of bids
is seen as a phase especially vulnerable to illegal agreements. Agents might in this stage feel compelled to introduce terms to a contract that allow variations during the contract implementation. This is how a bid could receive top grades in the bid assessment without being the one who makes the best offer. The contract parties might also try to create floats from which kickbacks can be paid to corrupt officials who supported them.

**Proposition 11:** Clarification of submitted bids can be misused to manipulate the contract award and implement corrupt agreements. It is recommended to clarify all questions about the content of the offers before the evaluation of the bids has taken place and forbid clarification once the bid assessment is finished.

**Bid Evaluation**

In the considered cases a team of public agents evaluated the bids on basis of the evaluation matrix (Interview 2; Interview 5; Interview 11; Interview 13). According to the due process, each expert appraised each bid or a certain part of each bid and gave scores for every criterion defined in the evaluation matrix (Interview 11; Interview 13). One expert explained that quality criteria always leave a certain room for interpretation which may help to camouflage biased decisions (Interview 14). But experts also confirmed that it is possible to make fair and comparable decisions if the project owner provides a detailed and carefully determined evaluation matrix (Interview 15; Interview 11). It is notable that consultants who helped to develop the evaluation matrix and attended the dialogue phase, in most cases, also supported the bid evaluation (Interview 2; Interview 13; Interview 23). A special challenge of the bid assessment in a competitive dialogue is the comparison of the bids that differ in their offered solutions. A judicial consultant stated:

“Bidders submit different proposals to solve a problem. This makes the bid assessment difficult because you have to evaluate and compare different solutions by means of the evaluation matrix [...]. It is a challenge you have to handle in a competitive dialogue” (Interview 9).

From the literature it is known that the evaluation of bids is seen as vulnerable to corruption because at this point the procurement entity decides who should receive the contract (Ware et al. 2007: 314). Many scholars have warned that a major risk of manipulation exists when assessing intangible qualitative criteria such as design or
urbanistic integration because such an assessment is invariably dependent on each evaluator’s own subjective opinion. The evaluation stage of the competitive dialogue is seen as specifically vulnerable to corruption because applicants invited to the bid submission already put much effort into the dialogue phase. These efforts are sunk costs for all bidders who will in lose the competition in the end. They are the higher the longer a supplier bears up the dialogue phase. In some cases the amount of advanced payments sums up to several million Euros. Therefore, the incentive to win the contract by all means is seen as especially high and the risk of corruption deserves particular attention.

In order to ensure traceable decisions, it is therefore essential to quantify nonprice evaluation criteria in a transparent and faithful way (Ware et al. 2007: 314-315; Wiehen and Olaya 2006: 42). This again underlines the important role of the evaluation matrix. Only if evaluation criteria are defined in a precise manner, can bidders get an impression on how discretion is exercised. Providing the criteria to the bidders supports a trustworthy bid assessment (OECD 2007: 259).

According to Paterson and Chaudhuri (2007: 163), technical evaluations supported by consultants contain a particular high risk of manipulation. Consultants might serve as middleman between the public and the private party. If the same consultants are furthermore involved in the entire procurement procedure and especially in the preparation of the evaluation matrix, their readiness to impact the process of decision-making becomes precariously high. Background checks of all involved consultants are seen as important to avoid conflicts of interests (Heggstad and Frøystad 2011: 23). Besides, Lengwiler and Wolfstetter (2006: 421-423) recommend using a median of the evaluator’s scores instead of the usual average because extreme high or low scores do not affect the median as it would affect the usual average. Such an extreme bid could be caused by a bribed expert whose impact is reduced in a quality assessment based on the determination of the median.

If all players involved in the evaluation of bids stay anonymous until the termination of the assessment and no company names are attached to the bid, the identification of the best bid on basis of the evaluation matrix becomes possible. But disclosing the evaluators’ names after the evaluation of bids and keeping them to the records together with a report about the assessment supports a possible control of the evaluators’ decisions ex post. Furthermore, it is recommended to publish the outcome of the
evaluation so that competitors have the opportunity to submit complaints in case of obscurities (Wiehen an Olaya 2006: 41-42).

The formation of an evaluation committee in charge of the assessment of the bids is thought to have a positive influence on the prevention of malpractice compared to the responsibility of a single administrator assessing bids. It is much easier to influence the decision process of one person compared to that of an entire committee (Kelman 1990: 99). Heggstad and Frøystad (2011: 23) recommend separating the evaluation committee members into two teams, one to assess technical components and the other one to conduct the evaluation of economical details. Not sharing the decision-making process between the teams render a manipulation of the overall result to be more difficult.

**Proposition 12.** The evaluation stage of the competitive dialogue is especially sensitive to corruption and requires special caution. First and foremost, it is recommended that a team of experts evaluate the bids. Members of the team must not have contributed to the preparation of the evaluation matrix nor have anyone taken part in the dialogue phase.

**Monitoring of the process and complaint handling**

It is striking that suppliers of the considered cases hardly voiced any complaints aimed at the respective procurement authorities, neither during the dialogues nor after bid submission and evaluation of bids (Interview 11; Interview 23). According to the experts, this is very unusual when procuring complex projects with high investment sums involved. At the same time, experts reported that precise examinations of the decisions made only take place if corresponding complaints have been submitted. Only if a supplier challenges a decision at the procurement chamber, will they analyze the case in detail (Interview 7; Interview 9; Interview 14). If the project owner should not be able to provide complete records and documentations of the case to disclose the correctness of all decision made, the procurement entity has to fear consequences (Interview 9; Interview 14). But in case no complaint is submitted, the project in all likelihood will never be thoroughly inspected.

Concerning this, the interviews also showed that internal control mechanisms focusing on anticorruption are very seldom at work in procurement entities. Ombudsmen or
whistleblower hotlines barely exist. Anticorruption appointees do not want to be confronted with real problems of corruption and see their position as an honorary appointment without real functions. Besides, public agents who execute a project often also supervise it. Public procurement managers seldom broach the risks of corruption in public contracting (Interview 11). Only one procurement manager described an implemented system of checks and balances (Interview 15). Monitoring systems that concentrate on the special characteristics of the competitive dialogue do simply not exist (Interview 4; Interview 9). The following statement demonstrates the situation:

“The topic of corruption is hushed up. [...] Nobody takes the problem serious. Nobody cares about it” (Interview 11).

Literature on anticorruption in public procurement warns that stringent requirements to control a project gain importance when there is little direct control of the procurement process (Trepte 2004: 76). Consequently, the close cooperation and the increased discretion between the participants require monitoring systems designed to enable and uphold a strict accountability of the involved agents concerning their decisions. Auditing, inspections and investigations are the three monitoring approaches that strengthen accountability (Klitgaard et al. 2000: 130). A lack of control mechanisms substantially increases the risk of corruption (Andvig and Todorov 2011: 55; Maravić 2006: 58, 63; Weber Abramo 2003: 21). Procurement managers might as well anticipate this deficit of supervision and consequently allow for a lack of discipline in their process work. Based on their extensive analysis of a significant number of corruption cases in Germany, Bannenberg and Schaupensteiner (2004: 131) conclude that opportunity makes a thief - a lack of control encourages corruption.

**Proposition 13:** The competitive dialogue is a procedure that prevents disputes between participants. It is all the more important to implement monitoring systems that control the entire process of decision-making.

### III.5.4. Contract implementation

The contract implementation stage in the considered cases illustrated that it pays off to allow for sufficient time to conduct the dialogues. According to the experts, the fact alone that various parties, including the bidder, experts and the public entity, were involved in the dialogue phase prevents challenges and disputes during contract
implementation (Interview 11). Interviewed procurement entities that had conducted at least three dialogue rounds reported about positive effects of the competitive dialogue on the execution of the contract. Supplementary claims that are considered to be common in other procurement approaches turned out to be marginal in the competitive dialogue (Interview 11; Interview 12; Interview 19). The implementation of the contract was completed within the planned time horizon and budget line (Interview 11). Due to the fact that the contract had been developed cooperatively between public and private parties, the sense of obligation seemed to increase on both sides to comply with the terms and conditions and implement the contract faithfully (Interview 6; Interview 11).

One expert pointed out that even though the competitive dialogue itself might be time consuming, it generally leads to an overall expedite result. The dialogue here was credited with an implementation of solutions at a shorter time period than without the possible collaboration of the involved participants (Interview 19). Another expert mentioned that the dialogue phase itself is considered as very time consuming. Still, he conceded that it allowed adhering to timelines where other procurement procedures are often confronted with delays (Interview 23). Besides, a comprehensive dialogue phase offers the opportunity to discuss risks more carefully (Interview 12). To the contrary, project owners who organized the dialogue phase in a hasty way were later confronted with problems and disputes and could not realize the same good results as procurement entities that had established the dialogue phase in a more sustainable way (Interview 4; Interview 23).

Generally, the procurement law does not cover the contract implementation phase. Yet corrupt agents often enforce illegal transactions in this stage. According to the literature on anticorruption, in many cases malfeasance hides behind the mask of ordinary mistakes that justify cost increases and delays. Projects that cannot be finalized within the agreed time lines and which are confronted with unexpected problems are more vulnerable to corruption than probably managed contract implementation (Wiehen and Olaya 2006: 17). Hence, being able to prevent delay and mistakes in contract execution is an important strength of the competitive dialogue.

Equally important is an accurate and precise contract implementation. The literature acknowledges the remaining risk that contractors just do not deliver what they offered in their bids simply to increase their profit, or to generate buffer for kickbacks
(Della Porta and Vannucci 2002: 69-70; Herbig 2002: 90; Lengwiler and Wolfstetter 2006: 11; Müller 2002: 107). The competitive dialogue cannot eliminate this risk. Therefore, anticorruption requires monitoring the delivery of goods and services (OECD 2007: 25). To ensure due diligence in the contract implementation stage, a reliable accounting system and several unannounced controls at the construction site are essential (Portz 2007: 372; Wiehen and Olaya 2006: 45-46). A monitoring system established in advance by the project owner supports proper contract implementation (Ware et al. 2007: 315). A system of checks and balances based on transparency and supervision becomes essential to foster good conduct (Maravić 2006: 57-58). It is recommended that such a system not only cover the planning and bidding activities but also focus on the implementation of the contract.

**Proposition 14:** An important strength of the competitive dialogue is the success and expediency realized when implementing the contract accordingly. This success can only be achieved if sufficient time is provided to conduct the dialogue phase and if the competitive dialogue is enhanced with adequate monitoring mechanisms.

### III.5.5. Final audit

According to the data, at the end of every public project an independent revision takes place to inspect whether public accounts have been managed properly (Interview 14). But these controls focus on the accounting process and do not prove the correctness of the background of recorded transactions (Interview 11). They do not analyze whether public funds were invested reasonably. Effective mechanisms of supervision and control to support anticorruption are completely lacking. The following remark made by a procurement manager illustrates the situation:

“There are no monitoring mechanisms in place. [...] There is a subsequent revision. One can assume, [...] that in about five years from now on the public audit department goes through this procurement report. That’s it” (Interview 11).

Ware et al. (2007) suggest integrating forensic tools into standard public audits to increase the effectiveness of controls. In order to support the transparency of the process of decision-making and tackle malfeasance, it is recommended to publish important core data of each project in the web. This would allow the public to monitor the decisions. It would be an improvement of the present deficit control mechanism, an
approach that can be implemented without creating great administrative burden (European Commission 2011: 51).

**Proposition 15**: A main risk of corruption in public procurement entities occurs from the lack of well working control mechanisms. Improvement is perceived as urgently needed.

**III.6. Is it worth the effort?**

Corresponding to the examined cases the proper application of a competitive dialogue requires a substantial allowance of time and organizational skills. Thus, the question arises whether the competitive dialogue is worth the effort. The majority of the interviewed experts agreed that the competitive dialogue improves the procurement system. Especially the public sector appreciates the introduction of this procedure. Only three experts stated that the competitive dialogue offers no additional benefit whatsoever and that the same results could have been achieved with conventional procedures (Interview 4; Interview 15; Interview 16). Cross-checking the database, these critical opinions arose from projects where bid inviters conducted only one or two dialogue rounds within a relatively short period of time or had started the dialogue phase with too many restrictions in the project approval plan. A supplier stated that the competitive dialogue is a strong procedure but it also requires a strong bid inviter, a premise that is not always fulfilled (Interview 21).

The supply side was more critical about the competitive dialogue because suppliers had to devote a significant time for the execution of advance performance without compensation (Interview 18; Interview 21). According to bidders, the procedure often proved not to be sufficiently organized. Still, also in the private sector many interviewed experts expressed the opinion that the competitive dialogue has a legitimate design to address problems in public procurement (Interview 18; Interview 19; Interview 20).

In accordance with the law, public agencies have decided to apply the competitive dialogue to award complex contracts. Interviewed experts suggest the application of a competitive dialogue in particular for cases of technical and financial complexity of a problem to which the solution is yet unknown (Interview 4; Interview 11), for cases in which a public need cannot be fully articulated at the present time (Interview 12), or if a solution has started to be considered but still wants for technical improvement
(Interview 15), in cases of uncertainties regarding the solution of a problem (Interview 12; Interview 7; Interview 19), in cases of the public sector desiring to gain from the expertise of the private sector (Interview 18), or if a project should be developed dynamically (Interview 1).

The size of a project was not of crucial importance when deciding whether to apply a competitive dialogue (Interview 9). Experts explained that the application of the procedure requires a high degree of openness and flexibility (Interview 9; Interview 21). One procurement manager underlines that the competitive dialogue is recommendable when quality aspects play an especially important role. In his opinion the interactive procedure could also be applied to improve the outcome of less technical projects and services, such as the purchase of printer cartridges or cleaning services (Interview 11). The competitive dialogue could be also useful to discuss environmental or labor standards to be fulfilled with the potential contractors (Interview 11; Interview 13). But according to the law the application of the competitive dialogue is not allowed when procuring such products (Interview 11). In contrast, interviewed suppliers do not recommend enhancing the application of the competitive dialogue because of the very high efforts they have to deliver in advance during the process and for which in most cases there is no compensation (Interview 8).

Still, considering the analysis of the twelve cases it is recommended to increase the scope of application of the competitive dialogue in three cases: First, according to § 3a section 3 VOB/A together with § 3 section 3 number 2 VOB/A, restricted competitive tendering should be applied when a project announced with open competitive tendering already failed to produce an acceptable result. In this case, the openness immanent to the competitive dialogue makes it more suitable to find an appropriate solution. Therefore, it is recommended to include this exception to the scope of application of the competitive dialogue defined in § 3a section 4 VOB/A.

Second, according to § 3a section 5, number 1, negotiated competitive tendering can be applied in case a project announced in open competitive tendering or restricted competitive tendering did not result in any cost efficient offer. In such a case, the competitive dialogue seems to be more suitable because this procedure assigns more bargaining power to the public entity than negotiated competitive tendering and at the same time opens an opportunity to discuss further technical solutions.
Third, § 3a section 5 number 3 VOB/A assigns the application of negotiated competitive tendering to cases in which it is not possible to define the list of specifications in a way that allows for the estimation of prices. It is recommended to eliminate this section because a competitive dialogue already covers these cases. At the same time, the competitive dialogue is seen as more suitable to comply with the procurement principles of competition and non-discrimination (Schwabe 2009: 135).

**Proposition 16:** The scope of application of the competitive dialogue is not precisely separated from the scope of application of negotiated competitive tendering. It is recommended to enlarge the former one on expenses of the later one.

### III.7. Conclusion

The analysis of this section shows that the discretionary power provided to procurement officials in a competitive dialogue often helps to improve the expedient execution of a project. In the majority of examined cases, it allowed the public sector to profit from the expertise of the private sector. The close collaboration obviated problems during the implementation of a project. Delays of delivery were less likely and the procedure helped to finish projects within the planned target costs. In order to develop the advantages inherent to the competitive dialogue, it is essential to conduct a sufficient number of dialogue rounds. According to the examined projects, it is recommendable to conduct at least three to four rounds so that the dynamic of a quality competition arises. The exact number increases with the complexity of a project.

While allowing for a closer cooperation between the public and private sector, certain procurement rules emerge to be important in order to mitigate corruption. In this context, it is recommended that the public procurement entity is required to define the evaluation criteria in detail before a project is announced. All decisions during the prequalification, the dialogue phase and the bidding, have to be in line with these evaluation criteria in order to make the process of decision-making accountable. In addition, comprehensive documentation of the development of the procedure has to be considered as an important tool to monitor agents and to hold them responsible for their decisions. It is recommended to disclose the outcome of the evaluation so that parties have the opportunity to submit complaints in case of obscurities.
Still, the close contact between private parties and public entities can be misused to organize corrupt transactions. Offering a bribe in order to manipulate the evaluation of bids is perceived as an especially high risk. This is due to three main reasons to be deducted from the analysis of the application of the competitive dialogue. First, candidates invited to submit a bid already insert an enormous amount of effort into the dialogue phase. As suppliers never receive an adequate compensation for these efforts, the corresponding economic value is lost for those suppliers who are not awarded the contract. The incentive to win the contract by all means increases as the process unfolds. Second, many agents, including consultants, are involved in demand determination and planning activities and at the same time support the evaluation of bids and the award of the contract. This gives them opportunities to influence the entire process of decision-making. Third, some procurement entities do not specify the evaluation matrix in detail from the very beginning. They only define categories to which they add new criteria throughout the dialogue. This allows them to adapt the matrix to the special needs of a certain competitor. Only if the evaluation matrix is completed before the project announcement, will the process of decision-making be accountable.

In contrast, the competitive dialogue dilutes a common corruption scheme based on the manipulation of specifications and the submission of supplementary claims. A project procured in a competitive dialogue becomes public in a much earlier state than projects procured in other procurement approaches. The procedure conducts the majority of planning activities after the announcement of public needs. This increases transparency and allows starting the competition at an early stage. It also hinders project owners from tailoring the list of specification to the needs of a certain bidder. Furthermore, supplementary claims and change orders are relatively rare in a competitive dialogue compared to other procedures. Experts give three main explanations for this development: First, the dialogue phase allows discussing challenges more carefully and considering possible precautions. Second, the award of a lump sum contract instead of a unit-price contract makes it very difficult to justify supplementary claims. Third, the intrinsic motivation to implement a contract according to the terms and conditions increase because both parties develop the contract cooperatively. In a competitive dialogue it becomes more difficult to increase the contract amount ex post in order to create monetary buffers for kickbacks. Besides, the competitive dialogue is a very open process that includes a lot of stakeholders in the preparation of the procurement
decisions. In addition, the procedure draws relatively high public attention. This serves as a control mechanism of the decision passed by public representatives.

In order to deploy the valuable effects of the increased discretionary power in a competitive dialogue and at the same time keep the risks of corruption under control, it is recommended to make use of general anticorruption approaches that apply beyond a specific procurement procedure. These include the conduct of extraordinary controls, the use of information management systems, the implementation of whistle-blower hotlines and ombudsmen, organization of trainings and sensitization of public and private agents, the integration of integrity clauses into the contract agreeing that nobody will offer or take bribes, or the explicit designation of anticorruption policies at the beginning of every project. In this context, great weaknesses exist in the considered procurement entities. In most of the cases, the risks of corruption are simply hushed up and effective controls are lacking.
Chapter Four

IV. The Tangible Construction Market:

Learning Lessons from China’s Fight Against Corruption in Public Works

“Procurement markets, and especially major works projects, are often considered a lucrative target for potential bribery [...]. The use of practices such as existing toolkits that enhance good, transparent management of the whole procurement cycle should be encouraged. [The question arises:] What additional instruments could be provided by the Directives to tackle organized crime in public procurement?”

(European Commission 2011: 50-51)

IV.1. China’s innovation to tackle corruption

The above chapters outlined the characteristics of the construction market that illustrate the particular difficulties to curb corruption when contracting for public works. An additional and even more important explanation for the ongoing problem of corruption in the construction industry is the fact that most countries have missed to invest in applied approaches that prevent malfeasance in this sector. Even though countries normally have procurement legislation in place, no administrative mechanisms were developed that support the enforcement of existing laws. In order to prevent malfeasance in public procurement, solutions have to be found ensuring fair and efficient procurement processes according to the regulations in place.
Trying to fill this gap, China established a unique institution called the *Tangible Construction Market*, referred to as “the TCM”, which was introduced to the Chinese construction market in 1997. The TCM is a bid invitation management system for construction projects offering one-stop purchasing services supported by electronic facilities to avoid personal contact (Zou 2004: 184). It is able to facilitate the execution of open as well as restricted procurement procedures. This institution provides administrative mechanisms helping to organize and monitor bidding activities. It aims at providing an efficient and transparent market environment.

The purpose of this paper is to explain the institutional design of the TCM and to evaluate it from an anticorruption point of view. Furthermore, the study depicts whether it is possible and recommendable to implement similar mechanism like the TCM outside China. Three research questions drive the analysis: First, how does the TCM mechanism work? Second, is the TCM capable of curbing corruption on the construction market? Third, is the TCM suitable to be transferred to other countries than China?

Due to the fact that only a few written documents about the TCM exist other than in Chinese, important findings regarding the institutional setup of the TCM are based on a qualitative research project. During a trip to China in the year 2007, I collected the needed data by means of onsite visits of the TCMs in Beijing and Dalian and through 20 face-to-face interviews with Chinese public officials and specialists on construction and anticorruption. Mayering’s (2007, 2002) qualitative content analysis served to examine the data according to the research questions.

The presentation of the results is organized as follows: Chapter IV.2 provides specific details about the applied empirical approach. Chapter IV.3 introduces the main public agencies that are involved in contracting for public works in China. Chapter IV.4 focuses on the structure and working process of the unique institutional approach applied by means of the TCM. Based on this information, chapter IV.5 presents an analysis on whether the TCM provides useful solutions to curb corruption on the construction market. Chapter IV.6 focuses on the transferability of the TCM to other countries than China. Chapter IV.7 concludes the study.
IV.2. **Characteristics of the empirical approach**

The TCM is barely known outside China and no detailed description on the TCM is available other than in Chinese. Therefore, I collected the needed data about the TCM by means of a field investigation conducted during a research trip to China in the year 2007. While the applied methods follows the approach described in chapter II, the following section outlines specific characteristics of the research design of the qualitative study at hand.

**IV.2.1. Survey design**

Experts in anticorruption and public procurement were chosen as adequate interview partners with the intention of gaining a more detailed comprehension of the institutional structures of the TCM. A semi-structured open interview guideline established along the five stages of the standard procurement process helped to receive access to information about the institutional design of the TCM. It allowed for compiling its detailed structure and its precise functions in public contracting for construction works step by step. While some questions were designed to deepen the comprehension of this particular process, others focused on anticorruption systems and approaches. This theory-oriented approach to research fostered the internal validity of the study. Appendix IV.A presents the entire interview guideline.

**IV.2.2. Sample**

I considered two different groups of experts. One focus group consisted of experts who happen to possess extensive knowledge covering anticorruption work and public procurement in China due to their own professional academic interest. Without exception, these participants are professors at Tsinghua University in Beijing. The information gathered in these interviews constituted the contextual basis for further interviews. The second type of experts selected was chosen by criteria of direct involvement in some field of activity of the TCMs located in Beijing or Dalian. These specialists form the main part of the group of interview partners. It contains officers from each department of the TCM and one civil engineer who presented the point of view of the bidders. Each one of them held a key position within the TCM and fulfilled a
specific function during the TCM bidding process. By sharing their experience and knowledge gained during the direct participation in the procedures, these insiders could provide crucial information needed for this paper. (Meuser and Nagel 1991: 443-445). Appendix IV.B includes the list of experts interviewed for this research project. In spite of the considerable effort to find more participants from the private sector, the search was unsuccessful. A reason might be the sensitivity attached to the topic of corruption in China and a lack of a gatekeeper to support the access to the field of private market players. Consequently, this paper emphasizes the point of view of the public sector, a restriction that should be kept in mind when reading the study.

IV.2.3. Survey implementation

I interviewed 20 experts in the field of anticorruption and public procurement. Interview partner who speak English were preferably selected but, if needed, interviews were also held with the help of an interpreter. In order to support the concept of construct validity, the interview data was triangulated with supplementary information collected by on-site visits to the TCMs in Beijing and Dalian, by participation in a bid opening, by watching a bid assessment as well as from film material and brochures provided by TCM officers, by the Chinese Ministry of Supervision and by the Beijing Municipal Bureau of Supervision. Still, the interviews form the essential and most important source of data.

To provide an open interview atmosphere and allow the revelation of information without apprehension, interview partners were granted the choice to stay anonymous. Eleven out of twenty of the interview partners have chosen to remain anonymous. An average interview took around 75 minutes. The conversations were recorded to save the obtained data for the evaluation and analysis. Recording the interviews could cause a particular distortion of the given information as it compiles evidence of the interview (Meuser and Nagel 1991: 450). In order to prevent interview partners from giving biased comments, they were asked for permission to record the conversation. Two interview partners preferred me to take notes instead of recording the conversation. Saturation of data collection was reached when the organizational structure of the TCM and activities conducted in each TCM office became coherent. Therefore, I interviewed at least one public official of each TCM office.
IV.2.4. Evaluation

I analyzed the collected data on the basis of a Mayring's qualitative content analysis (2002: 114-117). For this purpose, I prepared a compilation of a written résumé of each single interview. Preparing a summary renders it unnecessary to transcribe the interviews word by word. It is however very important that the content of the interview is not falsified. Summaries were prepared according to the chronology of the interviews. Only the very important aspects were transcribed word by word (Meuser and Nagel 1991: 455-457). As already explained in section II.8, a deductive system of category dimensions has to be determined to structure and analyze the written summaries of the interviews. These dimensions were defined *a priori*, keeping in mind the risk of corruption in public procurement and the focus of the paper to describe the structure and functions of the TCM. The analysis of the resulting category system in terms of the focus of the paper allowed to find out the scope of the TCM within the standard procurement process (chapter IV.3) and rendered the description of the institutional structure of the TCM possible (chapter IV.4). Based on this information, the examination of its capability to curb corruption in public procurement could be analyzed (chapter IV.5).

IV.3. Public procurement on the Chinese construction market and the risk of corruption

A standard process as defined by Transparency International and already introduced in chapter III.2 helps to describe and analyze public procurement (Wiehen and Olaya 2006: 17). This process consists of five stages, namely demand determination, preparation, bidding, contract implementation and final audit. It was shown above that corruption in public procurement can have many faces including bribery, conflicts of interest, kickbacks, fraud, extortion, deception, or, among others, simple abuse. Chapter III.2, furthermore, introduced the specific risks of corruption entailed in every stage of the procurement process. In accordance with this, the following section outlines main activities and typical risks of corruption along this standard process in the Chinese construction sector in order to expose the basic structures of the environment the TCM is working in.
The standard procurement process starts with the demand determination stage. In this stage, a district council decides how public money should be spent and names the project that should be realized. For instance, public agents could either come to the decision that a municipality needs a school building or a road or a shopping mall or any other public project. Corruption at this stage may occur when a constructor bribes a public person to influence demand determination and induce a project that is not publicly needed but favors the respective private party (Rose-Ackerman 1999: 59; Stansbury 2003: 13). It is relatively easy for high-ranking public officials or politicians to illegally initiate public projects and manipulate demand determination because they hold sufficient discretionary power to influence these fundamental decisions of public procurement. A special area of risk existing in China refers to the size of a project. By implementing big construction works, public agents see the chance to raise a monument of their professional achievements and to improve the preconditions for their future career. Hence, they may inflate the demand from the very beginning without the basis of public need. For instance, by interfering with the demand determination, they may achieve the renovation of the city centre instead of building a new kindergarten that is actually needed (Guo and Lian 2005: 131).

Accordingly, in the preparation stage, public bid inviter have to specify the needs in detail and prepare a procurement plan. They have to collect all approvals and licenses needed to arrange the announcement of the project. In China, the majority of pre-bid approvals are subject to a powerful institution called the Development and Research Commission, referred to as the “DRC”. Together with the local Department of Urban Planning the DRC has to approve all project plans before a bid inviter is able to announce a project at the TCM (Deng Xiaomei 5; Anonymous 3). To apply for the permission of project announcement, the bid inviter has to prepare feasibility studies. He has to justify the demand and provide an exact project plan. Often consultants support the bid inviter to specify the project and prepare required plans. Besides, the DRC only allows the implementation of projects for which the financing has already been arranged and officially approved. Therefore, the bid inviter has to approach the Ministry of Finance or a sub-ordinate finance department of the government which is at various levels responsible for the allocation of public funds (Deng Xiaomei 5). Further important public agencies engaged in the preparation for public bidding are the Ministry of Construction and its subordinated construction departments at the provincial and
local level. These departments are in power to issue licenses to suppliers needed before a constructor is able to participate in public bidding.

Malfeasance in the preparation stage takes place when project designs, contract drafts and bidding documents are not prepared on basis of public needs but in a way that gives a specific supplier a competitive advantage (Weber Abramo 2003: 3; Wiehen and Olaya 2006: 18). For instance, even if a bid inviter collected all required documents correctly, the DRC could reject the application for project approval of a bid inviter as long as the project design does not fit the conception of a preferred supplier who bribed the certain DRC officer in charge20. In addition to these practices, public agents may try to split up projects and manipulate the selection of the bidding procedure to favor a certain party through direct contracting. This practice is explicitly forbidden in China and public bidding is defined as the standard procedure for construction projects (Law on Bid Invitation and Bidding, article 4). Still, a constructor may offer a bribe to the responsible public agent, trying to restrain competition by means of applying a restricted procedure. Again, it is the DRC that decides if a project has to be procured by open bidding or if an exceptional approach can be applied. No matter if a project is procured through open competitive tendering or through restricted competitive tendering, it will be announced and processed in a TCM.

As another way of influencing the bidding process in favor of a specific contractor, public officials can introduce bureaucratic hurdles and develop market barriers to hinder new suppliers from entering the market and protect established market participants in return for corrupt transactions (Linearly 1998: 128). Developing red tape and asking for bribes to overcome rigid rules is a way of increasing personal income for a public official. For instance, a constructor has to apply for various licenses before he will be able to take part in bidding for public projects. In China, paying bribes in order to urge a public official on issuing a certain license more rapidly is of special concern. In comparison to other countries, the issuing of licenses requires a considerable period of time on the Chinese construction market and a relatively high number of licenses are needed to involve in business (Menshausen 2007: 1; Shen and Liu 2004: 9). Another area of concern during the preparation stage especially occurring in China is the illegal use of land to construct large, impressive public buildings. Officials

20Scenarios are outlined only to demonstrate imaginable situations of corruption. The scenarios are preconceived, exclusively to point out the complexity of corruption on the construction market.
misappropriate the property in their administrative district by constructing modern public buildings to gain renown and make a political career (Zou: 2006: 24; Guo and Lian 2005: 131).

A final example for the risk of corruption in the preparation phase refers to consultants, such as a project designer or a private procurement agents who normally offer the bid inviter professional help from the very beginning. These consultants know the specific demand required by their clients and they have good contacts to many market participants. Under these circumstances they might arrange corrupt agreements as part of their offered services. For instance, they could collect bribes from the different suppliers and forward a share to the bid inviter. As a quid pro quo, the bid inviter adjusts the project design in favor of the bribing supplier or he provides confidential information to a certain bidder (Bosshard 2005: 21-22). Such consultants could be of special help for suppliers from foreign countries. Business on the Chinese construction market requires local knowledge and strongly depends on domestic networking (Cheah and Chew 2005: 553). If this structure involves corrupt activities, international suppliers which may face strict anticorruption rules in their home countries, might hire a consultant in order to avoid having to negotiate the transaction by themselves (McGregor 2005: 119).

In the third stage of the standard process, the actual bidding takes place in order to identify the best bidder and award the contract to the respective supplier. In China, all bidding activities have to be conducted inside a TCM. During the selection and the awarding of contracts, the competitors may try to offer bribes to the evaluation committee with the aim to influence the process of decision-making. Hereby, complicated, unpublished selection criteria can give biased evaluators the chance to favor a special bidder. Public officials may misuse confidential information and make it illegally available to certain selected bidders before a bid opening takes place. Or certain bidders may be able to adjust their bids after the bid opening in exchange for a bribe. Or, in reverse to this practice, public agents could intentionally keep information secret with the purpose to hinder supervision and control (Wiehen and Olaya 2006: 18-19; Zou 2006: 25). These are important risks of corruption the TCM aims to control.

During the contract implementation stage, the project has to be concluded according to the terms and conditions of the awarded contract. In China, the Ministry of Construction
and its subordinated agencies supervise the quality of offered projects. Besides, the Ministry of Supervision and its subordinated departments inspects if public agents compile with all administrative rules and regulations throughout the entire procedure (Deng Xiaomei 5). Still, corruption often proceeds after the contract has been awarded. For instance, constructors may bribe supervisors from the said supervision departments making them weaken the controls. Malfeasance within this stage can include inflated cost reporting, or the delivery of substandard quality (Klitgaard 2000: 122). These are illegal strategies applied either to simply increase the own profit or to compensate bribes paid to biased public agents who treated the bidder preferentially. In case substantial changes of contract agreements and variations are allowed during the realization of a project, the role of the bidding process will be eroded and the door will be opened to corrupt activities.

Finally, to prevent public procurement from being affected by corruption, the Ministry of Finance and its subordinated departments monitors whether public money was spent in a legitimate way. Independent accountants from the Public Audit Department conduct final audits (Weber Abramo 2003: 3; Zou 2006: 26-27; Wiehen and Olaya 2006: 20). Nevertheless, agents may offer bribes to the auditors and monitors so that they close their eyes to irregularities.

The above explanations on the risks of corruption have not been listed with the intention of providing a complete overview of possible corruption schemes but for their exemplary value. Indeed, the list is all but exhaustive. As such, it enables a brief insight into the complex, system-embedded structures of corruption in public procurement in the Chinese construction market. Figure IV.1 summarizes the observations of this section. It also depicts that the operation area of the TCM exclusively covers the bidding activities in the second and third stage of the standard process. Its scope includes all bidding activities from publishing the procurement announcement to the award of a contract. Pre-bid and post-bid activities are not covered by the TCM.
<table>
<thead>
<tr>
<th>Five stages of a procurement process</th>
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<th>Main institutions involved in public works</th>
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<td>Observance of conflicts of interests</td>
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<td></td>
<td>Extent of discretionary power</td>
<td>Politicians and public agents</td>
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<tr>
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<td></td>
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<td></td>
<td>Design of bidding documents</td>
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<td></td>
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<td></td>
<td>Design of contract drafts</td>
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<td>Extent of discretionary power</td>
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<td>Extent of bureaucratic hurdles</td>
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<td>Selection of bidder &amp; contract award</td>
<td>Creation of selection criteria</td>
<td>TCM</td>
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<td>(Miss)use of confidential information</td>
<td>Evaluation committee</td>
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<td></td>
<td>Awarding of the contract</td>
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<td></td>
<td>Delays of delivery</td>
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<td>Final accounting &amp; auditing</td>
<td>Biased auditors</td>
<td>Ministry of Finance</td>
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<td>Public Audit Department</td>
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</table>

Figure IV.1 Areas of risk when contracting for public works in China

Thus, a first conclusion point towards a straightforward interpretation: Any market participant intending to engage in corruption practices could choose to try any of the
five stages of the procurement process. As the TCM only covers a certain scope of the procurement process, no matter how effective it might work, there are a lot of docking sites for corruption left over outside its range. Therefore, additional mechanisms would have to be installed to effectively counter and prevent corruption beyond the sphere of the TCM. Still, within its scope of action the TCM is an institution of particular interest because it uses a unique and innovative approach to organize the centerpiece of the procurement procedure. As an institutionalized approach to curbing corruption, a detailed analysis of the TCM is expected to produce further insight into the regulation of the bidding process. It allows for a judgment whether such an approach could curb corruption in public procurement.

IV.4. The Tangible Construction Market

The Chinese Ministry of Construction introduced the TCM in January 1997 in order to support the enforcement of regulations and laws and to prevent corruption in public construction work. The implemented systems are devised to provide mechanisms ensuring compatibility of all bidding activities with existing laws and regulations. The main purpose of the TCM is to concentrate on bidding activities and monitor the process of decision-making. The systems the TCM applies throughout all stages represent an institutionalized attempt to make the bidding process traceable. Every public project with a single contract of over RMB 2 million or a total investment of RMB 30 million has to be procured in the specific TCM branch subordinated to the council in whose jurisdiction a project is realized (Anonymous 7).

The TCM offers one-stop services. All public offices and agencies involved in the bidding process have an office within the TCM building and provide their services on-site at a fixed location (Zou 2004: 184). TCM branches exist all over China and are operating on municipal, provincial and national level. Each TCM branch is subject to the provincial government ordinances and regulations under which it operates. TCM branches are organized under the respective construction commission which is part of the public administration under the city council (Anonymous 8). The information presented in the following is based on investigations conducted at the TCMs in Beijing and Dalian which are both operating on a municipal level (Anonymous 8). The different TCMs in China may vary in their structure, their stage of development and their capacity but the
general system and the basic concept are the same and comparable all over China (Deng Xiaomei 5). The TCM consists of two main departments, namely the Trade Center and the Bidding Management Office. Figure IV.2 depicts the organizational structure of the TCM consisting of the two mentioned departments and the respective subordinated offices.

![Organigram of the Tangible Construction Market](image)

Whereas the offices of the Trade Center provide public and private agents with services supporting the applied auction procedure, the offices subordinated to the Bidding Management Department monitors the bidding activities and approves the qualification of all parties involved in TCM activities. The Trade Center offers venues including meeting rooms for bid openings, a closed-to-public evaluation area, a sealed room to keep bidding documents, a closed-to-public archive and various information facilities where all market participants can receive an inside view on the current market situation (Anonymous 7; Anonymous 10; Anonymous 14).
To explain the successive involvement of the nine TCM offices and the role they play in public bidding, it is helpful to look into the TCM working process. This process exists of eleven stages which are illustrated in figure IV.3. At each stage, several actions have to be completed step by step. Along the way, market actors have to approach various TCM offices to conduct the bidding in accordance with the regulations and standards. The entire process is supported by an information management system and the organization is based on computer software. For each step, some standard information is required from either the demander or from the suppliers to be submitted at the appropriate offices of the TCM. This information has to be saved on the TCM computer system. The office responsible for an administrative step has to feed all information required for a correct and legal conduct into the system. If a previous step of the bidding process has not been completed and some information is still missing, the respective public official cannot carry out the next step. The computer software serves as a supervising mechanism that ensures the correct fulfillment of the administrative regulations and standards along the TCM working process (Anonymous 8; Anonymous 16).

**IV.4.1. Registration of the project**

First of all, the public bid inviter who wants to award a public contract has to register the project at the TCM. For this purpose, he has to submit the construction application documents at the Bidding Service Office (Trade Center). These documents have to include a duly completed standard application form which can be downloaded from the TCM website, the general project plan accepted by the DRC and the permission from the Municipal Office of Urban Planning to realize a specific public work. The Bidding Service
Office conducts the registration whereas the Bidding Supervision Office (Bidding Management Department) is responsible for ensuring that all activities are completed correctly during the entrance registration of a project. In addition, this office inspects if the bid inviter holds all licenses needed to complete a certain project and the qualification from the Ministry of Construction to conduct the bidding himself. In case the paperwork should prove to be incomplete the bid inviter is required to hire a private procurement agency that helps him to organize the contracting activities due diligence (Anonymous 13). The responsible officers file all related documents with the pertinent project documentations and feed relevant standard information into the IT system (Anonymous 19). The required formalities for registration can be conducted within one working day. Once a registration has been successfully completed, the bid inviter receives written notification.

IV.4.2. Publication of the procurement notice

With completed registration at the TCM, the bid inviter is subsequently entitled to advertise the project. This is done by preparation of the project announcement and submission to the Bidding Supervision Office where a revision of the documents is conducted to ensure that the announcement is prepared in accordance with the general standards. Besides a project description, the required documentation of the project announcement includes the bid inviter’s contact details, pre-qualification requirement as well as the duration and location of pre-qualification. If the bid inviter has prepared the announcement correctly, the Bidding Supervision Office, with the help of the Information Office (Trade Center), publishes the advertisement on the TCM-website, on the electronic information terminals and at the TCM information hall (Anonymous 10; Anonymous 13). Accordingly, the bid inviter prepares a declaration of pre-qualification requirements giving detailed information about the organization and requirements of the pre-qualification. The declaration is filed at the Bidding Supervision Office. This document is needed again later when the Bidding Supervision Office has to examine whether companies have been selected carefully during pre-qualification (Anonymous 12).
IV.4.3. Registration of the bidders

A bid inviter’s project announcement at the TCM is designed to solicit suppliers’ interest. Any construction company interested in placing a bid for a public contract is required to enroll at the TCM where the project is announced. The Bidding Service Office conducts the registration process. This requires basic information about the company, including the name and the size of the company, information on its legal status, special qualifications, the contact address and information about the legal person. This information is entered into the TCM electronic data management system. The Bidding Service Office verifies the information with the relevant departments of the Municipal Construction Commission. According to technical capabilities, past performances, financial capabilities and company assets, the construction companies are divided into four groups A*, A, B, C. Those rated with A* may offer a bid for all registered projects whereas construction suppliers in group C are limited to only offer services to small projects (Anonymous 15).

IV.4.4. Bidders’ preparation for pre-qualification

Once suppliers are classified according to this system and have received their rating, they are considered legally qualified for participation in the TCM process. Technically, this means that interested suppliers have to duly complete a standard application form by using the information terminals installed at the information hall or the TCM website. This electronic application provides suppliers with access to information about the projects that suite for the group the supplier is registered in (Anonymous 7).

IV.4.5. Implementation of pre-qualification

Having been accepted, constructors need to pass a pre-qualification selection before being eligible to take part in the bidding. The pre-qualification process is designed to establish whether a supplier has the actual capability of realizing the given project. Therefore, each interested constructor has to prepare a proposal reflecting the specific pre-qualification requirements defined in the procurement announcement (Anonymous 7). During the conducted interviews, the respective experts provided contradicting information on how and where the pre-qualification is organized. While
some interviewees stated for example that only experts from the municipal expert tank do and may assess the pre-qualification documents, others declared that the bid inviter conducts the pre-qualification with the help of his own consultants. In the same manner the information that the proceedings are organized inside the TCM contradicted descriptions of other interviewees who contributed the information that the proceedings are indeed conducted at an outside venue. Yet, another example pertains to the organization of pre-qualification process. Some experts explained that the pre-qualification is organized in two steps by first selecting seventeen companies and in a second round seven to finally pre-qualify. Others stated that the seven pre-qualified suppliers are selected within one selection round.

The contradicting statements given by the interviewed officers imply that no clear standard practice exists at this stage. However, it does seem to be common practice that, independently of the individual proceedings during the pre-qualification process, bid-invitters are indeed required to submit reports on the selection criteria together with all written materials obtained during the pre-qualification at the Bidding Supervision Office. It also was commonly agreed on the fact that the Bidding Supervision Office conducts a double-check as to whether the selection was carried out in accordance with the requirements defined in the declaration for pre-qualification that was initially filed at their office during the registration of the project. Only if that is the case, will the Bidding Supervision Office inform pre-qualified companies in writing about admittance to the bidding (Anonymous 12).

**IV.4.6. Preparation for bidding**

In order to prepare the bidding, the bid inviter has to issue tender documents and submit them to the Tendering and Contract Management Office (Bidding Management Department). The tender documents are collected in a booklet available to all prequalified suppliers summarizing the relevant information for the preparation of their bids. These documents ought to include an instruction for bidders with detailed information about all project requirements, the conditions of the contract and a list of detailed project specifications. Furthermore, the tender documents specify the evaluation criteria and include an instruction manual to evaluators how to apply these criteria. The booklet also contains a timetable with information about the dates and
venues of the most important activities of the bidding process (Zhang Zhihui 6). If the bid inviter makes any changes in terms of the requirements of the project that affect the information given in the tender documents, he is obliged to report the adjustments in written form to the Tendering and Contract Management Office as well as to the bidding parties not later than fifteen working days before the deadline of the bid submission (Anonymous 8; Anonymous 12; Anonymous 19).

The bid inviter is obligated to inform the Tender Service Office (Trade Center) about the planned date of bid opening. Subsequently, the Tender Service Office books a so-called “bid opening room” and a room in the evaluation area. This room remains closed to the public. Furthermore, the bid inviter is required to apply for the arrangement of selection of a group of experts from the municipal “expert tank” one working day before the actual evaluation takes place. The expert tank is a list of all specialists in the field of construction provided by the Human Resource Department of the City Council. The registered experts are senior engineers with at least five years of practical experience. They are divided into several groups in terms of their specific field and are registered in an electronic database called the expert tank (Anonymous 8).

The selection of experts from the expert tank is conducted on the same day or the day before the evaluation takes place. Nobody knows either the name or any other personal information about the chosen experts. They are selected randomly with the help of computer software. An automatic message system places a random call to a registered expert and inquires whether he is available to come to the TCM at a certain date. Should the expert prove to have time and be willing to join the evaluation team, he is asked to type key number one on his telephone, if he is not available, he indicates this by typing key number two (Wong Xiaohui 9). Only information on the place and the date of evaluation is provided to the experts. Detailed information about the project will not be given to the experts until they have entered the non-public evaluation area inside the TCM (Zhang Zhihui 6; Anonymous 16).

IV.4.7. Opening of the bids

Bids will be opened on the date indicated in the tender documents under the supervision of the Tendering and Contract Management Office. On the day of the bid
opening or one working day before, bidders submit one copy of their bidding documents to the Tender Service Office and a second copy at an external place as specified in the tendering documents. Another copy is to be brought along to the bid opening room. All three copies of bidding documents have to be enclosed in an envelope and sealed with the official company stamp. Before bids can be opened, all bidders have to deposit a tender entry security to ensure their good intention. The amount will be returned to them if the process could be finalized in accordance with all laws and regulations.

In order to conduct the bid opening, authorized representatives of the bidders and the bid inviter as well as TCM supervision staff meet at the bid opening room. At the beginning, all participants are introduced by the bid inviter who is the chairmen of the bid opening. It is obligatory for all bidders to attend the bid opening less their bids will be judged invalid. The chairman of the bid opening reads out aloud the rules of the bid opening and all participants verify that the bids are closed and sealed. All bidders are asked to confirm that they have prepared their bids in accordance with the legal codes. Then bids are opened and read out loudly. Meanwhile, an agent of the Tendering Service Office enters technical and economic information about each bid into the predefined forms of the electronic data system. This includes the basic information on the construction companies that submitted a bid, price and cost details, materials to be used and further non-price criteria (Anonymous 7; Anonymous 11). A document with this information is printed out and the bidders confirm that the data of the form is correct. The documentation of each bid will be filed at the Tendering and Contract Management Office later on. At the end of the bid opening, the chairman closes the meeting and asks the bidders to bring their bids to the entrance of the closed-to-public evaluation area. The evaluation generally starts 20 minutes after the bid opening has finished (Anonymous 12).

IV.4.8. Evaluation of the bids

Experts who were selected for a bid assessment are granted access to the evaluation area only after having their fingerprints taken by a computer terminal featuring a recognition system. This terminal is placed next to the entrance of the evaluation area (Deng Xiaomei 5). Once the fingerprint is verified, the computer indicates the room where the evaluation takes place. Experts have to enter the area before nine o’clock in
the morning. If an expert is more than half an hour late, he is refused permission to enter the area and is excluded from the evaluation of bids. In this case, the expert tank can be browsed for experts living close to the TCM. Again the system selects an expert randomly using the automatic call mechanism and requires him to come to the TCM within the next 30 minutes (Anonymous 11). The evaluation area is absolutely insulated from mobile networks. Once a person enters the area, there is no technical possibility to establish any contact to the outside world (Zhang Zhihui 6; Deng Xiaomei 5).

Not until the experts enter the evaluation area, will they receive information on the project to be evaluated. They will meet the other members of the evaluation committee for the first time at the evaluation room. The bid assessment is done in an anonymous way and names or identifications are erased in the set of bids provided to the experts. The other two sets of bids stored outside the evaluation area ensure that the results of the assessment can be traced back to the respective bidders. Before the evaluation begins, the video-surveillance of the room is switched on and a live video of the evaluation is broadcasted to a supervision room placed inside the evaluation area. This is a room equipped with a big television screen where external and internal supervisors from public and private organizations have the possibility to take a seat and watch the experts evaluating the bids.

The evaluation committee conducts a review of the bids according to the instructions given in the tendering documents. The assessment is done on a multi-criteria basis which can be divided into technical and economic aspects (Zhang Zhihui 6). Each expert appraises each bid and gives scores in accordance with the evaluation criteria set by the bid inviter. The average of all scores constitutes the final score based on how the bidders are ranked (Zou 2004: 188). Besides, the experts are to check bidding documents for collusion or hints of collusion. If a suspicion of collusion arises, the evaluation process is suspended and the documents have to be transferred to the Bidding Management Office where a special investigation is set up. If the fact of collusion have taken place can be established, the expert who gave the advice will receive 20 per cent of the insurance deposited by the bidders (Wong Xiaohui 9).

Before the evaluation committee comes to a final decision, they often need additional information clarifying certain aspects of the bids. For this purpose, experts can call at the clarification room located at the TCM but outside the evaluation area. These
clarification rooms look like telephone boxes. In each of them one supplier has to wait for requests on their documents. The telephone inside the evaluation room is connected to loudspeakers so that all experts of an evaluation committee can follow the discussions with a bidder. The TCM officers organize the mapping of the anonymous bids to the respective suppliers. At the end of an evaluation, the experts suggest three companies that scored the highest. The list of these best bidders is submitted to the Tendering and Contract Management Office. The TCM officers will publish the decision of the experts in the TCM information hall for at least five days (Zhang Zhuhi 6; Wong Xiahui 9). During this time, the public has the possibility to appeal the decision at the Practice Regulation Office (Trade Center) should they perceive the outcome of the assessment as unsatisfying (Anonymous 16).

IV.4.9. Selection of the winning bid, signing of the contract and preparation of an invoice

Contracts can only be awarded if no serious complaints have been submitted and once any appeal has been dealt with. The bid inviter completes the selection of the winning bid within the next fifteen days after the evaluation was concluded. The public bid inviter is required to choose the best out of the three bidders suggested by the experts. If the best bidder does not accept the selection, the next best supplier is chosen. The contract has to be signed within thirty days after it was awarded. In the end, the winning bidder has to prepare a written report about the bidding process and submit it to the Tendering and Contract Management Office. In addition, the contract between the bid inviter and the supplier must be filed together with the letter of award and the bidding documents.

The Tendering and Contract Management Office checks if the information from the bidding documents is also used in the contract and if the name of the supplier is the same as the one of the winning bidder. Having received and checked all these documents, the Tendering and Contract Management Office will send a letter of comments to the contracting parties to point out that in case of any changes or variations to the contract, paperwork would have to be re-submitted and TCM officers kept informed about amendments influencing the realization of the contract (Anonymous 8). For the use of the Trade Center, the winning bidder is charged a certain
percentage of the final construction project price mentioned in the awarded contract. All services and facilities provided at the Trade Center can be completely financed through this income (Anonymous 17).

**IV.4.10. Complaint handling**

By law, participants involved in public procurement must have the opportunity to report complaints at any time (Law on Bid Invitation and Bidding, Article 65). It is the task of the Practice Regulation Office (Trade Center) to deal with dissatisfied market participants. For this purpose, a reporting telephone and a mailbox were set up (Anonymous 10). When an appeal is submitted at the Practice Regulations Office, all relevant tender documents are crosschecked. If a suspicion of irregularities in the bidding process can be established, the case will be further scrutinized and finally handed over to the municipal Supervision Bureau which is responsible to maintain the administrative discipline and handle accusations against public organs. Generally, the work to be done at this office is more of an administrative nature. The administrators dealing with complaints have to report to the Bidding Management Office which is in charge of supervising the handling of complaints and of deciding about further steps to be taken in case serious problems arise (Anonymous 8; Anonymous 10).

**IV.4.11. Continuous improvement**

The Development and Research Office (Trade Center) conducts studies to find out how to improve the TCM process and its facilities. Statistical analysis of the market situation is conducted by examining the filed documents at the TCM archive. Furthermore, TCM officers are interviewed or other TCMs throughout China are visited in order to discuss different situations and challenges. Based on this information, suggestions and advice are formulated and referred to the Bidding Management Office. These will include suggestions on the improvement of the TCM working process according to specific problem analysis. Apart from that, statistical analysis on the TCM is published on the website, in the information hall and in several leaflets, allowing the public to gather information on the market situation (Anonymous 14). Successful continuous improvement also includes regular training sessions of the TCM personnel arranged by
the Office of General Affairs (Bidding Management Department). The staff is trained in
different areas, including topics on how to comply with good governance requirements
(Anonymous 19).

**IV.5. The capability of the Tangible Construction Market to curb corruption**

Uniting all administrative offices and services of the organization in one physical
location is an important design element of the TCM. The resulting creation of a
“tangible” market necessitates not only an actual physical presence of everyone involved
in public procurement of construction projects in a specific region but also concentrates
the procurement of all construction projects in one main location, the TCM. This helps to
obtain an overview of the market activities and implement standard procedures in line
with rules and regulations. As all offices are located at the same place, market
participants save time during the procurement activities. They do not have to cover long
distances to approach the different public entities responsible for the various bidding
procedures and a shuttle between different agencies does not pose a problem. Thus, the
problem of speed money loses weight, where bidders bribe public agents to accelerate
proceedings and avoid further visits to a public agency.

Concerning the organizational structure of the TCM, the division of the TCM into Trade
Center and Bidding Management Office separates the administrative tasks from
monitoring and controlling. The TCM is based on a mechanism of checks and balances
and every step of the working process involves at least two different offices. In case of
malfeasance, the probability of detection increases as various offices monitor the
fulfillment of rules and regulations (Ren Jianming 2). The implications of this system are
twofold. The danger of being detected by the implemented supervision mechanism
yields a preventive influence on corruption. At the same time, the development of the
Trade Center as a unit capable of covering its own incomes and expenses provides an
administrative body equipped to work independently from the local construction
commission to which the TCM is subordinated. The status of administrative
independency abates political influence on public contracting (Wittig 2005: 21).

In the information hall of the TCM, every citizen can take advantage of the opportunity
to gain access to a multitude of different documents, including the procurement
announcement, explanations on the TCM working process, explanations on important rules and regulations or the list with the names of companies found to have violated said rules and regulations in the past. The information hall is open to the public and allows constructors and interested visitors alike to form a view on the present market situation. Public access to this information enables constructors to assess possibilities of an envisioned participation in public procurement while simultaneously allowing public control of the administrative process (Stevens 2004: 104).

Providing construction companies with easy access to explanations about standards, requirements, rules and regulations also ensures an equal education of potential market participants in respect to a fact derived understanding of the mechanisms of the market. It abolishes asymmetric information between bidders and public officials. This in turn prevents public officials from exerting pressure on the participating bidders to gain access to specific disclosures (Manion 1996: 182). The information facilities provide a high level of transparency to every interested person. Equally well-informed market players are an important condition for fairness. This is why information facilities form an essential basis to curb corruption (OECD 2006: 14-19; OECD 1999: 20; Wittig 2005: 11; Rose-Ackerman 1999: 30).

Furthermore, the TCM creates a level playing field for market participants through the definition of standards such as the working process, standardized forms for every stage of the process or clear timelines to be adhered to. The division of power and duties along the bidding process stands out positively and hinders public officials from maintaining too much discretionary power which could be abused for private interests (Weber Abramo 2003: 22). Besides, an exact definition of the process offers transparency to market participants and supports them in an understanding of how the system is intended to work and how decisions should be formed. Manipulative activities of competitors and public officials are prone to exposure.

The TCM system effectively implements self-regulating mechanisms that cause the involved parties to control the good conduct of each other. The computer software that manages and monitors the entire working process serves as a further suitable control mechanism. The information management system is programmed to ensure the adherence to important rules of an applied procedure such as the maintenance of timelines or the correct submission of standard application forms, licenses and approvals.
The officers of the Trade Center enter relevant data into the system and the Bidding Management Office checks the correctness and completeness of the information (Anonymous 8). At this stage, it is suggested to integrate the bid submission into the IT-process, too. The establishment of an electronic submission procedure with a secure logbook would allow the prevention of bid rigging after the bids have been submitted (Lengwiler and Wolfstetter: 2006: 7). To prevent bid rigging, the TCM presently offers sealed rooms in which bidding documents are stored between the bid submission and bid opening. It furthermore requires bidders to submit three copies of the bids at different places. This already helps to hinder the manipulation of bidding documents once they have been submitted (Wiehen and Olaya 2006: 36). However, the person in charge of lodging the bids to that sealed room is vulnerable to corruption. Bidders still could try to bribe that person in order to get access to the bidding documents and exchange them. A secure electronic logbook would ensure that bid documents could not be replaced in any way.

The system provides further safeguarding approaches in form of the expert tank. The random selection of the experts from the expert tank makes it difficult for bidders to influence the bid assessment (Lengwiler and Wolfstetter 2006: 7). Limited and restricted access to the evaluation area prevents a manipulation of the bid assessment. A scanner at the entrance of the evaluation area verifies fingerprints before the door opens, thereby ensuring that the evaluation area remains closed to the public. Access to the area is exclusively allowed to the randomly selected experts (Anonymous 16). Observation of this procedure prevents third parties from influencing the involved evaluation team. Consequently, the specialists are limited to a thorough assessment of each bid on the basis of their expert knowledge. This situation is reinforced by the fact that no personal details are mentioned on the bidding documents and experts therefore cannot relate a specific bid to the submitting company. A further aspect of an overall commitment to fair and legal proceedings are the complete insulation of the evaluation area to mobile networks and the regulation that experts are not permitted to leave the area before coming to a final decision. The area provides overnight facilities if necessary. Thus, experts conduct the assessment in total anonymity and isolation (Zhang Zhihui 6; Deng Xiaomei 5).
It is conceded that under strict observation of these regulations no concern should arise that the experts might misuse their discretionary power when evaluating the bids. In addition to these strict requirements, the formation of an evaluation committee assessing the bids instead of one single person being entrusted with this administrative office is considered to have a positive influence on the prevention of malpractice. It is much easier to influence the decision finding process of one person than that of an entire committee (Kelman 1990: 99). It is also beneficial for anticorruption that the experts have to evaluate the bids strictly in relation to explicit criteria defined *a priori* in the tender documents (OECD 2006: 18-19; Trepte 2004: 76). The bid inviter has to publish the tender documents at the beginning of the preparation-for-bidding. Thus, it is ensured that evaluation criteria and specifications cannot be influenced during bidding proceedings in favor of a certain bidder. This decreases the possibilities of corruption (Trepte 2004: 76).

However, it is still possible that these aspects are determined in accordance with agreements made during pre-qualification. For instance, a supplier may offer a bribe during the pre-qualification and will consequently be invited to submit a bid. In order to provide the supplier in question with the best chance to win the competition, the bid inviter defines specifications and evaluation criteria in a way that provides him with a competitive advantage in exchange for further kickbacks. In order to obviate this kind of bid fixing, it is recommended to appoint the specifications and evaluation criteria in detail before the announcement of a project (Zou 2006: 25). Receiving the detailed tender documents already the moment a bid inviter registers at the TCM would improve the TCM mechanism.

The evaluation area is equipped with a variety of electronic facilities. These include the video-surveillance of each evaluation room. An assessment will not start before the closed-circuit television has been switched on and the real-time broadcast to the supervision room has started. The supervision room is a unique facility that gives external and internal monitors from public and private entities the possibility to follow the bid assessment. However, it is common that actually nobody takes an interest in monitoring the video surveillance and the facility therefore has lost its intended value. It is only consistently used according to its original design in case of important projects. But it has to be stated that no clear definitions exist about the characteristics to be
applied in order to identify a project as important (Anonymous 12). It could be argued that this circumstance has little influence on the quality of supervision, as the videos are archived and could be watched should suspicion of manipulation arise. However, the videotapes are only stored for six months before they are discarded (Anonymous 16). This might not be enough time to discover malfeasance.

Furthermore, the installation of the clarification rooms allows experts to address legitimate questions to the suppliers during the bid assessment. Constructors are obliged to sit inside these telephone-boxes should the necessity arise that the evaluating experts need clarification on suppliers’ bids. Transparency of these conversations is ensured as the cells are video-supervised and experts can only make conference calls via the usage of the loudspeaker so that the entire evaluation committee can listen to all phone calls. Personal conversations between experts and bidders are thus not possible and a manipulative influence on the process through these conversations can be excluded. These conversations between experts and contractors enable the evaluation committee to judge the bidding documents in a more detailed way. Besides, they also assist in uncovering malpractice through strategic questions. Experts try to put pressure on the bidders by querying specific matters about the content of the bid. For instance, they try to find out the expediency of offered technical solutions or the foundation and adequacy of presented calculations. If a bidder cannot explain the purpose of the contents of the bid convincingly, experts inform the TCM supervising officers who in turn check the respective bidding documents for hints of malfeasance (Wong Xiaohui 9). As an example serves the situation of collusion uncovered by examining the prices of bids. If the price of five out of seven bids is much higher than the standardized budget prices, illegal arrangements between bidders are to be suspected. Or, if bidders collude, documents of different bidders may have similar information, they might include round numbers or prices of each bidder might increase in round percentage rates. Another example refers to bidding forms that will have the same mistakes such as a black point made by the same printer (Wong Xiaohui 9). As it is very difficult to detect potential malfeasance, the evaluators’ help and technical knowledge is essential to discover malpractice. At the TCM, experts are encouraged to find colluding or corrupt bidders by offering rewards for the discovering of any malpractice (Wong Xiaohui 9). Reward schemes motivate experts to expose illegal arrangements (Marjit and Shi 1998: 165-169).
An improvement which could be achieved during the evaluation of bids, concerns the role of the bid inviter. During the bid assessment, it could be helpful for the experts to discuss with the bid inviter his specific preferences. However, allowing the bid inviting party to attend the evaluation committee makes him vulnerable to corruption. A certain bidder could try to bribe him in order to lead the evaluation into a particular direction so that the bidder has a higher chance to win the contract. A solution to solve this trade-off could be the use of the clarification rooms not only for the communication between experts and bidders but also between experts and the bid inviter. As these rooms are endowed with efficient supervision facilities, the risk of manipulation could be reduced. Besides, it is recommended that submitted bids are binding. The provided possibility of the best bidder to stand back from the contract award after the bid assessment goes along with the risk that the three best bidders collude.

The exclusive task of the Practice Regulation Office is the handling of complaints. The opportunity to submit complaints is given to all the involved parties throughout the entire process (Anonymous 10; Anonymous 12). If a player offers corrupt transactions, he has to reckon that it will be reported to the Practice Regulation Office (Anonymous 10; Anonymous 12). Complaints often serve as the first hint to malfeasance and, thus, they are a useful approach to self-policing. It provides all parties involved with the possibility to control each other. This has a decreasing effect on the risk of corruption. At the same time, complaints can be perceived as feedback, giving suggestions on where a bidding process requires improvement (Wittig 2005: 8, 26-27; OECD 1999: 20-21).

As it must be ensured that submissions of complaints are not misused to hinder legitimate proceedings, it is valuable that the Practice Regulation Office evaluates in a first investigative step whether evidence of malpractice actually exists and whether the appeal therefore seems justified. All corresponding findings have to be reported to the Bidding Management Office, where a decision has to be made whether further actions seem to be indicated. Thus, the responsibility of handling complaints is divided between two different administrative entities, leading to the conclusion that a well-adjusted system of checks and balances is applied during complaint handling (Wong Jinjun 3).

Impeding illegal trading advantages presents itself as a true challenge in the design of the bidding procedures of the TCM. However, corruption on the Chinese construction market is still a serious problem. This is due to several reasons. First of all, the practical
success of the TCM as far as its ability to curb corruption is concerned depends highly on how the system is implemented in different regions. The principal idea of the TCM is the same all over China but its practical enforcement can vary between different regions. Only if the TCM works on the basis of corresponding regulations and standards throughout the entire country and achieves a similar level of development as the model TCM in Beijing, can it be ensured that the agency would prove overall successful in curbing corruption on the national Chinese construction market.

Furthermore, it was shown above that a multitude of high-risk areas exist along the procurement process whereas the TCM bidding process only covers a limited area of all tasks. In order to curb corruption in public procurement, it is essential to introduce further mechanisms that take effect on all five stages of the procurement process. Zou’s interviews (2006: 19-21) conducted with Chinese construction supervision officers in 2006 substantiate this need for reform. His research shows that corruption on the Chinese construction market exists with stakeholders involved in every stage of the procurement cycle and that it is often powerful authority departments conducting malfeasance. An important aspect outlined in this context is the fact that malpractice is not a cause of the badly defined procurement process but occurs due to unethical behavior of government authorities and officials involved in any stage of the process. Accordingly, all institutions and players on the Chinese construction market may potentially open opportunities for corruption. This not only refers to activities covered by the TCM but also tasks arranged before and after the TCM bidding process.

An important challenge the TCM will have to address in the future is the overcoming of the lack of capacity in various areas (Guo and Lian 2005: 131). This includes the closed-to-public evaluation area. In large TCMs and in TCMs located in areas rapidly developing, it happens that during some periods all evaluation rooms are occupied so that the assessment cannot start directly after the bid opening. In some cases it is even conducted outside the TCM (Anonymous 12). Only if sufficient evaluation rooms are provided, could a marginalization of the risk of manipulation between the bid opening and the evaluation stage be achieved. In addition, TCMs sometimes do lack supervisory staff. Consequently, important supervisory mechanisms such as the video surveillance in the evaluation area lose their value.
In addition to these shortcomings, the TCM lacks clear and standardized method of pre-qualification that supports a fair and transparent proceeding. At the moment the lack of regulation of the pre-qualification stage forms the most important loophole within the TCM process. This lack of regulation encourages the manipulation of the competition before the bidding even starts. An improved procedure could for example require pre-qualification to take place in the TCM. The bidders’ proposals could be required to be entered into the process as anonymous before pre-qualification starts. For this purpose, an assignation of a code to each bid would allow the mapping of a proposal to the respective bidder without putting the company names to the bids. Keeping the codification secret would then render an anonymous pre-qualification possible. A committee from the expert tank could conduct an anonymous pre-qualification according to pre-defined selection criteria at the evaluation area of the TCM. This solution would prevent the misuse of information exchanges during pre-qualification and could prove an effective tool to realize the same positive impact on the pre-qualification stage as already attained during the evaluation stage.

Finally, it is recommended not only to require suppliers and the bid inviter to register at the TCM but also consultants involved in a project. Consultants play an important role when establishing corrupt networks. For example, if a company seeks to influence a public decision but is not able or does not want to arrange the criminal act without external help, it may hire a consultant who is well connected to public agents. The consultant may receive a high commission for an intangible service contract and may forward a share of the commission as a bribe to the respective public decision maker. To secure an overview of all players involved in a public project, consultants should be required to register at the TCM as well. In this way consultants who would desire to offer services in public projects could be required to lodge an explanation of their field of expertise, of the nature of services they offer and the role they play in a certain project. Conceded that such a registration would not be able to obviate the misuse of consultancy contracts for the arrangement of corrupt transaction it might still be instrumental in receiving a better overview over the entire network of parties involved in a project and thus make it more difficult to hide corrupt transactions behind legal contracts. It would support monitoring of contracting activities and may facilitate to uncover malfeasance once suspicions arise.
IV.6. Learning lessons from China’s Tangible Construction Market

Even though the TCM procedures still offer potential for improvement, the establishment of this unique institution retrieves many opportunities to curb corruption in public procurement. According to the Chinese Ministry of Supervision, the TCM already helped to solve problems of bribery and under-the-table deals in China. The question arises: What can other countries than China learn from the Chinese approach of organizing public bidding for construction works? In light of this, the following section, first, underlines characteristics and conditions of the Chinese construction sector that affect the success of the TCM and that are important to consider when trying to convey this mechanism outside China. Second, typical characteristics and important success factors of the TCM will be highlighted and analyzed with the goal to establish whether they are to be deemed transferable to countries other than China.

IV.6.1. The role of the legal framework and the market environment

Since the 1990s, China has been changing its former planned economy into an increasingly market-driven one. This development can also be observed in the construction industry. The Chinese construction sector used to be a non-profit public sector without project management, whereas cost and time planning was solely used as a measure to allocate resources. All construction expenses were borne by the government including cost-over-runs. Illiquidity of a company did not result in insolvency. Due to a lack of managing executives’ direct responsibility, no incentives existed to control costs. This situation led to a high level of inefficiency and ineffectiveness on the market. Hence, in 1981, in line with the Chinese “open door policy”\(^\text{21}\), the Chinese government introduced a tendering system in Shenzhen for the first time (Chou 2006: 536). As this system proved to be successful and led to lower costs and increased quality, the Sixth National People’s Congress decided in 1984 to introduce a nationwide tendering system for public construction (Zou 2004: 182-183). In 1992, the Chinese government established formal regulations and defined roles and functions for different government departments in order to manage the entire tendering process. The administration improved regulations successively in the following years.

\(^{21}\) Implementing the “open door policy”, China started to open up its economy to foreign countries and introduced first approaches to the development of markets.
Since 1995 an emphasis has been put on the development of a legal system to rule the market.

Today, there are three important sets of legal codes to regulate public procurement of construction projects. The first legislative codex, specifically designed for the construction market, is the Construction Law of the People's Republic of China which was approved by the Eighth National Peoples' Congress in March 1998. According to Article 1 of the Construction Law, “This law is enacted with a view to enhancing supervision and administration over building operations, maintaining order in the construction market, ensuring the quality and safety of construction projects and promoting the sound development of the building industry”. In 1999, the Ninth National People's Congress enacted a further set of legal code, namely the Law of the People’s Republic of China on Bid Invitation and Bidding (Zou 2004: 184; Chou 2006: 536). “[This] Law was enacted in order to regulate bid invitation and bid submission activities [and] to protect [...] the public interest and the lawful rights and interests of all parties involved” (Law on Bid Invitation and Bidding, article 1). It specifically sets rules to be adhered to during the activities of public bidding proceedings of construction projects (Cheng Wenhao 2). It prescribes general rules and standards of bid invitation, bidding, bid opening, evaluation and winning of bids. Besides, it defines various sanctions in case of rule breaking (Cao 2003: 65-67).

Further judicial standards are set in the Government Procurement Law of the People's Republic of China which came into effect on 1 January 2003 (Chou 2006: 540). This is a law with a wide scope, enacted to regulate all government procurement activities including construction projects as well as the public purchase of goods and services. This law defines standards, rules and sanctions for procurement activities by government entities at every level (OECD 2006: 35). It also includes regulations on supervision of the procurement process and the handling of complaints (Procurement Law, chapter VI-VII). Additional official ordinances that apply when contracting for public works include the Contract Law and the Law Against Unfair Competition (OECD 2006: 35). Apart from these, there are many regulations that organize the administrative procedures on the market. Governmental bodies publish regulations at national, provincial and local level (Yu 2005: 137).
This legislation has been approved as a consequence of the fundamental economic change. It forms the basis to diminish corruption in China. These laws outline methods of procurement and their respective procedures (Yu 2005: 137). They explicitly forbid any kind of corruption. They define auditing and supervisory authorities that shall control the process of money spending. Procurement entities and bidders can be made liable for malfeasance and have to fear sanctions for different corrupt activities (Guo 2006: 13; OECD 2006: 35). The legal codes address important issues with the goal to provide a level playing field. This includes the definitions of procurement principles such as the provision of fair competition, transparency, justice and honesty. According to law, a procurement agent shall withdraw from contracting for a project in case a conflict of interest exists with a bidder.

The TCM in China is an administrative agency owing its success to the implementation of its mechanisms, on the observation of the written legislation with defined regulations for procurement. It is an administrative body with the competence to enforce legal codes and existing rules. As part of the administrative branch, it does not create its own rules and was not established in China to compensate regulations. The systematic mechanism of the TCM was designed to ensure abidance and an observance of the governing law.

Key points of a legislation that creates an empowering environment for the TCM are the definition of a standard procurement cycle, the specification of clear time-lines, the regulation of the publishing of the procurement notice, the proscription of discrimination, the determination of rules regarding bid opening, evaluation and contract award as well as the introduction of the right to submit complaints. In addition, the legal definition of administrative responsibilities has been implemented as a necessary component to strengthen administrative effectiveness of supervision and corresponding measures. In order to create a level playing field that supports competition in public procurement, corruption has to be legally defined and declared as criminal activity. Corresponding sanctions for contraventions have to be in place.

In countries lacking advanced procurement legislation, the TCM, as introduced in this research project, could serve as a first step to develop a procurement system providing standards resistant against corruption. Some approaches, such as the way to organize the bid opening or the evaluation of bids, may work without detailed procurement rules. Information facilities and electronic devices may support an equal treatment of all
bidders without being based on legally binding rules. But a major strength of the TCM is the provision of transparency and accountability to support disclosure of malfeasance. This is only of avail for the case that a legal system is in place explicitly forbidding corruption and making agents liable for rule breaking.

The TCM may exclude corrupt parties from participating in public bidding. However, disqualified market players may try to circumvent the TCM and continue their illegal business outside this institution. Disqualified suppliers may offer bribes to public agents in order to award contracts beyond the TCM. The TCM includes innovative concepts that help to prevent such malfeasance. But it is important to note that the mechanism itself is not sufficient to solve the problem of corruption in public procurement. The success of the TCM depends on the legal system in which it is working. Besides the legal codes that regulate public contracting, this also includes an independently working judicial system. The judiciary in China still does not work totally independent and does not provide sufficiently well educated jurists. This deficit in the institutional environment of China is seen as partly responsible for the enduring problem of corruption in China (Guo 2005: 131).

The introduction of public tendering on the Chinese construction market supports the prevention of corruption in public procurement through the promotion of competition (Lai et al. 2004: 200). The change from a planned economy to an increasingly market-driven one opens the door for many national and international suppliers to take part in public tenders, not only in the building field but also in areas concerning project financing (Shen et al. 2004: 386). Klitgaard states “[A]s a starting point for any municipal effort to enhance efficiency and fight corruption, it is good to prefer and if possible engender more rather than less competition” (2000: 129). In principal, the TCM acts according to Klitgaard’s instructions. It offers a mechanism that improves competition and supports an efficient market mechanism. However, the Chinese construction industry has not yet completely evolved into a market driven one and sometimes only partial competition takes place. Some regions still miss a sufficient number of suppliers who would be in the position to submit offers as well as a sufficient level of expertise in order to plan, to assess or to realize construction projects. The Chinese cases show that the TCM cannot compensate this lack of market development.
To unfold the advantages of the TCM, it requires experts that run the mechanism as well as sufficient suppliers willing and capable to take part in a public bidding.

In China the TCM is subject to the national, provincial or local government ordinance under which it operates and the public activities on the Chinese construction market are *de facto* based on a federal system. This is a feasible approach for a large and diverse country such as China because it allows operational flexibility and adaption to local situations. In contrast, a central system would have the advantage to guarantee the application of clear minimum standards nationwide. In China the regulation of supervision and post contract award are only superficially outlined in national legal codification. The task to define adequate regulations ensuring contract management and supervision is assigned to the provincial ordinance (Zou 2004: 190). The applied standards in various regions consequently differ a lot. Not all TCMs realize the level of development needed to prevent corruption effectively. In case the conditions in various regions of a country differ, it can be of avail to establish a central procurement entity that ensures minimum standards of anticorruption and good governance being in place all over a country (OECD 2006: 13; Zou 2006: 20; Ren Jianming 1; Chou 2006: 538). Specifically when introducing the TCM in a country for the first time, a central procurement agency will be suitable to coordinate the implementation of the new system and the adjustment of the regulative basis. It will support the harmonization of local procurement approaches to the newly established standards (Walker 2003: 10-11).

**IV.6.2. The transferability of the TCM framework**

A uniqueness of the TCM is to provide all facilities at the same fixed place and organize the entire bidding activities at one physical location. It is a simple but innovative approach which can be easily implemented in other countries outside China. The application of a number of facilities provided inside the TCM is already a known component in the administrative and legislative structures of many countries. China even copied aspects of their procurement system from industrialized countries when establishing a Chinese market for public bidding (Anonymous 8; Cheng Wenhao 2). Facilities that are familiar in countries outside China include the provision of a public location to meet for bid openings, the clear definition of a bidding process that
distributes responsibilities and discretionary power, the collection of a bid security, public platforms where procurement announcements and further important information are made available, the provision of standard forms to all market participants, an archive for long-term storage of important documents or a complaint mechanism. Having those or comparable facilities already in place makes it relatively easy to establish a tangible market and provide the necessary services in one building. Knowing how the TCM in China works out can serve as a helpful blueprint to reform an existing procurement system.

A main and important characteristic of the TCM is the dichotomy of the organizational structure separating the administrative tasks from supervision and control. The establishment of the Trade Centre that bears its own costs creates financial independence for the TCM. Thus, its assignment outside China would not burden the budget of a procurement entity. It may even help to decrease the public costs to run the entity. The financial independence of the Trade Center also assures that the employed public officials receive a decent wage. This aspect could be of special importance in developing countries where public officials often collect bribes because they cannot make a living with their legal income.

According to the Anticorruption Resource Center\textsuperscript{22}, the risk of corruption is high during the assessment of bids when determining the supplier with the best offer. In this stage, the application of the expert tank and the closed-to-public evaluation area play an important role in preventing the bidding process from being manipulated. This one-of-a-kind facility forms the core of the TCM and has shown to be effective in preventing manipulation of the assessment. The facility in fact has to be considered essential in supervising the evaluation activities. Its success rate suggests that it is recommendable to serve as an example for other countries to organize bid evaluation in the public sector in a similar way.

One might argue that it could prove to be difficult to generate the political acceptance for such a strictly supervised mechanism in a society less authoritarian than China. It might become even more difficult to persuade policy makers when the awareness of the problem of corruption is small. But it is worth to keep in mind the importance of an

\textsuperscript{22} see: http://www.u4.no/themes/procurement/procurementintro.cfm (last accessed on 22 November 2011)
objective bid assessment in public biddings. The evaluation is crucial to ensure the delivery of best value for money. Biased bid evaluation in many cases causes an outcome of poor quality work. It is in the nature of corruption that bidders exerting manipulative influence are awarded public contract despite the fact that they offer substandard goods and services. In the extreme case, a distortion of quality can have tremendous effects not only on the national economy but also on the standard of living in general. Ambraseys and Bilham (2011: 153-155) have shown that corrupt societies suffer the largest death tolls from earthquakes. This is due to a corrupt public construction sector that distorts the quality of public buildings and exposes them to an increased risk of collapse during an earthquake. As an example of this serves the dramatic death toll of the earthquakes in Sichuan in 2008 when especially public buildings collapsed whereas private houses were not destroyed at an equal rate. Insufficient quality of public buildings caused the death of many people who attended different services provided in these buildings. A comparable situation manifested itself during the 1999 earthquake in Izmit, Turkey. More than 15,000 people died, many of them buried under the debris of collapsed public houses of insufficient quality (Mitchell and Page 2005: 28).

It has to be considered an objection to the creation of expert tanks in countries with a less state-centered government than China that the required spontaneous absence of a prospective expert from a daily job in order to participate in a bid evaluation could be a challenge difficult to overcome. In China the mere fact of being listed in a city’s expert tank is considered to be an honor and bears witness to a remarkable reputation of the person listed (Deng Xiaomei 5; Zhang Zhihui 6). This reputation of the expert tank as an honor list might be based on specific cultural circumstances and may not be equally successfully realized outside China. In such case it might indeed be difficult for a person to accept the participation in an evaluation committee according to the specific TCM practice just one day before the assessment takes place.

In order to foster an understanding of the importance of the TCM, information on the role of the expert and the value for the community in the form of a specific public education would have to be established with the goal to encourage employers to support their employees to apply for participation in the expert tank. For the experts themselves an appropriate monetary compensation can set the required incentives to sign up in the expert tank. To support a proper standing of the expert tank, a strict selection procedure
has to be in place. This could be for example a written assignment or an oral examination to have engineers prove their expert knowledge and experience in their specific field of construction engineering. Only if the required level of professional knowledge is ascertained, should the expert be accepted as a member of the tank. This ensures the quality of the tank and underlines the essential role it plays (Anonymous 8). A certain number of highly qualified engineers have to be listed in an expert tank in order to ensure a random selection of the evaluation committee. Especially in less developed regions it might pose challenging to find a sufficient amount of experts that ensures a stochastic selection. This problem also exists in some regions in China where the level of development is not sufficient to provide enough high-qualified people to form part of the expert tank. Consequently, a random selection is not possible in these regions.

To conclude, an additional challenge causing predictable difficulties in implementing a TCM in less developed countries is the provision of the needed IT-support integrated in the TCM mechanisms. Most importantly, IT facilities serve as the main monitoring mechanism and ensure a certain level of process discipline. Developing countries might lack the expertise and resources to provide such a mechanism. Consequently, the correct fulfillment of the administrative regulations and standards as well as the proper documentation of all steps could not be supervised in a comparable effective way. At some stages of the TCM working process, it is possible though to set IT support aside and find alternative methods to achieve similar results. For instance, during the bid opening, simple approaches such as reading out aloud the code of conduct is a tool that can easily be used anywhere and could be instrumental in raising a general sensitivity to think and openly talk about risks of malfeasance. Another example of alternate methods in the absence of sufficient IT support refers to the highly equipped information hall. It would not be absolutely necessary to publish all information on computer terminals. Alternatively, hard cover posters with important information about the TCM working process, the code of conducts or important rules and regulations could fulfill the same role as an electronic version. In case the procurement announcement cannot be published on the web or no web access is available, printed publications exhibited in the information hall as well as publications in the respective newspapers might well serve as good alternatives.
IV.7. Conclusion

The establishment of the TCM provides a unique mechanism that curbs corruption in public procurement on the Chinese construction market. The TCM is able to provide the strong institutional support necessary to foster integrity during the bidding activities. In addition, the TCM offers transparency where adjuvant to create fair competition and it provides anonymity where personal information and direct contact could destroy objective decision-making. But the TCM fails to cover all five phases of the standard public procurement process. In its present stage of development, it is not sufficient to eliminate the problem of corruption. Strengths and weaknesses of the TCM have been discussed in this paper and suggestions of improvement have been made. Further development of the TCM could focus on the question how activities of the demand determination phase, contract implementation phase as well as final audit and accounting phase could be integrated into the TCM working process.

In many countries procurement laws and regulations are in place and guidelines, standard documentation and proceedings are defined. But the definition of well working enforcement mechanisms continues to be a formidable challenge. The TCM is an innovative approach that helps to diminish this gap. Most procurement cycles applied in different countries broadly follow the same phases of the standard procurement process. Therefore, it is possible to implement an institution such as the TCM in countries outside China. It will be easier for industrialized countries to copy the TCM than for developing countries for which the cost of establishing such an institution might be prohibitive. But the TCM can already be useful in a less developed stage and the Chinese example can serve as a valuable blue print.
Chapter Five

V. Final Conclusion

Approaches to anticorruption programs in public procurement can be based on various strategies. On one hand, the establishment of strict rules that limit discretionary power can hinder public officials from manipulating a procurement process. On the other hand, anticorruption policies can rely on effective monitoring mechanisms and impose high sanctions in case of malfeasance. This acts as a deterrent in case the probability of detection is sufficiently high and penalties exceed the profits from illegal transactions. However, in practice strict rule bound systems are often contra productive because limiting discretion of public procurement agents goes along with administrative burdens and impedes an appropriate and expedient contract realization. At the same time, the implementation of monitoring mechanisms that control the process of decision-making often generate high costs and hinder proceedings. While a regulatory system is necessary to fight corruption in public procurement, it is difficult to define practicable procurement rules and find the best balance between limiting areas of responsibility and monitoring policies. In this context, the study discussed challenges of anticorruption in public procurement with a specific focus on the construction sector.

To examine the effect of procurement rules on the risk of corruption, the work at hand relies on case study research. This approach focuses on the contextual environment where procurement rules are applied in order to diagnose risks of corruption. It discloses strength and weaknesses of policy measures and suits to establish recommendation for reform. As the methodological literature lacks precise description of qualitative approaches to research focusing on public integrity, a case oriented research design was developed and presented in detail. The method involves expert
interviews as the most important data collection tool. It examines the information by means of a qualitative content analyze. Case studies are suitable to cope with the sensitivity attached to the topic of anticorruption. The flexible nature of case study research allows responding to participants in an appropriate way. The method concentrates the investigation on the application of rules rather than on real corruption cases. By doing so, the establishment of policy recommendations becomes possible even before malfeasance has taken place. In order to get rigor results, the concepts of external validity, construct validity, internal validity and reliability have been applied.

This research design was adopted to analyze the challenges and chances for anticorruption when awarding contracts in a competitive dialogue. A field investigation in the German construction market has shown that the discretionary power provided to procurement officials in this youngest European procurement procedure often helps to find expedient solutions for public needs. Allowing a close cooperation between public and private parties and increasing the discretionary power of involved agents enables a discussion of various plans and supports innovative ideas. An important advantage of the competitive dialogue is its ability to integrate planning activities into the procurement procedure. Public procurement agencies can gain from the expertise of the private sector which helps to obviate problems during the implementation of a project. If the procedure is based on a sufficient number of dialogue rounds before the actual bidding takes place, delays of delivery during contract implementation are less likely and projects can be finished within the planned target costs. The investigation shows that a main mistake made by procurement agents is the conduct of the dialogue rounds in a hasty way as it destroys the benefits of the competitive dialogue.

The analysis of the collected data indicates that the competitive dialogue is able to dilute a common corruption scheme based on the manipulation of specifications and the submission of supplementary claims. A project procured in a competitive dialogue becomes public in a much earlier state than projects awarded in common procurement designs and the procedure conducts the majority of planning activities after the announcement of the project. This increases transparency and allows starting the competition at an early stage. Besides, supplementary claims and change orders are relatively rare in a competitive dialogue because dialogues allow discussing challenges more carefully and considering possible precautions. In addition, the award of a lump
sum contract instead of a unit-price contract makes it very difficult to justify supplementary claims. What is more, the intrinsic motivation to implement a contract according to the terms and conditions increases because contract parties develop the terms cooperatively. Thus, in a competitive dialogue it becomes hard to justify an increased contract amount *ex post* which makes the creation of monetary buffers to pay kickbacks more difficult.

The competitive dialogue is a very open process that includes a lot of actors in the preparation of the procurement decisions and the procedure in many cases draws high public attention. This serves as a control mechanism of the decision made to award a contract. In contrast, risks for corrupt behavior during the evaluation of bids is perceived to be especially high in a competitive dialogue. Due to the enormous efforts bidders have to invest to take part in dialogue rounds, the incentive to receive the contract award by all means increases. Consultants or project managers who are involved in all stages of a procurement cycle can help to employ corrupt agreements.

In order to be able to use the positive effects of the increased discretionary power in a competitive dialogue and at the same time to keep the risks of corruption under control, certain procurement rules emerge to be important. In this context, it is crucial that the public procurement entity defines detailed and complete evaluation criteria before the procedure of a competitive dialogue can start. All decisions during the prequalification, the dialogue phase and the bidding, have to be in line with these evaluation criteria in order to make the process of decision-making accountable. It is recommended to apply the concept of a separation of power to a competitive dialogue and do not hire the same consultant to evaluate bids that were also involved in the planning of that project. In addition, comprehensive documentation of the development of the procedure has to be considered as an important tool in a competitive dialogue to monitor agents and to hold them accountable for their decisions. It is recommended to disclose the outcome of the evaluation so that parties have the opportunity to submit complaints in case of obscurities.

Effective monitoring mechanisms gain importance in a competitive dialogue. Conducting extraordinary controls, installing whistle-blower hotlines and ombudsmen, applying information management systems or implementing complain mechanism are strategies that help to prevent malfeasance where procurement law assigns an increased
discretion to public agents. In this context, the investigations identified great weaknesses in the considered procurement entities. Risks of corruption are not taken serious and effective control mechanisms are, in many cases, non-existent in public procurement agencies.

An administrative mechanism that is able to provide strong institutional support necessary to foster integrity without harming efficient proceeding is China’s Tangible Construction Market. The TCM is an administrative institution where a bid inviter can register in order to announce a public need and conduct a procurement procedure at a fixed location. It offers strong institutional support that can be helpful to organize different procurement procedures including open as well as restricted approaches to bidding.

In the framework of a further case based research project, the paper analyzed the organizational structure and working process of the TCM. It showed that organizing all procurement activities at a predefined place makes the implementation of monitoring mechanisms easier. An important strength of the TCM is the provision of an electronic information management system that supports the compliance with the respective legally defined procedures applied to award a contract. Facilities such as the public information hall, the archive to store important documents and the bid opening rooms help to offer transparency where adjuvant in order to allow fair competition. At the same time, clarification rooms, the closed-to-public evaluation area or the sealed rooms to store bid documents support the provision of anonymity where personal information and direct contact could hinder an objective decision-making process.

Summarizing lessons learned from both research projects suggest that the combination of a less rigor procurement law together with a reliable bidding management system can help to diminish the dilemma between anticorruption and expedient satisfaction of public needs. While the TCM misses to monitor the planning activities of a project, applying the competitive dialogue procedure within a TCM could counteract this shortcoming. Even the TCM was invented to implement the Chinese standard procurement procedures of open and restricted competitive tendering, the institution provides many facilities that could also help to prevent corruption in a competitive dialogue. A great advantage of the TCM is the organization of the evaluation activities. This approach would help to overcome the vulnerability of the competitive dialogue at
this stage. The technological support installed inside the TCM and the provision of strict supervision mechanisms would make the undermining of the bid assessment in a competitive dialogue very difficult. Besides, the TCM is able to organize public bidding and effective monitoring without creating enormous administrative burdens. Embracing the results of the conducted case studies suggests that a structured administrative entity such as the TCM allows for a less regulated, expedient procurement procedure such as the competitive dialogue without compromising anticorruption in public procurement.

To conclude, no matter which procurement procedure is applied and how well it is monitored, two very significant risks of corruption remain. Procurement rules are not suitable to prevent high-ranking political corruption. Politicians often do not accept the independence of the administrative body and try to influence the management of a project. Furthermore, land management is another area of the public construction sector that is not covered by a procurement procedure but where public authorities may collude with investors. These persisting risks of corruption point towards the importance of a broad anticorruption policy needed in public administration.
Appendix III A  Interview guideline - competitive dialogue

Einleitung

- Bitte beschreiben Sie kurz die Position, die Sie in Ihrer Einrichtung innehaben und welche Aufgaben Sie im Rahmen des wettbewerblichen Dialogs (WD) übernommen haben.
- Waren Sie schon häufiger in einen WD involviert?
- Welche Aufgaben betreuten Sie im Rahmen des WDs?

Anwendung des WD

- Was sind wichtige Aktivitäten, die durchgeführt werden müssen, bevor ein Projekt im Rahmen des WDs öffentlich ausgeschrieben werden kann?
- Was sind Besonderheiten bei der Bekanntmachung eines öffentlichen Bedarfs im Rahmen des WD?
  - Was wird hier festgelegt?
- Nur Anbieter mit ausreichender Fachkunde, Zuverlässigkeit und Leistungsfähigkeit sollen laut Vorschriften zur Dialogphase zugelassen werden. Wie wird die Auswahl getroffen?
  - Nach welchen Maßstäben werden die Vorauswahlkriterien festgelegt?
- Die Bewertungskriterien für die eigentlichen Angebote müssen schon vor der Dialogphase definiert werden, also bevor man die Lösung für ein Problem kennt. Wie schafft man das?
  - Wer legt die Kriterien fest?
  - Nach welchen Maßstäben werden die Kriterien festgelegt?
  - Wie muss man sich solche Bewertungskriterien vorstellen?
  - Wie detailliert können diese Bewertungskriterien sein?
  - Bekommen die Bieter die Bewertungsmatrix vor der ersten Dialogphase?
- Was sind Ihres Erachtens wichtige Stärken und Schwächen der Dialogphasen?
- Wie wurde die Dialogphase organisiert und durchgeführt?
  - Wie viele Dialogphasen gab es?
  - Wie hat man die Bieter auf die Dialogphasen vorbereitet? Woher wussten sie was von ihnen erwartet wird?
  - Wie kommuniziert man mit den Bieter zwischen den Dialogphasen?
  - Wie lange dauerte die Phase der Dialoge?
  - Wie viel Zeit verging von einem Dialog zum nächsten?
- Welche Themengebiete werden in einem Dialog besprochen?
- Wer ist in einem Dialog anwesend?
- Wurden Bieter im Rahmen der Dialogphasen abgeschichtet?
- Fördert der WD Ihres Erachtens eine gute Zusammenarbeit des privaten und öffentlichen Sektors?
- Wie verläuft die Definition der eigentlich öffentlichen Nachfrage im Detail ab?
• Werden im Rahmen des WD Spezifikationslisten und Listen über Leistungsanforderungen erstellt?
• Was sind die Besonderheiten bei der Durchführung der Angebotsabgabe im Rahmen eines WDs?
• Was sind die Besonderheiten bei der Durchführung der Angebotsöffnung im Rahmen eines WDs?
  o Wer nimmt an der Angebotsöffnung teil?
  o Wie viel Zeit vergeht zwischen Angebotsabgabe und Bewertung?
• Was sind die Besonderheiten bei der Durchführung der Angebotsbewertung im Rahmen eines WDs?
• Wer führt die Bewertung der Angebote durch?
  o Wie viele Bewerter umfasst ein Bewertungsteam?
  o Wie muss man sich so eine Bewertung vorstellen?
  o Wo fand die Bewertung statt?
  o Wann begann die Bewertung und wie lange hat sie gedauert?
• Wird während der Angebotsbewertung eher auf Qualitätskriterien oder eher auf Preise wertgelegt?
• Im WD gibt es die Möglichkeit für Nachverhandlungen? Wie muss man sich eine solche Nachverhandlung vorstellen?
  o Wie läuft eine Nachverhandlung ab?
  o Wird mit allen Bietern nach verhandelt?
• Am Ende des WD steht die Vergabe eines Vertrags. Unterscheidet sich ein solcher Vertrag strukturell und inhaltlich von den Verträgen, die im Rahmen klassischer Vergabeverfahren erstellt werden?
• Beeinflusst der WD die Vertragsumsetzung?
  o Sind Nachverhandlungen nötig bzw. üblich?
• Ist die öffentliche Seite bei solch einem komplexen Projekt noch in die Vertragsumsetzung involviert?
  o Wie begleitet man die Vertragsumsetzung?
  o Kann man sicherstellen, dass der Bieter wirklich den Vertrag umsetzt, den er unterschrieben hat?
• Wie werden Nebenverträge vergeben, die sich aus dem Hauptvertrag ergeben?
• Verlangt der WD Ihres Erachtens besondere Kontrollmechanismen bei der Vergabe und Umsetzung eines Vertrags?
  o Welche unterschiedlichen Kontrollmechanismen gibt es?
  o Welche Arten von Kontrolle gibt es?
  o Wo setzt Kontrolle an?
  o Unterscheiden sich die Arten der Kontrollen im Vergleich zu den Kontrollen bei herkömmlichen Verfahren?
  o Wer hat Kontrollverantwortung?
• Wie erfolgt die Dokumentation des Prozesses?
  o Wo werden die Vergabevermerke aufbewahrt?
  o Wer hat Zugang zu den Vergabevermerken?
Korruptionsrisiken und Wettbewerbsverzerrungen in öffentlichen Ausschreibungen

- Wie wird der WD dem Transparenz-, Gleichbehandlungs- und Wettbewerbsprinzip des Vergaberechts gerecht?
- Welche Phase bei der Realisierung eines öffentlichen Projektes ist Ihres Erachtens besonders anfällig für Wettbewerbsverzerrungen (Planungsphase, Ausschreibungsphase, Phase der Angebotserstellung und Angebotsabgabe, Phase der Angebotsbewertung und Vertragsvergabe, Phase der Vertragsumsetzung)?
- Wird das Problem der Korruption bei öffentlicher Auftragsvergabe thematisiert?
  - Gibt es Maßnahmen um Interessenkonflikte vorzubeugen?
  - Was könnte man unternehmen wenn man ungewollt mit unfairen Handlungen konfrontiert wird?
### Appendix III B  Sample of experts - competitive dialogue

<table>
<thead>
<tr>
<th>Expertise</th>
<th>Ref. No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procurement Agent</td>
<td>Interview 2, Interview 3, Interview 4, Interview 5, Interview 11, Interview 12, Interview 14, Interview 15, Interview 22, Interview 23</td>
</tr>
<tr>
<td>Bidder</td>
<td>Interview 8, Interview 16, Interview 17, Interview 18, Interview 19, Interview 20, Interview 21</td>
</tr>
<tr>
<td>Technical Consultant</td>
<td>Interview 1, Interview 6, Interview 10, Interview 13</td>
</tr>
<tr>
<td>Legal Consultant</td>
<td>Interview 7, Interview 9</td>
</tr>
</tbody>
</table>
### Appendix IV A  Interview guideline - TCM

#### Part I: Stage specific question:

<table>
<thead>
<tr>
<th>1 Phase: Needs assessment phase and demand determination phase</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Who are the main players of this stage? How are the actors supervised?</td>
</tr>
<tr>
<td>• How is public demand perceived? Who decides which projects are procured?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2 Phase: The preparation phase: design and preparation of bid documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Who are the main players of this stage? How are the actors supervised?</td>
</tr>
<tr>
<td>• Where are procurement notices published?</td>
</tr>
<tr>
<td>• How do you get informed that a project is procured?</td>
</tr>
<tr>
<td>• Which different designs for the bidding process exist?</td>
</tr>
<tr>
<td>• How is demand specified? When is the contract drafted?</td>
</tr>
<tr>
<td>• Do you have to follow any standards during the preparation of your bidding documents?</td>
</tr>
<tr>
<td>• Who sets time limits?</td>
</tr>
<tr>
<td>• Do you have access to information about the evaluation criteria regarding which a bid will be evaluated?</td>
</tr>
<tr>
<td>• Do you organize pre-bid meetings? When are they organized, where do they take place? Who attends these meetings?</td>
</tr>
<tr>
<td>• How can you qualify to participate in a bid? How is prequalification organized?</td>
</tr>
<tr>
<td>• Where do you have to submit bids?</td>
</tr>
<tr>
<td>• Where are bids opened? Who attends bid openings?</td>
</tr>
<tr>
<td>• How much time passes between bidding registration, submission of bids files and bid opening?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3 Phase: The contract selection and award phase</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Who are the main players of this stage? How are the actors monitored?</td>
</tr>
<tr>
<td>• How much time passes between bid opening and evaluation? How much time passes between evaluation and award of contract? How much time passes between award of contract and the signing of the contract?</td>
</tr>
<tr>
<td>• Does a clarification phase exist? Where does clarification take place? Who is able to take part in the clarification phase? Is clarification documented?</td>
</tr>
<tr>
<td>• Does an office exist where conflicts of interest are managed and complains can be submitted?</td>
</tr>
<tr>
<td>• How is evaluation organized? When is the selection criteria determined?</td>
</tr>
</tbody>
</table>
• Does one get access to information about the evaluation process and its outcome?
• Is it possible to get access to the original bidding documents to overview them?
• Can one submit complaints? How are complaints handled?

4 Phase: The contract implementation phase

• Who are the main players of this stage? How are the actors monitored?
• How are variations of contract implementations supervised?
• Can specifications of the procurement notice be changed after a contract was awarded?
• Are contract renegotiations possible?
• How is contract implementation supervised?

5 Phase: The final accounting and audit phase

• Who are the main players of this stage? How are the actors supervised?
• Is there any official body that reviews the final outcome?

Part II: Questions referring to cross process activities:

• How does the flip chart of the TCM look like? What are the main tasks and responsibilities of the different offices?
• Who defines laws and regulations?
• Are market participants informed about rules and consequences in the case of rule breaking?
• How is the TCM bidding process monitored? How are the actors supervised?
### Appendix IV B  Sample of experts - TCM

<table>
<thead>
<tr>
<th>Ref. No.</th>
<th>Name</th>
<th>Institution</th>
<th>Position/Department</th>
<th>Experience</th>
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<tbody>
<tr>
<td>1</td>
<td>Prof. Ren Jianming</td>
<td>Tsinghua University, Anti-Corruption &amp; Governance Research Centre</td>
<td>Professor</td>
<td>Specialist on Anti-Corruption</td>
</tr>
<tr>
<td>2</td>
<td>Prof. Cheng Wenhao</td>
<td>Tsinghua University, School of Public Policy and Management, Anti-Corruption &amp; Governance Research Centre</td>
<td>Associate Professor</td>
<td>Specialist on Anti-Corruption</td>
</tr>
<tr>
<td>3</td>
<td>Mr Wang Jianjun</td>
<td>Private Entrepreneur</td>
<td>Civil Engineer</td>
<td>Supplier on the construction market, Civil Engineer</td>
</tr>
<tr>
<td>4</td>
<td>Mr Wong Ruiz</td>
<td>Supervision Bureau under the Dalian City Council</td>
<td>Deputy Director General Dalian</td>
<td>Supervision of public administrative proceedings</td>
</tr>
<tr>
<td>5</td>
<td>Dr. Deng Xiaomei</td>
<td>Tsinghua University, Department of Construction Management</td>
<td>Associate Professor</td>
<td>Specialist on Chinese Construction Market and Corruption</td>
</tr>
<tr>
<td>6</td>
<td>Prof. Zhang Zhihui</td>
<td>Tsinghua University, Department of Construction Management</td>
<td>Director of Research Institute of Construction Engineering and Management</td>
<td>Member of the Expert Library</td>
</tr>
<tr>
<td>7</td>
<td>Anonymous</td>
<td>TCM Beijing</td>
<td>Information Office</td>
<td>TCM Official</td>
</tr>
<tr>
<td>8</td>
<td>Anonymous</td>
<td>Chinese Government Official</td>
<td></td>
<td>Specialist on the Chinese Construction Market</td>
</tr>
<tr>
<td>9</td>
<td>Mr Wong Xiaohui</td>
<td>TCM Dalian</td>
<td>Director of Bidding Management Office</td>
<td>Management of the TCM in Dalian, Member of the Dalian Expert Library</td>
</tr>
<tr>
<td>10</td>
<td>Anonymous</td>
<td>TCM Beijing</td>
<td>Practice Regulation Office</td>
<td>TCM Official</td>
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<td>11</td>
<td>Anonymous</td>
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<td>Tendering Service Office</td>
<td>TCM Official</td>
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<td>12</td>
<td>Anonymous</td>
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<td>Tendering and Contract Management Office</td>
<td>TCM Official</td>
</tr>
<tr>
<td>13</td>
<td>Anonymous</td>
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<td>Bidding Service Office</td>
<td>TCM Official</td>
</tr>
<tr>
<td>14</td>
<td>Anonymous</td>
<td>TCM Beijing</td>
<td>Development and Research Office</td>
<td>TCM Official</td>
</tr>
<tr>
<td>15</td>
<td>Anonymous</td>
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<td>Information Office</td>
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<td>16</td>
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<tr>
<td>17</td>
<td>Anonymous</td>
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<td>Finance Office</td>
<td>TCM Official</td>
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<td>18</td>
<td>Mrs Lv Hui Yu</td>
<td>TCM Beijing</td>
<td>General Affairs</td>
<td>TCM Official</td>
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<td>19</td>
<td>Anonymous</td>
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<td>Bidding Supervision Office</td>
<td>TCM Official</td>
</tr>
<tr>
<td>20</td>
<td>Mr Wong Yutong</td>
<td>Dalian Municipal Supervision Bureau</td>
<td>Permanent delegate at the TCM from the Dalian Supervision Department under the Ministry of Supervision</td>
<td>Public Official</td>
</tr>
</tbody>
</table>
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**Legal Codes**

Construction Law of the Peoples Republic of China

Gesetz gegen Wettbewerbsbeschränkungen (German Law Against Unfair Competition).

Government Procurement Law of the People's Republic of China

Law of the People's Republic of China on Bid Invitation and Bidding

Vergabe und Vertragsordnung für Bauleistungen (German Official Contracting Rules for the Award of Construction Contracts).

Verdingungsverordnung (German public procurement regulations)

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