

DEVELOPMENT OF THE ANTI-CORRUPTION OPERATING SYSTEM ON CONSTRUCTION CONTRACTS AND PROCUREMENTS IN KOREA

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ABSTRACT : The present Korean laws related to anti-corruption are not effective in preventing corruptions[1]. In this context, the purpose of this study is to build the proactive anti-corruption operating system that has the function to prevent corruptions from occurring in the contract and procurement sector of Korean public construction projects. The proactive anti-corruption operating system consists of four parts ; developing integrity performance manual(IPM), making integrity performance plan(IPP), practicing IPP, and integrity performance evaluation(IPE). By analyzing various kinds of audits and relevant laws and interviewing with government officials and staff in construction companies, the causes and stereotypes of corruptions and the concept, role, and guide of IPM, IPP, and IPE are provided in this paper.

Key words : anti-corruption, integrity, integrity performance manual(IPM), integrity performance plan(IPP), integrity performance evaluation(IPE)

1. BACKGROUND AND RESEARCH OBJECTIVES

Korea was the 47th in the rank of CPI(corruption perceptions index) among 145 countries as getting 4.5 point out of 10 in 2004 and the 18th in the rank of BPI(bribery payers perceptions index) among 21 countries as getting 3.9 point out of 10 in 2002[2,3]. These ranks show that Korea is insufficient in the international market with other countries of which ranks are higher as well as not free from corruption. A recent survey indicated that the construction sector was recognized as being most corrupted among the Korea administration sectors[4]. Recognizing public procurement sector as the field in which corruptions are alarmingly widespread and almost certainly the most publicized, Transparency International has encouraged countries to build anti-corruption system with a function to prevent corruptions before they occur[5].

According to audits performed by many Korean government organizations and researches on the actual condition about corruptions in the construction field, it is found that the primary corruption areas are bidding, sub-contracts, change order, payment, tests under construction, and penalty for unjust contractors[1]. These corruption areas are characterized as to be tactic, monetary, iterative, and

occurring frequently. Although Korean government have tried to prevent these corruptions by modifying relevant laws and polices, these corruptions have been occurred iteratively. Thus the causes of corruptions are not in relevant laws and policies but in the operating process of such laws and policies. Besides policies about anti-corruption are punishment-oriented only when corruptions occur. To eradicate these corruptions, first of all it is important for government officials(owners) to make efforts for themselves and second, the systematic method to eradicate these corruptions is needed. In this context, this study suggests the proactive anti-corruption operating system as a method to improve the level of integrity in the field of construction contract and procurement in Korea.

2. RESEARCH SCOPE AND METHODOLOGY

2.1 Research scope

This study establishes the proactive anti-corruption operating system centered on working process of the government officials. It is noteworthy that corruptions occur not only when the profit of employers, contractors, and contractor's staff coincides but also when government officials abuse their authority.

2.2 Research methodology

This study proceeded with establishing the proactive anti-corruption operating system after analyzing the causes and stereotypes of the corruptions. First, the relevant laws and regulations were analyzed to find out the causes of corruptions under the present administration system. Second, the various audits, surveys, and existing literatures were analyzed and relevant individuals (government officials and staff of construction companies) were interviewed to find out the stereotypes of corruptions. Finally, through organizing the experts pool and having meetings several times, the primary management areas of the stereotypes of corruptions were identified and the proactive anti-corruption operating system could be developed effectively.

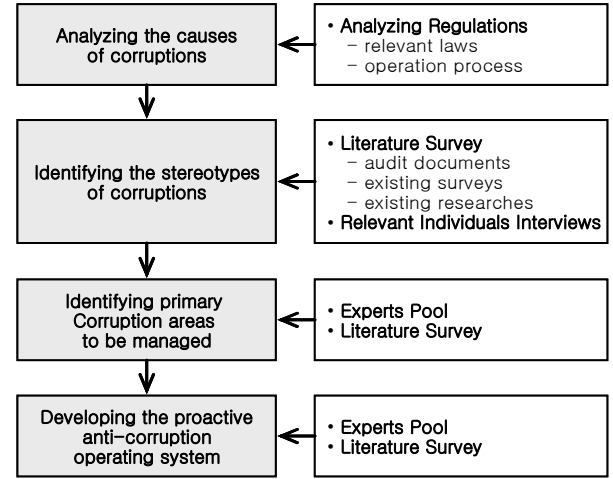


Figure 1. Research methodology

Table 1. Primary items and numbers pointed in government audits related to corruptions in construction projects

phase		primary items pointed in audits	numbers pointed				sum
			2000	2001	2002	2003	
Bidding & Contract phase	preparing for a bidding & announcement	over estimating, over designing	13	7	23	6	49
		improper bidding type(private contract, design-bid-build contract)	4	6	4	2	16
		improper announcement	1	-	1	-	2
		improper estimation of schedule	-	-	1	-	1
	bidding	not thorough evaluation for pre-qualification	1	2	5	2	10
		leakage of budget estimate	3	1	-	-	4
	selecting contractor	non-fulfillment of regulations on selecting a contractor	1	1	1	-	3
		over estimating of overhead and profit	2	-	1	-	3
		improper check for past construction records	-	-	1	-	1
	contracting	negligence for total budget management according to the gaps between budget estimate and contract amount	-	-	2	-	2
Construction phase	approval	improper approval for possession of a road or a river	6	5	6	9	26
	check for program	imperfect check for design or program for construction	29	11	34	27	101
	sub-contract management	not reporting sub-contractors	3	-	5	-	8
		improper approval or check for liable sub-contractors	4	-	1	-	5
	construction (inspection)	improper construction work	3	12	1	-	16
		improper allocation or change of inspectors	4	3	-	3	10
		imperfect quality management or delay of quality test	-	1	7	1	9
		allocation of improper contractor's representative	2	3	2	-	7
		improper reporting of status of construction	-	1	-	-	1
		improper imposing a fine on an engineering company	1	-	-	-	1
		negligence for inspection(supervision)	-	-	1	-	1
	change order	improper change order or variation	3	6	6	4	19
	evaluation under construction	habitual and unfair check for actual conditions of construction site	1	-	-	-	1
	payment	improper payment or delay	8	2	-	-	10
tests	delay or improper completion test	-	1	2	-	3	
	improper engineers for completion test	1	-	-	-	1	
civil affair treatment	improper treatment for civil affairs	2	3	1	-	6	
Commissioning phase	maintenance	improper test for maintenance	3	3	4	3	13
		improper repair work	6	-	3	1	10
	evaluation after completion	improper evaluation of execution capacity of construction work	2	-	-	-	2

3. CAUSES AND STEREOTYPES OF CORRUPTIONS

3.1 Causes of corruptions

By analyzing laws and regulations related to the construction contract and procurement, the causes of corruptions were found as follows. First, corruptions are caused not by regulations themselves but by the problems of operating process of regulations. The absence of the system to operate regulations transparently and consistently causes the problems of operating process. Second, corruptions are caused by the absence of evaluating system for performing regulations properly. With the view of government officials, they have only duty and responsibility as an evaluator as well as a supervisor. There is no relevant law and policy to effectively evaluate on how properly they perform the regulations.

The result of analyzing laws and policies related to anti-corruption actions shows that the present anti-corruption actions are regarded as punishment after a corruption occurs that they can't prevent corruptions proactively. In this context, anti-corruption system to enhance the level of integrity should be established in order to solve these problems.

3.2 Stereotypes of corruptions

MOCT(Ministry of Construction and Transportation) of Korea had audited construction projects from January in 2000 until August in 2003. The authors identified the primary items and numbers pointed in audits related to corruptions statistically by analyzing audit documents above.(See Table 1) In addition, to identify the stereotypes of corruptions and the primary managerial corruption areas, interviews with government officials and staff of construction companies were conducted.(See Table 2) The result of analyzing the numbers and the stereotype of corruptions shows that similar corruption types occurred frequently every year and the primary corruption areas which are needed to be managed in table 2 almost coincide with the corruptions which have been pointed frequently in audits in table 1.

The interviews with government officials and staff of construction companies pointed commonly that the most serious corruption type would be characterized as to be tacit, monetary, and iterative transactions.

4. CONCEPT AND COMPONENTS IN PROACTIVE ANTI-CORRUPTION OPERATING SYSTEM

The proactive anti-corruption operating system means the process of establishing the plan to prevent corruptions proactively, performing the plan, and evaluating the results by government officials for themselves in terms of whether the plan is performed and corruptions occur. The proactive anti-corruption operating system consists of four parts, which include developing integrity performance

Table 2. The primary managerial corruption areas and stereotypes of corruptions

Corruption areas	Stereotype of corruptions
Bidding	<ol style="list-style-type: none"> 1. improper private contract 2. over limitation of pre-qualification aiming at selecting a specific contractor 3. pre-leakage of information for tendering (budget estimate, drawings, etc.) 4. tacit approval of unjust contractor's tendering 5. tacit approval of unjust action such as illegal collusion 6. tacit approval or not opening of false documents such as certificate of execution capacity of construction works 7. not keeping regulations about rules to make base prices to decide budget estimate 8. not opening of the rest base prices except selected base prices
Sub-contract management	<ol style="list-style-type: none"> 1. tacit approval of illegal sub-contract 2. negligence for sub-contract management
Change order	<ol style="list-style-type: none"> 1. negligence for pre-check of drawings and bill of quantity <ul style="list-style-type: none"> - improper drawings - over estimating of quantity - over estimating of unit cost - appointing a specific method of construction. 2. lack of technical specialty about change order 3. unjust change order to make up for a contract with low price 4. arbitrary application of cost by agreement 5. keeping a bribe for fast change order 6. lack of will for cutting down a budget 7. not recording change order reasons that are disadvantageous for an employer 8. not reporting change order which has reported to officials in charge of supervision to officials in charge of contracts
Test	<ol style="list-style-type: none"> 1. negligence for tests about safety, midterm, completion 2. habitual completion tests by relevant organizations such as a fire test 3. keeping a bribe habitually for tests 4. delay of tests about midterm, completion, etc. 5. arbitrary tests by an employer
Payment	<ol style="list-style-type: none"> 1. unjust delay of payment 2. not paying for extra works which are ordered by an employer 3. wasting a budget without a check for a settlement of accounts 4. improper management about advance payment
Maintenance	<ol style="list-style-type: none"> 1. improper test for maintenance 2. tacit approval of not repairing 3. ordering(bidding) extra works to repair completed construction
Penalty to unjust contractors	<ol style="list-style-type: none"> 1. improper decreasing score or penalty for unjust contractors 2. unjust treatment of imposing or decreasing demerit marks for improper works 3. unjust exemption of disqualified contractors and unjust designation of best qualified contractors

manual(IPM), making integrity performance plan(IPP), practicing IPP, and integrity performance evaluation(IPE).

4.1 Integrity performance manual (IPM)

① Overview of IPM

IPM is a type of instruction to lead government officials to establish a plan that can eradicate corruption proactively and evaluate performance of the plan in a voluntary basis. IPM is the basic document for anti-corruption activities for the purpose of identifying stereotypes of corruptions as primary management areas and describing anti-corruption activities for each management area.

② IPM's role

IPM can present anti-corruption resolutions to relevant individuals and prescribe the general explanation about integrity plan of an organization and precise documents. In addition, IPM can give the message that all staff should participate in anti-corruption activities and should be liable for keeping IPP.

③ IPM preparing guide

IPM deals with the relevant regulations, factors having possibility of corruptions, and the methods for improvement in each primary management area. The primary management area includes bidding, sub-contracts, change order, payment, tests under construction, and penalty to unjust contractors. First, the regulations describe provisions of relevant laws. Second, the factors having possibility of corruptions describe stereotypes of corruptions that are tacit, monetary, iterative, and multi-occurred. Third, the methods to improve integrity suggest the ways that can get rid of the possibility of corruptions proactively. It is noteworthy that IPM has to be prepared in consideration of the opinions from the relevant individuals in government organizations who take in charge of contracting construction projects.

4.2 Integrity performance plan (IPP)

① Overview of IPP

IPP is referred to as a specific anti-corruption plan that relevant government organization can establish based on IPM by reflecting the characteristics of their construction projects. It is also referred to as a core action plan in anti-corruption system. Officials in charge of contracts and supervision can develop IPP at the planning phase of a construction project. IPP should be submitted to the relevant government organizations at the budget request. Officials in charge of contracts can implement IPP at the bidding phase and officials in charge of supervision can implement IPP at the construction phase.

② IPP's role

IPP leads relevant officials to improve integrity and to lower the possibility of occurring corruptions by making the pertinent government organization establish IPP and

implement detailed action plans in IPP. IPP takes the role of integrating all management issues which are needed to check whether IPP is implemented properly and provides the model to show the anti-corruption system of the pertinent construction project. The officials are required to keep relevant data in order to ensure that IPP is implemented efficiently and is used to detect any evidences by evaluating the performance of IPP at the commissioning phase of the construction project.

③ IPP preparing guide

IPP is established in consideration of the characteristics of the particular construction project. The specific and detailed action items should be provided for each stereotype of the corruptions described above. The detailed action plan is established for each primary management area in IPM. In addition, the detailed action plan is regarded as the method to prevent corruptions effectively and to be able to be implemented practically. This IPP is a useful tool as a reference in auditing at the commissioning phase of the construction project.

4.3 Integrity performance evaluation (IPE)

① Overview of IPE

The pertinent government organization evaluates the practical result and integrity level in a voluntary basis by checking whether IPP is performed practically and whether corruptions occur. This evaluation is carried out based on the relevant data collected during IPP.

② IPE's role

IPE provides a basic standard for government officials to evaluate whether IPP is performed and whether corruptions occur. By doing this evaluation, government officials can get more chance to improve their integrity level and to update IPM and IPP continuously through feedback of the result from the evaluation.

③ IPE preparing guide

Government officials record and keep the relevant data to support the performance IPP during construction phase. They evaluate whether IPP is performed using the checklist after a construction project is completed. The audit office that belongs to the pertinent government organization can use the checklist and the relevant data and check whether IPP is performed properly based on the contents in table 3. Finally, they can report the results to the top management of the pertinent government organization.

On the other hand, the evaluation based on the data prepared by the officials in charge can be one-sided evaluation. To compromise this limitation, two-sided evaluation is required in consideration of the civil affairs documents and their result related to the pertinent construction project. The officials in charge of the audit

Table 3. General rules of self-audit for performing IPP

Rule of audit		Content
IPP	Propriety of IPP	Is IPP practical to eradicate corruptions?
Relevant data	Coincidence of relevant data with performance of IPP	Is it possible to judge whether IPP has performed through relevant data?
	Reliance of relevant data	Is relevant data reliable? Is there any content different from the facts?
Penalty & Incentive	Propriety of penalty & incentive	Was penalty or incentive applied transparently according to relevant rules?
Concealment of corruptions	Possibility of concealing corruptions	Is there any possibility for work items to be treated smoothly with a monetary and tacit bribe?

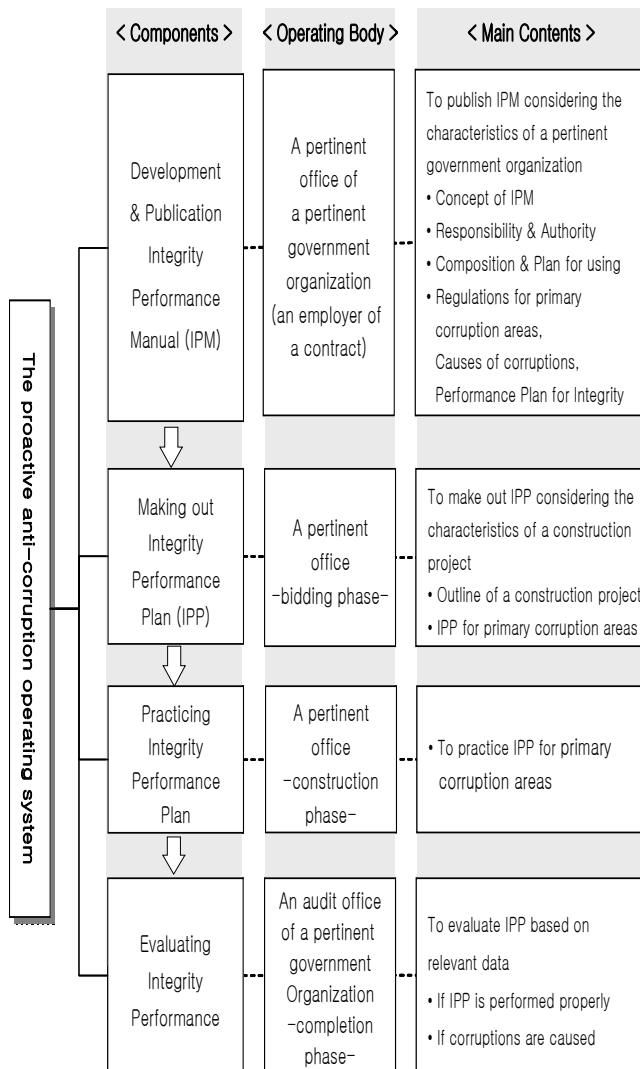


Figure 2. The proactive anti-corruption operating system

obtain the civil affairs documents and the result for themselves, compare them with checklist, and open the result of the audit to the public.

5. DEVELOPING PROACTIVE ANTI-CORRUPTION OPERATING SYSTEM

The proactive anti-corruption operating system is established through the procedure depicted in figure 2. This system consists of components, operating body, and main contents. This procedure has the flow leading government officials to improve the level of integrity and to ultimately eradicate corruptions by performing the detailed plan at each phase of the flow.

6. SUMMARY

The purpose of this study is to suggest the systematic solution to be able to proactively prevent chronic corruptions in the construction contract and procurement. As the result of the research, first, it is concluded that not regulations but the problems of operating process of regulations are the main cause in corruptions. Second, corruptions are caused by the absence of effective evaluating system on how to implement regulations. Third, the primary corruption areas which are needed to be managed are bidding, sub-contracting, change order, payment, tests under construction, and penalty for unjust contractors. To solve these problems, this study suggested the proactive anti-corruption operating system. As the transparency in construction industry is a great concern, this system would enhance the anti-corruption level in Korean government. The main issue in developing this system is to maximize the participation of the practitioners into sound activities in a voluntary basis. This system consists of development integrity performance manual(IPM), generation of integrity performance plan(IPP), implementation of IPP, and integrity performance evaluation(IPE). The concept, role, preparation guide, operation body, and the main contents of IPM, IPP, and IPE are presented in the body of this paper.

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