

TRANSPARENCY IN PUBLIC PROCUREMENT

PURPOSE

To ensure that the massive sums involved in public procurement are not vulnerable to corruption, by guaranteeing procurement information is accessible and that procurement processes are clearly specified and followed.

THE PROBLEM

Worldwide

Public procurement spending averages between 13–20% of gross domestic product¹ (about \$US9.5 trillion every year) – but currently 20-25% of this is estimated as being lost to corruption.²

Corruption distorts competition and can reduce the quality and sustainability and safety of public projects and purchases. As a consequence, trust in governments can be eroded when goods and services purchased fail to meet public needs. With huge sums of public money at stake, it is vital that governments effectively control corruption in public procurement budgets. According to the UN Office on Drugs and Crime, “a procurement system that lacks transparency and competition is the ideal breeding ground for corrupt behavior.”³

Australia

In Australia, public procurement is estimated at AU\$200-300 billion,⁴ but in recent years, a number of procurement scandals have eroded trust in government.

In Victoria, an investigation is underway in to alleged multi-million dollar corruption schemes in the Department of Education.⁵ At the Federal level, confusion over the procurement of submarines has thrown spotlight on importance of transparency and clarity in procurement processes.⁶ Even items as innocuous as printer cartridges have been responsible for a \$1.2m scandal in South Australia involving 21 companies and 11 government bodies.⁷ Governments at State and Federal level are also committed to increase investment in infrastructure, adding to the prospect of increased procurement by public sector agencies in tandem with the private sector.

HISTORY AND PREVIOUS RECOMMENDATIONS

Legal frameworks for procurement vary across state and local governments in Australia, with a number producing best practice guides and corruption risk control documents.⁸ Freedom of Information and Right to Information laws also play important roles in ensuring integrity in the procurement process as well as initiatives such as AusGoal and the Australian Governments Open Access and Licensing Framework. These would support open access to publicly funded information in accordance with the Open Access Principles developed by the Information Commissioners across Australia.⁹

At the Federal level, the Government has declared that it is committed to open government based on a culture of engagement, built on better access to and use of government information and sustained by the innovative use of technology, based on 3 key principles.¹⁰

1. Informing: strengthening citizen's rights of access to information, establishing a pro-disclosure culture across Australian Government agencies including through online innovation and making government information more accessible and usable:
2. Engaging: collaborating with citizens on policy and service delivery to enhance the processes of government and improve the outcomes sought; and
3. Participating: making government more consultative and participative.

In addition there are several other tools that could be employed in Australia and abroad to ensure that the many billions of procurement funds are not vulnerable to corruption.

UNICITRAL – Model Laws on Procurement

In 2011 the United Nations Commission on International Trade Law (UNICITRAL) published its latest model laws on the procurement of goods, construction and services. These provide a template for public procurement regulatory systems with the aim of encouraging consistency in international procurement measures. The adoption of such Model Laws may lead to less corruption, more ethical behaviour and effective competition.¹¹ In Australia, the UN Model Laws would provide further guidance and detail for government procurement, beyond existing measures.

Transparency International Secretariat – Integrity Pacts

Transparency International's Anti-Corruption Public Procurement Guide¹² as well as TI's *Integrity Pacts in Public Procurement: An Implementation Guide* offer practical guidance to Governments and citizens seeking to hold their governments to account.

Integrity Pacts (IP) seek to help governments, businesses and civil society fight corruption in public contracting. It consists of an agreement between a government or government agency and all bidders for a public sector contract. The IP sets out the rights and obligations to the effect that neither side will pay, offer, demand or accept bribes and that bidders will not collude with competitors to obtain the contract or bribe representatives of the government or its agency while carrying it out. It also provides for a monitoring process. Sanctions include loss of the contract or forfeiture of the bid and liability for damages and debarment from future contracts. Implemented in 15 countries and 300 separate situations around the world, including Berlin's €2.4 million Brandenburg International Airport and over 100 contracts worth US\$30 billion in Mexico, Integrity Pacts would complement existing procurement guidelines.

The G20 Anti-Corruption Working Group is developing a statement of Principles of Public Procurement. TI believes those principles should include a number of specific commitments.

- Governments should publish in a timely manner selection criteria and method of award of any contract before the procurement process commences;
- Governments should collect and disclose the identity and beneficial ownership of all bidders;
- Full details of awarded contracts should be disclosed and details of completion of the contract should be published in a timely manner with any alterations to the terms of the original contract also disclosed;
- Independent monitoring of all stages of the procurement process with a robust, transparent and effective appeals process should be accessible;
- Information on public procurement in open data format – non-proprietary, searchable, sortable, platform-independent and machine-readable.

TI AUSTRALIA'S POSITION

- **The Australian Government adopt and promote the Model Laws on Procurement published by the United Nations Commission on International Trade Law (UNCITRAL).** The adoption of such Model Laws would lead to less corruption and more ethical behaviour and effective competition.
- **TIA supports the principles contained in Transparency International's *Integrity Pacts in Public Procurement: An implementation Guide*.** Implementing Integrity Pact (IP) in major government projects would help governments, businesses and civil society fight corruption.
- **TIA supports openness and transparency in the procurement process.** This includes maximising freedom of information. The use of public money dictates that transparency and accountability are the basic prerequisites of a procurement process.
- **The Australian government should ensure that recommendations from the G20 Anti-Corruption Working Group are included in the proposed G20 Principles on Promoting Integrity in Public Procurement**
- **The TI Procurement principles can strengthen transparency, integrity and accountability and should be included in the governance frameworks of the Global Infrastructure Hub, Asian Infrastructure Investment Bank, Infrastructure Australia and State infrastructure bodies.**

¹ OECD "Fighting Corruption in the Public Sector"

www.oecd.org/gov/ethics/meetingofleadingpractitionersonpublicprocurement.htm

² OECD "implementing the OECD Principles of Integrity in Public Procurement", www.oecd-ilibrary.org/government

³ UNDOC, "Guidebook on anti-corruption in public procurement and the management of public finances".

www.undoc.org/documents/corruption/publications/2013/guidebook

⁴ OECD "Fighting Corruption in the Public Sector"

www.oecd.org/gov/ethics/meetingofleadingpractitionersonpublicprocurement.htm

⁵ <http://www.ibac.vic.gov.au/investigating-corruption/current-and-past-investigations/operation-ord>

⁶ <http://www.abc.net.au/news/2015-06-05/submarine-procurement-to-be-overseen-by-expert/6526318>

⁷ <file:///Users/admin/Downloads/Procurement%20Working%20Group%20Final%20Report%20Attachments.pdf>

⁸ [file:///Users/admin/Downloads/Corruption_risks_in_NSW_Government_-](file:///Users/admin/Downloads/Corruption_risks_in_NSW_Government_-_The_management_challenge_REPORT_3_(December_2011).pdf)

[The_management_challenge_REPORT_3_\(December_2011\).pdf](file:///Users/admin/Downloads/Corruption_risks_in_NSW_Government_-_The_management_challenge_REPORT_3_(December_2011).pdf)

⁹ ausgoal.gov.au.

¹⁰ finance.gov.au.

¹¹ Lemke, M, Public Procurement Policy Seminar on the Model Law, 11 January 2013.

¹²

http://www.transparency.org/whatwedo/publication/curbing_corruption_in_public_procurement_a_practical_guide.