

CORRUPTION PREVENTION CONCEPTS: PROCUREMENT



Australian Government
Australian Commission for
Law Enforcement Integrity

The public sector, including law enforcement agencies, regularly engage vendors to deliver services to, and on behalf of, government.

ACLEI investigations have revealed vulnerabilities in the management of procurement activity resulting from deliberate and inadvertent procurement practice and contract management deficiencies.

Procurement

Notwithstanding the robust legal requirements governing public sector procurement practices¹, unrealistic time and resourcing pressures may compound the risk that decision-makers will forego due diligence in favour of 'getting the job done'.

This approach leaves decision-makers vulnerable to corrupt compromise, particularly where they are reliant on the technical expertise of others to inform their decisions.

A lack of contract management capability, resources and oversight can compound risk by enabling inappropriate use of delegations, ineffective quality control, and failure to follow correct processes².

Appropriate levels of due diligence and probity are required at all stages of the contract life cycle to ensure adherence to procurement rules and policy, and the integrity expectations of the agency.

Procurement processes and associated employees may also be compromised when officers develop personal relationships with providers as a result of personal or professional contact, and these relationships evolve to become exclusive and/or mercenary. Such relationships, if not declared and monitored, may result in an officer using their position to dishonestly secure a benefit for themselves or others³.

Cliques and sub-cultures can grow to create an environment where poor practices can develop, thrive and be masked⁴. ACLEI has observed situations where managers or colleagues have been excluded from decision-making or information updates because of these closed networks.

Left unchecked, a public perception of corruption in government procurement has the potential to seriously undermine the capacity of the public sector to deliver services, particularly when perception acts as a barrier to otherwise-suitable suppliers bidding for contracts⁵.



¹The Commonwealth Procurement Rules, made under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), outline the Australian Government's procurement policy and framework.

² IBAC 2020 – *Corruption in Procurement: risks and warning signs*

³ <https://www.ibac.vic.gov.au/preventing-corruption/are-you-vulnerable-to-corruption/procurement>

⁴ *ibid*

⁵ Schneider & Bose 2017 *Organizational Cultures of Corruption*. *Journal of Public Economic Theory*

What you need to know:

High risk area —time and resourcing pressures

Procurement in law enforcement is often subject to challenging time and resourcing requirements, where the operational pressure to deliver outcomes can be significant. These and other situational variables, such as employees with limited technical or procurement experience, may impact adherence to standard procurement processes and be detrimental to ethical decision-making⁶.

Government procurement relies on employees making informed and objective assessments and decisions, consistent with any relevant legal requirements, policy and procedures⁷. Employees without the requisite level of technical expertise to make objective assessments may need to rely on the advice of others to inform their decision-making processes. In some cases, this may present an opportunity for interested third parties to improperly influence procurement activity⁸.

Employees may justify actions and decisions which 'bend the rules' as a means to deliver the expected outcome more quickly than the 'standard' process allows⁹. In particular, procurement activity which is time sensitive and subject to significant interest (this could be political or from senior management) may be at risk of compromise. The integrity of the process may also be impacted due to a failure to adhere to established controls, such as relevant probity measures and good record-keeping¹⁰.

High risk area – officers attempting to self-manage risk

An ACLEI investigation examining the relationship between a potential supplier and a member of a procurement panel observed that the panel Chair was afforded significant discretion in deciding how to deal with this potential conflict of interest. The Chair did not seek further advice on the potential conflict and the relationship subsequently brought the panel's collective decision-making into question.

Self-managing risk involves officers attempting to deal with integrity issues alone and failing to report matters or seek assistance. Self-managing risk exposes staff to compromise, and denies the agency the opportunity to understand, appreciate and deal with risk holistically.

Senior and experienced officers responsible for large-scale procurement activities may be particularly vulnerable where they decide to self-manage conflicts of interest, particularly given their ability to influence agency decision making. Undeclared conflicts of interest may add weight to allegations of improper conduct and bring the validity of key decisions into question.

High risk area — reach-back, relationships and associations

The nature of law enforcement work can create an intense group loyalty which may endure long after former law enforcement employees have departed the agency, particularly when former law enforcement officers maintain social and professional connections with serving employees.

In-groups – which are often found in military and law enforcement environments and may consist of prior relationships between officers going back decades – may further intensify group loyalty and allow poor practice to go unchecked¹¹.

⁵ NSW ICAC 2011 *Corruption Risks in NSW Government Procurement: Suppliers' Perceptions of Corruption* <https://www.icac.nsw.gov.au/ArticleDocuments/232/Corruption%20risks%20in%20NSW%20Government%20procurement%20-%20Suppliers%20perception%20of%20corruption.pdf.aspx>

⁶ Soutar, McNeil & Molster 1994 - *The Impact of the Work Environment on Ethical Decision Making: Some Australian Evidence*, Journal of Business Ethics <https://doi.org/10.1007/BF00871761>

⁷ See <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>

⁸ OECD 2016 *Preventing Corruption in Public Procurement* <http://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>

⁹ NSW ICAC 2011 *Corruption Risks in NSW Government Procurement: Recommendations to Government*

<https://www.icac.nsw.gov.au/ArticleDocuments/232/Corruption%20risks%20in%20NSW%20Government%20procurement%20-%20Recommendations%20to%20government.pdf.aspx>

¹⁰ *ibid*

¹¹ IBAC 2016 *Operation Ord: An investigation into the conduct of officers of the Department of Education and Training, in connection with the use of 'banker schools' and related activities*. <http://www.ibac.vic.gov.au/investigating-corruption/public-examinations/operation-ord>

Reach-back occurs when former law enforcement employees seek out currently-serving employees to provide favours, access, or information¹². Corruption risk in procurement may be heightened where reach-back occurs in the form of suggesting or lobbying on behalf of certain suppliers, particularly when this advocacy involves coercion or the promise of benefits for the law enforcement employee¹³.

This risk may be compounded in circumstances where former senior officers can exploit the power imbalance caused by the (former) subordinate's 'superior officer mentality'¹⁴.

What should you do?

For agencies:

- Ensure procurement activities are subject to rigorous record keeping requirements, particularly in relation to the declaration of conflicts of interest and decision making.
- Make it easy for staff to report integrity matters, including actual and potential conflicts of interest.
- Encourage diversity in the membership of procurement panels and ensure oversight arrangements are fit for purpose – consider whether there is value including an independent assessor for high value high risk procurements.
- Ensure sufficient probity and due diligence arrangements are in place commensurate with the risk associated with procurement activity.

For managers:

- Consider whether expectations regarding procurement are reasonable and realistic – employees who are subject to challenging time and resourcing pressures may seek to 'bend the rules' and put the integrity of the agency at risk.
- Foster an environment where your team are empowered to ask questions, seek advice, and raise concerns.

For employees:

- Trust the system and don't try to self-manage risk. Reporting an actual or potential conflict of interest as soon as possible in the procurement activity will minimise your risk of compromise and help to maintain the integrity of the process.
- Know where to go for help and advice within your agency – your procurement, legal, integrity and professional standards area, or your manager are good places to start.

Further information

- [ACLEI Corruption Prevention Posters: available for download from the ACLEI website](#)
- [ACLEI website – developing risk control plans](#)
- [ACLEI website – understanding the risk](#)
- [Department of Finance website – Commonwealth Procurement Rules](#)

¹² ACLEI 2018 - https://aclei.govcms.gov.au/sites/default/files/18362_-_aclei_-_corruption_prevention_final.pdf?acsf_files_redirect

¹³ NSW ICAC 2011 *Corruption Risks in NSW Government Procurement: Recommendations to Government* <https://www.icac.nsw.gov.au/ArticleDocuments/232/Corruption%20risks%20in%20NSW%20Government%20procurement%20-%20Recommendations%20to%20government.pdf.aspx>

¹⁴ Callan 2016 *Institutional Corruption: The Australian Department of Defence's Achilles Heel*, IACA https://www.iaca.int/images/sub/master/Masters_Thesis_-_Michael_Callan.pdf



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