



ICAC

Independent Commission
Against Corruption
SOUTH AUSTRALIA



BUYING TRUST

CORRUPTION RISKS IN
PUBLIC SECTOR PROCUREMENT



BUYING TRUST
Corruption risks in public
sector procurement

Published June 2024

Level 9, 55 Currie Street
Adelaide SA 5000
(08) 8463 5191
GPO Box 11066
Adelaide SA 5001
icac.sa.gov.au

Contents

LETTER OF TRANSMITTAL	4
COMMISSIONER’S FOREWORD	6
RECOMMENDATIONS	8
CHAPTER ONE: INTRODUCTION	12
The impact of corruption in public sector procurement	12
CHAPTER TWO: GOVERNANCE OF PUBLIC SECTOR PROCUREMENT	16
Overall perceptions of corruption risks in South Australian public sector procurement	16
Corruption risks associated with complex and compliance-based processes	17
Splitting tenders	18
Black cladding	20
CHAPTER THREE: CONFLICTS OF INTERESTS	22
Undeclared and unmanaged conflicts of interests	23
Post separation conflicts of interests	25
CHAPTER FOUR: GIFTS, BENEFITS AND HOSPITALITY	28
Policies relating to gifts, benefits and hospitality	28
Gifts, benefits and hospitality may create a conflict of interests	30
Culture of entitlement	31
CHAPTER FIVE: MISUSE OF INFORMATION	34
Policies for protecting confidential tender information	34
Leaking of confidential procurement information	35
Unequal provision of information	37
Intellectual property in procurement	38
CHAPTER SIX: TYPE OF PROCUREMENT	40
Open market approaches	40
Direct market approaches	41
Panel and multi-use list procurements	42
Unsolicited proposals	44
Incumbent suppliers	45
CHAPTER SEVEN: PROCESS INTEGRITY	48
Planning a procurement	48
Variations and extensions	49
Evaluating tenders	50
Open periods	51
Failure to segregate duties	52
Exceeding delegated authority	53
Dealing with unsuccessful tenderers	53
Record keeping	54
CHAPTER EIGHT: CAPABILITY	56
Lack of capacity	56
Information and communication technology procurement	58
Procurement under pressure	59
Procurement during times of crisis	60

CHAPTER NINE: UNDER REPORTING OF CORRUPTION AND IMPROPRIETY IN PROCUREMENT	62
Suppliers' awareness of reporting obligations	63
Procurement officers' awareness of reporting obligations	64
Fear of negative repercussions	65
Reports of potential impropriety must be actioned	66
CHAPTER TEN: CONCLUSION	68
Red flags of potential corruption in public sector procurement	69
ENDNOTES	72

Case Studies

CASE STUDY 1: The impact of perceived corruption in public sector procurement	13
CASE STUDY 2: Public officers corruptly award public infrastructure contracts	19
CASE STUDY 3: Procurement improperly influenced by a manager with an undeclared and unmanaged conflict of interests	23
CASE STUDY 4: A conflict of interests is declared but not adequately managed	24
CASE STUDY 5: Suppliers use incentives to improperly influence procurement	30
CASE STUDY 6: Culture of accepting bribes becomes entrenched in a Western Australian department	32
CASE STUDY 7: Confidential tender information is disclosed due to an undeclared and unmanaged conflict of interests	36
CASE STUDY 8: A public officer inappropriately manipulates procurement specifications	40
CASE STUDY 9: A public sector employee improperly procures an unregistered supplier	42
CASE STUDY 10: Unsolicited proposal does not follow due process	44
CASE STUDY 11: Public officers may be perceived to favour an incumbent supplier	46
CASE STUDY 12: Public sector employee improperly favours a supplier by accepting a late tender	51
CASE STUDY 13: Failure to adequately segregate procurement and financial duties results in improper procurement	52
CASE STUDY 14: Public sector employee exceeds her delegation to sign a contract that does not offer value for money	53
CASE STUDY 15: Misguided public sector employee allows neighbour to improperly secure a contract	56
CASE STUDY 16: Procurement officer's lack of experience compromises an ICT procurement	58
CASE STUDY 17: A procurement officer under pressure circumvents procurement policies and procedures	59
CASE STUDY 18: Suppliers are reluctant to report improper conduct	65
CASE STUDY 19: Public authority does not adequately address a complaint made by a supplier	66

Letter of transmittal

30 May 2024

The Hon. Terence Stephens MLC
President
Legislative Council
Parliament House
North Terrace
ADELAIDE SA 5000

The Hon. Leon Bignell
Speaker
House of Assembly
Parliament House
North Terrace
ADELAIDE SA 5000

Dear President and Speaker

In accordance with section 41(2) of the *Independent Commission Against Corruption Act 2012 (SA)* I present to each of you the Commission's report *Buying Trust: Corruption Risks in Public Sector Procurement*.

Section 41(3) of the Act requires that you each lay the report before your House of Parliament on the first sitting day after receiving it.

Yours sincerely



The Hon. Ann Vanstone KC
COMMISSIONER



**COMMISSIONER'S
FOREWORD**

Commissioner's foreword

Public sector procurement is vulnerable to corruption. Corruption in procurement can be difficult to detect, may persist over long periods of time, and undermines the provision of essential public services.

Corruption in procurements for large scale infrastructure and construction projects may cost the state sector significant sums of money. Improper conduct in procurement can lead to reputational damage to public authorities and the public sector more generally, and suppliers who believe that tender decisions will be unduly influenced may be reluctant to bid. Corrupt procurement tends to delay or prevent the delivery of essential public services, and result in incomplete or substandard works that put public safety at risk.

For these reasons the Commission has conducted a study into the corruption risks in public sector procurement. This is the second report arising from this project. The first provided quantitative findings from a survey of public sector procurement officers and suppliers who have tendered, or intended to tender, for public sector contracts. This report provides analysis of qualitative survey responses and submissions, reports and complaints referred to the Commission, and insights from other integrity agencies.

While the integrity of public sector procurement in South Australia may have improved in recent years, there is still room for improvement.

Worryingly, some procurement officers are not sufficiently aware of corruption risks. Many lack adequate procurement experience or are under-resourced. Too many are not receiving training in key corruption risks. Many suppliers who hold public sector contracts are unaware of their status as public officers, and that public officers are required to report suspicions of corruption in public administration.

This report has been prepared in accordance with section 41 of the *Independent Commission Against Corruption Act 2012 (SA)* to raise awareness of key corruption risks in public sector procurement. It aims to identify red flags that could indicate corruption and makes 18 recommendations to address weaknesses in public sector procurement open to exploitation by corrupt public sector employees or suppliers.



The Hon. Ann Vanstone KC

Commissioner

INDEPENDENT COMMISSION AGAINST CORRUPTION





RECOMMENDATIONS

Recommendations

RECOMMENDATION 1

Public authorities conduct regular procurement audits based on the risk profile of their procurement activities. High risk procurements may include those where the number of suppliers able to tender is limited, extensions or variations are utilised, an incumbent supplier has been reengaged, and those conducted with urgency or in emergencies. Procurements under \$55,000 should be regularly audited for evidence of tender splitting.

RECOMMENDATION 2

Public authorities prevent non-Aboriginal suppliers taking unfair advantage of schemes intended to assist Aboriginal suppliers to win public sector contracts by verifying the status of suppliers claiming Aboriginal identity.

RECOMMENDATION 3

Where relevant, public authorities conduct random audits of contracts that are required to have a mandated proportion of labour force hours to be performed by nominated groups.¹ Non-compliance needs to be reported to the Office of the Industry Advocate.

RECOMMENDATION 4

All public officers involved in procurement, including those with delegation authority, complete training on probity in procurement. This should include training on corruption risks in procurement, conflicts of interests, gifts, benefits and hospitality, the handling of confidential information and public officers' reporting obligations.

RECOMMENDATION 5

Public authorities ensure that if a participant in a procurement discloses a conflict of interests, a management plan is devised, documented, actioned and monitored.

RECOMMENDATION 6

Public authorities consider control measures to address post separation conflicts of interests for public sector employees in high risk roles, including exiting procedures, information access restrictions and monitoring, or the use of restraint clauses where reasonable.

RECOMMENDATION 7

The Commissioner for Public Sector Employment ensure that the *Gifts and Benefits Guideline* is consistent with that provided by Procurement Services SA, which recommends that public officers in high risk roles do not accept gifts, benefits or hospitality.

RECOMMENDATION 8

Public authorities ensure that internal policies include advice regarding the handling and recording of gifts, benefits and hospitality offered by suppliers in high risk functions including procurement.

RECOMMENDATION 9

Public authorities ensure they are complying with *Premier and Cabinet Circular PC035 – Proactive disclosure of regularly requested information*, including publication of information on agencies' websites.

RECOMMENDATION 10

Procurement Services SA continue its development and implementation of a Code of Conduct for suppliers.

RECOMMENDATION 11

Public authorities conduct regular audits of staff permissions, access and use of confidential procurement information to identify patterns of unusual activity or instances of misuse.

RECOMMENDATION 12

Procurement Services SA consider the need for guidance on the proper management and protection of intellectual property during procurement processes.

RECOMMENDATION 13

Entities that control panels and multi-use supplier lists vet new suppliers, regularly review existing suppliers on a panel or list, and remove suppliers if they no longer fit relevant criteria or conditions.

RECOMMENDATION 14

Public authorities consider and limit public officers' discretion over procurements and financial decision making, and ensure appropriate segregations and separations are in place.

RECOMMENDATION 15

Public authorities conduct regular audits of procurement record keeping, including ensuring all procurement decision making is documented with reasons, and relevant written and verbal communication with suppliers is recorded.

RECOMMENDATION 16

Procurement Services SA consider expanding its capacity to assist agencies that require additional support to undertake procurements, especially where that assistance would help safeguard procurements from impropriety.

RECOMMENDATION 17

Public authorities ensure they have emergency situation procurement frameworks in place and published on their websites.

RECOMMENDATION 18

Public authorities provide suppliers with information on internal reporting policies and procedures and suppliers' reporting obligations as public officers. Public authorities ensure that contractors provide corresponding induction material to their subcontractors.



CHAPTER ONE
INTRODUCTION

Chapter one: Introduction

Public sector procurement refers to the process by which a public authority acquires goods and services, or engages in a construction project.² It involves significant public spending, which can attract those with unscrupulous intentions. The high volume of transactions and often complex nature of procurement processes can create opportunities for improper behaviour as well as making corruption difficult to uncover. Procurement occurs at the intersection between the public and private sectors, where potential for a conflict of interests and collusive behaviour raises the prospect of corruption.

This report examines perceptions and experiences of corruption risks in public sector procurement. Recommendations are made to assist public authorities to prevent and minimise those risks. It draws on findings from surveys conducted with procurement officers and suppliers involved in public sector work,³ and submissions from stakeholders. It also provides insights from reports about potential corruption in public sector procurement referred to the Commission, and findings from other integrity agencies.

The impact of corruption in public sector procurement

Corrupt procurement may have serious consequences. It can increase the costs of goods and services, and the delivery of construction projects. Essential services may not be delivered, or the quality of those services reduced. Once corruption is detected, services may need to be interrupted or stopped and public authorities may need to pay for remedial action.

The project team received submissions from suppliers who believed they had lost work when contracts had been improperly awarded. As a result, suppliers laid off staff, moved their business interstate, and some small businesses dependent on government contracts closed.

Suppliers who believe that tenders are not assessed fairly may be deterred from bidding. Perceptions that procurements may be corrupt may deprive public authorities of contracts that offer value for money and innovation that could boost South Australia's economy. If suppliers believe that other companies are engaging in corruption, they may behave corruptly themselves.⁴

Several suppliers gave accounts of the financial and other costs incurred by being involved in a public sector procurement believed to have been corrupted (*Case study 1*).

CASE STUDY 1:

The impact of perceived corruption in public sector procurement

One supplier described the devastating personal and professional impact of having lost contracts due to perceived corruption. The supplier had founded a business that had developed an innovative and unique product, and had succeeded in winning contracts with several public authorities.

The supplier believed that their intellectual property had been inappropriately leaked to a competing supplier by a corrupt public officer during a procurement, in exchange for a benefit. The supplier alleged that a competitor used this information to replicate the product and was awarded contracts that were not open to the market.

As a result, the supplier lost a significant proportion of his business. The supplier described the psychological impact of losing his intellectual property. For someone who had built his company around a unique product, this loss was profound. The supplier felt embarrassed that he was no longer fully contributing to a business that he had founded. He decided to retire early.





CHAPTER TWO
GOVERNANCE OF
PUBLIC SECTOR
PROCUREMENT

Chapter two: Governance of public sector procurement

Public sector procurement is governed by the South Australian Government Procurement Framework ('the Framework'), which came into effect on 1 July 2021. The Framework provides a whole-of-government approach to procurement with common principles, standards and benchmarks. The Framework consists of *Treasurer's Instruction 18*, the *Procurement Governance Policy*, and supporting policies that set the minimum requirements for key procurement activities.⁵

Under the Framework, the Treasurer has responsibility for setting the rules and policy direction for public sector procurement. Procurement Services SA (PSSA) is the government's central procurement branch. PSSA is responsible for whole-of-government procurement policies, standards and guidance, and supporting the public sector's procurement capacity.

Chief Executive Officers of public authorities have responsibility for their own procurements. Public authorities are required to develop their own internal procurement framework, policies and procedures that are consistent with the Framework.

Overall perceptions of corruption risks in South Australian public sector procurement

For some survey respondents, the Framework has reduced integrity risks to public sector procurement, particularly in the last twelve months.



"I haven't seen any of this in past 12 months. It seems much tidier" (supplier).

"Within the last 12 months appears to have been a far fairer process and I have no concerns or criticisms about it [procurement]" (supplier).

"Much more robust processes in place these days. In my early days in the public sector, it was much easier to influence a procurement process in my view" (procurement officer).

"We have specific systems in place and so many people have to sign off on procurement that it's not up for question" (procurement officer).

Some suppliers claimed that corruption was less prevalent in South Australia than other jurisdictions.



“No recent suspicions in SA” (supplier).

“I have personally observed these issues in jurisdictions outside SA” (supplier).

“SA is one of the most compliant states I have worked in” (supplier).

The New South Wales Independent Commission Against Corruption and the Victorian Independent Broad-Based Anti-Corruption Commission have conducted similar surveys with suppliers in their jurisdictions. South Australian suppliers were less likely to believe corruption in public sector procurement to be a problem compared to respondents in New South Wales and Victoria.⁶

Not all suppliers agreed that South Australian public sector procurement was more resilient to corruption compared to other jurisdictions, although these comments were relatively few.



“South Aust is the most corrupt place to do business” (supplier).

“South Australia does not give us a really fair go. Very sad reality” (supplier).

Corruption risks associated with complex and compliance-based processes

The Framework was intended to reduce the complexity of procurement. PSSA explained that the steps required for a procurement valued above \$55,000 decreased under the Framework. Two thirds of procurement officers (67%) and over half of suppliers (58.5%) agreed that the process for their latest procurement was straightforward.

Some respondents believed that finding the correct balance between compliance and efficiency is difficult.



“Government tendering has matured and become more complex over time, and this has required professionals to help organisations understand rules. This is positive because it helps organisations to prevent corruption and impropriety, but it also makes it difficult for smaller organisations to enter the marketplace” (supplier).

“I also think that some people don’t value the steps involved in a procurement process (that people complain about as being red tape) unless something goes wrong, and then they wish they followed the steps!” (procurement officer).

However, some procurement officers believed that public sector procurement continues to be too compliance heavy.



“Reliance on overly complex processes chases good people out of procurement and replaces them with ‘box tickers’” (procurement officer).

“Part of the issue for procurement often not complying with guidelines or policies is they are constantly changing and often the process becomes far more complex with more red tape, for no evident gain apart from ticking a box or empire building” (procurement officer).

Compliance heavy processes can distract procurement officers from attending to integrity issues. Some senior Super SA staff interviewed as part of the Commission’s evaluation of Super SA (2022) saw compliance as a burden rather than a necessary integrity measure. This attitude may result in procurement policies and processes being circumvented, and a culture of non-compliance.⁷ This attitude was also expressed by some survey respondents.



“I believe that creating further bureaucracy in an effort to stamp out corruption will only lead to greater levels of corruption. There needs to be a degree of trust and accountability in policies to allow efficient procurement processes” (procurement officer).

Splitting tenders

Some procurement officers (18.6%) and suppliers (26.3%) believed that public sector procurement was highly or extremely vulnerable to tenders being split to circumvent thresholds. The Framework only applies to procurements valued over \$55,000, and it may be that procurements are split to avoid governance under the Framework. It may also be possible that procurements are split to avoid thresholds set by the Industry Participation Policy.



“As the procurement process based on TI 18 is so complex, convoluted and difficult all sorts of people are working around the system, doing 2 contracts for the same thing, using different equipment at different sites to work around the process of using the same supplier or service. This is all because to prevent fraud you have made it so time consuming and pointless, that people work hard to not hit the 55k” (procurement officer).

“Procurement processes seen as all too hard. Too much work. Managers tell you to split contracts to avoid PARS reporting” (procurement officer).

While PSSA expressed concern about tender splitting, they observed that the number of procurements valued from \$55,000 to \$60,000 have decreased and higher value procurements have increased. PSSA contended that this may indicate that public authorities are planning ahead and consolidating rather than splitting procurements.

Even if tender splitting has decreased, it remains a risk.⁸ Tender splitting by itself may not be corrupt conduct, however it may be used to hide corruption (*Case study 2*).

CASE STUDY 2:

Public officers corruptly award public infrastructure contracts

Investigators from the Victorian Independent Broad-Based Anti-Corruption Commission found that two public officers had corruptly awarded public infrastructure contracts valued at \$25 million to entities they controlled or were controlled by their associates. Money that should have gone into public works was siphoned off by those public officers leaving some projects incomplete or completed to an unsatisfactory standard. Honest contractors, many regionally based, were locked out of the tendering process or unable to fairly compete.

This corrupt conduct was facilitated by serious breaches of procurement policies and procedures. Those breaches included splitting tenders so that procurements awarded to companies controlled by the public officers would not be appropriately scrutinised. When questioned by other agency staff, the public officers' explanations for the split tenders were accepted without further enquiries.

The public officers' corrupt conduct spanned seven years. Warning signs that contracts were being manipulated were ignored. A workplace culture which placed timely outcomes above compliance with procurement processes, did not provide staff with proper training on risks associated with corruption, and where management did not support procurement policies also allowed corruption to be covered up.⁹

Public authorities conduct regular procurement audits based on the risk profile of their procurement activities. High risk procurements may include those where the number of suppliers able to tender is limited, extensions or variations are utilised, an incumbent supplier has been reengaged, and those conducted with urgency or in emergencies. Procurements under \$55,000 should be regularly audited for evidence of tender splitting.

RECOMMENDATION 1

Black cladding

The Government's *Aboriginal Economic Participation Strategy* is intended to increase Aboriginal participation in the South Australian economy.¹⁰ For large projects, industry participation weighting is increased for contracts that will involve Aboriginal participation. This includes giving additional weighting to a South Australian business with an Aboriginal owner or a joint venture arrangement between Aboriginal and non-Aboriginal partners.

Aboriginal procurement policies have succeeded in including more Aboriginal suppliers in procurement bids. However, an unintended consequence of Aboriginal procurement is 'black cladding.'¹¹

'Black cladding' is defined to be:

...the practice of non-Indigenous business entity or individual taking unfair advantage of an Indigenous business entity or individual for the purpose of gaining access to otherwise inaccessible Indigenous procurement policies or contracts. Unfair advantage involves practices and arrangements that result in the disadvantage or detriment to an Indigenous business, or that do not represent a genuine demonstrated level of equitable partnership and benefit.¹²

The project team received submissions that alleged that some suppliers misrepresent their Aboriginal identity to obtain an advantage in a procurement. This problem has been reported in other jurisdictions.¹³ Public authorities can verify the identity of suppliers claiming Aboriginality, for instance ensuring that an Aboriginal supplier is registered as such with the Office of the Industry Advocate or referring joint ventures with non-Aboriginal capacity partners to Supply Nation for verification.

Public authorities prevent non-Aboriginal suppliers taking unfair advantage of schemes intended to assist Aboriginal suppliers to win public sector contracts by verifying the status of suppliers claiming Aboriginal identity.

RECOMMENDATION 2

It was also alleged that once a joint venture bid is successful, work is not allocated to the Aboriginal business. For South Australian construction projects valued over \$50 million, 20% of labour force hours need to be performed by nominated groups which include Aboriginal job seekers.¹⁴ While the project team did not receive submissions alleging misreported labour hours, this has been reported in other jurisdictions.¹⁵

Where relevant, public authorities conduct random audits of contracts that are required to have a mandated proportion of labour force hours to be performed by nominated groups.¹⁶ Non-compliance needs to be reported to the Office of the Industry Advocate.

RECOMMENDATION 3



CHAPTER THREE
CONFLICTS
OF INTERESTS

Chapter three: Conflicts of interests

An undeclared conflict of interests often lies at the heart of corrupt procurement.¹⁷ PSSA's *Probity and Ethical Procurement Guideline* states that government employees, including Chief Executives, should identify, document and effectively manage conflicts of interests for every procurement. Conflicts of interests declarations should be completed by panel members prior to completing an evaluation.¹⁸

Almost all procurement officers surveyed claimed that their workplace has policies and procedures relating to conflicts of interests (97.0%), and they are required to declare conflicts when involved in procurement (96.0%). However, approximately one in three (30.1%) procurement officers responded that their workplace does not provide training, or they were unsure if their workplace provides training, in relation to conflicts of interests.

All public officers involved in procurement, including those with delegation authority, complete training on probity in procurement. This should include training on corruption risks in procurement, conflicts of interests, gifts, benefits and hospitality, the handling of confidential information, and public officers' reporting obligations.

RECOMMENDATION 4

Undeclared and unmanaged conflicts of interests

Respondents most commonly described a conflict of interests as entailing a public sector employee involved in a procurement failing to declare a relationship with a supplier. This typically involved the supplier being a family member, friend or former colleague of a public sector employee with procurement responsibilities.

Corrupt procurement sometimes involves a public sector employee awarding a contract to a private company in which they have undisclosed interests, such as being an owner or shareholder. The Commission and other integrity agencies have investigated allegations of this nature.¹⁹

Procurement officers explained that senior managers in decision making roles are the most likely to unduly influence procurement processes due to a conflict of interests.



“Managers force your hands – tell you this is what they want done. You tell anyone and your job is on the line ... Absolutely wasteful contract to their friends” (procurement officer).

“My experience shows that procurement outcomes are more likely to be influenced at higher level (i.e. senior management) than the public officer managing the procurement e.g. normally by the person who signs off or approves the procurement who may happen to know or have a business or social relationship with one of the bidders” (procurement officer).

Public sector employees do not always appreciate the corruption risks posed by an undeclared and unmanaged conflict of interests in procurement (*Case study 3*). The Auditor-General has reported that a conflict of interests declaration is not always completed at the commencement of a procurement evaluation.²⁰

CASE STUDY 3:

Procurement improperly influenced by a manager with an undeclared and unmanaged conflict of interests

An investigation conducted by the Commission established that a senior manager in a public authority had engaged her husband to undertake works required by the authority. The senior manager had been sent a copy of the authority’s Conflicts of Interests guidelines and declaration form, although she had not completed the form. It was only after the work was completed that the senior manager declared her conflict, and admitted she had not obtained quotes. She explained she had not realised at the time that there was a conflict; she thought that no one would object to her husband doing the work, and she needed the work done quickly.

Some procurement officers explained that conflicts of interests are well managed in their workplace. However, others stated that conflicts are declared but not managed. A conflict of interests should be effectively managed by someone in a more senior role. *Case study 4* highlights the risks to procurement if a conflict of interests is declared, but not managed.

CASE STUDY 4:

A conflict of interests is declared but not adequately managed

The Commission referred allegations to the Ombudsman that a public sector procurement had been improperly influenced by a public sector employee with a conflict of interests. The Ombudsman found that the employee had declared that a company interested in tendering was owned by a family member. The employee was excluded from the evaluation process, and evaluation panel members were informed of the conflict.

However, the employee remained involved in administrative tasks related to the procurement as directed by her supervisors. She had access to the tender documents and communicated with tenderers. The Ombudsman concluded that the conflict was insufficiently managed, and the employee should not have had any involvement with the tender process.

The New South Wales Independent Commission Against Corruption has argued that schemes giving preference to local suppliers may lead to unnecessary lobbying and undeclared conflicts of interests.²¹ The South Australian Industry Participation Policy (SAIPP) is intended to assist South Australian suppliers. The scheme is overseen by the Industry Advocate, who assists to protect the public sector procurement from the integrity risks identified in New South Wales.

Public authorities ensure that if a participant in a procurement discloses a conflict of interests, a management plan is devised, documented, actioned and monitored.

RECOMMENDATION 5

Post separation conflicts of interests

Public sector procurement may be compromised by a post separation conflict of interests. A procurement officer who has accepted employment with a supplier may use the period in which they are still engaged in the public sector to benefit their new employer. Once the employee takes up the new position, they may reveal confidential information and manipulate relationships with previous colleagues to influence a procurement decision.

Even in circumstances where a former procurement officer has not advantaged their new employer, there may still be the perception that a procurement decision was improperly influenced. Others may perceive that the contract was awarded to a specific supplier in return for a personal benefit in the form of employment to the person making that decision.

The *Public Sector Code of Ethics for the South Australian Public Sector* states that:

*Public sector employees who leave the public sector to work with a non-Government employer will avoid situations that would result in an unfair advantage for their new employer. This holds particularly in the case where the employer is bidding for a government contract or is competing for a grant or similar disbursement of public moneys.*²²

However, public authorities may benefit from further guidance on how to address post separation conflicts. Steps should be taken to ensure that a public sector employee who has accepted employment with a supplier who has bid for a contract with their former agency is not able to access confidential procurement information. Public authorities may consider auditing records accessed by departing staff to ensure that procurements have not been compromised.

The *Australian Public Sector Commission's Values and Code of Conduct in Practice* suggests that public sector employees disclose conflicts of interests resulting from an employee's intention to leave the public service. Agencies may reallocate an employee's duties, move the employee to a different work area, or require the employee to take temporary leave.²³

The guidance suggests including a restraint clause in a request for tender. This clause would prevent a supplier soliciting or engaging particular public sector employees during the procurement process.²⁴

Restraint clauses cannot be used unreasonably. There needs to be a legitimate interest in imposing a restraint clause, such as preventing a departing employee from unfairly influencing a procurement in their new employer's favour. A restraint clause might reasonably be applied to a procurement officer who is in direct contact with suppliers or has a decision making role in a procurement. Restraint clauses need to be of a short duration.

Public authorities consider control measures to address post separation conflicts of interests for public sector employees in high risk roles, including exiting procedures, information access restrictions and monitoring, or the use of restraint clauses where reasonable.

RECOMMENDATION 6





CHAPTER FOUR
GIFTS, BENEFITS
AND HOSPITALITY

Chapter four: Gifts, benefits and hospitality

A gift is anything of value offered to an employee above their normal salary or employment entitlements. A benefit is preferential treatment, privileged access, favour or other advantage. Benefits are usually intangible such as personal service and job offers. Hospitality includes offers of meals, invitations to events, sponsored travel and accommodation.²⁵

Accepting gifts, benefits or hospitality may damage the reputation of individual procurement officers and public authorities, deter suppliers from bidding for tenders, and erode public confidence in the delivery of public services.²⁶ Even if not accepted, the offer of a gift, benefit or hospitality by a supplier to a public sector employee involved in procurement may be perceived as an attempt to unduly influence the procurement process.

Public sector employees soliciting gifts, benefits or hospitality can pose a serious corruption risk. A review of New South Wales Independent Commission Against Corruption investigations found that alleged corruption in procurement was usually initiated by a public sector employee demanding cash payments or gifts in return for manipulating the procurement process to favour a specific supplier.²⁷

Policies relating to gifts, benefits and hospitality

PSSA's *Gifts and Benefits Guideline* states that:

*Due to the high-risk nature of procurement and contract management, it is strongly recommended that a gift, entertainment, or benefit; even when it has low or no value is declined.*²⁸

The Office of the Commissioner for Public Sector Employment's (OCPSE) *Gifts and Benefits Guideline* recommends that public officers use their judgement about whether accepting a gift, benefit or hospitality gives the impression that decision making will be unduly influenced.²⁹ However, the Guideline does not recommend that public officers in high risk roles, such as being involved in procurement, should refuse gifts, benefits and hospitality.

The Commissioner for Public Sector Employment ensure that the *Gifts and Benefits Guideline* is consistent with that provided by Procurement Services SA, which recommends that public officers in high risk roles do not accept gifts, benefits or hospitality

RECOMMENDATION 7

Some public authorities have internal policies which state that gifts, benefits and hospitality cannot be accepted during the procurement process (e.g. SA Health).³⁰ However, not all internal policies contain this advice. One third (36%) of procurement officers responded that their workplace had not provided training relating to gifts, benefits and hospitality.

Public authorities ensure that internal policies include advice regarding the handling and recording of gifts, benefits and hospitality offered by suppliers in high risk functions including procurement.

RECOMMENDATION 8

Premier and Cabinet Circular PC035 – Proactive disclosure of regularly requested information requires departments to publicly disclose their agency’s gift registers every month online. The registers assist in making transparent gifts, benefits and hospitality offered to and accepted by public sector employees. Such disclosure does not always occur.

Public authorities ensure they are complying with *Premier and Cabinet Circular PC035 – Proactive disclosure of regularly requested information*, including publication of information on agencies’ websites.

RECOMMENDATION 9

Most suppliers (61.2%), especially larger suppliers, stated that they have an internal gifts, benefits and hospitality policy. Small suppliers may lack the resources to put together comprehensive internal policies relating to probity in procurement. The project team understands that PSSA is considering developing and implementing a Code of Conduct for all suppliers. Some other jurisdictions have such codes in place.³¹

Procurement Services SA continue its development and implementation of a Code of Conduct for suppliers.

RECOMMENDATION 10

PSSA’s guideline on gifts and benefits appears to have made some impact. Several respondents stated that they had witnessed public sector employees with procurement roles accepting gifts in the past. However, more recently gifts were being refused. The majority (86.9%) of procurement officers who responded to the survey agreed that they are not allowed to accept gifts, benefits or hospitality when involved in a procurement. Fewer suppliers stated that they offer gifts to public sector employees involved in procurement compared to Victoria and New South Wales.³²

Gifts, benefits and hospitality may create a conflict of interests

The acceptance of a gift, benefit or hospitality by a public sector employee may create a conflict of interests and the expectation that the public sector employee will reciprocate.³³ Offering a gift may be the first step in a grooming process, which can lead to improper conduct (*Case study 5*).

CASE STUDY 5:

Suppliers use incentives to improperly influence procurement³⁴

In May 2010, the South Australian Crown Solicitor's Office received information from the Western Australian Crime and Corruption Commission regarding improper purchasing of toner cartridges by Western Australian state government agencies. The South Australian state government established a Procurement Working Group to examine allegations that suppliers had been persuading public sector employees to purchase printer cartridges at inflated prices in return for gifts. Public servants were found to have spent \$1.25 million on overpriced office supplies in return for gifts and benefits. These included gift cards, iPads and iPods, notebook computers, digital cameras, a television, MP4 player and game console. Some public officers were cautioned while others had their employment terminated, and one public officer pleaded guilty to charges of failing to act honestly while a public sector employee.

Procurement officers may not be sufficiently aware of these risks. One in three procurement officers (34.7%) was unaware that suppliers may offer gifts, benefits and hospitality in order to influence a procurement decision.

Respondents were asked what types of gifts, benefits or hospitality may be offered by a supplier to a public sector employee involved in procurement. Many offers were low value, such as a cup of coffee or box of chocolates. However, even trivial or token gifts can have an unconscious influence on a procurement decision.³⁵

Procurement officers and suppliers described items of greater value such as meals, accommodation and travel. Tickets to events were the most frequently mentioned benefit, including corporate tickets to events accompanied by hospitality. A few procurement officers described suppliers offering cash payment, employment, to perform work at an employee's house for free, and paid holidays including travel and accommodation for an employee and their family.

Culture of entitlement

A lack of adherence to policies and procedures relating to gifts, benefits and hospitality may encourage a culture of entitlement to develop in an agency. The Tasmanian Integrity Commission has observed gifts and benefits being accepted but not declared during procurements.³⁶ The Tasmanian public sector was described as being at risk of developing a culture where public sector employees believed that gifts were a ‘reward’ for their ‘hard work’, and the risks associated with gifts and benefits were overlooked.

A few procurement officers believed that they should be entitled to gifts, benefits or hospitality.



“Be nice to be offered something considering all the goodwill we give”
(procurement officer).

“Politicians and management line up future \$300,000 per annum jobs by creating huge projects for their industry friends but hammer a lowly public servant for once getting a \$300 iPad with printer cartridges they needed anyway” (procurement officer).

A culture of entitlement may develop when procurement officers attempt to justify improper behaviour. Procurement officers described circumstances when they considered that accepting a gift, benefit or hospitality was acceptable. These included accepting a gift as if it was:

- ▶ entered into the gifts register
- ▶ declared and shared with the team
- ▶ accepted in front of someone else
- ▶ valued at less than \$50
- ▶ approved by a senior executive
- ▶ not intended to “obviously influence” the employee accepting the gift
- ▶ not perceived to create a conflict of interests.

A sense of entitlement may lead to public sector employees soliciting gifts, benefits or hospitality. One supplier described having been asked for employment during the procurement process by a probity advisor. Another described hearing rumours of public sector employees soliciting consultancy work during a procurement.

A culture of entitlement may develop if senior leaders are poor role models. Some procurement officers observed that senior leaders in their workplace accepted gifts, benefits and hospitality.



“CEOs and executive were regular [sic] provided with concert tickets. They were disclosed but because it was a senior member of staff it was somehow deemed OK. It wouldn’t be OK if it were a junior member, but surely the more senior staff member (and decision maker) accepting the tickets carries more risk” (procurement officer).

The consequences of allowing a sense of entitlement to take root and then grow into a culture of bribery and solicitation are highlighted in *Case study 6*.

CASE STUDY 6:

Culture of accepting bribes becomes entrenched in a Western Australian department³⁷

An investigation by the Corruption and Crime Commission, Western Australia, found that senior public officers had received lavish gifts and benefits in return for awarding contracts to favoured suppliers. Over a period of six to ten years, suppliers spent \$125,000 on lunches for public sector employees. Two executives received more than \$150,00 of personal travel, including interstate and overseas travel with business class flights, and renovations to their personal residence. Suppliers recouped the considerable sums spent to secure contracts by inflating invoices.

Other staff in the department were aware that bribes were being sought and paid, but the behaviour was not openly questioned and warning signs were overlooked. As a result, a culture of bribery and fraud flourished. Some staff did not speak out as they were worried about their jobs. Others were groomed by suppliers.

One such target was courted with expensive lunches at the same time as he was making decisions to award work and approve invoices. This public officer received \$5,000 of restaurant meals from one supplier over a one year period.



CHAPTER FIVE
MISUSE OF
INFORMATION

Chapter five: Misuse of information

The improper disclosure of confidential procurement information may confer an advantage to a favoured supplier. For instance, a public sector employee may improperly disclose a supplier's pricing to a competing supplier who then adjusts their bid. Misuse of information may also entail the unequal provision of information to potential tenderers. This may involve providing information to a favoured supplier, and withholding information from others.

Policies for protecting confidential tender information

PSSA's *Sourcing Policy* states that public authorities should manage the security and confidentiality of documents, and prevent unauthorised access to and dissemination of commercial-in-confidence information. All participants in a procurement evaluation are required to complete a confidentiality agreement prior to commencing an evaluation. All interested tenderers are to be provided with the same information during the procurement process, including responses to requests for information.³⁸

The *Code of Ethics for the South Australian Public Sector* requires that public sector employees do not access, or attempt to access, official information except in connection with the performance of their duties, and that they will not disclose official information without authority.³⁹

Several respondents suggested that the misuse of confidential procurement information had decreased in the past twelve months. A few suppliers commented that the SA Tenders and Contracts website helps ensure that all interested suppliers receive the same information about tenders. Several procurement officers commented that there are sufficient policies and procedures in place to ensure that confidential procurement information is handled appropriately.



“While not perfect, the system to manage these issues is much more robust these days” (procurement officer).

“There is a process to follow and probity advice is sought on all complex and strategic procurements. The risk of this happening while following process is minimal” (procurement officer).

Despite these positive comments, there is room for improvement. Approximately one in four procurement officers (27.2%) stated that they were not required to enter a confidentiality agreement during a procurement process. More than one third of procurement officers (38%) stated that they had not received training relating to handling confidential tender information. The need for training was raised by some procurement officers.



“I have never had any formal training in managing confidential information. I am very aware of confidentiality due to my years of experience as a public sector employee but have never had any formal training or discussions with management in my time at my current department. It seems to appear as if we should know right from wrong, rather than being trained formally” (procurement officer).

Leaking of confidential procurement information

One in four suppliers (26.5%) and one in ten procurement officers (9.9%) believed that confidential procurement information was highly or extremely vulnerable to being improperly handled. A similar proportion of suppliers (23.5%) stated that they have suspected that confidential procurement information has been disclosed to competitors prior to the closing of a tender. These findings are similar to those in other jurisdictions.⁴⁰

Lack of experience or training was the most common explanation for confidential information being improperly given to a supplier during a procurement. However, several respondents described incidents where they believed confidential information had been deliberately leaked.

One supplier alleged that a procurement officer had intentionally disclosed confidential tender information to a competitor during the procurement process in exchange for being given employment with the successful contractor. A procurement officer described a public sector employee deliberately providing a friend with confidential tender information to assist the friend to win a contract. The Commission has received allegations that a public sector employee involved in a procurement improperly disclosed confidential information (*Case study 7*).

CASE STUDY 7:

Confidential tender information is disclosed due to an undeclared and unmanaged conflict of interests

The Commission received allegations that a procurement had been improperly influenced by a public sector employee who had an undeclared conflict of interests with the successful tenderer. The agency had conducted an independent review, which found that the preferred tender did not align with the scope provided in the call for Expressions of Interest. The person who had responsibility for the procurement had failed to declare that she had a long term friendship with the preferred supplier. She had disclosed information about the bid to that supplier, and engaged in direct negotiations prior to the opening of the Expression of Interest process. Following the review, the procurement process was halted and needed to be redone.

Public authorities conduct regular audits of staff permissions, access and use of confidential procurement information to identify patterns of unusual activity or instances of misuse.

RECOMMENDATION 11

Unequal provision of information

One in three suppliers (33.6%) and one in four procurement officers (26.5%) considered that public agencies were highly or extremely vulnerable to giving unequal information to suppliers during a tender. These results are comparable with perceptions in other jurisdictions.⁴¹

Most comments from procurement officers suggested that the unequal provision of confidential tender information occurs inadvertently. For instance, a procurement officer may be unaware that if one supplier asks a question then all suppliers need to be informed of that question and answer.

Several procurement officers suggested that some suppliers deliberately attempt to obtain information that is not made available to their competitors.



“Where working relationships with suppliers has already been formed through existing contracts, it’s possible that suppliers try to seek information from those people, rather than the procurement contact. Most staff members have been reminded or advised that all requests need to go to the contact person, however I’ve experienced tenderers asking questions to other staff members” (procurement officer).

“Some bidders believe it is acceptable to approach Ministerial level people to discuss open procurements. Ministerial staffers need to be educated as the probity risks this involves and be taught how to manage accordingly” (procurement officer).

A few suppliers described instances where they had suspected the intentional unequal provision of information. Those largely consisted of allegations that specific suppliers were preferentially provided with information about tender requirements, and that procurement officers met with favoured, rather than all, suppliers.



“There appears to be a serious inequality in the level of communication with suppliers... It was observed that one organisation had 3 meetings and opportunities to change tender information each time prior to it closing. We did not receive a single meeting, nor feedback that was provided to that particular organisation and should have been accessible for other applicants” (supplier).

“Only a few select providers were called in to shortlisting meetings ... Was provided information the other tenders have not been and have been given an unfair advantage to negotiate their rates” (supplier).

Intellectual property in procurement

Several suppliers described having used their intellectual property as part of their bid, only to have lost the tender and have their intellectual property provided to the successful tenderer. Those suppliers expressed surprise and disappointment that this happened. For several suppliers, the fact that the successful tenderer was contracted to provide a product that the unsuccessful supplier had initially developed, fueled their suspicion that the contract was not won fairly.



“Often the tender is based on the (stated confidential) IP of the provider offering it in good faith, and the contract (with our IP) goes to a competitor. We have stopped discussing our methodology with some agencies because we know our IP will be stolen” (supplier).

PSSA’s *Intellectual Property Guideline* covers rights to intellectual property that may arise during the evaluation of a tender and once a contract has been entered.⁴² However, the guideline does not explicitly discuss the ownership of intellectual property prior to the execution of the contract, or explain how a supplier’s intellectual property will be handled or protected.

Procurement Services SA consider the need for guidance on the proper management and protection of intellectual property during procurement processes. .

RECOMMENDATION 12



CHAPTER SIX
TYPE OF
PROCUREMENT

Chapter six: Type of procurement

Corruption risks vary depending on procurement type. Types of public sector procurements range from open market approaches where any interested supplier can tender, limited market approaches where certain suppliers are invited to tender, direct market approaches where a public authority approaches a single supplier, to unsolicited approaches where suppliers put new proposals to public authorities.

Open market approaches

Open market approaches were seen to be the least vulnerable to corruption. This is unsurprising as an open market approach is the most transparent type of procurement. However, this does not mean that open market procurements cannot be corrupted.

Some suppliers believed that open market tenders may be manipulated by writing specifications to unduly favour a particular supplier.



“Occasionally it appears that preferred suppliers have been approached in advance of a tender and the tender specification is steered towards that suppliers specific offering” (supplier).

“Some tender specifications are written in such as way as to favor particular products or services. This tendering practice results in the exclusion of other products and services” (supplier).

Case study 8 demonstrates how specifications can be improperly manipulated.

CASE STUDY 8:

A public officer inappropriately manipulates procurement specifications⁴³

The New South Wales Independent Commission Against Corruption established that a public officer had dishonestly awarded contracts to favoured suppliers in return for financial benefits. He did so by improperly assisting favoured suppliers to be appointed to suppliers’ panels, manipulated the tender specifications so that they advantaged the favoured suppliers, and assisted them to write their submissions. This included misrepresenting the experience and technical skills of one of the suppliers and adding reports plagiarised from other suppliers. The public officer dishonestly declared that he did not have a conflict of interests with those suppliers.

The *South Australian Industry Participation Policy Procedural Guidelines* states that public authorities should ensure specifications are clear and comprehensive but not discriminatory by using Australian standards or standards regularly applied in Australia. References to a specific brand or product should only be used in exceptional circumstances, and should allow for an equivalent product.⁴⁴ However, several respondents suggested that some agencies were insisting on specific brands without an equivalent in order to favour a particular supplier.

Direct market approaches

A direct market approach involves a public authority negotiating a contract with a single supplier. The PSSA's *Procurement Planning Policy* states that a direct market approach should not be used for convenience or to avoid competition. A direct market approach must ensure that the procurement outcome provides value for money and is compliant with procurement policies and procedures.⁴⁵

A direct market approach was seen by respondents to be the procurement type most vulnerable to exploitation. Procurements involving a public authority repeatedly using the same supplier were especially perceived as suspicious.



“There is a perception that the [agency] never go out to the open market for tenders and favour a select few (usually the same 3). Some of the employees have worked at these companies or have spouses that work there. It is very difficult for a company to get an opportunity to tender. I don't think that value for money is obtained by not testing the market” (supplier).

The market approach used in procurements valued above \$55,000 is recorded in the Procurement Activity Reporting System (PARS). Analysis of the PARS data shows that some agencies use direct market approaches for the majority of their procurements. These agencies may have legitimate reasons for not using open market procurements. However, agencies should be aware of potential corruption risks if open market approaches are not used. The reasons for utilising a direct market approach should be documented. Documentation will assist a public authority to defend the integrity of a direct market approach should it be questioned.

Panel and multi-use list procurements

A panel contract is a form of standing offer with multiple suppliers for anticipated goods or services. A panel contract may be established by an agency for its own use, by a lead public authority for use by other public authorities (e.g. government schools), or by a lead agency to address an across government need (e.g. an ICT panel).⁴⁶

A multi-use list contains suppliers who have met established criteria and will be required to meet additional criteria during the formal procurement process. Prequalification provides an early indication of suppliers' capability and capacity. Prequalification is a first step in performing due diligence, but it should not be the only means of verifying a supplier's capacity.

Panels and multi-use lists have been used as a protection against procurements being unduly influenced.⁴⁷ For instance, an across government panel for stationary contracts was introduced following the misuse of incentives by suppliers to encourage public sector employees to order unnecessary toner cartridges at inflated prices.⁴⁸

However, some suppliers believed that the decision to include a supplier on a panel could be improperly influenced. Other integrity agencies have reported on corrupt public sector employees improperly assisting a supplier to gain a position on a panel, and subsequently favouring that supplier to win contracts, in return for kickbacks.⁴⁹

Some suppliers expressed disappointment that they had not received work from a panel contract. This may be due to misunderstanding that being on a panel does not guarantee a supplier will receive work. However, it is possible that a procurement officer improperly favours one supplier on a panel. Public authorities should consider auditing contracts awarded to panel providers to protect against improper favouritism.

The use of panel or multi-use lists can be mandated, with exemptions permitted only in limited circumstances.⁵⁰ The use of a supplier who is not on the mandatory list may be an indicator of improper conduct (*Case study 9*).

CASE STUDY 9:

A public sector employee improperly procures an unregistered supplier

The Commission received allegations that a public sector employee had deliberately not used a pre-qualified supplier in circumstances where their use was mandated. The allegations were referred to the relevant public authority.⁵¹ The public authority subsequently found that the employee was aware that the supplier was not registered as an approved supplier, but contracted them anyway. The employee had also split the procurement into three parts so that it would fall under the threshold for governance under the state government's procurement policy.

Some suppliers believed that panels are misused to award contracts to a favoured supplier.



“The ‘Panel’ contract waits until a contractor that [the public authority] ‘like’ finishes their works before issuing out further packages” (supplier).

“There are some departments and agencies who have had the same supplier for years, and do not go out to the market to seek quotes from other suppliers on the panel” (supplier).

“Panel contracts are often easily manipulated and a way to keep the same vendor(s) engaged. It’s easy to establish an agency panel and limit the field of view and innovation that may be achieved through casting the net wider” (supplier).

Entities that control panels and multi-use supplier lists vet new suppliers, regularly review existing suppliers on a panel or list, and remove suppliers if they no longer fit relevant criteria or conditions.

RECOMMENDATION 13

Unsolicited proposals

An unsolicited proposal is an offer to provide unique or innovative goods or services made to a public authority by a supplier on their own initiative, rather than being formally requested. PSSA explained that unsolicited proposals from incumbent suppliers are common. However, such an offer is not always understood by the parties as an unsolicited proposal. This creates the risk that unsolicited proposals are not identified as such and do not follow due process.

Unsolicited proposals valued at more than \$3 million for infrastructure projects or \$1 million for non-infrastructure projects are assessed under guidelines set out in the *Premier and Cabinet Circular PC038 – Unsolicited Proposals*.⁵² Such proposals should be submitted to the Department of Treasury and Finance and assessed by the Unsolicited Proposals Committee, rather than being assessed as procurements under the Framework.

Under the PSSA's *Unsolicited Proposals Schedule*, suppliers need to provide an initial proposal which, if accepted, is followed by a detailed proposal.⁵³ Proposals will only be accepted if they are compliant with PSSA's *Procurement Planning Policy*.⁵⁴

The importance of following due process is highlighted in *Case study 10*.

CASE STUDY 10:

Unsolicited proposal does not follow due process

The Commission's report, *Yes Minister*, discusses an investigation of allegations that a minister had improperly used his position to arrange a contract for a personal associate. The minister received an unsolicited proposal from a business owner which did not offer value for money for the public sector. The minister referred the bid to the relevant agency, where the Chief Executive and other senior executives rejected the proposal. While there was no evidence that the referral came with an expectation that the proposal would be accepted, the Chief Executive had been placed in a "difficult position."⁵⁵

The referral of an unsolicited proposal through personal connections with a minister raises the risk of preferential treatment, or at least the perception of preferential treatment. The proposal should have been assessed in accordance with the PSSA's *Unsolicited Proposals Schedule*, which requires the proposer to have put an initial proposal to the agency, rather than approaching a minister.

Incumbent suppliers

An incumbent is a supplier with a preexisting contract with a public authority. An incumbent may have a legitimate advantage over a new bidder. Their experience may mean they can deliver goods and services at a lower cost than a new supplier, have staff in place, own necessary equipment and assets, understand the public authority's needs, have a reasonable working relationship with the public authority, or offer a unique product.⁵⁶

However, an incumbent may have an unfair advantage over competitors if a procurement decision is based on expedience rather than value for money. A quarter of procurement officers (24.5%) and approximately a third of suppliers (36%) believed that there is a high or extreme risk that existing suppliers are unfairly advantaged in procurements.



“Current knowledge of the organisation a benefit to the re-engagement. Less time spent learning about the organisation. No onboarding required, systems and policies understood” (procurement officer).

“Hard to find better value for money given a new contractor would need to be inducted and security checked to begin work and existing contractor could continue on as is” (procurement officer).

Some procurement officers stated that an incumbent was reengaged due to a lack of planning or capacity.



“I was advised that the timeframe to ‘go to market’ was too tight & that we needed to use the same contractor” (procurement officer).

New suppliers may be deterred from bidding if an incumbent has repeatedly won tenders with the public authority.⁵⁷ Some suppliers stated they had not bid for a tender as they believed the incumbent supplier would be favoured.



“Have not bid as it is an expensive process and believe the way the tender was written they were just going through the process and directly awarding back to the current supplier” (supplier).

“We do not bid on projects where a single supplier has repeatedly secured ongoing work at the same site location for any particular government agency. There are frequently assessment questions on ‘understanding of the project’, ‘understanding of the site’, ‘relevant previous experience’ all of which can unduly benefit repeat appointment of the same supplier” (supplier).

Public authorities should be aware of integrity risks that may arise when an incumbent is reengaged. An incumbent may be unfairly advantaged by being asked to provide information to be used in the procurement process. They may have access to confidential tender information that is unavailable to other suppliers or have access to systems where confidential tender information is stored. An incumbent may be unfairly advantaged if the specifications substantially describe the incumbent's experience, capability or business operating model.⁵⁸

An incumbent and a public sector employee may have developed such a strong working relationship that it becomes a conflict of interests. Public sector employees involved in procurements need to be aware of suppliers attempting to exploit an existing relationship (*Case study 11*).

CASE STUDY 11:

Public officers may be perceived to favour an incumbent supplier

The Commissioner referred allegations to the Ombudsman that an incumbent supplier had been given an unfair advantage over other bidders for a new tranche of an existing product. The allegations involved public sector employees involved in the procurement partaking in an overseas study tour arranged by the incumbent. It was alleged that the incumbent was unfairly advantaged as they used the trip as an opportunity to demonstrate a similar product developed for an overseas agency. The incumbent did not win the contract, although the outcome did not eliminate the possibility that the procurement had been improperly manipulated.

The Ombudsman found that the incumbent was aware that the trip could potentially influence the procurement in their favour. They had provided the employees with an initial itinerary, and had hoped to share travel arrangements. While overseas, the employees attended some meetings with the incumbent. They also attended an office lunch at the incumbent's overseas office while rejecting offers of lunch or dinner with another supplier who was intending to bid.

The employees claimed that they had taken steps to prevent the incumbent from influencing the procurement. They arranged the final itinerary, travel and accommodation separately, and met with other stakeholders during the trip.

The Ombudsman found that the public officers had not committed misconduct. However, the employees could have been more circumspect in their dealings with the incumbent to prevent perceptions of favouritism. The trip was not urgent, and the Ombudsman queried why it was not postponed until the tender process was complete.

Parties involved in a reengagement should declare and manage conflicts of interests. An incumbent who intends to bid for a new procurement should not be involved in developing procurement material, such as specifications. Information made available to the incumbent should be made available to all suppliers. If possible, contract managers should be regularly rotated and the contract manager should not be on the evaluation panel. If the contract manager is on the evaluation panel, their contribution should be given after other members.⁵⁹



CHAPTER SEVEN
PROCESS INTEGRITY

Chapter seven: Process integrity

The Framework establishes policies and processes which, if followed, should assist in mitigating corruption in procurement. However, if the process for conducting a procurement is not robust, procurement becomes vulnerable to being manipulated by someone with improper intentions.

Planning a procurement

The Framework requires public authorities to plan procurements before they are released to the market to ensure that procurements achieve best value for money.⁶⁰ Only a small proportion of procurement officers (5.2%) and suppliers (8%) considered procurement to be vulnerable to corruption risks during the planning stage. However, procurement can be corrupted if planning is inadequate. These risks may be underestimated.

Poor planning may result in frequent changes to a procurement's scope. This may create an opportunity for a dishonest supplier to charge for work that is not needed.⁶¹ Poorly written tender documents may be exploited by an unscrupulous supplier.



“Poorly written tender that requested items well and above its offered contract budget that ultimately got awarded to a company, but likely has had its specification extensively modified to suit said company without re-releasing the tender with the revised specification for others to quote on. At least that’s our perception as to what has occurred” (supplier).

The time and documentation required in the planning stage was seen by some respondents as onerous.



“The process to get a new acquisition plan approved and open a tender and assess tenders takes a huge amount of time because of all the micro steps and re-work and double handling, so the decision was made to vary the original contract to include the new scope” (procurement officer).

However, others expressed frustration at the lack of attention paid to the initial stages of a procurement.



“There is need for training to the Executives who approve the Acquisition plan to comply the policies” (procurement officer).

“Review and approval of Acquisition Plans not given due care and attention by correct persons” (procurement officer).

Variations and extensions

Poorly planned procurements may be vulnerable to the improper use of variations or extensions. A variation involves a change to the established contract. An extension allows the contract to go beyond its expiry date. PSSA's *Contract Extensions and Variations Guideline* stipulates that an agency may extend a contract by exercising an option written into the contract, or if an option does not exist, by parties agreeing to extend the expiry date.

Several Commission investigations have involved a public sector employee failing to obtain required approvals for variations. One involved the granting of extensions despite the contract not containing any extension options. Another noted the failure to appropriately document variations. These problems have been observed in other jurisdictions.⁶²

Contracts above \$55,000 must be reported in PARS.⁶³ This includes contracts where variations have increased the contract value above the threshold. A small number of agencies were responsible for a high number of variations. Agencies need to be aware of the corruption risks associated with the misuse of variations. Variations should only be used where necessary and in line with procurement policies and procedures, and not for expediency.

Feedback from those who have attended corruption risks in procurement masterclasses run collaboratively by the Commission and PSSA suggests that corruption risks arising from the improper use of variations are not well understood:



“Use greater scrutiny in doing a variation to extend an existing agreement”
(masterclass attendee).

“The training highlighted variations for me. I believe Variations can be a weak link that could be exploited” (masterclass attendee).

There is currently no requirement for public authorities to report variations to the Office of the Industry Advocate. A variation may impact upon an Industry Participation Plan without the Office of the Industry Advocate being made aware of this outcome.

Evaluating tenders

PSSA's *Evaluation and Planning Guideline* requires public authorities to have an evaluation plan.⁶⁴ The guideline recommends that members of the evaluation team have the capability to understand the tender. The team should consider and document conflicts of interests, security of information, management of late and alternative offers, and the process for clarifying offers.

Approximately one fifth of procurement officers (19.9%) claimed to have observed certain suppliers being improperly favoured when evaluating bids. Respondents perceived evaluation panels to be more vulnerable to unconscious bias than explicit favouritism. Respondents suggested that favouritism could be avoided by:

- ▶ panel members being trained on addressing unconscious bias
- ▶ an external member included on evaluation panels for high value procurements
- ▶ exclusion of members with pre-existing relationships with tenderers
- ▶ panels being chaired by a procurement professional.

Several respondents made comments regarding integrity breaches that go beyond unconscious bias. One procurement officer described witnessing a senior manager improperly overturning an evaluation panel's decision. Several suppliers involved in separate procurements believed that someone on the evaluation panel had favoured a tenderer with whom they had common interests.

A few suppliers perceived that a procurement had been improperly influenced by an undeclared conflict of interests. This included one supplier who claimed that during the debrief they were told by an evaluation panel member that the evaluation panel's decision was overturned by someone in a "higher" position.

Open periods

PSSA's *Sourcing Policy* requires that suppliers are given sufficient time to prepare a high quality bid.⁶⁵ Just over half of suppliers (55%) surveyed believed that they had sufficient time to prepare their most recent bid. Short opening periods may favour a preferred supplier, particularly an incumbent supplier.

PSSA's *Sourcing Policy* allows for an extension to a procurement opening period only in limited circumstances.⁶⁶ Preferential treatment of suppliers regarding accepting late bids can confer an unfair advantage (*Case study 12*).

CASE STUDY 12:

Public sector employee improperly favours a supplier by accepting a late tender

The Commission received allegations that a procurement officer working for a local council had reopened a tender upon request from a certain supplier, and had done so without notifying his CEO or receiving approval. Competing tenderers were not offered an extension. The public officer argued that the supplier had not received preferential treatment as other tenderers could have requested an extension. However, the tender had been advertised on the SA Tenders website, which clearly stated that late bids would not be accepted. The supplier who had received the extension was awarded the contract. It was alleged that the public officer had an undeclared conflict of interests with the successful supplier.

Several suppliers explained that they had worked hard to ensure that their tender was submitted on time, only to discover that a competing supplier had successfully applied to have the closing date extended. A few suppliers expressed frustration at having the due date changed multiple times, and several believed that a preferred supplier may have received favourable treatment.

Failure to segregate duties

Corruption may occur if a single employee has end-to-end control over a procurement, especially if this control is exercised without sufficient supervision (*Case study 13*). The failure to ensure separation between decision making at each stage of the procurement may make corruption difficult to detect.

CASE STUDY 13:

Failure to adequately segregate procurement and financial duties results in improper procurement

The Commission received allegations that a purchasing officer for a local council had entered into a large number of contracts with a single supplier without following proper processes, including for contracts that exceeded their financial delegation. A review conducted by the Council found that inadequate segregation of purchasing and payment functions had allowed a single public officer to commission and authorise Council contracts without having followed relevant policies and procedures. The contracts were for services that were beyond requirements and at premium prices. The review noted that under-resourcing and a lack of centralised control of the Council's procurement function had created an opportunity for the exploitation of procurements.

Public authorities consider and limit public officers' discretion over procurements and financial decision making, and ensure appropriate segregations and separations are in place.

RECOMMENDATION 14

Exceeding delegated authority

PSSA's *Governance Arrangements Guideline* allows a public authority's Chief Executive to delegate procurement authority to any public officer within their department.⁶⁷ Commission investigations have found that public sector employees have exceeded their procurement authority, sometimes with detrimental consequences for the public interest. In some instances, the employee was unaware of the need to obtain proper authorisation (*Case study 14*). Allegations have also been investigated that delegated authority has been intentionally exceeded.

CASE STUDY 14:

Public sector employee exceeds her delegation to sign a contract that does not offer value for money

The Commission received allegations that a public sector employee had exceeded her delegation authority by signing a contract for the provision of services. It was further alleged that the public sector employee had executed the contract without undertaking prior financial assessment and without consulting the agency's CEO, Chief Financial Officer or her manager. The procurement did not provide value for money, and the agency suffered a substantial financial loss due to the contract.

Dealing with unsuccessful tenderers

PSSA's *Supplier Debrief Guideline* requires that tenderers are informed of the procurement outcome and given an opportunity to receive feedback.⁶⁸ Debriefs are important to ensure accountability and provide the public authority an opportunity to demonstrate that the procurement was conducted fairly. Public sector employees may be reluctant to provide feedback as they lack confidence or an understanding of probity. A public sector employee who is reluctant to provide feedback to suppliers may also be trying to hide improper behaviour.

Some suppliers claimed they were not offered a debrief. The failure to provide sufficient feedback may lead unsuccessful suppliers to become suspicious that the procurement decision was unduly influenced.



“By the way the tender was written, this confirmed my suspicions that the contract had been awarded before it even went out to tender. Mates, for mates ... To this date, I have had no correspondence advising me of any result” (supplier).

Record keeping

Good record keeping is essential to maintaining accountability and transparency, and may be useful to address questions about a procurement's integrity. Good record keeping may deter corruption by increasing the likelihood that improper conduct will be detected, as explained in the Commission's evaluation of the City of Playford Council:

While it may be the case that each procurement was attended to with great care, the absence of important, available and auditable records relevant to the procurements puts the council at risk of assertions of unfair and unethical processes. Moreover there is a real risk that an individual or individuals will take advantage of lax processes to engage in impropriety with little chance of detection.⁶⁹

PSSA's *Procurement Governance Policy* requires that accurate records are kept for all stages of the procurement processes and decisions are documented. Documentation should be sufficient to allow for auditing or other review.⁷⁰

Most procurement officers (80.9%) responded that the process for their most recent procurement was well documented. However, Commission investigators have found that documentation in relation to public sector procurement is not always adequate. The Auditor-General has also observed that public authorities do not always keep adequate documentation. This includes public authorities not maintaining a record of contact and interactions with potential tenderers, actions taken to manage a potential conflict of interests, the assessment of probity, and how bids were assessed.⁷¹

Public authorities conduct regular audits of procurement record keeping, including ensuring that all procurement decision making is documented with reasons, and relevant written and verbal communication with suppliers is recorded.

RECOMMENDATION 15



CHAPTER EIGHT
CAPABILITY

Chapter eight: Capability

Public sector employees involved in procuring goods and services require sufficient procurement knowledge and skills to perform their jobs competently. PSSA's *Capability Development Strategy 2021–23* sets out the South Australian government's commitment to developing "a highly qualified, technically skilled workforce of procurement and contract management professionals."⁷² This involves assisting procurement leaders to develop the skills necessary to undertake their roles, and public authorities to attract and recognise skilled procurement staff.

Lack of capacity

Some procurement staff specialise in procurement, and have significant experience and relevant professional qualifications.⁷³ Suppliers described these procurement officers as having an excellent understanding of procurement processes including probity requirements.

Other public sector employees may perform procurements occasionally and alongside other duties, and may not have relevant professional qualifications in procurement.⁷⁴ Procurement officers who are infrequently involved in procurement were less aware of corruption risks in procurement compared to those with more experience.⁷⁵ Procurement officers who are not well versed in integrity risks may be manipulated by a supplier with nefarious intentions (*Case study 15*).

CASE STUDY 15:

Misguided public sector employee allows neighbour to improperly secure a contract⁷⁶

The Western Australia Corruption and Crime Commission found that a project director had mishandled the procurement of specialised equipment. Several potential suppliers were identified, and the project director had some queries about a Chinese-based supplier. The project director asked his neighbour, who was also a long term friend, for advice as he had previously procured an unrelated product from China for another government agency. The neighbour offered advice on purchasing. He recommended the project director bypass the Chinese supplier and purchase the equipment directly from a Chinese manufacturer, and offered to help translate.

The project director invited his neighbour's wife's company, in which his neighbour was a shareholder, to bid. The project director disclosed draft documents and the details of another bidder to his neighbour. The company was preferentially allowed an extension to complete tender documentation. The company won the bid despite failing the financial capacity assessment. The project director was on the evaluation panel. He declared that he had no conflicts of interests.

The procurement cost approximately \$1 million. The equipment that was eventually purchased was defective and unusable. The agency considered selling it for scrap valued at about \$24,000. While not corrupt, the project director was described as misguided, naïve, and insufficiently aware of confidentiality obligations and requirements to declare conflicts of interests. Inexperienced procurement and contract management staff aided the project director's conduct and contributed to the poor procurement outcome.

Several suppliers related experiences of dealing with a succession of newly-appointed procurement officers, and subsequent poor communication and delays in decision making. Those suppliers described the procurement process as “chaotic” and “a shambles.” High staff turnover and a lack of expertise can reduce personal responsibility and accountability, and leave procurements vulnerable to corruption.⁷⁷

An evaluation panel that lacks sufficient understanding of the product being procured may award a contract to the lowest bidder, rather than the bid that offers the best value for money. Underpriced tenders may result in underperformance and excessive variations, and not provide the greatest economic benefit realisation for South Australia.

PSSA's capability development strategy will assist public authorities to undertake procurements competently. However, small agencies may continue to struggle to support their procurements. PSSA conducts procurements on a cost recovery basis for agencies that require additional assistance. This approach may provide a more viable solution to building capacity.

Procurement Services SA consider expanding its capacity to assist agencies that require additional support to undertake procurements, especially where that assistance would help safeguard procurements from impropriety.

RECOMMENDATION 16

Information and communication technology procurement

The need for procurement officers to have appropriate skills and expertise is most acute in complex procurements such as in the supply of information and communication technology (ICT) services.⁷⁸



“The procurement for software solutions is complex and there will always be some vendors who know much more than others about the requirements and tender. In fact, the tender often doesn’t supply a lot of the finer detail and a lot of assumptions need to be made. This adds risk which may increase price for those who are not very familiar with the detail within the business requirements” (supplier).

The Commission has received allegations about improper ICT procurements (*Case study 16*).

CASE STUDY 16:

Procurement officer’s lack of experience compromises an ICT procurement

The Commission received allegations that a public authority had not followed proper processes in relation to an ICT project procurement. An investigation conducted by the public authority did not find evidence of improper conduct. However, it highlighted how the integrity of an ICT procurement can be compromised if the procurement team lacks sufficient resources and expertise.

The procurement was initially intended to secure an off the shelf software product. When no such product was available, the need for a bespoke product resulted in the procurement becoming complex. The procurement team did not sufficiently understand the business requirements of a complex ICT product, and awarded the tender to the lowest priced bidder. The procurement team did not adequately assess whether the product would fit specification, or the supplier’s ability to deliver. As a result, the project was considerably delayed and incurred additional costs.

ICT procurements can be for high value, long term goods and services, and can include numerous components, some of which may be intentionally omitted. For instance, an unscrupulous procurement officer may deliberately manipulate a procurement by including software, but excluding ongoing support or upgrades, to avoid delegation threshold. The need to add components after the contract has been executed, and without an open market procurement, increases the risk of corruption.

Public sector procurement staff need to have sufficient knowledge of the public authority’s requirements and the nature and full cost of products. If they do not have this knowledge, they should seek external advice such as appointing an external subject matter expert.

Procurement under pressure

Procurement conducted under pressure may be vulnerable to corruption. Pressure may arise from procurement officers undertaking procurement duties without sufficient training and support, excessive workloads, or the need to spend funds in a short period of time⁷⁹ (Case study 17).

CASE STUDY 17:

A procurement officer under pressure circumvents procurement policies and procedures

The Commission received allegations that a public sector employee had divided works into separate quotes to avoid procurement delegation thresholds. The employee had accepted quotes that contained duplication of costs and works, and had authorised work to be performed without purchase orders.

Some of these works were procured after the agency identified unexpended funds, and had directed the employee to spend this funding in a short period of time. The employee did not use a list of prioritised work that was available. Instead, he decided on required works himself. Pressure to spend funds quickly may have contributed to the employee's use of workarounds.

The employee engaged in further misconduct. He failed to declare that he was in a relationship with a manager from a supplier, and improperly directed work to the supplier. This supplier's contract was extended at least three times, despite there being no options for an extension. The employee approved work performed by this supplier without raising a purchase order. It was further alleged that the employee had improperly disclosed confidential tender information to his partner.

The investigation concluded that the employee's misconduct may have been triggered by a lack of skills, training and support needed to fulfil his duties. The employee had discretion over key business processes without appropriate scrutiny, which increased his opportunity to engage in improper conduct and the likelihood of his behaviour going undetected.

Several procurement officers commented that the greatest pressure came from ministers.



"There is a lot of pressure for public servants by incoming governments to procure goods and services quickly. This may relate to election commitments or promises made by government parties." (procurement officer).

"I have witnessed significant pressure from Ministers to get services contracted 'immediately'" (procurement officer).

These procurement officers explained that ministerial pressure can result in rushed procurements which are vulnerable to unplanned changes and expensive variations, and the improper use of direct market procurements.

Procurement during times of crisis

Procurement officers can be placed under pressure when a procurement is required in a crisis. Integrity risks may be exacerbated during a crisis, including procurement being duly influenced by an undeclared and unmanaged conflict of interests, unauthorised disclosure of confidential tender information, and the circumvention of procurement policies and processes. Further risks are discussed in the Commission's report *Public Administration in a Pandemic: Unique Challenges in the Current Climate*:

Engaging in emergency procurements, the avoidance of normal procurement practices in the interests of expedience, the increased use of credit cards to procure goods, vendors requesting contract variations and/or advance/quick payment, and the use of direct negotiations are all possible circumstances that, while potentially necessary and unavoidable in the current climate, nevertheless lend themselves to greater integrity risk. They should be carefully monitored and managed.⁸⁰

Several suppliers alleged that emergency situations may provide unscrupulous suppliers with opportunities to obtain contracts that do not offer value for money. During an emergency situation, public authorities should be alert to suppliers who are unknown to the public authority and, if possible, use pre-qualified suppliers. Documentation should not be neglected, including recording decisions made outside online financial systems. Public authorities may consider allowing suppliers to rely on force majeure clauses in contracts, or otherwise not force suppliers to meet impossible deadlines as this may encourage dishonest conduct and/or substandard work.⁸¹

PSSA's *Emergency Situation Procurement Schedule* allows for emergency protocols to be applied to situations defined as such under the *Emergency Management Act 2004*. The Schedule only applies to those public authorities who have emergency responsibilities and who are responding to an emergency, in accordance with the provisions of the State Emergency Management Plan, or formal arrangements outlined in other state or commonwealth emergency service related legislation. The *Emergency Situation Procedure Schedule* requires relevant public authorities to "develop a document strategy to ensure their readiness for undertaking procurements in the event of an emergency."⁸² However, some agencies may not have such a strategy in place.

Agencies should ensure that they fully understand when emergency situation procurements can be used. Emergency situation procurements cannot be used to avoid due planning approvals and competitive procurement processes, or for urgent or unplanned procurements which are not part of an emergency event.⁸³ The Auditor-General has reported that a public authority applied emergency situation procurement protocols when no emergency situation had been declared.⁸⁴

Public authorities ensure they have emergency situation procurement frameworks in place and published on their websites.

RECOMMENDATION 17



CHAPTER NINE
UNDER REPORTING
OF CORRUPTION
AND IMPROPRIETY
IN PROCUREMENT

Chapter nine: Under reporting of corruption and impropriety in procurement

The Commission's ability to detect, investigate and prevent corruption is heavily dependent on public officers making reports of suspicious behaviour. PSSA's *Supplier Complaints Schedule* states that:

*Supplier complaints can be a valuable source of information on how and where issues have occurred and may pinpoint improvement opportunities in the procurement function and processes.*⁸⁵

However, the Commission has received relatively few complaints and reports from suppliers. In other jurisdictions, suppliers also rarely report corruption, even when they believe that corruption is a major problem or they have lost important contracts.⁸⁶

Suppliers' awareness of reporting obligations

Suppliers who are contracted to public authorities are public officers under the *Independent Commission Against Corruption Act 2012*, and public officers have a duty to report suspected corruption to the Office for Public Integrity.⁸⁷ However, a considerable proportion of suppliers (40%) were unaware that they were classified as public officers, and almost half (48.3%) were unaware of their reporting obligations.

Only one third of suppliers (32.8%) were aware of how to report corruption or other impropriety. This is despite PSSA's *Supplier Complaints Schedule* requiring public authorities to provide "clear and accessible information for suppliers at the commencement of a procurement process on submitting a complaint or providing feedback."⁸⁸

Small suppliers in particular perceived reporting impropriety as being overly complicated.⁸⁹ Suppliers on agency-based panels were unsure about how to report.⁹⁰ Those primarily located outside of South Australia were confused about what should be reported.⁹¹

Suppliers involved in bidding for construction and infrastructure contracts were more likely than other suppliers to believe that reporting is not their responsibility and were less likely to make their subcontractors aware of their obligations as public officers. Instead of reporting, construction and infrastructure suppliers were more likely to not bid if they suspect potential corruption.⁹²

Construction and infrastructure procurements often involve large sums of money and can be especially vulnerable to corruption.⁹³ It is essential that suppliers and procurement officers involved in construction and infrastructure are prepared to report if they suspect potential corruption or other impropriety.

Attendees of masterclasses on corruption risks run collaboratively by the Commission and PSSA have suggested that contract managers could include information about reporting obligations in policies and contract documentation, and in contractor inductions. These suggestions would raise awareness among successful suppliers.

There is also a need to raise awareness of the importance of reporting among unsuccessful suppliers. Unsuccessful suppliers may be best placed to report suspicious conduct.⁹⁴ While they are not classified as public officers, they are still able to report to the Office for Public Integrity.

PSSA is developing a website for public sector suppliers that will include information on suppliers' reporting responsibilities. Agencies could include information on how to report in tender information, especially for tenders related to construction and infrastructure projects. These initiatives may encourage unsuccessful suppliers to report.

Procurement officers' awareness of reporting obligations

One in four procurement officers (19.9%) were unaware that contractors are public officers while performing contract work for a public authority. More than half (53.3%) were unsure if their workplace provides contractors with information about their reporting obligations as public officers.

Feedback from masterclasses run by the Commission and PSSA on corruption risks in procurement suggests that more needs to be done to ensure that procurement officers are aware of reporting obligations.



"I was not aware of the Contractor's ICAC obligations as a Public Officer..."
(masterclass attendee).

"Contractors are public officers and therefore have mandatory reporting obligations the same way that public sector employees do ... I am almost certain that most public authorities are not even aware of this fact let alone proactively inducting their contractors to comply with these legal obligations" (masterclass attendee).

The role of informing contractors of their reporting obligations primarily falls to contract managers. Nevertheless, procurement officers may have opportunities to make contractors aware of their reporting obligations, such as directing potential suppliers to PSSA's supplier website once it become available, or including information on reporting obligations in tender documents.

Public authorities provide suppliers with information on internal reporting policies and procedures and suppliers' reporting obligations as public officers. Public authorities ensure that contractors provide corresponding induction material to their subcontractors.

RECOMMENDATION 18

Fear of negative repercussions

Suppliers' reluctance to report suspicious behaviour may be due to fear of suffering negative repercussions. Almost two thirds of suppliers (61.6%) responded that they would be anxious about the personal impact of reporting corruption. More than half (58.7%) were worried that their organisation's ability to win another contract would be jeopardised if they reported.

A few suppliers stated that they had been "blacklisted" by a public authority for speaking out. During one of the Commission's investigations, suppliers explained that they had not reported problems as they wanted to protect their business (*Case study 18*).

CASE STUDY 18:

Suppliers are reluctant to report improper conduct

The Commission received an allegation that a public sector employee responsible for procuring contracts under a panel arrangement had been behaving inappropriately towards suppliers. It was alleged that the employee had threatened that suppliers would not secure work if they did not agree to her rates and had insisted that she was the only point of contact. Suppliers interviewed during the investigation explained that they had not complained as they were worried that they would lose business. The matter was referred to the Ombudsman who found that while the public officer's behaviour could not be proved to be threatening or unprofessional, it did limit the ability of suppliers to raise concerns with the department.

PSSA's *Supplier Complaints Schedule* requires public authorities to appropriately handle complaints, including appropriately managing the confidentiality of identities. Some suppliers (42.6%) believed that their identity would be disclosed if they reported. Several related having their identity disclosed to the public authority at the centre of the report.

Reports of potential impropriety must be actioned

Reports about improper conduct in public sector procurement must be acted upon. The failure to do so can allow corruption to continue unabated. Public officers who perceive that reporting is futile, or that reports may not remain confidential may also be deterred from speaking out.

Less than half of procurement officers (48.4%) and a quarter of suppliers (27.5%) were confident that action would be taken if they reported impropriety. Some suppliers and procurement officers who had reported impropriety were critical that appropriate action had not been taken:



“It wasn’t handled, it was covered up” (procurement officer).

“I don’t feel it was taken seriously” (procurement officer).

“Nothing was really done about it” (procurement officer).

“It went straight into the too hard basket” (supplier).

“It was swept under the carpet” (supplier).

“More could have been done” (supplier).

Public authorities do not always adequately act on a report of impropriety (*Case study 19*).

CASE STUDY 19:

Public authority does not adequately address a complaint made by a supplier

A complaint regarding procurement was referred to the Ombudsman, who concluded that the department had not adequately dealt with the initial complaint. The department had investigated the complaint, but had not clearly identified the issues raised, had not established if the issues were valid, and had not explained to the reporter what actions the department was going to take in response to deficiencies identified.

On 20 February 2023, an independent complaints process was established by PSSA. This involves the Chief Executive of the public authority informing the Procurement Review Committee within seven days of any unresolved complaints.⁹⁵



CHAPTER TEN
CONCLUSION

Chapter ten: Conclusion

Too often corruption in public sector procurement is overlooked or undetected. Red flags that should be noticed and reported are ignored. As a result, corruption is allowed to continue unabated.⁹⁶

This problem may be partly due to public officers and others involved in the procurement process being reluctant to report suspected corruption. However, failure to act may also reflect a lack of awareness of behaviour that may indicate that procurement is being unduly influenced.

Public officers are reminded to be alert to suspicious conduct relating to public sector procurement. These warning signs do not necessarily constitute corruption *per se*. However, they should prompt public officers to make further enquiries and report suspicious conduct.

Red flags of potential corruption in public sector procurement

- ▶ Tenders being split so that they fall under procurement thresholds
- ▶ The inclusion of an Aboriginal supplier to increase the chances of winning a tender. Once the tender has been successful, not allocating work to the Aboriginal supplier or misrepresenting labour hours performed by Aboriginal workers
- ▶ Public officers failing to disclose and effectively manage a conflict of interests
- ▶ Public sector employees accepting or soliciting gifts, benefits or hospitality from suppliers
- ▶ Suppliers offering gifts, benefits or hospitality to public sector employees with procurement responsibilities
- ▶ Public employees or suppliers improperly accessing, or attempting to improperly access, confidential procurement information
- ▶ Public sector employees improperly disclosing confidential procurement information to suppliers, or withholding tender information from suppliers
- ▶ Misuse of limited market approaches, variations and extensions
- ▶ Suppliers or public sector employees manipulating tender documents, including influencing specifications, to favour specific suppliers
- ▶ Suppliers being improperly included on a panel or multi-use supplier list, and failures to use suppliers on mandated panels/lists without approved exemptions
- ▶ The awarding of contracts to incumbent suppliers, including those on supplier panels, which do not offer value for money
- ▶ Unsolicited proposals that have not followed proper processes
- ▶ Poorly planned procurements, overly vague specifications, and repeated changes to scope
- ▶ Late tenders accepted from one supplier, but not others
- ▶ Public sector employees having discretion over the entire procurement lifecycle
- ▶ Public sector employees exceeding their delegated authority
- ▶ Failure to maintain robust documentation relating to procurement decisions
- ▶ Lack of transparency regarding procurement decisions, including the failure to provide appropriate and timely feedback to unsuccessful suppliers
- ▶ Procurements that are rushed, under-resourced, pressured by interested parties and conducted by procurement officers who have not received sufficient training and support
- ▶ Public authorities inappropriately using emergency procurement processes





ENDNOTES

Endnotes

- 1 Department for Industry and Skills, *Skilling South Australia: Procurement Guideline* (1 December 2018) p 3.
- 2 Department of Treasury and Finance, *Treasurer's Instructions 18 – Procurement, Section 5(1)* (20 February 2023).
- 3 For a description of the survey method, sample and findings see Independent Commission Against Corruption, South Australia, *Survey of Corruption Risks in Public Sector Procurement* (August 2023).
- 4 Tina S eide 'Corruption in International Business Transactions: The Perspective of Norwegian Firms' in Susan Rose-Ackerman (ed) *International Handbook on the Economics of Corruption* (Edward Elgar Publishing Limited, 2006) p 394.
- 5 Procurement Services SA, *Procurement Governance Policy* (20 February 2023).
- 6 Independent Broad-Based Anti-Corruption Commission, *Perceptions of Corruption 2022: Suppliers* (December 2022); Independent Broad-Based Anti-Corruption Commission, *Perceptions of Corruption: Survey of Victorian Government Supplies* (June 2016); Independent Commission Against Corruption, New South Wales, *Corruption Risks in NSW Government Procurement: Suppliers' Perceptions of Corruption* (2011).
- 7 Independent Commission Against Corruption, South Australia, *Evaluation of the Practices, Policies and Procedures of Super SA* (6 September 2022) p 70.
- 8 Independent Commission Against Corruption, New South Wales, *Submission to the Legislative Council Inquiry into Procurement Practices of Government Agencies in New South Wales and its Impact on the Social Development of the People of New South Wales*, Standing Committee on Social Issues (January 2024) p 10.
- 9 Independent Broad-Based Anti-Corruption Commission, *Operation Fitzroy: An Investigation into the Conduct of Former Employees of the Department of Transport/ Public Transport Victoria, Barry John Wells and Hoe Ghee (Albert) Ooi, and Others* (October 2014).
- 10 Attorney-General's Department, Government of South Australia, Aboriginal Economic Participation, accessed 21 May 2024. <https://www.agd.sa.gov.au/aboriginal-affairs-and-reconciliation/aboriginal-land-and-business/aboriginal-economic-participation>
- 11 Deloitte, *Third Year Evaluation of the Indigenous Procurement Policy* (Department of the Prime Minister and Cabinet, August 2019).
- 12 Supply Nation, accessed 21 May 2024, <https://supplynation.org.au>.
- 13 Standing Committee on Indigenous Affairs, *Report on Indigenous Participation in Employment and Business* (Parliament of the Commonwealth of Australia, 2021) p 20–32; Select Committee on the Effectiveness of the Australian Government's Northern Australian Agenda, *Final Report* (Parliament of the Commonwealth of Australia, April 2021) p 134–146; Small Business Commissioner, New South Wales, *Submission to Review of the Aboriginal Procurement Policy (APP) and Aboriginal Participation in Construction (APIC) Policy* (2 August 2019).
- 14 Department for Industry and Skills, *Skilling South Australia: Procurement Guideline* (1 December 2018) p 3.
- 15 Standing Committee on Indigenous Affairs, *Report on Indigenous Participation in Employment and Business* (Parliament of the Commonwealth of Australia, 2021) 20–32; Northern Territory Auditor-General, *Report to the Legislative Assembly* (November 2018); KPMG, *Independent Evaluation. Indigenous Employment Provisional Sum and Remote Contracting Policy: Final Report* (Department of Trade, Business and Innovation, 15 December 2016); Christopher Walsh 'Four-year sentence for Darwin builder who swindled \$200,000 from Indigenous jobs program' ABC News (10 April 2019), accessed 21 May 2024. <https://www.abc.net.au/news/2019-04-10/jail-time-for-darwin-builder-who-swindled-indigenous-program/10989510>.
- 16 Department for Industry and Skills, *Skilling South Australia: Procurement Guideline* (1 December 2018) p 3.
- 17 Crime and Corruption Commission, Queensland, *When Conflicts of Interest in Procurement Result in Criminal Convictions* (September 2021).
- 18 Procurement Services SA, *Probity and Ethical Procurement Guideline* (20 February 2023) p 3.
- 19 For example, see Independent Broad-Based Anti-Corruption Commission, *Operation Betka: An Investigation into Alleged Corrupt Conduct by a Former Contractor of the Department of Education and Training* (May 2020); Independent Commission Against Corruption, New South Wales, *TAFE South West Sydney Institute – Corruption Allegations Concerning ICT Manager (Operation Sonet)* (March 2016).
- 20 Auditor-General's Department, *Report 8 of 2002, Annual Report for the Year ended 30 June 2022, Part C: Agency Audit Reports* (18 October 2022) p 45.
- 21 Independent Commission Against Corruption, New South Wales, *Submission to the Legislative Council Inquiry into Procurement Practices of Government Agencies in New South Wales and its Impact on the Social Development of the People of New South Wales*, Standing Committee on Social Issues (January 2024)
- 22 Office of the Commissioner for Public Sector Employment, *Code of Ethics for the South Australian Public Sector* (January 2022) p 8.
- 23 Australian Public Service Commission, *APS Values and Code of Conduct in Practice* (13 September 2021) p 50.
- 24 Ibid.

- 25 Independent Commission Against Corruption, South Australia, *Integrity Spotlight, Gifts and Benefits* (June 2022) p 1.
- 26 Independent Commission Against Corruption, South Australia, *Integrity Spotlight: Gifts and Benefits* (June 2022); Independent Commission Against Corruption, New South Wales, *Corruption Risk in NSW Government Procurement: The Management Challenge* (December 2011).
- 27 Adam Graycar 'Mapping Corruption in Procurement' (2019) 26(1) *Journal of Financial Crime* 162.
- 28 Procurement Services SA, *Gifts, Entertainment and Benefits Guideline* (20 February 2023) p 1.
- 29 Office of the Commissioner for Public Sector Employment, *Guidelines, Gifts and Benefits* (26 August 2020).
- 30 SA Health, *Policy Gifts and Benefits*, (30 May 2023).
- 31 NSW Buy, *Supplier Code of Conduct* (14 February 2020); Buying for Victoria, *Supplier Code of Conduct* (15 September 2022).
- 32 Independent Broad-Based Anti-Corruption Commission, *Perceptions of Corruption 2022: Suppliers* (December 2022); Independent Broad-Based Anti-Corruption Commission, *Perceptions of Corruption: Survey of Victorian Government Suppliers* (June 2016); Independent Commission Against Corruption, New South Wales, *Corruption Risks in NSW Government Procurement: Suppliers' Perceptions of Corruption* (2011) p 9.
- 33 Dana Katz, Arthur L. Caplan and Jon F. Merz 'All Gifts Large and Small: Toward an Understanding of the Ethics of Pharmaceutical Industry Gift-Giving' (2010) 10(10) *The American Journal of Bioethics* 11.
- 34 Procurement Working Group (Ministerial Statement), House of Assembly (13 March 2012); Printer Cartridge Scam, Legislative Council (15 October 2013); Daniel Willis '\$1.25m Spent by Public Servants in Cartridge Kickback Scandal, Government Report Reveals' (14 March 2012) *The Advertiser*; Candice Pross 'Public Servant Admits to 'Gross Over-Ordering' of Printer Cartridges Before Getting iPads' (15 July 2016) *ABC News*.
- 35 James P. Orlowski and Leon Wateska 'The Effects of Pharmaceutical Firm Enticements on Physician Prescribing Patterns: There's No Such Thing as a Free Lunch' (1992) 102 *Chest* 270.
- 36 Tasmanian Integrity Commission, *An Own Motion Investigation into Policies, Practices and Procedures Relating to Receiving and Declaring of Gifts and Benefits in the Tasmania State Sector* (2015).
- 37 Corruption and Crime Commission, Western Australia, *Report into Bribery and Corruption in Maintenance and Service Contracts with North Metropolitan Health Service* (16 August 2018).
- 38 Procurement Services SA, *Sourcing Policy* (20 February 2023).
- 39 Office of the Commissioner for Public Sector Employment, *Code of Ethics for the South Australian Public Sector* (January 2022) p 6.
- 40 IBAC's 2022 survey found 61% of suppliers believed there was a medium or high risk that confidential tender information provided to agency could be leaked to a competitor prior to close of tender. IBAC's 2016 survey found 25% of suppliers believed it is typical or very typical for confidential tender information to be leaked to competitors. Approximately 25% of respondents to the 2011 New South Wales survey thought that the leaking of confidential tender information occurred frequently. Independent Broad-Based Anti-Corruption Commission, *Perceptions of Corruption 2022: Suppliers* (December 2022); Independent Broad-Based Anti-Corruption Commission, *Perceptions of Corruption: Survey of Victorian Government Suppliers* (June 2016) 9; Independent Commission Against Corruption, New South Wales, *Corruption Risks in NSW Government Procurement: Suppliers' Perceptions of Corruption* (June 2011) p 10.
- 41 Two thirds (64%) of respondents to the 2022 Victorian survey believed that there is a high or medium risk of a Victorian state or local government agency giving unequal information to organisations interested in a tender. In the 2016 Victorian survey and the 2011 New South Wales survey, approximately 40% of suppliers believed that agencies typically give unequal information to suppliers interested in a tender. *Independent Broad-Based Anti-Corruption Commission, Perceptions of Corruption 2022: Suppliers* (December 2022), Independent Broad-Based Anti-Corruption Commission, *Perceptions of Corruption: Survey of Victorian Government Suppliers* (June 2016) p 9; Independent Commission Against Corruption, *Corruption Risks in NSW Government Procurement: Suppliers' Perceptions of Corruption* (June 2011) p 10.
- 42 Procurement Services SA, *Intellectual Property in Procurement Guideline* (20 February 2023).
- 43 Independent Commission Against Corruption, New South Wales, *Roads and Maritime Services – Allegations Concerning Employees' Awarding of Contracts (Operation Ember)* (2022).
- 44 Department of Treasury and Finance, *South Australian Industry Participation Policy: Procedural Guidelines* (1 January 2023) p 3.
- 45 Procurement Services SA, *Procurement Planning Policy* (20 February 2023) pp 5–6.
- 46 Procurement Services SA, *Panel Contracts Guideline* (20 February 2023) p 1.
- 47 Independent Broad-Based Anti-Corruption Commission, *Corruption Risks in the Public Health Sector* (October 2017) p 11.
- 48 Procurement Working Group, House of Assembly (14 March 2012).
- 49 Independent Commission Against Corruption, New South Wales, *Investigation into the Awarding of Roads and Traffic Authority and Roads and Maritime Services Contracts* (March 2023); *Independent Commission Against Corruption, Investigation into the Conduct of a University of Sydney ICT Manager* (May 2016); Independent Commission Against Corruption, New South Wales, *Submission to the Legislative Council Inquiry into Procurement Practices of Government Agencies in New South Wales and its Impact on the Social Development of the People of New South Wales*, Standing Committee on Social Issues (January 2024) p 9.
- 50 Procurement Services SA, *Panel Contracts Guidelines* (2 February 2023) pp 3–4.

- 51 This matter was assessed as raising potential issues of misconduct and maladministration. The matter was accepted as it was received prior to the October 2021 legislative changes that restricted the Commission's jurisdiction to corruption.
- 52 Department of Premier and Cabinet, *Premier and Cabinet Circular PC038 – Unsolicited Proposals*.
- 53 Procurement Services SA, *Unsolicited Proposals Schedule* (1 June 2023).
- 54 Procurement Services SA, *Procurement Planning Policy* (20 February 2023).
- 55 Independent Commission Against Corruption, South Australia, *Yes Minister* (7 March 2023) p 4.
- 56 Elisabetta Iossa and Michael Waterson, 'Maintaining Competition in Recurrent Procurement Contracts: A Case Study on the London Bus Market' (2019) 75 *Transport Policy* 141; Christoph Carnehl and Stefan Weiergraeber 'Bidder Asymmetries in Procurement Auctions: Efficiency vs. Information – Evidence from Railway Passenger Services' (2023) 87 *International Journal of Industrial Organization*; Independent Commission Against Corruption, New South Wales, *Dealing with Incumbent Providers in Procurement* (November 2021).
- 57 Elisabetta Iossa and Michael Waterson, 'Maintaining Competition in Recurrent Procurement Contracts: A Case Study on the London Bus Market' (1029) 75 *Transport Policy* 141.
- 58 Independent Commission Against Corruption, New South Wales, *Dealing with Incumbent Providers in Procurement* (November 2021).
- 59 Dakshina G. De Silva, Georgie Kosmopoulou and Carlos Lamarche, 'The Effect of Information on the Bidding and Survival of Entrants in Procurement Auctions' (2009) 93(1) *Journal of Public Economics* 56; Independent Commission Against Corruption, New South Wales, *Dealing with Incumbent Providers in Procurement* (November 2021).
- 60 Procurement Services SA, *Value of Money in Procurement Guideline* (20 February 2023); Procurement Services SA, *Procurement Planning Policy* (20 February 2023).
- 61 Independent Commission Against Corruption, New South Wales, *Investigation into the Conduct of a Senior Officer of the NSW Department of Justice and Others* (November 2016); Independent Commission Against Corruption, New South Wales, *Investigation into the Conduct of a Mine Subsidence Board District Manager* (March 2016).
- 62 Office of the Auditor General Western Australia, *Western Australian Auditor General's Report: Local Government Contract Extensions and Variations and Ministerial Notice Not Required* (4 May 2020).
- 63 Department of Treasury and Finance, *Treasurer's Instructions 18 – Procurement, Section 10(1)(a)* (20 February 2023).
- 64 Procurement Service South Australia, *Evaluation Planning Guideline* (20 February 2023).
- 65 Procurement Services SA, *Sourcing Policy* (20 February 2023) p 5.
- 66 Ibid.
- 67 Department of the Premier and Cabinet, *Procurement Governance Policy* (1 April 2021) p 2.
- 68 Procurement Services SA, *Supplier Debrief Guideline* (20 February 2023).
- 69 Independent Commission Against Corruption, South Australia, *Evaluation of the Practices, Policies and Procedures of the City of Playford Council* (November 2019) p 81.
- 70 Procurement Services SA, *Procurement Governance Policy* (20 February 2023) p 10.
- 71 Auditor-General's Department, South Australia, *Battery Storage Procurement, Report 9* (26 November 2018); Auditor-General's Department, South Australia, *Probity of the Processes for the Heavy Rail Service Contract, Report 9* (25 May 2021).
- 72 Procurement Services SA, *Capability Development Strategy 2021–23* (nd).
- 73 South Australian Productivity Commission, *Government Procurement Inquiry Stage 2 – Final Report* (8 November 2019) p 155.
- 74 Ibid, p 19.
- 75 Procurement officers who are occasionally involved in procurement are significantly more likely than those who are frequently involved in procurement to rate their knowledge of corruption risks in procurement as average or below ($\chi^2=32.973$, $df=5$, $p<0.01$, $N=326$, $v=0.318$), to not be aware that confidential agreements are required for a procurement evaluation ($\chi^2=10.539$, $df=2$, $p<0.01$, $N=314$, $v=0.183$), not to consider that agencies may give unequal information to suppliers ($\chi^2=13.080$, $df=5$, $p<0.05$, $N=314$, $v=0.204$) and not to believe that suppliers may offer gifts to public sector employees involved in procurement ($\chi^2=12.065$, $df=5$, $p<0.05$, $N=318$, $v=0.195$).
- 76 Corruption and Crime Commission, Western Australia, *Review of an Investigation by Water Corporation into Serious Misconduct Allegations in Procurement* (2021).
- 77 Michaly Fazekas and Elizabeth David-Barrett, *Corruption Risks in UK Public Procurement and New Anti-Corruption Tools* (Government Transparency Institute, November 2015) p 11.
- 78 Ivan Langr, 'Public Procurement in the Systemic Corruption Environment: Evidence from the Czech Republic' (2018) 2 *The NISpacee Journal of Public Administration and Policy* 68.
- 79 Independent Commission Against Corruption, New South Wales, *Submission to the Legislative Council Inquiry into Procurement Practices of Government Agencies in New South Wales and its Impact on the Social Development of the People of New South Wales*, Standing Committee on Social Issues (January 2024) p 11.
- 80 Independent Commissioner Against Corruption, South Australia, *Public Administration in a Pandemic: Unique Challenges in the Current Climate* (May 2020) p 7.

- 81 Independent Commission Against Corruption, New South Wales, *Managing Corrupt Conduct During the Covid-19 Outbreak* (2 April 2020); Independent Commissioner Against Corruption, South Australia, *Public Administration in a Pandemic: Unique Challenges in the Current Climate* (May 2020); Independent Broad-Based Anti-Corruption Commission, *State Government: Building Public Sector Integrity During Times of Crisis or Emergency* (August 2020).
- 82 Procurement Services SA, *Emergency Procurement Schedule* (20 February 2023) 2.
- 83 Ibid.
- 84 Auditor-General's Department, Report 8 of 2022, *Annual Report for the Year Ended 30 June 2022*, Part C: Agency Audit Report (18 October 2022) p 353.
- 85 Procurement Services SA, *Supplier Complaints Procedure* (20 February 2023) p 1.
- 86 Ibid.
- 87 Independent Commission Against Corruption, South Australia, *Factsheet: Are you a Government Contractor?* (January 2023).
- 88 Procurement Services SA, *Supplier Complaints Schedule* (20 February 2023).
- 89 $\chi^2=18.853$, $N=352$, $df=10$, $p<0.05$, $v=0.164$.
- 90 $\chi^2=11.450$, $N=357$, $df=5$, $p<0.05$, $v=0.179$.
- 91 $\chi^2=11.729$, $N=358$, $df=5$, $p<0.05$, $v=0.181$.
- 92 Suppliers involved in construction procurements are significantly more likely than suppliers for other types of goods and services to believe that it is not their responsibility to report ($\chi^2=18.937$, $df=5$, $p<0.01$, $v=0.230$) and to state that they do not make subcontractors aware of their obligations as public officers ($\chi^2=11.789$, $df=3$, $p<0.01$, $v=0.181$).
- 93 Independent Broad-Based Anti-Corruption Commission, *Construction Risks Associated with Major Transport Infrastructure Projects* (February 2023).
- 94 Tina Søreide, 'Beaten by Bribery: Why Not Blow the Whistle?' (2008) 164(3) *Journal of Institutional and Theoretical Economics* 407.
- 95 Procurement Services SA, Procurement Governance Policy (20 February 2023) p 10.
- 96 For example, Independent Broad-Based Anti-Corruption Commission, *Operation Liverpool: An Investigation into the Conduct of Two Officers of Bendigo Health*, Adam Harding and John Mulder (March 2017); Independent Broad-Based Anti-Corruption Commission, *Operation Nepean: An Investigation into the Conduct of Former Employee of Dame Phyllis Frost Centre*, Jeff Finlow (April 2017); Corruption and Crime Commission, Western Australia, *Review of An Investigation by Water Corporation into Serious Misconduct Allegations in Procurement* (2021).



ICAC

Independent Commission
Against Corruption
SOUTH AUSTRALIA