

Corruption in Public Procurement: The Links and Solutions

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forward together
sonke siya phambili
saam vorentoe



Photo by Stefan Els

Outline

- What is corruption?
- Relationship between corruption and public procurement
- Consequences of procurement corruption
- Past measures to address procurement corruption
- New(ish) solutions to procurement corruption

What is corruption?

- Abuse of entrusted office for private gain- covers bribery, abuse of office, theft & embezzlement, state capture, fraud...

Relationship between corruption and public procurement

- Corruption has been an issue for public procurement from when nations began keeping procurement records.
 - In 1861, a committee found to investigate procurement corruption during the US civil war found that “...both the Department of War under Simon Cameron and the Department of the Navy under Gideon Welles **had awarded contracts not to the lowest bidder through proper advertisements, but to friends and associates.**”
 - “Another purchaser, Simon Stevens, was implicated in the “Hall Carbine” affair, in which **the government unknowingly repurchased arms it had already discarded as uselessly obsolete.**”

Relationship between corruption and public procurement

- Political system
- Agency problem
- Discretion in decision making
- Asymmetry of information
- Complexity of procurement rules
- Professional (in)competence
- Accountability gaps
- Public sector employment contracts/incentives

Consequences of procurement corruption

- Impedes economic development- use more to get less
- Impact on public investment – white elephant projects
- Impact on foreign investment & borrowing costs
- Impact on youth
- Skews employment decisions
- Creates a societal trust deficit and undermines social cohesion
- Impact on the poor
- Constrains human development – access to water, sanitation, health, energy, education.

Consequences of procurement corruption

- Introduces inefficiencies into the procurement market- counters the benefits of competition
- Entrenches rent seeking as a primary public sector activity.
- Disincentivizes competition and innovation in the private sector
- The costs of bribery incentivizes firms to engage in state capture
- Supports organized crime
- Fosters civil unrest and political instability (Sri Lanka, UK, Nigeria)
- Contagion of corruption

Past measures to address procurement corruption

- Whistle-blowing laws
 - Education and training
 - Criminalization of procurement related corruption
 - Focus on process and procedural fairness
- Can be traced to “qui tam” rules allowing private citizens to file civil suits against fraudulent contractors. Successful cases would receive half the amount recovered from the contractor.
 - Compliance requirements for private and public sector and professionalization
 - International treaties (UNCAC), Prevention of Corruption Act 2004
 - Fairness as a mandatory part of procurement process

Past measures to address procurement corruption

- Addressing the supply side of corruption
 - Procurement legislation reducing discretion and increasing administrative processes
 - Integrity agreements
- Measures to address private sector complicity, including criminalization of foreign bribery; initiatives such as United Nations Global Compact, WEF Partnering Against Corruption Initiative, collective action measures such as the Coalition for Ethical Operations, Coalition for Integrity, the Alliance for Integrity etc.
 - Public Finance Management Act & Regulations, Preferential Procurement Act & Regulations, Municipal Finance Management Act & SCM Regulations
 - Require bidders to certify they have not engaged in corruption in the tender process.

New (ish) solutions - prevention

- Assessing corruption risks and taking a risk based approach to procurement
- Data and transparency
- Addressing behavioural incentives
- Contractor qualification
- Focus on outcomes-based contracting/contract execution
- Allows institutions to understand the areas and process most at risk for useful interventions
- Increased publication through:
 - Open contracting portals
 - Beneficial ownership information
 - Tech for integrity initiatives
- Adequate record keeping
- Behavioural psychology has shown promise in motivating persons to make ethical decisions
- Ensuring integrity of contractors
- Focuses on payment for output and objectives, not inputs. Address disconnect between buyers and users

New (ish) solutions -prevention

- Focus on procurement planning
- Link government spending to contracts
- Renewed focus on technology

- Address the use of bogus consulting contracts to embezzle public funds and false inflation of public needs. Address deliberate misrepresentation of costs and benefits of projects.
- Disallow invoices not linked to contracts and allows for validation of public expenditure. Validate tender advert prices against contract prices/payments.
- Focus on end-to-end electronic procurement

New(ish) solutions- detection

- Judicial remedies
- Focus on voluntary reporting
- Strengthening accounting/auditing mechanisms
- Improving whistle-blower mechanisms
- Civil society participation
- Coordination with competition authorities

- Bidder challenges often uncover hidden abuse and can signal areas that are most prone to corruption for future intervention. Personal cost orders?
- Deferred/non- prosecution agreements
- 2019 amendment to Auditor General's Act 2019
- 2017 amendment to Protected Disclosures Act - duty to provide feedback and extends the range of protected persons. Calls to make whistle-blowing a human right.
- Many countries have created space for citizens/civil society to participate in procurement processes
- Collusion and bid rigging detection requires inter-agency cooperation.

New(ish) solutions- deterrence and punishment

- Applying criminal and administrative penalties

- Enforcing accountability mechanisms through debarment, prison terms, personal cost orders, unexplained wealth orders

Missing piece in SA

- Public-private sector coordination and cooperation
 - Not solely a public or private sector issue
- Investment in civil society anti-corruption NGOs,
- Investment in ethical education

Unexamined issues

- Holding elected officials accountable
- Strengthening institutional resilience
- Recruitment in the public sector
- Re-examining the role of the state
- The desirability of anti-corruption enforcement
- Diversification of public sector supply chains
- Difference between public and private sector ethical standards
- Creating an ethical next generation
- Creating a culture of “speak-up”/ challenge
- The role of intermediaries
- Political willingness to act/credible leadership
- “Revolving door” appointments
- Presumption of transparency in procurement
- Addressing urgency/emergencies in procurement

Things we don't need

- *More legislation*
- *More gates and gate keepers*
- *More sporadic reactions to scandals*

QUESTIONS?

