
INTEGRITY IN INFRASTRUCTURE AND PUBLIC PROCUREMENT

PROTECTING THE PUBLIC INTEREST

By Peter McIntyre

INTRODUCTION

Processes to plan, commission and procure water projects, programmes and infrastructure require careful stewardship, especially when they involve large-scale civil works. The path from planning, procurement and tendering to construction and implementation contains areas of high integrity risk. Large-scale infrastructure projects for water and energy are capital-intensive and public services are monopolistic in nature, which allows room for corruption and abuse. Measures to prevent corruption are often at their weakest at the interface between public and private sectors.



Photo: Alfred Low Wan Juat, WIN photo competition 2011

The Open Contracting Partnership estimates that governments globally sign contracts to a value of US\$ 9.5 trillion every year, yet information about these contracts is often unavailable for public scrutiny, opening the process to corruption and mismanagement. The World Bank Enterprise Survey on Corruption shows that more than 23 per cent of companies in East Asia, South Asia, the MENA region and sub-Saharan Africa have received a bribe request from the public sector.

Concerns have been heightened because a new era of large-scale construction is under way in the water sector – for dams, for irrigation, for piped water systems and for wastewater and sewerage treatment. The ability to protect the public interest in water sector development relies on the commitment, skills and integrity of private contractors and public sector officials.

The Water Integrity Global Outlook recommends stronger control mechanisms for design, planning and implementation of infrastructure, with a critical evaluation of the use of resources and the generated outcomes. Building an effective relationship with stakeholders, including community-based organizations will help to ensure fair and sustainable implementation of projects. Transparency in contracting, effective supervision and scrutiny through independent audits are central to preventing corruption.

A BIAS TO BUILD

Over decades, the water sector has made many promises that have been inadequately fulfilled. Broken promises often begin with what has been called “the bias to build”. It is more satisfying – and appears more progressive to generate new infrastructure than to maintain and properly operate what is already there. Politicians who vote through large budgets for water-related projects expect to cut a ribbon and declare something open.

Yet major gaps in services are often failures of maintenance. The Rural Water Supply Network has estimated that only two out of three hand pumps in sub-Saharan Africa are working at any point in time and that this represents a crisis of wasted infrastructure investment. (RWSN, 2010).

In countries with high levels of corruption, this bias towards new investments offer opportunities to divert money or channel contracts, underestimating costs to win approval and seeking budget increases at a later stage (Grigoli and Mills, 2011). It is common to find ministries underbudgeting for the increased staff and

maintenance costs needed to support new investment. Repeated failures, as facilities are left unused or quickly start to fall apart, are integrity issues since they are predictable in the absence of maintenance and represent a massive waste of public investment.

In relation to the Sustainable Development Goals, the World Bank has stressed the need to strengthen institutions and regulations to ensure sufficient high-quality spending on operations and maintenance.

An area of continuing controversy relates to the construction of large-scale dams for agriculture or hydropower – especially how to balance benefits against the risks to the environment and communities. Benefits may be overstated in projects that result in large-scale displacement of people and livelihoods, while compensation is often insufficient or stolen.

There is a question mark over large-scale construction projects: are they cost-effective ways to meet need or are they built as matter of national or political prestige? A study from Oxford University found “overwhelming evidence” that hydropower dam budgets are systematically biased below the real costs. (Ansar et al., 2014) The authors put this down to a combination of “delusion and deception”. Economists increasingly recognize that the costs of losing a wetland can be bigger than the value of the energy produced by a dam, and that better assessment tools are needed to ensure short-term benefits don’t hide the long-term losses. (Winemiller et al., 2016).

This does not mean that dams should never be built – The World Bank supports hydropower as a major source of green energy – but there needs to be stronger scrutiny of the case for construction and of less disruptive alternatives.

Greater accountability can be achieved only if processes are transparent. The Construction Sector Transparency (CoST) initiative promotes public access to detailed information on construction projects, encourages multi-stakeholder groups to scrutinize information and supports target audiences in learning to understand data. Citizens, media, parliaments and agencies can use this information to challenge poor performance, mismanagement and corruption.

WEAKNESSES IN PROCUREMENT AND CONTRACTING

The Organisation for Economic Co-operation and Development (OECD) estimates that government procurement represents 29 per cent of total general government expenditure for its members and 13 per cent of their total GDP. Local government is responsible

for more than a half of this expenditure. The OECD identifies procurement as the government activity most vulnerable to waste, fraud and corruption.

Low capacity in public sector bodies and local governments slows decision-making, drives up costs, damages the private sector and opens the door to corruption. Water utilities, water boards, river basin organizations and local governments often lack the experience and capacity to make effective judgements about the quality of the bids for large contracts (Andvig et al., 2000).

If low cost becomes the only criterion for awarding contracts, then companies are incentivized to bid low to win contracts and may be unable to deliver quality results on time. The UK's Public Contracts Regulations advise procurers to balance cost and quality to achieve the 'most economically advantageous' approach (Practical Law, 2015).

The OECD lists a number of ways in which unethical bidders form cartels to rig the tender process to drive up prices and share the profits:

- submitting non-competitive bids
- agreeing not to bid or withdrawing a bid.
- arranging to submit bids only in certain areas.
- agreeing to take turns at 'winning'

Lack of capacity can be equally damaging. A report from Ethiopia suggests that many private drilling companies moved into the water sector without a business plan (Defere, 2015) and demonstrated a number of weaknesses:

- bidding without fully understanding the work or making a site visit;
- bidding for a very low price, leading to low quality and delays;
- lacking appropriate machinery and materials;
- using advance payments for other purposes; and
- using senior staff to win contracts but having the work done by junior staff.

However, many consultants believe that only the lowest bid will win a public contract and complain of weak or corrupt supervision. The drilling companies themselves complained of excessive bureaucracy on the part of the public sector and reluctance to take decisions.

STRENGTHENING PROCUREMENT

Processes for advertising invitations to tender must be open and fair and contain clear technical requirements.

Steps are needed to prevent contracts being awarded to companies with a poor integrity record or inadequate capacity. The selection process should be defined in advance, confidential information must be protected and records kept of selection procedures.

The World Bank, which currently funds 1,800 procurement projects to the value of US\$ 42 billion in 172 countries, introduced a new procurement framework in 2016 'to achieve value for money with integrity in delivering sustainable development' (World Bank, 2015). This follows consultation in which stakeholders reported fraud and corruption as major problems. The new framework defines roles and responsibilities for the Bank and the borrower and includes recommendations from Transparency International about beneficial ownership, civil society monitoring of procurement, and capacity building (TI, 2015a).

The Bank works with countries to produce Country Procurement Assessment Reports, which identify strengths and weaknesses and set out steps to increase the capacity to manage and monitor procurement and reduce scope for corruption. The World Bank and the OECD have also developed a Methodology for Assessing Procurement Systems (MAPS) tool to help developing countries and donors to assess procurement systems.

UNICEF says that application of a Rural Water Supply Network (RWSN) Code of Practice achieved a 31 per cent reduction in the unit cost of a borehole under the One Million Initiative in Mozambique, mainly through changes in contract procedures (UNICEF, 2011). A Water Governance Study on behalf of the Water Partnership Programme of the AfDB has noted some improvements in public sector procurement in Africa. (McGarry et al., 2010).

The African Development Bank (AfDB) says that policies, legislation and guidelines are ineffective without the capacity to implement them. Many countries 'continue to lack the necessary human resource capacity to implement these reforms effectively and do not have sufficient political will to drive them forward.' (ibid).

One way to ensure that companies have the capacity to complete contracts is through pre-qualification, a process of vetting the capacity and integrity before formal bidding begins. The European Bank for Reconstruction and Development (EBRD) recommends pre-qualification of contractors for all large or complex works and specialized services (EBRD, 2012).

Pre-qualification can protect against contracts being awarded to 'fly-by-night' companies that have no record of competence. The Taza Suu project to enhance WASH access to Kyrgyzstan villages was financed with loans from the World Bank and the ADB. After the project

came under scrutiny the Kyrgyz prosecutor initiated 31 criminal charges against contractors. According to the Kyrgyz Institute for Public Policy, some contractors had established their company only days before the tendering process began (Isabekova et al., 2013).

Many countries bar companies from bidding if they have been convicted of criminality. The EU has strengthened regulations to exclude companies that have been convicted of corruption, fraud or money laundering, offences linked to child labour, people trafficking or terrorism, or tax or social security offences.

The Open Contracting Partnership has published good practice principles with the aim of making contracting more competitive and fair. It calls on governments to recognize the right of the public to access information related to public contracts. The OECD Recommendation on Public Procurement calls on governments to implement 'an adequate degree of transparency of the public procurement system in all stages of the procurement cycle' (OECD, 2015).

Transparency International has pioneered integrity pacts under which companies make a commitment to reject all forms of bribery, collusion and corrupt practices. The pacts have been successfully implemented in drinking water and irrigation projects in Pakistan, Colombia, and Mexico. TI and the European Union are piloting integrity pacts project in 11 European countries (TI, 2015b).

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