



INDEPENDENT COMMISSION AGAINST CORRUPTION

Contract Works

BEST PRACTICE GUIDE FOR PUBLIC BODIES



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Introduction

Contract works is one of the areas most prone to corruption. Public works attract both active and passive bribery, because they involve substantial amount of public expenditure.

If corruption occurs in this area, then the Government/organisation runs the risk of not realizing value for money for its projects. It may also suffer public embarrassment, loss of public confidence and financial losses.

FIDIC, the world's leading professional organization of consulting engineers, made it clear that:

'Corrupt practices can occur at all stages of the procurement process: in the marketing of engineering services; during the design; in preparing tender documents (including specifications); in pre-qualifying tenderers; in evaluating tenders; in supervising the performance of those carrying out the construction; issuing of payment certifications to contractors; and making decisions on contractors' claims. (Policy statement on corruption - 1996)

FIDIC encourages firms to come up with Integrity Management Systems (IMS). The IMS consider the holistic implications of all elements of management on the firm's products and services. It seeks continuous integrity assurance at every transaction point along the way towards the delivery of the services offered by the firm.

FIDIC's guidelines specify that a firm's IMS should include a code of conduct, an integrity policy, an adequate organisational structure, the specification of responsibilities and training programmes, corruption-free procedures for all of the firm's substantial processes, and the development of resources, manuals, forms, checklists and records that facilitate integrity management.

Mauritius does not escape from the above problems. The National Audit Office has been highlighting various weaknesses in the management of contract works resulting in Government losing money and not getting value for money.

Main and recurring weaknesses highlighted by the National Audit Office are:

- No proper survey done before embarking on projects.
- Lack of planning resulting in additional costs.
- No proper supervision of works, resulting in non-conformance with standards.

- No appropriate tests performed.
- Discrepancies between payment certificate and Bill of Quantities.
- High variations resulting in delays and additional costs.
- Poor management at the final stage with late issue of completion certificates and late finalisation of contract accounts.
- Lack of coordination between various parties involved in contract works.

One of the main functions of the ICAC, as provided under the Prevention of Corruption Act 2002, is to enquire into the manner in which contracts for the performance of works is being carried out and performed.

In this perspective, the ICAC is proposing a Best Practice Guide, the objectives of which are to provide Public Bodies with a checklist to assess their own vulnerabilities to corruption risks in contract works. It is however not possible, to cover every possible scenario or dilemma that may arise.

We, therefore, recommend all Public Bodies involved in contract works to come up with their own set of IMS in order to reduce the risks of corruption in public contracting. This will enable project activities to be significantly enhanced and will help prevent fraud and corruption.

Containing corruption is only possible with the co-operation of all those who have a stake in the integrity and transparency of their institutions. Emphasis should be on reforming systems, not exposing individuals. A proper control mechanism should be implemented from inception to completion of every project.

Vulnerabilities in the Life-cycle of a Project

Planning Stage

- Pressures from third parties to tailor-made project to their requirements.
- Project cost estimate overruling quality/capacity.
- Requirements/pressures from client, lender and government.
- Alteration of the timings of projects to suit vested interest.

Tendering

- Specific clauses deliberately not included in tender document and contract.
- Named product or material requested where alternatives exist.
- Specify particular product or material where similar or equivalent exist.
- Excessive short bidding time.
- Preferential treatments.
- Potential contractors/subcontractors to influence Consulting Engineer.

Contract Management

- Late issue of instructions by Consultants.
- Twisting specifications during constructions.
- Lack/incomplete/too general specification leading to on-site change orders.
- Work not according to design.
- Behind the scene arrangements for subcontractors.
- Improper reporting on progress of works.
- Undocumented procedures for approval and payment of variations.
- Lack of on-site monitoring of works.
- Non-performance of tests to check quality of works.
- Over billing/overpayment authorized by Consultant.
- Certification for payment without proper assessment.
- Payment for materials off-site where not warranted.
- Deliberate delay in certifying and effecting payment by Consultant/Employer.

Commissioning and Taking over & Defects Liability Period

- Defects not corrected within the defect liability period.
- Practical completion certificate without snag list.
- Released of payment without measuring the actual work done.
- Documents needed in order to certify payments not filed.
- Delay in payment from completion to finalization of accounts.

Areas requiring special attention during construction stage

Two areas, which require special attention during contract management, are:

- Variation works and
- Site supervision

Contract Variations

An area in contracting that needs much attention is contract variations. Contract variations can lead to additional expenses and dispute between clients and contractors. They are major corruption risks. Therefore, without appropriate controls in place, opportunities can arise for misuse of public funds through false, misleading or excessive claims for variations.

Generally, there are two types of variations. These are those that represent a change in the scope of the original contract works, such as altered designs, extended construction works or extended service and then those that result from difficulties encountered in fulfilling the original specifications of the contract, or latent conditions.

In most contracts, there is a risk that a contractor will encounter conditions that were not ascertainable at the time of tendering, which will prevent works from being carried out to specifications.

Weaknesses in contract administration can increase a contractor's opportunity to exaggerate additional costs incurred in the field.

The inclusion of a variation clause in the contract and the adoption of procedures to approve variations can help alleviate this risk. There is need to properly monitor, evaluate and record variations once approved. Variations should be agreed prior to implementation as far as possible.

Variations can also be used as a means of circumventing tendering policy and procedures. There is a point where variations are so substantial that they constitute a new contract.

Site Supervision

There is no substitute for proper site supervision to ensure that projects are progressing satisfactorily. Sometimes site visits bring surprises, as actual progress observed might be substantially less than that reported.

Site inspections are important for construction contracts to ensure that the risk of contractors performing substandard work, which can represent considerable cost, is minimised.

There are probably some stages in a project where site inspections should be mandatory. Emphasis should be laid on progress points where it would be difficult to check an aspect of work once the project proceed. An example would be prior to a major concrete pour.

Failure to build formal controls into a system of site inspection can expose your organisation to considerable risks. Introducing formal site inspection procedures does not signify a lack of trust in employees but is meant to maintain accountability. Consequently, it helps to keep a concerted record of events during the project implementation and to protect the interest of all parties.

Ensuring Probity

This section focuses on how to ensure probity in a way that optimises efficiency and effectiveness. Five essential factors, which, should be considered throughout all stages of the contracting process outlined in the best practice model, are:

- Obtaining best value
- Transparency of process
- Dealing with conflicts of interest
- Accountability
- Monitoring and evaluating performance

The necessity of ensuring probity in the contracting process applies equally to the contracting of services and goods. Probity is an integral part at any stage of the contracting process and should not be a last minute consideration. Regular performance monitoring and evaluation are essential if a contract is to be managed prudently.

The community has a right to expect that decisions about contracting will provide value for money.

Probity checklist

Obtaining value

- Regular market testing should be undertaken to enable new options to be considered. Existing contractors/suppliers should be encouraged to perform and new contractors/suppliers must be given the chance to compete.
- Project specifications should be incorporated into predetermined selection criteria.
- The information provided to bidders should allow proper assessment of the predetermined criteria.

Transparency of Process

- Invitation documents should be designed to elicit the information necessary for proper assessment of each of the selection criteria.
- Bids must be assessed consistently, using predetermined criteria available to all potential bidders. The determined criteria should be established and documented prior to calling of bids.
- The award of a contract should not be decided from a pre-registered list or from expression of interest, unless full information, based on predetermined specifications, has been asked for and assessed.
- For a contracting process to be fair and be seen to be fair, criteria should not be changed midstream unless all bidders are given an equal opportunity to revise their bids.
- Criteria should never be altered to give advantage to any particular party and all bidders should have access to the same information.
- Confidential information must be protected and no information should be provided for the benefit, or to the detriment, of particular parties.
- Any extension of time granted, must be granted to all bidders.

Dealing with conflicts of interest

- An organization should establish policies to deal with conflicts of interest at the outset, rather than attempting to manage such issues part way through a contracting process.
- Members of the evaluation or assessment panels should be selected on the basis of their expertise. Consideration should be given to including an independent panel member who can help to ensure that impartial decisions are made.
- Prior to their appointment to the assessment panel, members should be made aware of the need to disclose any potential conflicts of interest. Members must also disclose any conflicts of interest arising during the procurement process.
- Potential service suppliers must be required to divulge all potential conflicts of interest at the time they offer to provide services. Failure to make adequate disclosure may be grounds for ending the contract.

Accountability

- Records should be maintained throughout the procurement process, detailing evaluation criteria, weightings, decision-making processes and decisions made. These records should provide sufficient information to enable audit and independent review functions to be carried out.
- Departure from established procedures for contracting should only be for sound, well-documented reasons. These reasons should be approved at senior level by those not directly involved in the process.
- More than one person should assess bids, submissions, expressions of interests and the like. The process should incorporate suitable internal and external experts to ensure sound and accountable decision-making.
- For large, complex or controversial contracts, consideration should be given to the appointment of a probity auditor who can provide external scrutiny and ensure integrity of the process.

Monitoring and evaluating performance

- Regular and systematic monitoring of performance must be undertaken to determine whether requirements are being satisfied.
- Perform an evaluation at the end of the contract, taking into account the complexity, quality, duration, cost and any other key issues relating to the service provided. Outcomes should be measured against the stated objectives.

General

- Does your organisation have a Code of Business Conduct and Code of Ethics?
- Do you inform contractors of the need for ethical/non corrupt dealings?
- Is the organisation accredited under any certification arrangement?
- Does your organisation subscribe to any code of tendering practice or procedures?
- Are there written policies, procedures and guidelines on how to deal with the different stages in the contract life cycle?
- Are there rules about conflicts of interest by the different business partners?
- Are there rules and guidelines about acceptance of advantages by staff?
- Do you have a system to report malpractices in ethical behaviour or violation of the law?
- Do you ensure that the duties and responsibilities of each party to a contract work are clearly defined in a Service Level Agreement?

E.g. Responsibility of Ministry of Public Infrastructure headquarters, Technical Office, Client Ministry, Consultant, Central Tender Board, Contractors.

- Do you ensure that you have an Internal Audit Section able to perform both technical and financial audits?
- Are the activities of the organisation in respect of contract works published regularly?

Giving details about works in progress, date started, names of contractors, project manager, stage of work, variations to-date, date of handing over, defect liability period, main problems encountered on the contract etc.

- Are external audit reports followed up and remedial actions taken where appropriate?
- Are staff given an orientation to corruption awareness and prevention as part of their overall development and training?
- Are duties, responsibilities and accountability clearly defined and properly assigned in respect of the following?
 - (i) Project design
 - (ii) Preparation of bidding document
 - (iii) Bid opening
 - (iv) Bid evaluation
 - (v) Contract preparation
 - (vi) Contract management
 - (vii) Quality control and inspection
- Has the organisation defined the different International Standards it will follow?
- Have you ensured that you have systems in place to establish whether staff working on a contract, do not have any conflict of interests with regard to contracts they will be managing prior to their engagement?

Documentation

- Do you keep a project register whereby you can follow all major events on each contract from start to end?
- Does the organisation keep records for all the stages of the contract from inception to the completion stage to enable the follow up of a contract work during its life-cycle?

Major documents would relate to tender from consultants and contractors, management of works e.g. variations, notes of sites visits and payments documents.
- Does the organisation have a clear retention policy for the keeping of contract documents?

Planning

- Do you have a checklist to ensure that all clearances are obtained before further proceeding on a contract work?

E.g. of clearances being from Fire Services, Local Authorities, CWA, CEB, Min of Housing and land etc

- Do you ensure availability of fund before embarking on a project?
- At the time of defining specifications do you require clients/users to sign off for their requirements to avoid misunderstanding and major future variations?
- Where appropriate, are measurement performed at time of preparing Bill of Quantities?
- Are site surveys performed to identify all potential problems on sites?
- Do you ensure that users are fully involved at the planning and design stage?
- For large contracts, do you ensure that site visits and pre bid meetings are held?

Database and Evaluation of Consultants and Contractors

- Do you have a formal system for monitoring and reviewing performance of all contracts?
- Do you maintain a register of qualified contractors and consultants together with updated market information?
- Have you established a panel for evaluation of consultants and contractors?
- Have you ensured that the panel constitutes of persons from different sections and independent members?
- Have you established the frequency at which evaluation of consultants/contractors should be done?
- Do you have established criteria for selection and grading of contractors?
- Do you ensure that these criteria would not cause prejudice or favour to any contractor?
- Are these criteria in line with International Standards?
- Are evaluations documented?
- Are non-performing contractors/consultants downgraded or removed from the register, informed and reasons given?
- Do you have mechanisms in place to ensure that contractors with unsatisfactory performance ratings are not awarded any future work until it can be demonstrated that the problems identified in previous performance reports have been rectified?
- Does the organisation have a system whereby unsatisfied consultants/contractors can safely report their complaints without being victimised?
- At the end of each contract, do you make a report on contractors/consultants whereby these information can be used at time of re-evaluation?

Pre Qualification of Contractors and Consultants

- Does the organisation periodically carry out pre-qualification of contractors and consultants?

- Does pre-qualification cover the following?
 - (i) Professional and technical qualification
 - (ii) Financial resources
 - (iii) Equipment and other physical facilities
 - (iv) Managerial capabilities
 - (v) Reliability
 - (vi) Experience
 - (vii) Reputation
 - (viii) Adequacy of personnel
 - (ix) Legal capacity to contract
 - (x) Payment of taxes
 - (xi) Conviction or other disqualification of directors/officers

- Do you ensure that pre-qualification documents clearly and completely describe the requirements?

- Do you have an Evaluation Committee for pre-qualification?

- Do you ensure that all potential candidates are notified through the press?

- Do you give reasons for non-qualification?

Tender

Calling for tenders

- Does your manual of procedures clearly set the limits, authorisations and procedures needed for the different types of contracts and consultancy services?
- Do you ensure that you are in line with the Central Tender Board requirements?
- Do you ensure whether exceptional cases where your organisation would depart from normal competitive bidding and tendering have clearly been defined and if so whose authority should be obtained?
- Do you ensure that all contracts to be awarded by competitive bidding are publicly advertised?
- In case where limited competitive bidding is resorted to, do you ensure that only pre-qualified bidders are invited?
- Does the organisation provide standard documents, as far as possible, for the calling of tenders?
- Does your manual of procedures provide for the minimum number of quotations that should be called for in case of selective tendering?
- Do instructions to bidders include all information necessary to prepare responsive bids, such as eligibility requirements, language and currency of bid, the source and date of the exchange rate to be used and validity of the offer?
- Do you ensure that enough time is provided to consultants/contractors for returning their quotations/tenders?
- Does invitation to bid state the deadline and place for the receipt and the opening of bids?
- Does instruction to bidders clearly explain evaluation criteria and the points to be allocated to each criterion?
- Are quotations/tenders issued by registered delivery?

- Is a register kept for recording all information on tenders?
- Are bidders required to provide appropriate security with their bids?
- Do you keep record of the following?
 - (i) All public advertisements
 - (ii) Pre-qualification documents and evaluation reports
 - (iii) Bidding document
 - (iv) Record of any pre-bid meetings
- Do you ensure that any request for clarification from contractors/consultants, is communicated to all other contractors?
- Do you ensure that any modification to the soliciting document is communicated to all contractors?
- Do you ensure that any amendment by contractors to the original bid is done through a separate sealed offer?
- Do you ensure that notice of overall rejection is made available to all contractors?
- Do you ensure that detailed scope of works is available to suppliers?

Such scope of works shall include complete and detailed description of the works to be undertaken and be accompanied depending on the type of contract offered, with a detailed Bill of Quantities?

- Do you ensure that all relevant factors, in addition to price, that will be considered for the purposes of bid evaluation and the manner in which such factors will be applied are stipulated in the solicitation documents?
- Are requests for clarification answered promptly in writing and sent to all prospective bidders?
- Do you ensure that subcontracts are awarded on time?
- Do you ensure that the organisation's approval is obtained before appointment of sub-contractors by the main contractor?

Bids opening

- Are bidders invited to bid opening meeting?
- Do you ensure that tenders are kept secure and confidential before the evaluation process?
- Are late tenders rejected?
- Is a tender box used for the deposit of tenders?
- Is the tender box in a secure place?
- Does the tender box have at least two locks and are keys kept by different persons?
- Is deposit in the tender box done by suppliers' or their representatives?
- Are security measures taken to prevent unauthorised access to tender information prior to opening of tenders?
- Are late tenders returned unopened?
- Is the tender box locked/sealed between the closing time and opening of tenders?
- Is the tender box opened by a committee?
- As far as possible, are bid openings conducted immediately after the deadline for submission?
- Are minutes kept at time of opening of tenders and are they signed by all parties?
- Are prices quoted recorded in minutes so as to ensure no future tampering of these documents?
- Is a tender summary prepared and signed by all members present?
- Are tenders securely kept once they are opened and at time they are being evaluated?

Evaluation of bids

- Do you ensure that all bids are first examined to determine if they
 - meet the minimum eligibility requirements as stipulated in the bidding documents
 - have been duly signed
 - are accompanied by a valid security, where stipulated in the bidding document
 - are substantially responsive to the bidding documents, and
 - are generally, or otherwise, in order.

- Do you ensure that at time of evaluation, the substance in a bid is not changed?

- Do you ensure that changes are not made to make an unresponsive bid become responsive?

- In case of major deviation, do you ensure the bid is rejected?

- Do you ensure that all steps are taken to avoid extension of bid validity period?

- In case of extension of bid validity period, do you ensure that approval from all bidders is obtained?

- At time of evaluation do you ensure that all bids are placed on same footing as to exchange rates?

- Do you perform separate financial and technical evaluations?

Negotiations

- Do you ensure that negotiation applies to specific identified contracts rather than being used as a general rule?
- Are negotiation clauses incorporated as part of the special conditions of tender?
- Is prior notice given to bidders of intention to negotiate?
- Are there strict operational protocols governing the use of negotiation?
- Is the use of negotiation subject to approval by appropriate authority?
- Is a team appointed to conduct negotiation?
- Does the team include at least an independent member?
- Have negotiation guidelines been clearly explained to and understood by staff?
- Is the negotiating team made aware of the negotiation parameters and limits together with a mandate to act accordingly?
- Are written records of the negotiation maintained and are they sufficient to enable verification by a third party?
- Are all tenderers within a defined “competitive range” given the opportunity to negotiate?
- Are the short-listed firms, which were invited to negotiate, required to submit a sealed “best and final offer” based on the finally agreed or revised requirement?
- Do you ensure that no negotiation takes place between parties or a third party with respect to a pre-qualification or standardisation exercise, a solicitation for bids or a request for quotation?
- Do you ensure that no negotiation is undertaken after contract issuance except those consistent with the terms and conditions in the contractual documents?

Post Qualification

- In case of no pre-qualification, do you undertake a post qualification to determine if the bidder whose bid has been determined the lowest calculated price has the capability and resources to carry out the contract effectively?

Award of Tenders

- Before awarding the contract, do you verify if the successful bidder continues to meet the qualification requirements?
- Are contracts awarded to the responsive and qualified bidder with the best-evaluated bid?

The best-evaluated bid is the one, which is responsive and with the largest weighted total score.

- Is appropriate performance security required?
- Before awarding do you ensure that the approved contract limit for the contractor is not exceeded?

Contract Management

Site inspections

- Do you use a risk management technique to determine the minimum standards for undertaking site inspections?
- Have you considered highlighting areas in contracts where it is not possible for a contractor to proceed without a site inspection?
- Do you have established procedures to ensure that contract performance is determined during the life cycle of the contract, not just at the end?
- Do you ensure that each participant has a well-developed quality control and supervisory system appropriate for its role?
- Do you ensure that works are closely examined to determine the nature and extent of compliance including both quality of works and materials used?
- Do you ensure that the following minimum details are recorded in site visit reports?
 - The dates and times of the site inspections
 - Weather conditions on site (if applicable)
 - The workers and equipment on site
 - The contract works being performed
 - Instructions issued to contractors or information received from contractors
 - Documents exchanged on site
 - Details of discussions during the inspections relevant to the management of the works
- Are evidence kept for all site visits?
- Have you determined when site inspection procedures should include other types of documentary evidence such as site photos?
- Do you ensure that the project manager periodically audits compliance with the set policies and procedures?

- Are all formal meetings minuted, typed and filed in the contract file?
- Are verbal instructions to contractors followed up by written instructions within an agreed time frame?
- Do you ensure that works are measured during site visits and most importantly at time of payment?
- Do you ensure that employees who are required to manage contracts are sufficiently experienced and receive appropriate training?

Contract Variations

- Have you developed formal procedures for processing of variations?
- Do contracts include a clause on latent conditions that clearly places the onus on a contractor to inform the employer of the discovery of a latent condition?
- Do you have procedures to ensure that all contract variations are handled promptly in writing and in accordance with contract conditions?
- Do you have established limits for extension of contracts for works, and the different authorisations and procedures to be followed in case of extension of works?
- Have you established limits of minus or plus variations of quantities in a Bill of Quantities?
- Do you ensure that a contractor understands that a site instruction does not represent a contract variation, unless this is explicitly stated?
- Does the clause set out the procedures to follow with regards to determining costs for variations?
- Do you ensure that contract clauses clearly stipulate who bears the responsibility for delay costs, such as those associated with bad weather, equipment failure etc?
- Have you clearly spelt out whether standard variations can be by-passed in case of emergency and what constitutes an emergency?
- Have you defined procedures to be followed in case of emergency?

- Have you determined who should approve variations and the limits?

Testing

- Do you adequately and independently test quality of work?
- Do you adequately and independently test materials used on contracts?
- Do you keep evidence of all checks and tests performed?

Others

- Do you ensure that insurance are provided, renewed for the whole duration of the contract?
- Do you ensure that performance bond is submitted and renewed by the contractor?

Commissioning and Taking-over

- Do you ensure that materials on site are returned to the Employer and are taken on charge or disposed as prescribed?
- Do you ensure that contractor submit as-built drawings?
- Do you ensure that defects are notified in the defect liability period?
- Do you ensure that the completion certificate is accompanied with snag list?
- Do you ensure the timely finalisation of contract final account?

Payment

- Do you ensure that all payments to contractors are examined by an independent section before proceeding for payment?

Important checks would include checking against contract clauses, work certificates etc.

- Do you ensure prompt payment to contractors?

Contract Conditions

- Do conditions of the contract cover all commercial and legal issues?
- Do you ensure that for long duration contract, a price adjustment formula is included in the contract document?
- Do you ensure that contract include provisions for a mechanism for dispute settlement and the application of law?
- Do you ensure that all negotiations are formal?
- If negotiation to resolve dispute fails, are disputes handled in accordance with contract conditions?
- Are all disagreement and disputes adequately documented?