

Centre for the Study of Corruption



Public Accounts Committee Inquiry into Covid-19: Government procurement, and contracts for PPE

submission by the Centre for the Study of Corruption at the University of Sussex

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Public Accounts Committee Inquiry into Covid-19: Government procurement, and contracts for PPE

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This submission focuses in particular on two of the three areas on which the Inquiry invites evidence - how procurement rules have changed during the Covid-19 crisis, and how the government is managing the risks associated with these changes – and considers them in particular with regard to the risk of corruption.

Background

Corruption in public procurement

Public procurement is ordinarily at high risk of corruption. The OECD has consistently rated it the area of public administration at greatest risk of corruption, and two-thirds of international bribery law enforcements relate to public procurement.

Public procurement is typically highly regulated by law, with regulation designed to ensure a fair and open competition, on the grounds that this is most likely to lead to selection of the best company to fulfil the task and the best quality service delivery for the public.

Corruption is the abuse of entrusted power for private gain. In public procurement, corruption occurs by manipulating aspects of the process, to avoid open competition, and steer a contract to a favoured bidder. It can be systemic and entwined with the political system, or ad hoc and opportunistic.

Corruption in public procurement is associated with increased prices and reduced quality, ie with poor value for money. In the context of healthcare, such weaknesses can have significant detrimental consequences for public health and for individual safety. Corruption in public procurement can also have longer-term effects in terms of undermining the market economy and hindering economic development.

¹ The Centre for the Study of Corruption (CSC) at the University of Sussex has also contributed to the submission by the UK Anti-Corruption Coalition, of which it is a member.

It is difficult to observe individual instances of corruption in procurement. One major approach seeks to observe 'irregularities' or 'red flags' in the process or outcomes. This approach has been developed, validated and tested in CSC research funded by the UK government through the Global Integrity-Anti-Corruption Evidence programme.²

Emergency procurement

Most public procurement laws allow for normal rules and procedures to be suspended in an emergency. This is necessary as, in an emergency, there may not be time to carry out all of the processes associated with rigorous and competitive open procurement tenders.

However, the suspension of normal rules also:

- Creates opportunities for individuals to exploit the lack of competition to steer contracts to favoured companies.
- Makes it more difficult to interpret irregularities and to discern whether or not they reflect corruption, incompetence, lack of capacity or error.

For these reasons, it is particularly important, during an emergency, to ensure that procurement remains subject to due diligence checks and is as transparent as possible, to enable public scrutiny and accountability, and maintain confidence in the system.

Covid-19 procurement in the UK

Three areas highlighted in the NAO report provide cause for concern about corruption risks and the government's ability to manage those risks:

I. High-priority channel

The government created a high-priority channel for some companies. This channel was associated with ten times more success in winning contracts, and hence appears to represent an institutionalisation of favouritism, which is highly inconsistent with normal procurement procedure.

The procedure for referral into this channel remains opaque. It appears to have been based on little more than personal referral by a defined group of individuals, including MPs, peers and ministers. It is not clear on what grounds such individuals were permitted to make

² For more information on this research, see: 'Using 'red flag' indicators to identify corruption and analyse reform efforts in the procurement process' here: <https://ace.globalintegrity.org/redflag/>; and project website here: <http://redflags.govtransparency.eu/>

referrals, why they were considered to have relevant expertise, or whether there were any criteria for access to the channel based on contract-relevant variables, such as a firm's track record or financial viability.

It is not clear what kind of treatment companies referred to this channel received, and whether they were subject to the required due diligence checks and – particularly, given the method of referral – to adequate conflicts of interest checks. Normally, connections to a politician are cause for more scrutiny of a supplier, but in this case they seem to have been treated as a reason to prioritise a supplier.

The government has not published details of which companies were permitted access to this channel and which were not, nor the details of their referral. In order for the public to be able to hold the government to account and interrogate the integrity of the system, this information should be in the public domain.

II. Excessive use of emergency procedures

One common way of corrupting the public procurement process around the world is spurious use of the emergency clause, which allows suspension of normal competitive procedures and – in some cases, transparency requirements.

The NAO report highlights some cases where the UK government has invoked the emergency clause in order to award contracts that were not closely related to the crisis, e.g., as in the example of Public First winning a contract for Public Relations support, some of which seems to have been unrelated to the covid-19 crisis – and therefore it is not clear why emergency rules were applied.

Moreover, the continued reliance on emergency procedures several months into the pandemic may be excessive. The government should be scrutinised on how well it has planned ahead in order to return to normal competitive procurement procedures as soon as possible.

It should also be noted that some countries have managed to procure PPE whilst maintaining due process. As we point out in a recent blog, in Sweden, Slovakia, Estonia and Latvia the amount of contracts awarded using open competition actually increased during the pandemic.³

III. Failure to comply with transparency obligations

³ To fix procurement, the UK has to open it up. Centre for the Study of Corruption blog, 30 November, 2020. <https://scscsussex.wordpress.com/2020/11/30/to-fix-procurement-the-uk-has-to-open-it-up/>

Transparency about the procurement process is critical to ensuring accountability, but also to building trust with the community of suppliers. We know from evidence in other countries that, if suppliers believe that the system is corrupt and that only those with political allies win contracts, many good suppliers cease to submit bids for public tenders. This has a detrimental effect on the quality of goods and services procured, as well as undermining the market economy.

The UK government has an obligation to publish details of contracts awarded within 30 days, yet some contracts let under emergency conditions during the covid-19 crisis have still not been published after 100 days. This denies the public the ability to scrutinise those contracts in reasonable time, and risks undermining supplier confidence in the system.

Moreover, this is another area where the UK is lagging far behind other countries, including countries which rank much lower in terms of income level and state capacity. Some other countries require Covid-19 emergency contracts to be published within 24 hours and share the information on a public dashboard. This not only helps to connect buyers and suppliers in a transparent way, but also allows analytics to track prices and corruption risk indicators.

The CSC has recently published a working paper on transparency in emergency procurement which includes ten recommendations to ensure integrity and accountability.⁴ The following are of particular relevance to the UK:

1. The decision to use emergency procurement must be justified, and that justification recorded and made public
2. Emergency procurement should be the exception, not the rule, and should be judged on a case-by-case basis
3. Emergency procurement data should be centralised and published fully, ideally in Open Data format and to include data on suppliers to strengthen due diligence and prevent fraud

Conclusion

The NAO reports highlight a number of areas where UK public procurement practice during covid-19 has fallen far short of best practice. In such conditions, corruption tends to flourish.

⁴ Hanna, Rachel. 2020. Transparency in Emergency Procurement: ten recommendations for policy makers, CSC Working Paper No. 8, November 2020. Available here: <https://www.sussex.ac.uk/research/centres/centre-for-study-of-corruption/documents/transparency-in-emergency-procurement-ten-recommendations-for-policy-makers.pdf>

It would be important to conduct a thorough investigation to understand the reasons for these weaknesses and to learn from them to help build a better system of public procurement.

With the government currently considering how to reform public procurement after Brexit and the end of the transition period, now is a good time for the UK to incorporate such learning into thorough reform.

It is vital that the new rules consider how to better regulate emergency procurement, to prevent it being exploited by those who wish to manipulate the process for corrupt gain.