



ICAC

Independent Commissioner
Against Corruption
SOUTH AUSTRALIA

Facilities Maintenance in **Local Government**





**Facilities Maintenance in
Local Government**

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Commissioner's foreword

Pursuant to section 42 of the *Independent Commissioner Against Corruption Act 2012*, I present this report entitled 'Facilities Maintenance in Local Government'.

Section 42(3) of the *Independent Commissioner Against Corruption Act 2012* requires that the President of the Legislative Council and the Speaker of the House of Assembly lay the report before their respective Houses on the first sitting day after the passage of 28 days (or such shorter number of days as the Attorney-General approves) after receiving this report.

The report has been prepared to inform public officers working in local government about corruption prevention issues revealed by several corruption investigations conducted by my officers.

Recently, we finalised an investigation into the conduct of a public officer working in facilities maintenance at a local council. The investigation involved allegations the public officer improperly used his position to award council maintenance contracts to individuals and businesses with whom he had longstanding connections. Those connections were not disclosed to the council.

The investigation uncovered a pattern of improper conduct. However, poor record keeping and a lack of admissible evidence meant it was doubtful a charge of corruption would be sustained.

This is not the first time the ICAC has seen conduct of this type in the award of facilities maintenance contracts in councils.

Procurement in general is a high corruption risk activity. Procurement as it relates to facilities management has some unique features that can make it more susceptible to corruption.

I believe it is in the public interest to set out some general observations arising from these investigations. I hope this will prompt councils and public officers working in facilities management to assess the corruption risks in their systems and practices, and to strengthen relevant controls.



The Hon. Ann Vanstone QC
Independent Commissioner Against Corruption

Observations from investigations

Investigations undertaken by the ICAC suggest that improper conduct by public officers and suppliers, and failures in practices, policies and procedures, are at the core of corruption risks in facilities management.

Observations from ICAC investigations can provide all councils with the opportunity to identify 'red flags' in the way they procure and manage facilities maintenance goods and services contracts.

ICAC investigations have revealed the following **improper conduct by council officers** working in facilities management procurement:

- ▶ seeking inducements as a reward for awarding contracts
- ▶ providing confidential information to potential suppliers about upcoming contracts
- ▶ seeking quotes from unqualified suppliers with the aim of favouring other suppliers
- ▶ awarding contracts to a company in which the procuring officer has an interest
- ▶ providing tight time frames to submit quotes in order to favour a related business
- ▶ engaging suppliers under expired general building service contracts
- ▶ inflating procurement valuation scores of a company in which the procurement officer has an undisclosed interest
- ▶ procurement decision maker writing a supplier's submission
- ▶ manipulating supplier quotations to ensure work is shared among suppliers with whom the procurement officer has a personal association

Investigations have revealed evidence of the following **improper conduct by suppliers**:

- ▶ colluding to set prices for maintenance work
- ▶ seeking confidential information from council
- ▶ overcharging for facilities maintenance work
- ▶ under delivering against agreed requirements and standards of work
- ▶ undertaking unnecessary inspection, testing, cleaning and maintenance of facilities

Investigations have uncovered the following **poor practices in councils**:

- ▶ inconsistency in procurement procedures and misuse of purchase orders
- ▶ failure to enforce a policy to declare conflicts of interest
- ▶ poor procurement induction and training
- ▶ inconsistent application of market approach requirements and financial delegations
- ▶ poor control of access to confidential tender and contract documents
- ▶ failure to update equipment and facilities registers
- ▶ inadequate measures to gauge whether work has been completed to appropriate standards
- ▶ raising of purchase orders after work is complete
- ▶ awarding work to unqualified or unlicensed contractors
- ▶ a lack of segregation of roles and accountabilities in procurement processes
- ▶ awarding contracts to public officers employed by the council, or their relatives, where the public officers are in positions that give rise to conflicts of interest

Corruption risk factors in facilities maintenance in local councils

The same risks involved in standard procurement processes are present in facilities management procurement. However, facilities management involves additional risks that make corruption prevention challenging.

Dispersal of council facilities

Council assets and facilities are often dispersed over large geographical areas, particularly in regional and rural councils. This can make supervision of the state of facilities and the quality of maintenance services challenging. However, it is important that councils understand what work is legitimately required and ensure that any work carried out is to the appropriate standard.

‘Slippery’ assets and procurement ambiguity

The ‘slipperiness’ of assets, or the difficulty of collecting and maintaining accurate information about the condition and maintenance costs of facilities, can lead to substandard procurement processes. A lack of visibility of facilities can lead to an over reliance on subjective measures to ascertain the quality of facilities, their need for maintenance, and the quality and value for money of services provided. Irregularities can appear in procurement processes if these challenges are poorly managed.

Continuous procurements

Maintenance of council facilities and assets is often managed by contractors engaged under ongoing procurement contracts or cyclical procurements (as opposed to a standalone contract for capital or infrastructure work). The use of open-ended purchase orders, open or rolling contracts, existing legacy contracts and 'set and forget' estimated budgets, heightens the risk of corruption. Procurements of this type can lead to mismanagement of contingency budgets and repeated use of contract variations.

A marked corruption risk of continuous procurements is that they allow longstanding relationships to develop between staff and contractors, which can lead to a decline in supervision over time. Lapses in supervision can also occur when long running contracts are managed by a succession of employees.

Mix of reactive versus planned work

The management and maintenance of facilities and assets is either planned and cyclical or reactive. When reactive work predominates, facilities management practices tend to lack strategy, become crisis-focused, incur unanticipated costs, and to be short on supervision and budget control.

One investigation revealed that a council's facilities maintenance work was roughly 65% reactive. The council spent considerable time responding to urgent service requests. Such business environments quickly become chaotic, with processes and controls bypassed through urgency. Deterioration makes facilities maintenance vulnerable to those seeking improper advantage.

Market condition of suppliers

Some industries involved in facilities maintenance, such as cleaning and landscaping, have low barriers to market entry. The lack of regulation in many small businesses can attract unscrupulous operators, as well as public officers who might seek to collude with them. Small businesses might prefer to tender for multiple small contracts that lack the probity controls applying to larger contracts. Some may seek to avoid formal contractual relations entirely. Small and unsophisticated businesses tend to provide invoicing and documentation of inferior quality, negatively affecting transparency in their engagement. Markets in facilities maintenance can be highly competitive, where suppliers can be motivated to underquote to 'get their foot in the door', only later to vary contract prices and conditions.

High volume, low value procurement

Investigations have established that procurements of high volumes of low value goods and services are open to abuse. These procurements are common in council facilities maintenance work. Low value goods and services tend to be purchased with less stringent checks and controls, and lower financial delegations. Small purchases can remain out of sight of council management and illegitimate expenditure can escalate quickly.

Knowledge imbalances between suppliers and councils

Some councils lack resources and capabilities in facilities maintenance. By contrast, maintenance contractors, whether a small business or a sophisticated company, will usually be experts in their field. This can result in significant knowledge imbalances between suppliers and council officers. Information asymmetry can be a factor in the exploitation of procurement processes, with suppliers manipulating technical knowledge, and council staff finding themselves ill equipped to detect excessive scoping, servicing or charging, and under delivery.

Segregation versus integration

Situations in which a public officer has too much power and discretion over a business function can drive corruption. This would ordinarily be controlled by segregating parts of the function to ensure that no single person has exclusive control over decisions or processes.

By contrast, in facilities management key corruption risks arise from a lack of overarching visibility of facility conditions, costs, maintenance needs, choice of suppliers, and verification of suppliers' work. Enhancing lines of sight between the phases of the activity is sometimes appropriate to minimise corruption. Far from a failure to segregate creating risks, a lack of integration might pose the principal corruption risk in facilities management.

Conflicts of interest

All ICAC corruption investigations into council facilities management have revealed undisclosed conflicts of interest. Conflicts of interest in procurement are a persistent integrity risk. However, in facilities management that risk is more complex than in other business areas, and requires more attention from councils.

Council facilities management officers will often have work histories in general facilities maintenance or allied industries such as cleaning, painting, plumbing, electrical, testing and inspections, building operations, construction, security and safety, landscape and gardening. The number of disciplines involved will naturally give rise to diverse associations and will increase the risk of conflicts of interest. Councils must proactively manage the possibility that some individuals may seek advantage, or favour certain associates. Policies and education about declaring and managing conflicts will mitigate some of these risks.

Regional and rural local councils should be particularly aware of their heightened conflict of interest risk. As noted in the evaluation of the City of Playford:

This is perhaps of even greater importance for councils where employees often live and work in the local area and may be known to suppliers competing for work. An effective policy framework should provide clarity around staff responsibilities for the management of procurement processes including for the declaration of conflicts, personal interests and outside employment. It should also provide clear guidance as to the effective management of those conflicts for staff with the ability to influence or decide upon procurement activities.¹

¹ SA ICAC, Evaluation of the City of Playford, p. 78. See, <https://www.icac.sa.gov.au/publications/published-reports/evaluation-of-city-of-playford>

The ICAC has released a guidance paper on the obligations on all public officers to *identify, disclose and manage* their conflicts of interest. There is also an ICAC **conflicts of interest online course**, available on the ICAC website.

External recruitment agencies

Recruitment is a business function particularly vulnerable to corruption. Additional risks are introduced when external recruitment agencies are engaged. In those circumstances councils will generally have less control over the vetting and integrity screening of candidates.

Reasons for using an external recruitment agency vary, but commonly the purpose is to cover staff absences, or to fill temporary positions or specific project based roles. These appointments often alleviate urgent staffing needs. However, they can result in reduced levels of screening and assessment of candidates. Lower screening standards can allow unscrupulous individuals to attain access to council operations and funds.

In one investigation, a council used a recruitment agency to hire a property maintenance officer who was later suspected of corrupt conduct. The investigation found the person was temporarily recruited to cover the extended leave of a staff member, and the recruitment occurred with some urgency. Thorough screening was lacking. It turned out that a simple Google search would have revealed the clouded work history of the individual.

Employee induction

Another risk associated with the use of recruitment agencies is that induction processes can be lacking or absent. One investigation revealed that induction processes, which the recruitment agency was contractually required to provide, did not occur. Failure to instruct an employee on the council's procurement procedures and conflict of interest policies potentially facilitated that employee's improper conduct.

Induction is important. Councils can reduce the risk of corrupt conduct by making staff aware of the ethical expectations, processes and procedures relevant to their role. Detailing the consequences of wrongdoing can reduce those risks. Staff who understand the integrity risks of their workplaces are better positioned to detect breaches.

Work backlogs and staff turnover

The need to recruit temporary staff to backfill positions can be an indication of workplace volatility. High staff turnover can be both the consequence and the cause of high workloads or backlogs. Councils that operate without adequate staffing levels or competencies are more susceptible to corruption. Busy work environments feature reduced levels of supervision and visibility of staff activities, as well as pressure to circumvent processes or find 'workarounds' to complete tasks and respond quickly to urgent work requests. This may be more challenging in facilities management because of the distinct procurement integrity risks that pertain.

Corruption mitigation

Eliminating the risk of corruption in facilities management is not possible. Mitigating the risk is. Section 49 of the *Local Government Act 1999* provides local government with principles to guide procurement activities. The section requires local councils to develop and maintain policies, practices and procedures directed towards obtaining value in the expenditure of public money, providing for ethical and fair treatment of participants, and ensuring probity, accountability and transparency in procurement operations.

Corruption is enabled by poor practices, policies and procedures. Improving the governance of facilities management will strengthen resilience to corruption. The following are broad principles to guide councils in their review of facilities management governance:

- ▶ improve visibility and knowledge about the range, dispersal, condition and requirements of council facilities
- ▶ set maintenance regimes to tighten scopes of work, control budgets, and reduce reactive workloads
- ▶ conduct market research prior to scoping work to protect against knowledge imbalance.
- ▶ undertake due diligence before appointing a supplier
- ▶ avoid open-ended, rolling, or 'set and forget' contracts, and monitor and manage contract variations and contingency budgets
- ▶ aggregate low value, high volume maintenance work into strategic, longer term contracts
- ▶ incentivise proper supplier behaviour through well designed contracts with appropriate and balanced performance indicators and/or penalties
- ▶ provide supplier training and induction to indicate expected conduct and performance, and provide work plans
- ▶ conduct random audits to identify poor performing suppliers
- ▶ map business processes in facilities management to find functions or staff needing integration and those requiring segregation
- ▶ develop a strong conflict of interest identification and management regime, regularly reminding council officers of their obligations in this regard
- ▶ ensure external recruitment agencies undertake employment and integrity screening practices that are commensurate with council's own screening expectations and standards
- ▶ ensure council officers—especially those appointed via external recruitment agencies—are properly inducted into procurement policies and procedures, including awareness of the consequences of misconduct
- ▶ monitor workloads in facilities management to guard against the development of pressured environments favourable to corruption

Conclusion

Corruption risks in council facilities management are present in the administration of councils, the conduct of individual public officers and that of suppliers seeking to benefit their businesses.

Understanding the risks and ensuring that appropriate governance structures are in place is vital if councils are to protect themselves from corruption. In light of this report, all councils should review their practices, policies and procedures on facilities management procurement and contract management. Councils may benefit from having their audit and risk teams conduct random audits of facilities management functions to detect weaknesses.



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