Strategic Procurement Update

Critical Trends

The Procurement Office

Global Focus on Ethics and Accountability

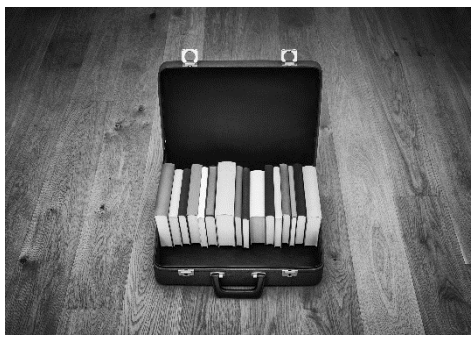
Feature Case Study

Nova Scotia Audit Finds Lack of Due Diligence

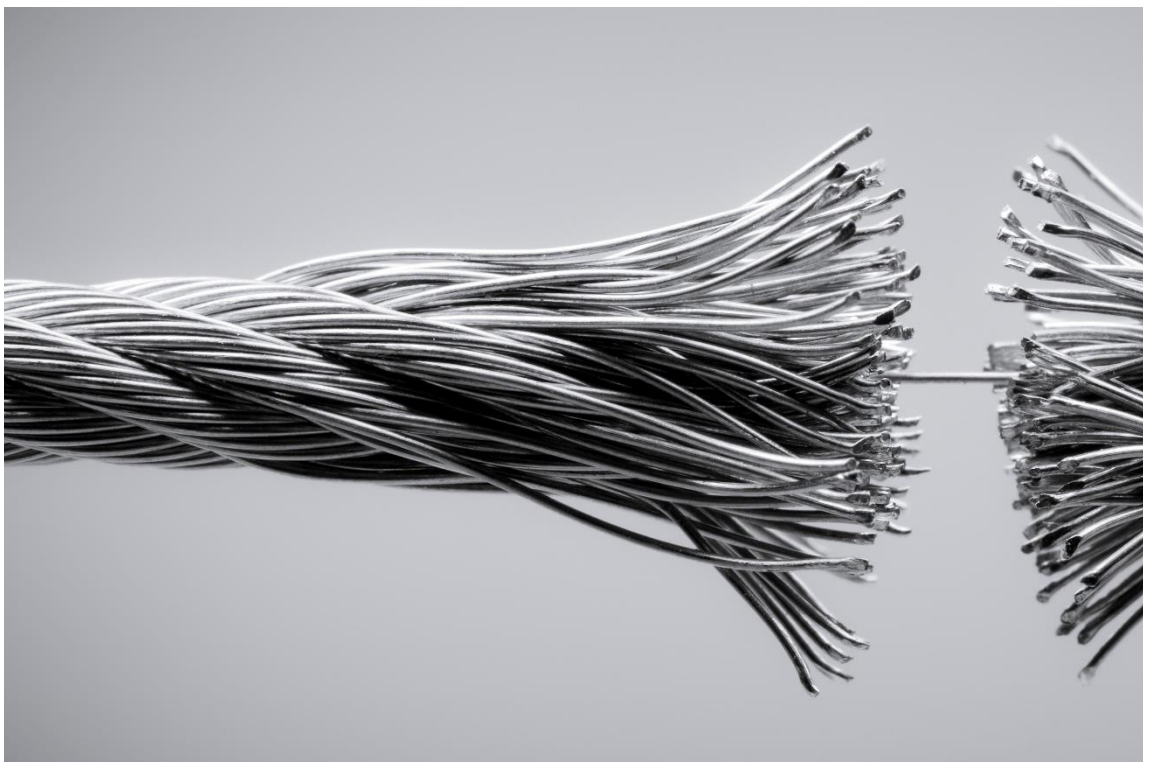
Inadequate Conflict Screening

In its February 2024 report entitled *Value for Money: Development of Transitional Care Facilities*, Nova Scotia's Auditor General found a lack of due diligence in Nova Scotia healthcare facility procurements. The report raised concerns over value-for-money, delays and cost overruns, improper sole-sourcing, and inadequate conflict screening.

The Auditor General raised concerns over a lack of conflict of interest screening in the portfolio. The Auditor General found that evaluation team members were not required to provide conflict of interest declarations. As the Auditor General cautioned, "by placing the onus on the individual to declare a conflict of interest rather than requiring a declaration form be completed by all evaluation team members" Nova Scotia Health "increased risk of undeclared conflicts of interest." This case study serves as a useful reminder to all public institutions of the importance of integrating due process into their procurement cycles to better ensure proper portfolio management.



Lessons Learned: Recent case studes serve as wake up call for public institutions to bolster their emergency procurement practices to avoid contracting irregularities. (See COVID-19 Exposes Systemic Weaknesses, Pandemic Purchasing Bypasses Due Process, Rushed Procurements Raise Fraud Risks and Rushed Awards Raise Red Flags)



Procurement Training Strategies: Public sector procurement departments are under unprecedented pressure to deliver results for their organizations. Moving forward, these pressures are going to place increasing demands on procurement departments to develop highly functioning procurement teams (see The Seven Essential Skills of Public Procurement and Five Factors for Scoring Advanced Performers) and to establish a culture of ethics and accountability (see Battling Bias, Conflict and Collusion)

Feature Article

Weak Conflict Controls in Canadian Procurement

The federal ArriveCAN project put a fresh spotlight on conflict of interest in Canadian public procurement. As this article discusses, the new scandal is symptomatic of a broader pattern of weak conflict controls within multiple public sector institutions across all levels of government in Canada.

In its February 2024 *ArriveCAN* report, Canada's Auditor General found a surprising lack of records documenting "how and why GC Strategies was awarded the initial ArriveCAN contract through a non-competitive process". After its $2.35 million sole-source award, the audit found that GC Strategies "was subsequently involved in the development of the requirements" that were included in a downstream bid solicitation for further project work.

The Auditor General concluded that the "requirements placed on bidders were restrictive and likely limited competition". In fact, in its parallel January 2024 audit entitled *Procurement Practice Review of ArrivCAN*, Canada's Procurement Ombud found that the bid solicitation included seven specific instances of overly restrictive requirements that favoured the incumbent. While 40 prequalified suppliers were invited to bid, no one else did. GC Strategies was the only bidder and was awarded a new $25 million deal. While conflict issues at the federal level, including multiple rulings against members of the federal cabinet, have been well documented, provincial and municipal institutions also face challenges in enforcing conflict rules. (see Weak Conflict Controls in Canadian Procurement)

Training Retreats

Leveraging Lessons Learned

Procurement Training Office

We will be hosting our in-person Strategic Procurement Retreats each October and May at our new training centre.

Governance 2.0

Policy-Protocols-Templates

Procurement Law Office

We are pleased to announce our new 2.0 Policy and Protocols and 5.0 Annotated RFx Templates.

RFx Drafter v. Training

Software or Deeper Learning

Procurement Advisory Office

Orbidder 2.0 goes head-to-head with our 5.0 Annotated RFx Templates and Platinum Training Program.

Paul Emanuelli

Audit Finds Conflicts at Housing Authority

Report Finds Lack of Conflict Screening Across Nova Scotia's Housing Sector

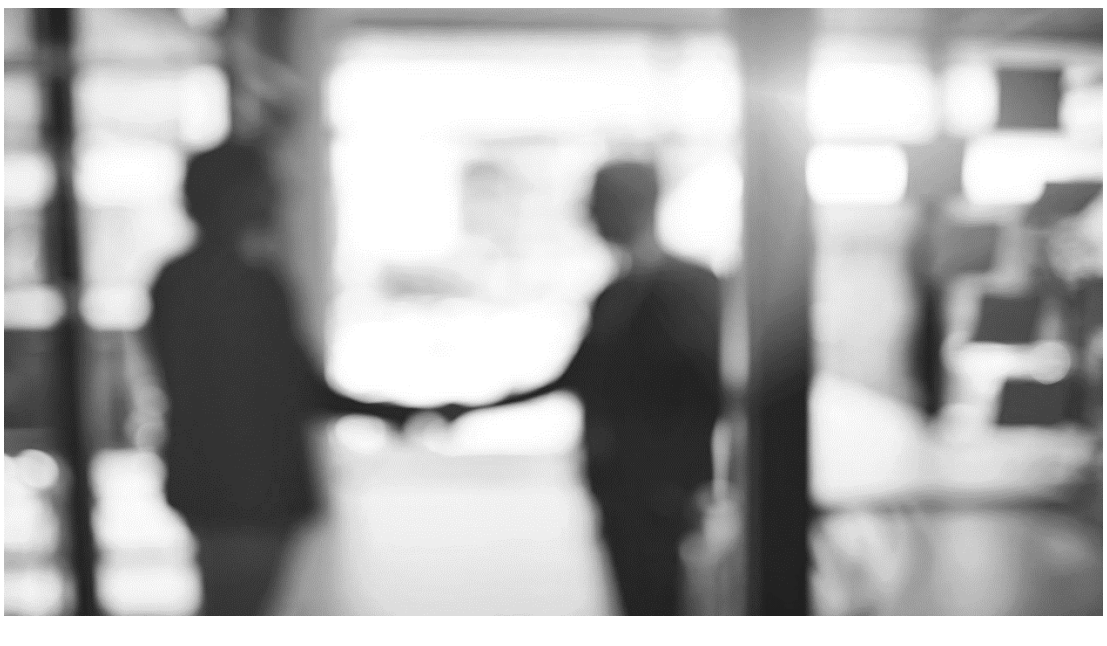
In its January 2023 audit entitled *Metropolitan Regional Housing Authority – Examination of Service Contract Awards*, Nova Scotia's Auditor General concluded that the housing agency ("Metro") needed to improve its conflict of interest practices after finding that Metro's Director failed to properly disclose multiple conflicts in relation to the award of a new security services contract.

By way of background, while conducting an audit on oversight and management of government owned housing, the Auditor General received a complaint that raised conflict concerns involving Metro's most senior officer, referred to in the report as the "Director", and a bidder that was awarded a $1 million security services contract.

In its investigation of the complaint, the Auditor General found that a series of conflict of interest "events" arose when the Director was involved in multiple personal transactions with a contractor while concurrently being involved in Metro's award of a tendered security services contract to that same contractor.

More specifically, the report found that the Director completed the sale of two personal properties with the contractor's owner during the same period as the tendering process. The report also found that the Director entered into a business arrangement with that same owner to build a full-service affordable housing development on the two sold properties and on a third property that was still owned by the Director.

The Auditor General noted, "these conflict-of-interest events are concerning because the Director is the most senior employee at Metro, and directly reports to the Executive Director at the Department of Municipal Affairs and Housing." The Auditor General concluded that the Director failed to properly disclose those conflicts. The Auditor General also found that "bidders were not required to declare any conflicts" in the tendering process for the new security services contract. More specifically, the report found that "the tender documents did not include conflict-of-interest language or declaration requirements", which meant that the owner of the company who entered into the parallel transactions with the Director "was not required to disclose, and did not disclose personally knowing and purchasing the property from the Director weeks before the tender closing date."



Foreseeable Failures: The inadequate spending controls, contract award irregularities, and project delivery flaws identified by the Auditor General were all foreseeable consequences of the government's failure to properly define roles and responsibilities at the outset of the ArriveCan project.

Paul Emanuelli

ArriveCan Audit Exposes Weak Oversight

Lack of Governance Undermines Emergency Procurement

As the Auditor General of Canada's February 2024 *ArriveCan* report reveals, the failure to establish proper oversight for emergency procurements can undermine spending controls, increase the risk of contract award irregularities, and lead to sub-standard project delivery. The report serves as a warning to all public institutions of the need to proactively adopt proper institutional governance standards to deal with future procurement emergencies.

As the Auditor General concluded, project oversight protocols, which should have been in place from the outset, were only formalized sixteen months after the start of the ArriveCan project. By this point it was too little too late. Moving forward, all public institutions should be assessing their existing procurement procedures to ensure that their institutional governance practices clearly mandate proper oversight of spending decisions.

Paul Emanuelli

Weak Oversight Leads to Governance Gaps

Weak project oversight can lead to irregularities in the procurement process, including compromised evaluation and award decisions, flawed conflict of interest procedures, unauthorized spending commitments, and the increasing risk of corruption and fraud.

For example, in its December 2021 report entitled *Campbell Primary School Modernisation Project Procurement,* the Australian Capital Authority's Auditor-General found that senior officials overruled the results of the bid evaluation team without properly documenting the rationale for doing so.

Further, in its August 2022 report entitled *Multiyear Procurement – Navy Should Provide Congress More Complete Information on Budget Request Decisions*, the U.S. Government Accountability Office raised concerns over multi-year contracts, noting that these contracts can include future financial commitments for spending that had never received legislative approval.

The failure to implement proper oversight can expose procurements to flawed award decisions and unauthorized expenditures.

Paul Emanuelli

Recent Audits Reveal Ongoing Governance Gaps

Better Resourcing Required

Need for Proper Training: As these audits reveal, maintaining global procurement standards remains a widespread challenge. To avoid becoming the next non-compliance case study, public institutions should assess their current governance practices and prioritize procurement training and resourcing within their organizations.

Recent public sector audits have exposed ongoing governance gaps across a broad range of jurisdictions, including Mozambique, South Africa, Australia, New Zealand, Canada, and the United States, providing fresh evidence of how many public institutions continue to struggle in implementing and maintaining proper procurement practices.

For example, in its May 2020 *Mozambique Assessment of the Public Procurement System Main Report Volume I*, the World Bank Group determined that the government's central procurement unit "remains in weak position and is under-resourced to play an effective role" in the implementation of procurement reforms. Similarly, in its 2020-21 *Consolidated General Report on National and Provincial Audit Outcomes,* South Africa's Auditor-General found widespread non-compliance across the public sector and raised specific concerns over ongoing conflicts of interest.

In its November 2021 report entitled *Audit Results Report – Annual 2020-21 Financial Audits of State Government Entities*, Western Australia's Auditor General cited the lack of resources as the cause of widespread procurement infractions. Further, in its *Annual plan 2022/23,* New Zealand's Auditor-General raised concerns over fraud risks caused by rushed procurements.

Similarly, in its January 2022 *Annual Report*, Newfoundland and Labrador's Office of the Auditor General found that a local school board failed to implement prior recommendations regarding ethical procurement practices and related staff training. Further, in its June 2022 report entitled *Alberta Infrastructure – Procurement Practices,* Alberta's Auditor General found that rushed bidding deadlines breached open tendering standards and that the agency failed to properly screen for conflicts of interest, secure confidential bidder information, consistently apply evaluation practices, or maintain proper evaluation records.

Similarly, in its July 2022 report entitled *Audit of Internal Controls Managing the Procurement of Goods at U.S. Embassy Freetown, Sierra Leone*, the Office of the Inspector General U.S. Department of Justice found weak record-keeping that was attributed to staffing shortages and the fact that procurement staff were not properly trained. Finally, in its July 2022 report entitled *Mayors' Council of Guam Host Community Benefit Fund*, Guam's Office of Public Accountability found a lack of proper procurement record-keeping and a lack of staff training.

Inside Collusion: Public institutions are often the target of fraudulent contracting schemes and need to implement proper oversight to guard against these illegal activities. In fact, recent Australian audits reveal flawed conflict controls within multiple public institutions, raising concerns relating to unsolicited proposals, biased specifications, and inadequate conflict screening. (See Reports Reveal Flawed Conflict Controls and Weak Oversight Enables Kickback Scheme). Similar issues have also been recently documented in Trinidad and Tobago and Jamaica. (See Court Recognizes New Collusion Claim, Registry System Subject to Due Process, and Unsolicited Proposal Raises Conflict Concerns)

Government Employee Imprisoned for Fraud

False Invoicing Scheme

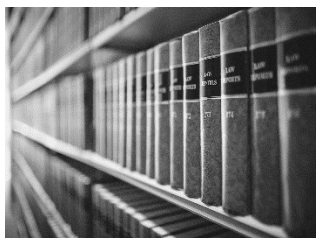
In its January 2022 decision in *Director of Public Prosecutions v. Robert Anthony Napoli*, the County Court of Victoria, Australia, ordered a defendant contractor to perform community service after sentencing the defendant's brother, a government employee, to a term of imprisonment for fraud against the government. As the Court noted, the brothers pled guilty to conspiracy for colluding to submit false invoices for payments in relation to improperly awarded government contracts.

The Court found that the defendant willingly engaged in the corrupt schemes with his government employee brother since he was motivated by receiving gifts and payments through the fraudulent transactions. The Court placed the defendant under terms of probation for a period of three years, during which time he was ordered to perform 300 hours of unpaid community service. His brother, the former government employee, was sentenced to a prison term for his role in the scheme. (see Weak Oversight Leads to Governance Gaps)

Case Studies Deliver the Verdict: As these case studies illustrate, cutting corners on proper oversight only serves to increase the risk of downstream delays in the execution of procurement projects. Public institutions should take the time to implement proper oversight practices if they are serious about avoiding those delays.

Oversight Flaws Cause Project Delays

Institutions Need to Establish Proper Project Oversight Practices



Recent audits reveal how weak oversight remains a leading cause of project delays. These reports serve as useful reminders to all public institutions of the importance of establishing robust oversight practices to help reduce this risk.

For example, in its November 2021 report entitled *HSA Outpatient Pharmacy Services*, the Office of the Auditor General for the Cayman Islands found that weak oversight and planning resulted in a delayed Request for Proposals process for the supply of medicine, which compelled the government to extend existing contracts numerous times before awarding new contracts.

Similarly, in its December 2021 report entitled *An Audit of Matters Relating to the Concession Awarded to Vitals Global Healthcare by Government*, Malta's National Audit Office found that weak oversight during contract award negotiations undermined the government's ability to enforce contract performance milestones. The audit involved the review of contract award negotiations under an RFP for long-term hospital maintenance.

Further, in its February 2022 report entitled *Performance Audit Report on the Management of Construction Development Projects Financed Through Loans*, The United Republic of Tanzania's Controller and Auditor General found that weak oversight repeatedly led to significant delays in government construction projects that were financed through loans. These delays ultimately increased the cost of those projects to the taxpayer.

Similarly, in its March 2022 report entitled *Performance Audit on the Management of Maintenance of Roads,* The United Republic of Tanzania's Controller and Auditor General also found weak oversight in the government's road maintenance program, which was underfunded and behind schedule notwithstanding the critical importance of the road system to Tanzania's economy.

> Cutting corners on oversight increases the risk of delayed projects.
>
> - Paul Emanuelli

Finally, in its March 2022 report entitled *New vessels for the Clyde and Hebrides*, the Auditor General for Scotland found that weak oversight caused delays in the construction of new ships, which were already four years behind schedule at the time of the report. The report stated that the government's "Programme Steering Group (PSG) had no clear role, and there were no formal escalation processes in place." More specifically, the report found that while delivery problems and delays were first identified in 2015, Scottish ministers were only provided informal verbal briefings and were only formally notified in February 2017 "that it was highly probable that the vessels would be late." Moving forward, the Auditor General recommended that Transport Scotland improve its project governance by "establishing clear roles and responsibilities, setting out a clear escalation process, and ensuring that risks are routinely recorded and monitored."