

Notifications and Investigations Relating to Procurement

Overview of Procurement Misconduct Notifications (1 July 2016 to 30 September 2017)

1. The Commission received 100 notifications regarding 182 allegations pertaining to Procurement.
2. The six agencies accounting for the highest percentage of allegations were Local Government (91), Port Authorities (16), Department of Health (12), Main Roads Western Australia (10), Public Transport Authority (8), and WA Police Force (9).
3. Of these allegations, 46% were identified from a s. 25¹ notification, 49% a s. 28² notification, 2% via the Public Sector Commission, and 3% from a s. 26³ proposition.
4. Of the 182 allegations pertaining to procurement over the last 15 months:
 - Three were determined to be investigated by the Commission;
 - Nine were determined to be cooperatively investigated;
 - Six were determined to undergo a preliminary investigation;
 - Fifty three were referred to the reporting agency for monitoring for outcome;
 - Sixty five resulted in no action being taken by the Commission; and
 - Nine allegations were referred to the Public Sector Commission.
5. Although Procurement accounts for only 3% of overall allegations received by the Commission, it has been a strategic priority since 2014. Procurement may involve contracts for millions of dollars. Corruption in the process puts the State at financial risk.

Commission Positioning on Procurement Risks

6. The Commission conducts annual 'Impact Planning' meetings against each strategic theme. In 2017, the Commission identified that many of the allegations relating to procurement had root causes such as:
 - Poor contract and tendering administration, management and monitoring;
 - Deficiencies in agency knowledge and skills in contract and tender processes;
 - Failure of agencies in managing information breaches to suppliers to benefit tender applications; and
 - A lack of mechanisms requiring evaluation panels to declare conflicts of interest.
7. The Commission also conducts environmental scanning of public sector agencies and has identified agencies that may be subject to procurement risks as a consequence of:
 - Total overall budget (can include but not limited to State contributions, Royalty for Regions, grants, and transactional revenue);
 - Asset investment program (current and forecasted);
 - Number of procurement processes undertaken by an individual agency; and,
 - The industry/sector type where procurement is at its highest/most frequent (such as ICT Services, temporary personnel services)

¹ Any person may report serious misconduct.

² Certain officers obliged to notify serious misconduct.

³ The Commission may make a proposition about serious misconduct

- Likelihood of agency outsourcing services (engagement of consultants, where expenditure is a considerable percentile of overall budget and the level of core services is contracted. Information is sourced from agency financial statements and annual reports identifying business delivery methods).
8. The Commission notes that procurement misconduct is more likely to be reported from a member of the public or an unsuccessful bidder as opposed to a public sector officer or panel member. This highlights the complex nature of procurement that makes it difficult for corruption to be detected.

Overview of Current and Completed Investigations (2016/17 Financial Year)

9. Eleven investigations completed regarding allegations related to procurement.
10. One matter is before the courts
11. Fourteen investigations currently on hand related to procurement (54% of current investigations).
12. Information Sharing

The Commission has worked with both the Public Sector Commission and the Office of the Auditor General on a number matters. The level of information exchange between the agencies remains very good.

Weaknesses in Governance and Management

13. A failure to follow procurement practices

In Operation Town (a Department of Corrective Services matter involving senior officers and their management of a consultancy contract) that there was a failure to follow basic procurement practices and the contract with the consultancy company had not been managed in compliance with State Supply policy. In effect, department officers were applying the wrong process to the procurement of consultant for services which meant that the contract was not subjected to appropriate competitive processes.

14. A failure to declare and manage conflicts of interest

In Operation Morgan (into allegations that a professor at Curtin had failed declare and manage conflicts of interest) that although the professor had an undeclared conflict of interest there was no evidence that he had corruptly taken advantage of that conflict. The investigation concluded that there was no oversight of the process in the selection and management of the contracts. For example, the professor alone was responsible for selecting research partners and negotiating project funding, milestones and contract terms. This lack of oversight created a risk to the university, especially in those cases where the professor had an external business relationships with the contractor.

15. The exploitation of contracted relationships

Operation Neil is an ongoing investigation arising out of allegations that senior procurement officers at a department had failed to manage their conflicts of interest.

16. A lack of expertise

Some agencies may lack the capacity and expertise to manage complex procurement, particularly Information Technology procurement. The OAG report is a prime example of lack of effective management leading to significant cost overruns.

ATTACHMENT 1

Assessment considerations if the allegation involves or potentially involves serious misconduct

1. Seriousness of conduct (s18(3)(a)):
 - a senior public officer (WA Police sworn officers - inspector or higher, Public Sector CEO, Directors General, Ministers, ministerial staff or an elected official);
 - extensive or serious injuries possibly inflicted by a public officer;
 - conspiracy to commit serious misconduct by a number of public officers;
 - sophisticated methods to commit and conceal the serious misconduct and its benefits;
 - value of financial loss or exposure is potentially a matter of public interest;
 - obtaining a substantial corrupt benefit or with intent denying someone a fundamental legal right or entitlement;
 - systemic issues relating to public authority's processes, systems or culture;
 - constitutes a threat to the viability of, or confidence in, government, the public sector, a public authority and/or the public service;
 - threat to public safety.
2. Assessment/analysis of whether the initial or collected information*:
 - is sufficiently adequate to make an assessment of the likely extent of the serious misconduct;
 - is sufficiently adequate to identify what laws, rules, frameworks and/or policies have possibly been breached and by whom;
 - shows or tends to show a likelihood that misconduct/serious misconduct has occurred.
3. Other considerations to note in the Assessment report include:
 - whether the allegation is frivolous or vexatious or not made in good faith (18(3)(b));
 - whether the conduct or involvement is which the allegation relates is or has been the subject of appropriate investigatory or other action than for the purposes of the CCM Act (s18(3)(c));
 - external factors (e.g. media interest)
 - other directly related matters that might influence the Operations Committee's decision;
 - concerns the reporter of the allegation might have about reprisal action;
 - anything notable about the reporting method;
 - information gaps to be addressed if further enquiries are being proposed pursuant to section 32(2) (i.e. with the subject/related public agency).

Factors considered in recommending an investigation:

- seriousness, seniority and the need for an independent investigation (s34);
- alignment with Commission priorities/strategies;
- public interest (s18(3)(d));
- whether the conduct or involvement to which the allegation relates is or has been the subject of appropriate investigatory or other action other than for the purposes of the CCM Act (s18(3)(c));
- external consideration/factors (e.g. media interest);
- investigative opportunities available;
- capacity and capability considerations (Commission and subject agency/appropriate authority);
- appropriate or viable alternatives other than for the Commission to investigate; and
- cost/benefit analysis.

Table 1: Procurement Related Notifications and Allegations (1 July 2016 to 30 September 2017)

| | |
|-------------------------------|-----|
| Notifications Received | 100 |
| Allegations Identified | 182 |

Table 2: Allegations by Subject Agency (1 July 2016 to 30 September 2017)

| Subject Agency | % | N |
|--|-------------|------------|
| Local Government | 52% | 94 |
| Port Authorities | 9% | 16 |
| Department of Health | 7% | 12 |
| Main Roads Western Australia | 5% | 10 |
| Police | 5% | 9 |
| Public Transport Authority | 4% | 8 |
| Department of Agriculture and Food | 3% | 5 |
| Department of Corrective Services | 3% | 5 |
| Horizon Power | 2% | 4 |
| Western Power Corporation | 2% | 3 |
| Department of Education | 1% | 2 |
| Department of Housing | 1% | 2 |
| Department of Mines and Petroleum | 1% | 2 |
| Subject Agency Not Within Jurisdiction | 1% | 2 |
| Department of Culture and the Arts | 0.5% | 1 |
| Department for Child Protection and Family Support | 0.5% | 1 |
| Department of Fisheries | 0.5% | 1 |
| Department of Local Government and Communities | 0.5% | 1 |
| No Specified Sector | 0.5% | 1 |
| Rottneest Island Authority | 0.5% | 1 |
| University of WA | 0.5% | 1 |
| Water Corporation | 0.5% | 1 |
| Net | 100% | 182 |

Table 3: Assessment Decision (1 July 2016 to 30 September 2017)

| Assessment Decision | % | N |
|--|-------------|------------|
| s33(1)(d) - Take no action | 36% | 65 |
| s33(1)(c) - Refer to Appropriate Authority (Monitor for Outcome) | 29% | 53 |
| s33(1)(d) - Take no action (Record AA Outcome) | 13% | 23 |
| s33(1)(b) - CCC to investigate in cooperation with independent agency or appropriate authority | 5% | 9 |
| Refer to Operations Committee | 4% | 8 |
| s33(1)(d) - Take no action (Disclose to Public Sector Commission s.152(4)) | 5% | 9 |
| s32(2) - CCC to conduct preliminary investigation | 3% | 6 |
| s33(1)(c) - Refer to Appropriate Authority (Monitor for Review) | 3% | 5 |
| s33(1)(a) - CCC to investigate | 1.5% | 3 |
| s33(1)(d) - Take no action (Disclose to other Agency) | 0.5% | 1 |
| Net | 100% | 182 |

ATTACHMENT 2

SUSPECTED CORRUPTION IN PROCUREMENT

[2016-17 and as at Oct 2017]

COMPLETED INVESTIGATIONS

| Operation | Investigation type | Investigation relating to: | Result |
|----------------|---------------------------|--|--|
| 1 AUBURN-ALPHA | Preliminary investigation | Proactive, intelligence-led investigation relating to the procurement of goods and services. | No evidence of serious misconduct. Deficiencies found in record keeping processes. Recommendation made to incorporate details of officer authorising contractor payments into procurement management system. |
| 2 AUBURN-BRAVO | Preliminary investigation | Analysis of information and data matching of employee records and suppliers to identify conflicts of interest between employees, suppliers and employees with adverse criminal holdings. | No evidence of serious misconduct. Some employees had not declared conflicts of interest, and some employees with criminal convictions had access to confidential information. Case study published. |
| 3 CABOT | Preliminary investigation | Suspected breach of tendering processes by awarding work to contractor and receiving personal benefit. | No evidence of serious misconduct. |
| 4 FIFE | Preliminary investigation | Awarding of contracts to a company he had an alleged personal relationship with. | No evidence of serious misconduct. |
| 5 FLAME | Preliminary investigation | Unfair awarding of work to contractors they had an alleged personal relationship with. | Referred to agency s33(1)(c). |
| 6 LAYMOOR | Independent investigation | Alleged corruption in procurement process | No evidence of serious misconduct. One allegation referred for s40 monitoring. Media statement issued (City of Melville). |
| 7 MORGAN | Independent investigation | Officer failed to disclose multiple conflicts of interest in procurement of services, using position to provide financial advantage to others and self. | Website Case Study " <i>...significant conflict of interest risks at Curtin University</i> " |
| 8 PUTNEY | Preliminary investigation | Alleged improper disclosure of confidential procurement information. | No serious misconduct. Agency adequately dealt with matter. |

| Operation | Investigation type | Investigation relating to: | Result |
|-------------|---------------------------|--|--|
| 9 SOVEREIGN | Independent investigation | Suspected corruption in procurement and conflict of interest | No evidence of serious misconduct. Overview of investigation and results provided to agency, for consideration of disciplinary action against officer. |
| 10 TOWN | Preliminary investigation | Failure to adhere to procurement requirements for the engagement of consultants. | No evidence of serious misconduct. Referred to the Public Sector Commission for consideration of misconduct, and Ombudsman advised. |
| 11 VALHALLA | Preliminary investigation | Procurement decisions taken to disadvantage a supplier. | Referred to agency for action. |

COMPLETED - BEFORE THE COURT

[2016-17 and as at Oct 2017]

| Operation | Investigation type | Investigation relating to: | Result |
|-------------|---------------------------|------------------------------|--------|
| 12 CARR TWO | Independent investigation | Monies paid to a contractor. | Court |

ACTIVE INVESTIGATIONS

[As at Oct 2017]

| Operation | Investigation type | Investigation relating to: | Result |
|------------------|---------------------------|--|---|
| 13 AUBURN | Preliminary investigation | S 26 proposition into suspected corruption in procurement. Resulted in Auburn Alpha and Bravo. | Active |
| 14 BARHAM * | Preliminary investigation | Alleged manipulation of contracts and tender process | Active |
| 15 BELLS | Independent investigation | Suspected corruption in funding application | Active |
| 16 DAHLIA | Preliminary investigation | Suspected corruption in procurement | Active (in the process of finalisation) |
| 17 HADDOCK | Cooperative investigation | Suspected corruption in procurement by improper use of office to obtain a benefit | Active |
| 18 HALDON | Preliminary investigation | Suspected corruption in procurement, conflict of interest in the engagement of a contractor | Active |
| 19 LONG | Cooperative investigation | Failure to comply with procurement policy by providing favouritism to contractors | Active (charges recently laid against two officers) |
| 20 MARNE | Independent investigation | Employment of contractors or awarding contracts based on a pre-existing relationship and for personal benefit. | Active |
| 21 NEIL | Independent investigation | Awarding of contracts to companies with pre-existing relationship and without seeking quotes. | Active |
| 22 OAKLEY | Independent investigation | Alleged misuse of resources for personal gain | Active |
| 23 QUENTIN * | Preliminary investigation | Alleged disclosure of pricing information during tender process | Active |
| 24 QUANTOCK | Independent investigation | Subverting procurement process, based on pre-existing relationship and to benefit others. | Active (in the process of finalisation) |
| 25 SELENE | Independent investigation | Suspected corruption in procurement and awarding of a contract | Active |
| 26 WRECK | Preliminary investigation | Suspected corruption in procurement | Active |