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APSACC 2011 Combating Corruption in Procurement

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good procurement processes

- Value for money
- Ethical and fair treatment of all participants
- Probity, accountability and transparency



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- Corrupt practice
- Fraudulent practice
- Collusive practices
- Coercive practices

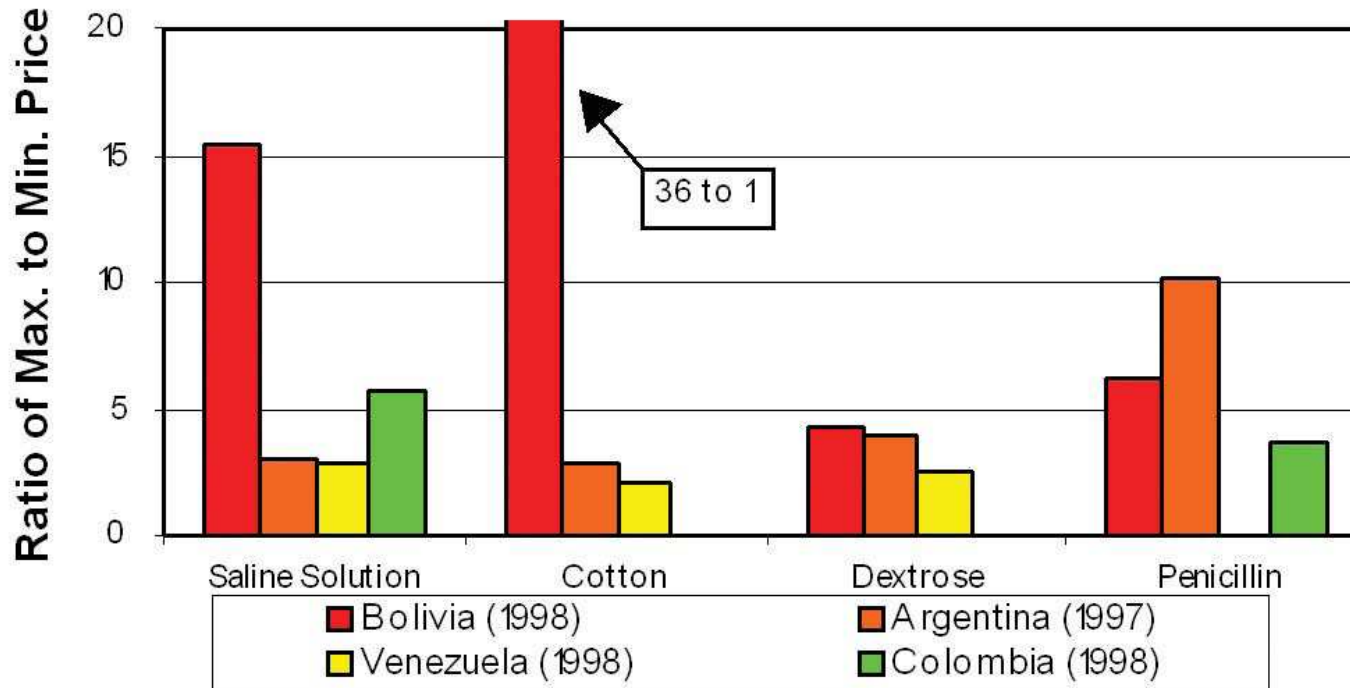


Global Context

- Poor countries
- Rich countries
- Rich companies operating in poor countries



Ratio of max to minimum price in hospitals



Medical supply price differences across hospitals in four countries

(Source Di Tella and Savedoff 2001.)



Global Context

- Corrupt Societies
- Corrupt Organisations
- Corrupt Individuals
- Corrupt Events

Unit of analysis?

Point of entry?



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Case Studies: Equipment Procurement

- An FBI security specialist approved a \$2 million contract to upgrade shredders in return for a Caribbean family cruise.
- The cruise was worth \$7,500.

(Roberts 2010)



Case Studies: Infrastructure Procurement

- A Swiss-based subsidiary of the French telco Alcatel contracted consultants to perform *vaguely described marketing services*, which included paying more than \$US7 million to seven Costa Rican officials.
- In December 2010, Alcatel was fined \$US137 million
 - (Verrender 2011)



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Case Studies: Defence Procurement

- Darleen Druyun, a USAF procurement official inappropriately managed contracts with Boeing before taking a job as Vice-President with them
- Druyun was jailed and Boeing fined \$615 mil

(Roberts 2010)



Case Studies: Politics & Procurement

- The former Taiwanese President Chen Shui-Ban and his wife sentenced to life for complex corruption issues including procurement.
- Chen accepted \$US 3 million in kickbacks for helping a contractor gain a government project.

(BBC News 2009)



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MASP (*Graycar*)

- **M**ethods
- **A**ctivities
- **S**ectors
- **P**laces



Methods

- Bribery
 - Extortion
 - Misappropriation
 - Self-dealing
 - Patronage
 - Abuse of discretion
- Creating or exploiting conflict of interest
 - Nepotism, clientelism and favoritism

etc



Activities

- Appointing personnel
 - Buying things (Procurement)
 - Delivering programs or services
 - Managing disasters
 - Making things (Construction / manufacturing)
 - Controlling activities (Licensing / regulation/ issuing of permits)
 - Administering (justice for example)
- etc*



Sectors

- Construction
- Health
- Tax administration
- Energy
- Environment & water
- Customs & Immigration
- Legal system *etc*

Places

- Countries
- Regions
- Localities
- Corporations
- Work places

etc



MASP

Applied to Cases

Who	Method	Activity	Sector	Place	Benefit
FBI specialist	Kickbacks	Procurement	Law Enforcement	National agency USA	Family Cruise
Alcatel	Kickbacks	Procurement	Communications	Corporations Costa Rica	Secure contracts
Darleen Druyan	Conflict of Interest	Procurement	Defence	National agency USA	Senior position
Taiwan President	Nepotism, kickbacks	Procurement	Land acquisition Political donations	Taiwan	Massive enrichment



Analysis 1

Origin

- Bribe giver
- Bribe taker

Context

- Structural
- Situational

Nature

- Enticement (to obtain unfair advantage)
- Extortion (to obtain fair treatment)



Analysis 2

- a low volume of high value transactions (infrastructure/ planes etc)
- a high volume of low value items (shredders/ hospital items)



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Combating Corruption

- Understand the opportunity structure
- Identify and implement controls



Opportunities

- motivated offender,
- a target
- absence of a capable guardian.



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Opportunities

- Systemic Opportunities
- Localised Opportunities



- Monopoly of power
- Wide discretion
- Weak accountability
- Little transparency
- Perverse incentive systems



Red Flags: Corrupt Procurement Practices

- Kickbacks
 - Bribes
 - Kickback Brokers: Agents & Local Representatives
- Bid Rigging
 - Bid Suppression
 - Complementary bidding
 - Bid rotation
 - Low Balling
- Front or Shell Companies
- Misrepresentation of facts

(Ware *et al.* 2007)



Red Flags: Kickbacks

- Improper bid selection
- Unnecessary middlemen or agents
- Officials accepting excessive gratuities
- Unusually wealthy officials
- Poorly performing contractors re-engaged
- Former officials in the supply chain
- Personal/family ties between suppliers/agents and officials

(Ware *et al.* 2007)



Red Flags: Bid Rigging

- Identical bids from different bidders
- Bids substantially higher than cost estimates or previous bids
- Winner subcontracting to losers
- Physical alteration of bid documents
- Line items substantially higher in some bids
- Wide gap between the winner and all other bidders

(Ware *et al.* 2007)



Red Flags: Bid Rigging (Cont)

- Evidence of collusion
 - (eg same handwriting, same errors)
- Qualified bidders do not bid
- Re-bids have the same ranking order as original bid
- Re-bids have substantial cost increases
- Mysterious price drops when new bidders enter

(Ware *et al.* 2007)



Red Flags: Front Companies

- Unknown sub-contractors with no track record
- Subcontractor registered in a secrecy jurisdiction
- Invoices originate from secrecy jurisdiction
- Owners listed as law firms or incorporation agents, not individuals
- Subcontractor has no visible corporate facilities

(Ware *et al.* 2007)



Red Flags: Front Companies (Cont)

- Subcontractor point of contact is answering service or private residence
- Opaque ownership structure
- Friends/relatives of senior government officials are owners/managers of contracting companies
- Government officials unnecessarily visit company premises

(Ware *et al.* 2007)



Red Flags: Misrepresentation of facts

- Procuring entity does not keep minutes of public bid opening meeting
- Minutes do not have all required signatures
- Delays between bid opening and circulation of minutes to all bidders
- Records of bid evaluation are incomplete or absent
- Submitted bids contain alterations post-submission

(Ware *et al.* 2007)



Responses

International Political Will

- UN Convention Against Corruption (UNCAC)
Article 9 – provides for anti-corruption measures in procurement
- OECD Convention on Combating Bribery
Establishes standards to criminalize bribery of foreign officials in international transactions
- GRECO – Group of States Against Corruption
Council of Europe's body to monitor states' implementation of anti-corruption measures



Responses

Domestic Political Will

- US Foreign Corrupt Practices Act (FCPA)

Prohibits US entities from bribing foreign officials

- *Criminal Code Act 1995* (Cwth) Div.70

Prohibits Australian entities from bribing foreign officials



Responses

Operational Entities

- World Bank
- Asian Development Bank
- Organization of American States
 - Inter-American Convention Against Corruption
- African Union
 - Convention on Preventing & Combating Corruption
- Council of Europe
 - Criminal Law Convention Against Corruption
 - Civil Law Convention Against Corruption

Etc



Responses

Tangible Controls

- Criminalization, investigation, prosecution, sanctions
- Anti-corruption agencies
- Structural reform
- Education, integrity building mobilization of the public
- situational countermeasures



Situational Responses

- Increase the effort to behave corruptly
- Increase the risks of corrupt behavior
- Reduce the rewards of corrupt behavior
- Remove excuses for corrupt behavior



Controls (1)

Systemic Controls

- Increasing the moral cost of corruption
- Creating a culture of integrity
- Vigilant media
- Civil society oversight
- Criminalization and penalties

Localised Controls

- Appropriate oversight of discretionary decision making
- Establishing effective internal and external reporting procedures
- Whistleblower protection
- Setting and enforcement of procurement guidelines
- Penalties for procurement breaches



Controls (2)

Systemic Controls

- Modification of conflicts of interest guidelines
- External auditing for party finances and campaigns
- Changing the burden of proof for demonstrating the legality of officials' wealth
- Simplifying regulatory framework

Localised Controls

- Decision making process transparent and available for regular and random audits
- Random integrity testing
- Rotating agents
- Creating a code of ethics
- Workplace performance indicators
- CCTV or others surveillance where appropriate



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