Introduction to Public Procurement

Introduction to Public Procurement

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CONESTOGA OPEN LEARNING
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Introduction to Public Procurement introduces students to essential concepts in public procurement including policies and procedures, authority and agency, and the competitive purchasing cycle. This OER provides an overview of legal considerations that need to be addressed when handling bid documents. The OER is designed to encourage strategic thinking and includes supply chain case examples, real-world scenarios, and landmark case rulings within each chapter.

The OER is written as an introductory text for students and is intended to help them understand the procurement process and the competitive bidding process. It will provide students with an overview of the duties and obligations of purchasers in public buying.

Key Features of this OER

Structure

This text is an adaptation of various open sources. Attributions to these sources are included at the end of each page. The resource was reviewed by several faculty members. Their feedback and suggestions improved the quality of this resource and were incorporated into the OER where possible.

This OER is divided into twelve chapters.

- Chapter 1: Introduction to Public Procurement
- Chapter 2: Government Structures and Authority
- Chapter 3: Legislation and Trade Agreements
- Chapter 4: Role of Public Buying – Public vs Private
- Chapter 5: Public Procurement in an International Context
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- Chapter 10: Risks and Liability
- Chapter 11: Ethics and Professionalism
- Chapter 12: Future Trends and Public Procurement

Each chapter begins with an overview of the content to be covered and lists the objectives the student will achieve after reading the chapter. The content of each learning objective is linked to a section within the chapter.

Real-World Scenarios and Real-Life Cases

Students can see the practical application of public procurement in each chapter within the OER.

"Practical Procurement: Scenarios and Solutions" helps bridge the gap between theory and practice. These short fictional scenarios illustrate the daily complexities and challenges that public procurement officers face during their work. Students are presented with a challenging question and are asked to consider the best solution to the problem.

These scenarios enrich the learning experience by making the textbook content more relatable and accessible. Instructors will find these scenarios a powerful tool for helping students connect the dots between

the classroom and the real world, making the learning process more dynamic and effective. “Practical Procurement” helps students gain the practical insights they need to excel in their future careers in public procurement.

The OER also provides other learning opportunities. “Real Cases in Public Procurement” gives a brief synopsis of real lawsuits that have shaped the course of public procurement in North America. Being acquainted with these seminal cases in the history of public procurement in Canada and the USA increases student awareness of the legal consequences of breach of contract, lapses in the tender process, and other issues that can cause legal liabilities.

“Practical Procurement” and “Real Cases in Public Procurement” are accompanied by questions that will spark lively debates in the classroom. Exemplar answers to these questions are included in the instructors’ manual.

Emphasis on Readability

We used tools that increase readability and faster review of the material, including headings and sub-headings, bolded key terms within the text that are hyperlinked to definitions, end-of-chapter key takeaway summaries, and a glossary of terms.

Review and Practice

Each chapter ends with a summary that reinforces learning by summarizing the most critical points from each section.

The multiple-choice questions are programmed as interactivities that provide students with a self-test opportunity at the end of each section. They also offer students feedback in real-time to confirm their understanding of the concepts presented in each section.

The review and essay questions test student understanding of the material presented in each chapter and encourage considered comment.

Instructor’s Manual Available

An instructor’s manual (IM) is available for this OER; it includes an answer key for the assessments included in this Pressbook. Note that requesting faculty must be vetted before Open Learning at Conestoga College can distribute this IM. The IM is copyrighted by its author and all rights are reserved; instructor’s manuals are for teaching purposes and may not be shared or republished in any form.

To obtain the IM for *An Introduction to Public Procurement*, please send an email to Open Learning at Conestoga College.

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Jennifer Misangyi
December 2, 2024

Acknowledgments

Land Acknowledgment

At Conestoga College, we would like to acknowledge that in Kitchener, Waterloo, Cambridge, and Brantford, we are located on the Haldimand Tract, the land promised to the Haudenosaunee people of Six Nations, which includes six miles on either side of the Grand River. This is the traditional territory of the Anishinaabe, Haudenosaunee, and Neutral peoples. Recognizing the land is an expression of gratitude and appreciation to those whose environment we reside in and a way of honouring the Indigenous people living and working on the ground for thousands of years.

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For more information about how we strive to meet accessibility standards, please review the Conestoga College Accessibility Statement for OER Projects.

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- Practical Procurement: Scenarios and Solutions. These fictional scenarios and accompanying questions in chapters 1 to 3 and chapters 5 to 12 were created with the assistance of Microsoft Copilot.
- Checkpoint: Multiple choice questions at the end of each section were created using the output from the Arizona State University Question Generator tool.
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Jennifer is a professor in the Supply Chain, Operations Management, and Business Purchasing programs at Conestoga College. Before entering full-time teaching in higher education, Jennifer worked for over 15 years in the supply chain field in various private and public sector organizations. In her long career, she supported many areas, including supplier relationship management, ERP implementation, project management, budget reporting, and supplier negotiations. Jennifer graduated with a Master of Business in Supply Chain Management and completed the Certified Supply Chain Management Professional (CSCMP) Designation with Supply Chain Canada. Jennifer continues to be heavily involved in industry professional development. Understanding that successful students become successful in their careers, the opportunity to provide students with an additional learning resource by creating an open educational resource (OER) in Public Procurement was a gratifying experience for Jennifer.

CHAPTER 1: AN INTRODUCTION TO PUBLIC PROCUREMENT

Public procurement has been subject to governing rules from many legal sources, including trade agreements, legislation and common law. In Canada, the common law on public procurement has been established over several decades. The fundamental principles applicable to public procurement are fairness, openness, and transparency.

In this chapter, we will look at public procurement and the public purchasing cycle. We will also review the various trade agreements and territorial, provincial, and federal laws enforced in the Canadian public sector markets, as well as the controls to ensure transparency and accountability in public procurement practices.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Explain the public sector and how it procures goods and services.
2. Identify the importance of public sector supply chain management.
3. Understand the principles of public procurement and its impact on the economy.

Public Procurement Playbook

Watch this video to learn more about public procurement.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=5#oembed-1

Source: NASPO (2022, February 8) What Is Public Procurement [Video] https://www.youtube.com/watch?v=cWppAPoGEBY.

1.1: Overview of Public Procurement

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The public sector comprises government departments and public entities, such as roads, transport, communication systems and health services. Public funds are collected through taxes and must be spent in a transparent and accountable manner. Public **procurement** plays a key role in the service delivery and performance of government departments and public entities.

Public procurement is the process by which governments and state-owned enterprises purchase **goods** and **services**. Public procurement represents a significant portion of a country's GDP. The Government of Canada purchases approximately $22 billion worth of goods and services every year, making it one of the largest public buyers in the country. In the United States, government procurement amounts to nearly $2 trillion annually.

This massive scale of procurement gives governments substantial leverage in influencing supply chain practices. By setting criteria for their suppliers, governments can enforce sustainable practices, dictate who they will procure from, and even shape the broader market dynamics (Shah, nd).

The extensive list of public purchases can include standard items such as stationery to more complex expenditures such as the construction of roads and delivery of key services to citizens such as healthcare or education.

Public sector organizations provide services to improve citizens' standard of living by ensuring access to essential services such as health, education, water and sanitation, electricity, and transport. Public sector

organizations comprise ministries, departments or other divisions of government or statutory bodies, and local (both regional and federal) authorities.

Because of the importance of public procurement, the public procurement process in most countries is governed by public procurement laws and regulatory frameworks. The major challenge has been the failure of procurement officials to comply with multiple regulations and policies. However, the public sector is facing pressure to deliver more effective and efficient services to stakeholders despite the global and regulatory challenges that governments are facing.

The public sector works with private sector organizations when private businesses work on a specific public project contract. Private individuals or entities control private sector organizations, but if they want to conduct business with the government, they must adhere to legislations of public administration.

As mentioned earlier, the public procurement process is represented by rules, policies and procedures that specify how government procurement activities should be carried out.

Public Services and Procurement Canada (PSPC) plays an important role in the daily operations of the Government of Canada. The Supply Manual (Canada Buys, nd), with its policies and procedures, is written for the use of contracting officers and regional acquisitions offices to assist them in providing procurement services while following rules and regulations. Canadian government procurement is carried out in a decentralized manner. Individual departments award contracts under their own authority for services and under certain authorities for goods and construction as delegated by the Minister of Public Works and Government Services Canada (PWGSC). The Supply Manual is to be read in conjunction with other government policies and directives.

Emphasis on Sustainability

Public procurement accounts for a large portion of purchasing in Canada and worldwide. By procuring sustainable goods and services, governments can reduce greenhouse gasses, encourage the use of renewable resources and help with environmental conservation. Sustainable procurement also promotes the use of local vendors and services, which reduces the carbon footprint and encourages social responsibility. Here are some examples of how the Canadian government encourages sustainable procurement practices.

- Multiple policies, guidelines, and government legislation govern Canada's public procurement. The federal Canadian Content Policy from the Department of Public Works and Government Services Canada encourages industrial development in specific circumstances by limiting procurement opportunities to suppliers of Canadian goods and services.
- In 2022, the Standard on Embodied Carbon in Construction became effective, setting the requirements for the procurement of design and construction services to disclose and reduce the embodied carbon of major construction projects. This is in accordance with the commitments in the Greening Government Strategy.
- Canada's Net-Zero Challenge encourages businesses to develop and implement transition plans to net-zero emissions by 2050. The Government of Canada is committed to reducing Canada's emissions by 40-45% from 2005 levels by 2030 and putting Canada on a path to reach net-zero emissions by 2050. The federal government rewards such businesses by purchasing from them where possible.

In Canada, the objective of government procurement is to acquire goods, services and construction services in a manner that

- Facilitates access
- Encourages competition
- Treats suppliers fairly
- Results in the best value for Canada

Public procurement must be conducted in a manner that will accomplish the following:

- Stand the test of public scrutiny and reflect fairness in the spending of public funds.
- Respect operational requirements.
- Support long-term industrial and regional development and other appropriate national objectives, including Indigenous economic development.
- Comply with the government's obligations under the trade agreements.

Essential Reading

Read Chapter 1, Introducing Public Procurement | SpringerLink. (Sections 1.1 Introduction, 1.2 The Public-Private Continuum, 1.3 What Is Public Procurement?)

Learn how public procurement differs from private purchasing by understanding the public-private continuum. Apply the 3P model to the public procurement process. Recognize how public procurement has developed from an executive management function aimed at fulfilling a demand to a policy instrument to create public value.

Checkpoint 1.1

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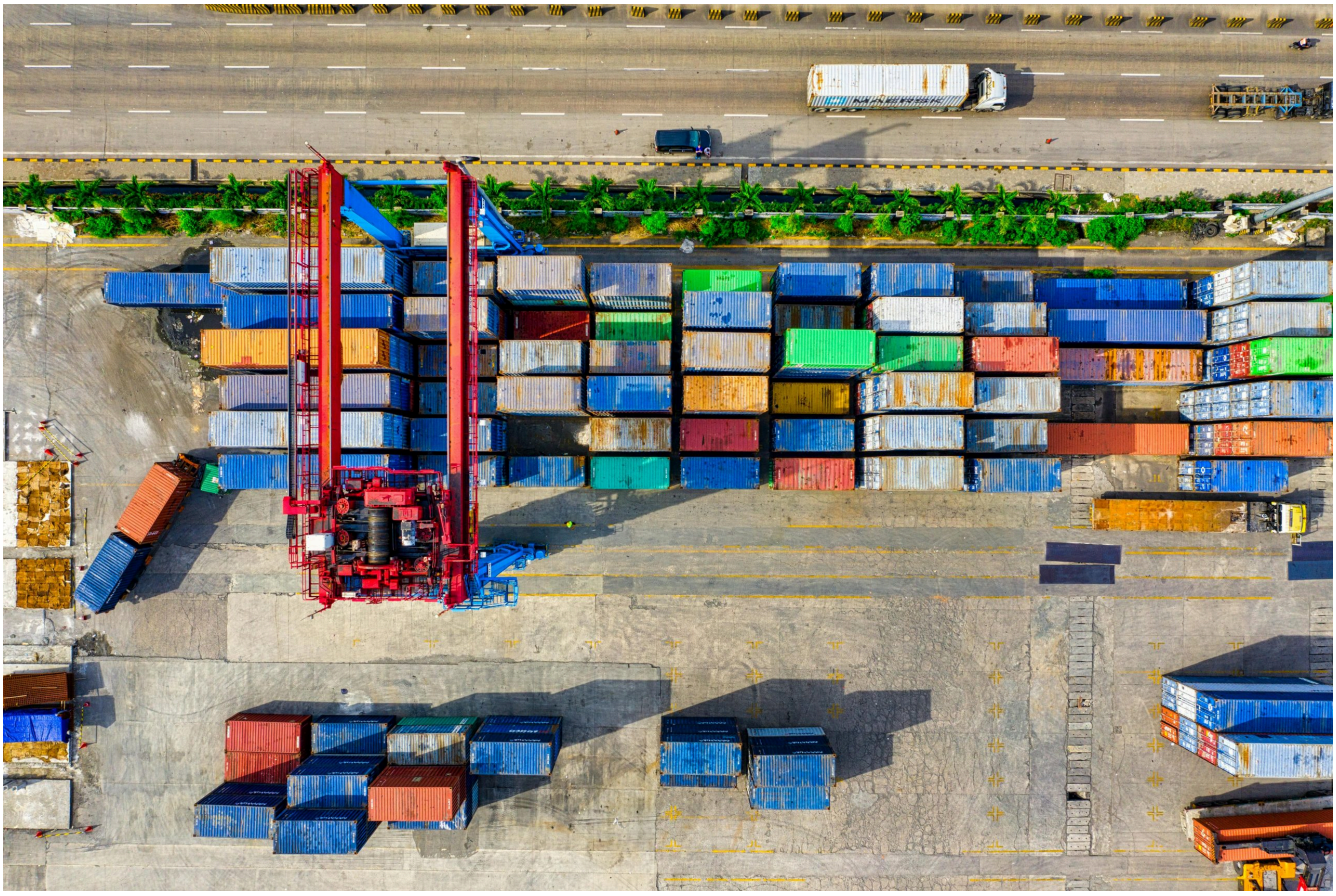
1.2: Managing and Controlling Public Sector Supply Chains



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Supply chain management (SCM) is a term used in business literature to refer to the control of materials, information, and finances as they move from supplier to manufacturer to wholesaler to retailer to consumer. The term supply chain (SC) is inspired by the product flow that should be delivered to citizens or businesses through several organizations. In a functional sense, this focus on activities and relationships involves logistics, marketing, purchasing/supply, and production/operations.

In essence, SCM integrates supply and demand management within and across organizations. A supply chain consists of all parties and functions involved directly or indirectly in receiving and fulfilling a customer request. These functions include but are not limited to new product selection, procurement, marketing, operations, distribution, finance, and customer service.

A **supply chain**, as opposed to supply chain management, is a set of organizations directly linked by one or more of the upstream and downstream flows of products, services, finances, and information from a source to a customer.

Supply Chain Management in the Public Sector

In the public sector, SCM is responsible for the flow of supplies. Its main goal is to achieve the best value for money. Supply chains in the public sector address different focus areas. The focus of SCM can differ from sector to sector.

An example of a government sector-to-sector focus area could be the health sector, where the focus may be more on logistics and the effective movement of goods and services in and out of hospitals. In contrast, SCM in the education sector may focus on streamlining the chain through which teaching materials are delivered to students. The responsibility and goal of the supply chain processes will vary depending on the organization.

Public Services and Procurement Canada (PSPC) supports public sector procurement departments and plays an important role in daily operations by providing a reference framework through its acts and federal regulation requirements. PSPC is committed to engaging public sector supply chain stakeholders with the necessary training in interpreting the regulations. Since government procurement activities are executed with taxpayer money, most countries have laws and regulations around procurement activities to ensure value for money and reduce unethical risks. This is why many procurement regulations and trade agreements have been created to ensure fairness and **transparency** in public procurement markets. Public sector procurement must consider the development of its local economy and small businesses, job creation, fair competition, general services and transparency.

Public Procurement Playbook

Watch this video on the functions of the Public Services and Procurement Canada (PSPC).

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=87#oembed-1

Source: Public Services and Procurement Canada (2021, September 28). We are PSPC. [Video]. YouTube. https://youtu.be/BzU5ihi3wac?si=1T4pxfL_z7eeKKRB

The Role of Stakeholders in Supply Chain Management

A stakeholder is an individual or organization that benefits from or is affected by the project, product or service. In public procurement, stakeholders are comprised of two major categories: internal and external stakeholders. Key internal stakeholders in procurement include those who operate within the organization, such as procurement managers, budget owners, manufacturing, finance and legal teams. External

stakeholders contribute to the project but are not directly connected to the organization. Suppliers and other partners are considered external stakeholders.

Procurement officials must constantly weigh the trade-offs between objectives such as economic interests, trade agreements, fairness, equality, transparency requirements, and enhancing procurement efficiency.

Supplier Performance Management

Supply chains and associated management processes often remain invisible to the public sector client. Governments have traditionally focused on contracting with **first-tier suppliers**, the supply chain members with whom the procuring organization directly contracts. Historically, public procurement departments have not included an analysis of their suppliers' supply chains as part of their criteria for selecting suppliers. Thus, they lack assurance about the reliability and resilience of their key suppliers' subcontractors.

Supplier performance management has become a key element in the public sector, and many governments have introduced it to measure efficiency and meet the needs of the public. Increasing the effectiveness, efficiency and transparency of public procurement systems has become an ongoing concern of governments and the international public sector community. Effectively managed strategic supplier relationships contribute to higher levels of customer service and reduced costs.

While it is relatively common, especially in complex procurements, for the first-tier supplier(s) to manage the supply chain on behalf of the contracting authority, relatively little effort has been made by the public sector to improve the visibility of its supply chain and its ability to exert influence over how the first-tier suppliers manage this chain, except perhaps in the construction industry.

The limited effort in other industries to improve the supply chain performance could be for reasons of simplicity, resource constraints, a lack of understanding or perceived need for understanding, or perhaps even a perception on the client side that the policy and legal framework do not allow for such activities.

Increasingly, the complexity of many contracts, a greater appreciation of the need to improve competition and innovation, and an increasing awareness of the impacts of terrorism or natural disasters on SCs and business continuity mean that wider supply chain issues need to be considered in seeking improved efficiency and value for money.

The Strategic Value of SCM for the Public Sector

The supply chain is an area of strategic importance to an organization due to the significant percentage of overall cost it accounts for. But is it strategic? In the commercial world, companies seek to create a competitive advantage, lowering their cost base to contribute to their bottom line or profit. In the public sector, the cost advantage gained through the procurement function contributes to lower costs for the organization, enabling funds to be diverted to frontline services such as hospitals and schools. This means better value for money for public sector shareholders that are taxpayers.

Countries such as the UK, US and Canada have long employed SCM to manage their procurement and logistics in the private industry. Health Canada has established a digital supply chain infrastructure enabling more efficient tracking and traceability of critical supplies and equipment from the supplier to hospital care settings. The Department of Defence (DOD) in the US has minimized costs in managing its logistics by employing SCM best practices. The Office of Government Commerce (OGC) in the UK releases year-to-year updates about best practices of SCM in the public sector. (Gansler et al., 2004)

Governments must follow the private sector with digital integration and adopt more available and proven tools for implementing a modern supply chain. Streamlining and modernizing the government supply chain

can result in substantial cost savings and improve delivery times for essential goods and services. (Gansler et al., 2004)

One of the ways governments in several jurisdictions are attempting to improve efficiency in the delivery of public-sector services is through the introduction of supply chain management (SCM) best practices. Citizens expect their public services to operate as an efficient, seamless and effective system, optimizing the same best practices as the private sector. Governments and their partners are trying to ensure this happens through proper SCM. If excessive amounts of time and money are spent needlessly on back-office processes, fewer amounts are left to be spent on classrooms, hospital wards and the general needs of the public. It makes sense, therefore, that if there are better ways for the public sector to plan, source, move and pay for goods and services, these should be examined and implemented.

Benefits of Implementing Good SCM Practices in the Public Sector

Effective management and control of SCM yields several clear benefits to the public sector. These include:

- **Better risk allocation.** Effective risk allocation is a critical consideration in procurement. Risk should always be allocated to the party best placed to manage it.
- **Greater visibility.** Visibility creates subcontracting opportunities for a range of organizations that can bring increased competition, dynamism and specific skills or strengths to the public sector. This can increase competition and allow organizations with particular skills or strengths to get involved in the public sector marketplace.
- **Greater opportunities for innovation.** Supplier innovation in the SC can contribute to better quality, faster delivery and reduced cost of ownership over the life of an asset, also known as the **total cost of ownership**. Effective SCM encourages innovation in the supply chain.
- **Better-defined requirements.** Early supply chain involvement shapes business needs through understanding stakeholder requirements or market sounding, which is the process of figuring out the interest of potential investors in a transaction.
- **Improved ability to identify risks or bottlenecks.** In contract delivery, greater authority creates awareness of how the contract will be implemented and the key SC dependencies.
- **Better quality.** Solutions offered by suppliers are opportunities to improve quality, increase delivery times and reduce costs in their supply chains.

More effective use of supply chains contributes to the wider agenda of improving efficiency and value for money in the public sector's commercial activities by promoting competition, not just at the first-tier supplier level but across the wider supply base and by encouraging more efficient management of suppliers.

Practical Procurement: Scenarios and Solutions

Rosario Lopez, the newly appointed Director of Procurement at the City of Greenfield, faced a significant challenge. The city had recently embarked on a major infrastructure project to renovate its

aging public transportation system. This project, crucial for the city's economic development and public welfare, required effective supply chain management to ensure timely and cost-effective delivery. Rosario knew that managing and controlling the public sector supply chain was vital to the project's success, but they faced several obstacles, including risk allocation, visibility, and innovation within the supply chain.

The City of Greenfield, with a population of 150,000, was known for its vibrant community and growing economy. The city's public transportation system, however, had not kept pace with its growth. The city council approved a $50 million budget for the renovation project, which included upgrading buses, installing new bus shelters, and implementing a real-time tracking system. The city employed over 1,200 people, with a dedicated team of 50 working in the procurement department. The primary customers of the city's services were its residents, local businesses, and tourists. The city generated revenue through taxes, grants, and public service fees.

Rosario had three options to address the supply chain challenges. The first option was to allocate risks more effectively by partnering with suppliers who had a proven track record in managing similar projects. This would involve conducting thorough market research and selecting suppliers best positioned to handle specific risks. The second option was to increase visibility in the supply chain by implementing a comprehensive tracking system that would allow for real-time monitoring of all project components. This system would enable better subcontracting opportunities and ensure that all stakeholders were informed about the project's progress. The third option was to encourage innovation by engaging suppliers early in the project to contribute their expertise and innovative solutions. This approach would help define requirements more clearly and identify potential risks or bottlenecks early on.

Rosario understood that each option had its advantages and challenges. Allocating risks effectively could lead to better project outcomes but required significant upfront effort in supplier selection. Increasing visibility would improve project management but might involve additional costs for the tracking system. Encouraging innovation could result in better quality and cost savings but required a collaborative approach with suppliers, which could be time-consuming.

The business problem Rosario faced was critical. The success of the public transportation renovation project depended on effective supply chain management. Delays or cost overruns could undermine public trust and impact the city's budget. Rosario needed to decide on the best approach to manage and control the supply chain to ensure the project's success.

Discussion Questions:

1. How can effective risk allocation improve the outcomes of the City of Greenfield's public transportation renovation project?
2. What are the benefits and potential challenges of implementing a comprehensive tracking system to increase visibility in the supply chain?
3. How can early supplier engagement and innovation contribute to better-defined requirements and improved project outcomes?

Tension between Citizen and Customer Requirements

There are enormous challenges in applying SCM in the private and the public sector. One of the challenges that needs to be addressed for the successful management of public sector supply chains is the tension between citizen and customer requirements.

In the private sector, the key goals of SCM are lower costs, customer-focused and demand-oriented production, and optimization of goods and information flow. In the public sector, the need for supply chain control is derived from the complex relationship between the general demand for public goods and the individual citizen's willingness to pay for the provision of goods. Customers in the public sector are tax-paying citizens who demand efficient utilization of public resources. There are also differences in attitudes and values, creating a challenge in considering democracy participation.

This reveals a serious tension between the assumptions of citizens and established SCM practices. Due to the overall perception of the supply chain demands and procurement processes, citizens become most frequently "forced" customers. The central benefit of rewarding the entire network with a customer's positive purchase decision thus loses its effect in public supply chains.

Citizen/customers' demands are understood as a society's interest in public goods. However, due to the peculiarities of public goods and the resulting problems of collective action, it is difficult to assess citizen/customers' demands by their willingness to pay.

Checkpoint 1.2

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1.3: Basic Principles of Public Procurement

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Public procurement acts or laws govern public procurement in most countries. Although regulations vary from country to country, public sector supply is based on the following globally accepted principles:

- Economy
- Integrity
- Efficiency
- Transparency
- Fairness

Governments are playing an increasingly important role in our economies, and this trend in growth in supply chain management will continue. As budgets in the public sector continue to tighten, public-sector supply organizations will continue to adopt management practices from the private sector.

Globally Accepted Principles

Economy

Value for money is the principle of economy that emphasizes the proper management of public funds. Public procurement officers should avoid fraud, waste and abuse of public resources. Public officers must do their due diligence, not pay high prices for goods, collude with other bidders or indulge in unacceptable practices.

Integrity

Integrity of the procurement process and the public procurement officers ensures stakeholders' confidence in the public supply chain. When solicitation documents are made publicly available, the information they contain must be dependable and free of ambiguities or bias. Procurement officers should be perceived as honest, trustworthy, responsible and reliable. They must strive to ensure responsible management of the process as mandated by the public regulations and **accountability** for taxpayers.

Efficiency

Public procurement strives to create efficient processes by reducing administrative overhead costs and devoting time to complex, strategic projects instead of straightforward ones. Increasing competition through negotiation can improve contracts and identify solutions before projects are awarded. Creating a centralized information database on prior performance provides information to potential bidders during decision-making. Enhancing the expertise of the public procurement officers is essential in managing transactions and innovative solutions.

Transparency

Transparency in public procurement is very important; all information must be available for all stakeholders unless prevented by legal reasons. Company proprietary information or military information about defence-related procurements are examples of confidential information. When a procurement requirement is announced, it must include sufficient details for interested suppliers to determine their ability to compete. The close interaction between the public and private sectors creates risks for private gain and waste at the expense of taxpayers' money. Providing transparency is critical to minimize risk and create a level playing field for suppliers.

Fairness

Fairness is achieved in public procurement processes by ensuring equal treatment and opportunity for all bidders. Decision-making must be unbiased and based on compliance with solicitation documents, with no preferential treatment given to one supplier over the other. In accordance with the public procurement rules,

suppliers should have the right to challenge the procurement process whenever they feel they were treated unfairly.

Checkpoint 1.3

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Chapter Review

Key Takeaways

- Public sector procurement is when a public sector body purchases goods or services using public funds.
- In the public sector, the goal of supply chain management is to deliver high-quality public services, not to profit from selling services. The financial magnitude of public purchases can lead to significant cost savings when managed effectively.
- Public procurement can strategically benefit the economy with increased competition leading to lower prices, improvements in quality by purchasing from qualified suppliers, increase in contracts awarded to local and global free trade companies and infusing social value in procurement delivery.

Explore and Engage

Discussion Questions

1. What is the definition of public procurement?
2. What is the primary objective of a public procurement officer?
3. What is the importance of transparency in public procurement?
4. What is the role of Public Services and Procurement Canada (PSPC) in public procurement?
5. Give three reasons why effective supply chain management is important in the public sector.

Active Learning

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=91#h5p-1

Recommended Readings and References

Recommended Readings

"Chapter 1 – An Overview" by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.

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CHAPTER 2: GOVERNMENT STRUCTURES AND AUTHORITY

Introduction

In this chapter, we will learn how the public sector in Canada must comply with the rules when purchasing goods and services. These policies, regulations and agreements provide guidance for efficient and effective procurement in line with a public organization's objectives and tasks. We will also discuss the principles and processes of public procurement, including planning, tendering, contract management, and evaluation. After reviewing this chapter, we will also acquire an understanding of the legal and regulatory environment governing public procurement.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Explain the different procurement regulations in the public sector stipulated by Government Structures and Authority: Federal, Provincial/State and Regional.
2. Provide an overview of Canadian law and explain the relationship between the rule of law and the Charter of Rights and Freedoms.
3. Distinguish between various forms of law applied in Canada and the systems and mechanisms supporting the operations of law.
4. Explain the principal-agent model.
5. Understanding the purpose of business legislation and regulation in Canada in public procurement.

Public Procurement Playbook

Watch this video to learn more about the three levels of government in Canada.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=236#oembed-1

Source: Parliament of Canada (2014, May 22). Levels of Government. [Video]. YouTube. https://www.youtube.com/watch?v=uwcMDuSGym4.

2.1: Procurement Regulations

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Public sector organizations have individual policies and procedures that determine the best use of public funds when deciding on a purchase. In using procurement best practices, they are encouraged to ensure the process is Open, Fair and Transparent.

Trade agreements, statutes, regulations, case law and policies govern Public Procurement. The legal framework that applies to government procurement at the federal level differs from the framework that applies to the private industry in Canada. The Government Contract Regulations (GCR) is the primary legislation regulating procurement by federal government entities. Several Canadian provinces have put in place legislation to regulate procurement procedures. The Broader Public Sector Procurement Directive in Ontario, the *Public Procurement Act* in Newfoundland and Labrador, and the *Act Respecting Contracting by Public Bodies* in Quebec are examples.

Common Law, typically called "Contract A/Contract B," Procurement Principles apply in federal and provincial procurement contracts. The underlying purpose of a legal framework for the procurement process is to be open, fair, and transparent and to support the principle of value for money.

Provincial Legislation

Act Respecting Contracting by Public Bodies

This Act aims to promote Quebec-sourced products and responsible procurement by public bodies. It also seeks to reinforce the integrity of procurement and to increase the powers of the Autorite des Marches Publics (AMP). The AMP is a neutral, independent body whose primary role is the oversight of public procurement regulations in Quebec.

Broader Public Sector Procurement Directive

Overseen by Supply Ontario, the Broader Public Sector (BPS) Procurement Directive sets out procurement rules for the purchase of goods and services with public funds under Ontario's Broader Public Sector Accountability Act. This directive aims to ensure that publicly funded goods and services are acquired through a process that is open, fair and transparent; outline responsibilities; ensure that procurement processes are managed consistently; and maximize value from the use of public funds.

The Public Procurement Act of Newfoundland and Labrador

Public Procurement legislation in Newfoundland and Labrador would see tenders awarded for the best value over the lowest cost over several areas of government spending. The Act allows for greater consistency across all public bodies in the tender process, evaluation and award.

The Public Procurement Act of Nova Scotia

The *Public Procurement Act* governs how public sector entities buy goods and services. The Act helps the government and the public sector work to ensure funds are spent as efficiently as possible. The Act encourages competition, innovative ideas and solutions while respecting legislative and trade obligations.

The Procurement Act and Regulation of New Brunswick

The amended *Procurement Act* and Regulations ensure that goods, services, and construction services required by the government are procured from New Brunswick vendors and suppliers wherever possible while respecting trade agreements.

The Purchasing Act of Saskatchewan

The *Purchasing Act* governs the purchasing regulations in Saskatchewan. The regulations aim to ensure that Saskatchewan public procurement officers procure goods and services fairly, achieving the best value

and resulting in the best possible balance of benefits to stakeholders and customers. Procurement activities will support the development of Saskatchewan's economy, including providing opportunities to Indigenous businesses in Saskatchewan.

Checkpoint 2.1

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2.2: Overview of Canadian Law

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Rules and regulations govern procurement practices, including the bidding process, contract formation, compliance, enforcement, and dispute resolution. Public purchasers must keep up with legal developments in public sector procurement law and guard against legal risk and reputational or financial problems. Procurement laws vary from country to country and may also depend on the type of procurements being made.

Historical Context

Laws are created to establish standards for acceptable conduct, proscribe punishment for violations as a deterrent, establish systems for enforcement, and peacefully resolve disputes. The Canadian legal system has its roots in the British common law system, the French civil law system, Aboriginal laws (developed by courts

and legislatures) and Indigenous law (practices that originate and are applied by Indigenous cultures and communities). A primary goal of the Canadian legal system is the promotion of the common good.

Establishing Standards

The Canadian legal system was developed to establish standards that outline what is to be considered minimally acceptable behaviour. All Canadian citizens are expected to follow federal and provincial laws. Provincial and territorial laws may mirror federal laws, but they may also differ in content and application.

The **Books of Authorities** are early legal textbooks that can be easily referenced as a legal authority in a court of law.

No system of law is perfect, and the Canadian system is no different, as evidenced by the problematic history endured by Indigenous people in this country. A primary goal of the Indian Act (an Act that is still in full force and effect) was the assimilation of Indigenous peoples for the common good. The principle of the common good applied in this example is not a version that views all people's values, cultures, history and experiences equally and inclusively.

It is important to note that there are Indigenous Nations that have **Self-Government Agreements** (for example, the First Nations within the Anishinabek Nation and Nisga'a), which provide the legal authority to make their own laws in certain areas of jurisdiction. This may include, but is not limited to, education, elections within the First Nations, language and culture. Each self-government agreement is unique to the context and needs of the Nations that are party to the Agreement, which may result in variations across Agreements.

The Procurement Strategy for Aboriginal Business was created in 1996 to increase the number of Indigenous suppliers and vendors who bid on and won federal contracts. In 2021, the program changed its name to the Procurement Strategy for Indigenous Business, with a mandatory requirement for federal departments and agencies to ensure that qualified Indigenous businesses held a minimum of 5% of the total value of contracts.

First Nations self-government agreements in Canada are agreements between the federal government and a specific Indigenous community or nation that give them the authority to create and enforce their own laws, manage their finances and resources, and develop their own social programs. These agreements are important in the reconciliation process between Indigenous and non-Indigenous peoples in Canada. They provide a way for Indigenous communities to have greater autonomy and control over their affairs. The agreements are negotiated between the government and the Indigenous community and are legally binding. The agreements are also designed to ensure that the rights of the Indigenous community are respected and upheld.

Debates in the Legislative Assembly

The Legislative Assembly's main responsibilities are to debate and pass legislation to hold the government accountable and improve government spending. A report of the debates and proceedings is known as a **Hansard**.

Promoting Consistency through Case Law

The Canadian legal system follows the British common law system, which is designed to reference past judicial reasoning while promoting fairness through consistency. Judges in the common law system help shape the law through their rulings and interpretations. This body of past decisions is known as **case law**. Judges use case law

to inform their rulings. Indeed, judges rely on precedent (previous court rulings on similar cases) to rule on their cases.

Resolving Disputes

Laws are typically developed and applied to promote, provide, and maintain order, but conflicts are expected, given people's varying needs, desires, objectives, values, and perspectives. The Canadian legal system provides a formal means for resolving disputes through the courts. In addition to the federal and provincial court systems, in Canada, there are alternative systems for resolving disputes, including mediation, arbitration and, in Indigenous applications, **restorative justice circles** (a dialogical community-based healing process focusing on an offender's obligation to repair harms that they have created or actioned).

The Rule of Law

The *Rule of Law* stands against arbitrary actions undertaken by the State against its citizens. It requires transparency of law and fair, predictable, and equal application of laws, an independent judiciary and due process. The *Rule of Law* ensures that the law is public and accessible — enabling people to understand legal obligations and the process governing legal procedures.

Canada has a **rule of law** system. Canadian laws operate with the purpose and function of protecting the liberties and rights of people from violations by persons, companies, governments, or other entities. The Canadian Constitution is the supreme law of Canada, containing and explicating the conditions, rules, and regulations within which government and the people operate.

The first statement of the *Charter of Rights and Freedoms* (a section within the Canadian Constitution) states: **"The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."** The Charter provides a guardrail to ensure that laws enacted by a government do not override or infringe on the individual rights and freedoms identified within the Act. The intention is not absolute, as the Charter limits the exercise of rights that could result in adverse outcomes for Canadian society. For example, freedom of speech is protected under the Charter, but such freedom does not extend to hate speech.

It should be noted that the *Charter of Rights and Freedoms* contains a controversial provision in Section 33 — the *Notwithstanding Clause*. The clause enables parliaments within Canada to disregard specific sections of the Charter (sections 2 and 7 – 15) for up to five years if "non-controversial issues" warrant the invocation of the clause. Agreement on what counts as legitimate application of the clause continues to be vigorously debated in legal, academic, and political circles throughout the country.

Practical Procurement: Scenarios and Solutions

Robin Thompson, Procurement Manager for the City of Maplewood, faced a significant challenge. A recent audit of Keller Tech Solutions, a company that had recently won a major government contract to supply IT infrastructure to the City, revealed that some of its procurement processes might have violated Canadian law. It was flagged that Keller Tech's supplier standing agreement had expired three months before the IT infrastructure project was awarded. With the duty for purchasers to comply with fair competition, this has now exposed the city to potential challenges. This issue was critical for Robin because non-compliance could lead to legal repercussions, damage the City's reputation, and result in a legal dispute with the unsuccessful bidders.

Robin had two options to address the procurement compliance issue. The first option was to continue with Keller Tech. However, an unsuccessful bidder that was compliant with all the terms could claim that the purchaser breached the Duty of Fairness under Contract A, which requires the Purchaser to treat all bidders fairly. The court may rule in the compliant supplier's favour, making this an expensive decision for the City.

The second option was to cancel and re-issue the solicitation. This could potentially cause another complication because the agreement was already awarded to Keller Tech Solutions. The company might claim losses due to the cancelling of the contract. The purchaser would risk a legal challenge for improper solicitation and other reputational risks.

The procurement compliance issue was pressing for Robin and the City of Maplewood. Robin needed to decide on the best course of action promptly to mitigate any potential risks and uphold the integrity of the city's procurement process.

Discussion Questions:

1. How does the rule of law apply to the procurement processes at the City of Maplewood, and why is it important for the city to adhere to these principles?
2. What are the potential legal and reputational risks for the City if it fails to comply with Canadian law and the Charter of Rights and Freedoms in its procurement processes?
3. Evaluate the two options available to Robin. Which option would you recommend and why, considering the principles of the Rule of Law and the Charter of Rights and Freedoms?

Source: Scenario and questions created with the assistance of Microsoft Copilot.

Checkpoint 2.2

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=240#h5p-19

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2.3: Laws and Legal Mechanisms

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Business Law, Ethics, and Regulation

Business law is an expansive area comprising various legal disciplines. To ensure that business is developed and operated with the greatest chance of success, it is essential to be familiar with the laws, regulations, and ethical aspects of the context in which business activities occur.

The law can't recognize and correct every wrong that occurs in society. At a minimum, laws are developed and applied to curb the most egregious wrongs. There is an association between what we generally think of as ethical behaviour and what laws prescribe. For example, contract law upholds the general expectation that promises should be kept. Most people view breaking a promise as unethical. The law provides remedies for broken promises (in breach of contract cases) but not for all, as there may be valid reasons underlying an unmet obligation (for example, a *force majeure* situation).

A common challenge for students new to the law is disentangling what the law says against ethical prescriptions and practices. While laws are typically based on societal ethics and customs, ethical expectations or obligations may not align perfectly with existing laws. It is essential to recognize that ethics and the law are not the same, and there may be times when simply following what the law stipulates may not be the ethical and responsible course of action.

Understanding legal rights and regulations, including social and environmental obligations, should be a primary concern for any business initiative. Failure to understand legal rights may result in customers or competitors taking advantage of a business. The inability to understand regulatory and related obligations could expose a company to risks and other negative impacts.

Source and Types of Law

Canada has two fundamental forms of law: *Common Law* and *Civil Law*. The civil code of Quebec Law is followed in the Province of Quebec, while the other provinces and territories in Canada follow **common law**. Judges in the common law system help shape the law through their rulings and interpretations, a practice known as applying **precedence**. The idea that a finding from an earlier case should be binding on future cases is captured by the Latin term *stare decisis,* which means "let the decision stand." This body of past decisions is known as case law, which judges use to inform their rulings. Judges rely on precedent (previous court rulings on similar cases) when determining the verdict in their cases.

In the scope of procurement, common law, referred to as "Contract A/Contract B," applies to the bidding contract in procurement tenders. In Canada, public procurement law is broken into four categories: common law (civil law in Quebec), international and domestic trade agreements, statutes and regulations, and administrative policies and procedures.

Substance versus Procedure

Substantive law is the category of law that pertains to the rights and obligations of individuals. In contrast, procedural law focuses on the rules of procedure, which are the court's rules and other administrative forums or tribunals. Substantive rules prescribe how to act according to rights and obligations under the law.

Substantive law is a body of legal rules that define and govern individual rights and obligations and are enforceable by the courts. It includes laws that establish the rights and obligations of citizens, such as property law, contract law, and family law. Substantive law also includes criminal law, which defines and prescribes punishments for criminal offences.

Procedural law is the set of rules that govern the enforcement of the rights and obligations established by substantive law. It is the body of law that outlines the procedures for filing a lawsuit, such as filing a complaint and serving notice on the defendant. It also governs the rules for discovery, hearings, and appeals.

Procedural laws delineate the rules of process that must be followed and applied where a substantive law issue arises. Courts follow procedural rules when determining substantive law matters. Procedural law is important to ensure that the rights and obligations established by substantive law are enforced fairly and efficiently.

Public versus Private Law

Laws generally fall under two classifications: *public law* or *private law.*

Public law refers to the relationship between the state and the people within it and includes constitutional laws, criminal laws, and administrative laws.

- Criminal law concerns crimes and their punishments.
- Constitutional law defines the relationship between governments (federal and provincial governments

primarily) and the limits of governmental power over individuals.
- Administrative law concerns the actions and operations of the government.

Other examples of public law include environmental law and tax law.

Private law governs the relationship between individuals rather than between people and the State. Business contracts are typically developed by individuals involved in a private law agreement by virtue of their business relationship. The terms of the contract apply to the parties of the contract but not to others. If the parties have a contract dispute, the terms of the contract and the remedy for breach will apply only to the parties of the contract.

In addition to contracts, other examples of private law include tort and property laws.

Cause of Action

Regardless of how wrong someone's actions may seem, the only wrongs you can submit in a court are those tied to one or more causes of action. A **cause of action** is a legal claim that can be brought before a court of law to seek a remedy for a wrong or injury that has been suffered. It consists of a set of facts which, if proven in court, will entitle the plaintiff to a remedy or damages from the defendant. Common causes of action in Canada include breach of contract, negligence, trespass, and defamation.

Courts in Canada

Courts in Canada are designed to resolve disputes between parties. Courts are tasked with examining and interpreting laws and ensuring alignment with the Constitution. The courts also set standards, define issues in question, and develop ongoing common law, which can impact many areas of Canadian society.

The court system in Canada is divided into two levels: federal and provincial/territorial. At the federal level, the **Supreme Court** of Canada is the highest in the country and hears appeals from other federal and provincial/territorial courts. Below the Supreme Court is the **Federal Court** system, which includes the Federal Court of Appeal and the Federal Court. At the provincial/territorial level, the highest court is the **Court of Appeal**. Below are the superior trial courts, which hear more serious cases, and the provincial/territorial courts, which hear less serious cases. In addition, there are specialized courts, such as family courts, youth courts, and small claims courts, which deal with specific types of cases.

Tribunals are independent bodies that provide dispute-resolution services in various areas and are usually established by legislation. They are a form of **administrative justice**, providing a less formal and less costly alternative to the court system. Tribunals are responsible for resolving disputes between individuals and organizations and between individuals and government. They also make decisions on appeals, reviews and hearings on matters such as employment insurance, workplace safety, human rights, tenant protection, and labour relations.

Watch this video on the overview of the Canadian legal system.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=245#oembed-1

Source: Schulich Law (2018, July 24). Overview of the Canadian Legal System Pt 1. [Video]. YouTube. https://youtu.be/-xiCsyyoyzs?si=GNxZpOzSdtN5CbO8.

Legal Systems of the World

Legal systems in other jurisdictions may be very different from the Canadian system, so any business or business person needs to be aware of other forms of law, especially if there is an intention to operate in a different country or region.

- **Common law:** This legal system is based on prior court decisions and is used in countries such as the United States, Canada, the United Kingdom, and Australia.
- **Civil law:** This legal system is based on written codes and is used in countries such as Germany, France, and Japan.
- **Religious law**: This legal system is based on religious beliefs and is used in countries such as Saudi Arabia and Iran.
- **Traditional or customary law**: This legal system is based on customs and tradition and is used in many African countries.
- **Mixed legal systems:** This type of legal system combines elements of different legal systems, such as common law and civil law, and is used in countries such as Scotland and South Africa.

Legal systems in other countries often have different laws and regulations that may affect how the business operates. Laws can determine how goods and services are purchased, what taxes are applicable, how contracts are formed and enforced, and how intellectual property is protected. Understanding and complying with the laws of other countries is essential for businesses that operate in international markets. Failing to comply with foreign laws can have significant financial and legal consequences.

Checkpoint 2.3

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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2.4: The Principal-Agent Model

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Types of Principals

There are three types of principals, which are described from the perspective of a third party: disclosed, partially disclosed, and undisclosed.

- The most common form is that of a **disclosed principal** — a principal whose identity is revealed by the agent to a third party. For example, agents work for a disclosed principal when they are on the employer's premises, wear a name badge or uniform identifying the employer, or answer the phone by identifying the employer's name.
- A **partially disclosed principal** is a principal whose existence, but not actual identity, is revealed by the agent to a third party. In other words, a third party knows that the agent represents a principal but does not know the identity of the principal. For example, a realtor may represent an owner who does not want their name disclosed publicly.
- An **undisclosed principal** is a principal whose identity is kept secret by the agent. Often, third parties do not realize that an agency relationship exists and believe that the agent is working on his or her own behalf. Undisclosed principals are typically arranged when the identity of the principal can lead to

increased purchase prices, unwanted publicity, and security concerns.

Types of Agents

An agent is someone who is authorized to act on behalf of a principal. Because there are a variety of authorizations that a principal can grant an agent, there are many different types of agents. Broadly speaking, agents are described as either general or special. **General agents** have the authority to transact all the principal's business of a particular kind or in a particular place. General agents often include partners, managers, factors, and brokers.

Special agents, in contrast, only have the authority to conduct a particular transaction or to perform a specific act. Special agents often include realtors, athlete's agents, and employment recruiters.

Some of the most common business agents include:

- **Broker** — Receives a commission to make contracts with third parties on behalf of a principal.
- **Business Agent** — Has general power involving the exercise of judgment and discretion, such as a manager or officer.
- **Factor** — Receives and sells goods or property for a commission.
- **Forwarding Agent** — Receives and ships goods for a principal.

Types of Authority

Authority is the right or permission to act legally on another's behalf. In general, authority can be either actual or apparent. Authority is critical in **agency** as it is the key element that gives an agent the authority to act on behalf of a principal. Agency cannot occur unless authority is given. Authority matters to principals because the moment an agent has the authority to act, the principal becomes liable for the actions of the agent. Therefore, principals should always take care to ensure that the authority is granted clearly.

Actual authority, sometimes called real authority, is established when a principal intentionally confers authority on an agent. Actual authority can be either express or implied.

- **Express authority** is authority given by an express agreement, either verbally or in writing. For example, a principal clearly states to an agent, "I am granting you the authority to sell my house."
- **Implied authority** is authority granted to the agent as a result of the principal's conduct. Imagine a principal invites a real estate agent to their property and describes the features of the house, when they want it to go on the market, at what price, and other conditions that a principal would typically share with an agent, but without clearly stating, "you will be the agent to sell my house." In this situation, the principal is acting as if the agent is in fact an agent but has not expressly stated that fact. However, the agent could interpret that they are in fact the agent to sell the house based on the principal's actions, which imply the agent has been given the authority to sell the house.

Apparent authority is authority that a third party reasonably believes an agent has based on the third party's dealings with the principal. If a principal's words or actions lead others to believe that authority was given to someone else, then the principal is held accountable for the perceived transfer of authority. For example, if a principal fails to give notice that an agent is no longer working for the principal, the agent may still bind the principal through apparent authority when dealing with third parties. This is important because the agent's actions could bind the principal to accept a deal when the principal did not necessarily want that deal. It can

also open the principal up to third-party liability if a third party was damaged during or by the outcome of the transaction.

Ratification and Authority

Ratification occurs when a disclosed principal adopts or confirms a contract entered into on his or her behalf by an agent. Ratification can be automatic if the agent has been granted signing authority.

The authority to act is critical to a principal and an agent. The agent wants authority so that they can broker a deal in good faith with a third party. A principal wants to grant authority only to those agents who will achieve their desired results and not increase their liability risk.

Retroactive Ratification and Authority

If an agent does not have the authority to act on behalf of the principal but presents an opportunity for the principal to benefit from the third-party transaction, then the principal has the right to retroactively grant the authority to the agent in order to take advantage of the opportunity.

Imagine you have a friend who wants to sell their car. You have another friend, who does not know the seller of the car but knows he wants to buy the exact type of the car the first friend is selling. You could approach the potential buyer and say, 'I might know someone who has the car you want; what price are you willing to pay?' Once known, you could then go to the seller and say, 'I have a deal for your car at this price, do you want it? If yes, then I want to be the agent to broker the sale.' The seller (or principal) could then agree to effectively make you the agent, retroactively, to a time before you asked the buyer so that you can effectively broker the deal acting as an agent with authority.

Duties of Agents

Agents are fiduciaries of principals and so they are required to act with the highest duty of care. Fundamentally, agency is a fiduciary relationship created by express contract or implied actions in which the agent has the authority to act on behalf of the principal and legally bind the principal to third parties.

A **fiduciary relationship** is a relationship in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship. Fiduciary relationships require trust, good faith, and acting in the best interest of the other. In fiduciary relationships, the law requires the fiduciary to act with the highest duty of care. This means that the fiduciary must put the interests of the other party before their own. Examples of fiduciary relationships include doctor-patient, attorney-client, accountant-client, trustee beneficiary, and guardian-child. An agent is also a fiduciary of a principal.

Beyond a fiduciary duty, an agent is required to provide:

- Duty Description Account: An agent must keep proper records to account for all the principal's money and property given to the agent. An agent must act reasonably, in good faith, and always avoid negligence.
- Disclosure: An agent must inform the principal of all material facts that affect the principal's interests.
- Loyalty: An agent cannot engage in any dealings that compete or interfere with the principal's business or interests.
- Obedience: An agent must obey all the principal's instructions within the scope of agency unless they are illegal or unethical.

- Protect Confidential Information: An agent cannot use or disclose a principal's confidential information.

An agent cannot normally delegate their authority to a "sub-agent."

Duties of Principals

Principals also owe duties to agents as part of the fiduciary relationship. These duties include:

- Compensation: A principal must pay an agent for work performed.
- Honesty: Principals cannot deceive agents about the nature and scope of the work they are to perform.
- Indemnification: A principal must hold an agent harmless and free from legal liability for actions properly taken on the principal's behalf.
- Loyalty: A principal cannot engage in any dealings that prevent an agent from performing agency tasks
- Reimbursement: A principal must reimburse an agent for money reasonably expended on behalf of the principal

An agency relationship affects liability to third parties. The scope of liability depends on the type of principal involved, the type of authority involved, and the nature of the dispute.

Contractual Liability

A principal is always liable on a contract if the agent has authority. However, the agent's liability on a contract depends on how much the third party knows about the principal. Disclosure, when allowed by the principal, is the agent's best protection against legal liability.

An agent is not liable for any contracts made with authority on behalf of a fully disclosed principal. Therefore, if a third party knows the existence and identity of the principal, then all legal liability rests with the principal. The only exception to this is when an agent exceeds his or her authority. In that case, the agent has not acted with authority and becomes personally responsible to the third party. If the agent did not have authority, but the principal later ratified the contract, then the principal would be liable for the contract.

If a principal is partially disclosed, then the third party may recover from either the principal or agent. In this situation, the principal and agent are jointly and severally liable, and the third party may sue either or both to recover the full amount of damages owed. However, the third party cannot seek "double damages" and recover more than the total amount owed for the contractual breach.

In the event of an undisclosed principal, a third party may recover from either the agent or the principal. The fact that a principal's existence or identity is hidden from third parties does not change the nature of the agent-principal relationship. Therefore, an undisclosed principal may become liable for contracts entered into by an agent acting with actual authority. An undisclosed principal has no liability to an agent or third party when the agent exceeds the actual authority granted by the principal. In addition, the type of contract must be the type that can be assigned to the undisclosed principal. If the contract is for personal services, then liability cannot be assigned to the principal in case of a breach.

Termination of Agency Relationship

Agents and principals may end their agency relationship in various ways, but the most common way is through

mutual agreement. Additionally, there are some events that will terminate an agency relationship as a matter of law. The death of a principal or agent automatically terminates the agency agreement, even if the other party is unaware of the death. Once the time of death is established, any transactions afterward are deemed void.

The mental incapacity of a principal or agent also terminates an agency relationship. It is often hard to determine the precise time someone loses mental capacity. Therefore, courts often hold that an agent's contract with a third party is binding on the principal unless the third party is aware of the principal's incapacity.

Bankruptcy terminates an agency relationship when the bankruptcy affects the subject matter of the agency agreement. For example, if a principal declares bankruptcy and the real property that an agent is authorized to sell is part of the bankruptcy estate, then the bankruptcy will automatically terminate the agency relationship.

Finally, the destruction or illegality of the subject matter will terminate the agency relationship. For example, if Parliament passes a law making it illegal for private parties to sell specific types of polluting vehicles, then the agency relationship between a principal / car manufacturer and the agent / dealer selling those types of cars will automatically end.

Legal Principles of Competitive Bidding and Procurement

Two Contracts in Tendering

The concept of legal contractual obligations and the law of tendering begins with the court's decision in the Ron Engineering & Construction case (1981). The decision of the Supreme Court of Canada in R. v. Ron Engineering is considered a landmark development in the law of tendering.

In the Ron Engineering & Construction case, there was a tendering package that called for bids within a specific period of time. Any contractor submitting a bid was required to pay a deposit. After the time for submitting bids had closed, bids could no longer be withdrawn or amended. If a bid was selected, the offeror was to be called upon to enter into Contract B in accordance with the submitted bid. Failure to do so would result in forfeiture of the deposit. If a bid was not selected, the deposit would be returned.

Ron Engineering made a mistake in their bid and attempted to withdraw it, but the Supreme Court of Canada ruled that the bid could not be withdrawn and the bid deposit was forfeited. The case established that two separate contracts were formed during the tendering process:

- Contract A (which is a unilateral contract created upon a contractor submitting a bid to do certain work in response to a formal tender package), and
- Contract B (which is the contract formed between the parties when a bid is accepted).

Both these contracts bind the bidder and the owner (agency). In the invitation to tender, the expectation is that the contract will be awarded upon completion of the tender using the evaluation criteria set out in the tender documentation. The tendering process is governed in Canada by Contract "A" and Contract "B".

Binding and Non-Binding Processes

Case law has clearly drawn a distinction between the competitive procurement processes that are binding (where Contract "A" is created) and those that are not intended to be binding (where no Contract "A" is created). Courts have emphasized that the procuring agency must be clear in its competitive procurement documents regarding its intention to create Contract "A."

Contract “A” is the contract that comes into existence between a bidder and an agency upon the submission of a compliant bid in a tender call. Contract “B” is the goods and service contract itself, which comes into existence upon the acceptance by an agency of the submitted bid made by the contractor.

Contract “A” governs how the tendering process will occur, including but not limited to how a bidder can expect their tender response to be evaluated. If the owner fails to comply with the terms and conditions set out in the original invitation to tender (i.e., the owner deviates from the originally described evaluation criteria), the bidder can argue that Contract “A” was breached.

Fairness in Tendering

Bids must be compliant to take effect. In M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd., the court established that Contract “A” only comes into effect the moment a compliant tender is submitted.

The court went on further to observe that the ruling in the Ron Engineering case does not imply that Contract “A” will always be formed. Whether the tendering process creates a preliminary contract depends upon the terms and conditions of the tender call. Also, there can be no breach of duty of fairness in procurement law when no Contract “A” is formed.

What is important is that the submission of a tender in response to an invitation to tender may give rise to contractual obligations, quite apart from the obligations associated with the contract to be entered into upon the acceptance of a tender, depending upon whether the parties intend to initiate contractual relations by the submission of a bid. If such a contract arises, its terms are governed by the terms and conditions of the tender call.

The duty of fairness in procurement contract law is that all bidders must be treated fairly and equally unless otherwise expressly agreed upon in tender terms. In Martel Building v. Canada, the courts held that implying an obligation to treat all bidders fairly and equally is consistent with the goal of protecting and promoting the integrity of the bidding process and benefits all participants involved. Without this implied term, tenderers could incur significant expenses in preparing futile bids or ultimately avoid participating in the tender process.

Exclusion Clauses and Liability

No matter how clear or broadly interpreted, exclusion clauses cannot exclude an agency from liability in the event of modifications to the tendering process. In the Tercon Contractors Ltd. v. British Columbia (Transportation and Highways) case, Tercon filed a suit for breach of contract and damages against the Ministry of Transportation. Tercon was one of the bidders, along with Brentwood Enterprises Ltd. Brentwood recognized that it lacked the depth of expertise to complete the project on its own and entered into a joint venture with another contractor named Emil Anderson Construction (EAC). This arrangement would have been compliant had Emil Anderson been a sub-contractor and not a joint-bidder. However, since the arrangement (EAC and Brentwood) was a joint venture, it did not comply with the terms and conditions of the RFP. The British Columbia Supreme Court found that the Ministry of Transportation and Highways had breached its contractual duty of fairness and equity by awarding the contract to a non-compliant bidder. In quantifying the damages, the court established that when a bidder under a tendering agreement sues for breach of Contract “A,” the appropriate measure of damages is the “expectation principle” (i.e., what would the bidder’s financial position have been had they performed the contract). Whether a Contract” A” has arisen and what terms, if any, should be implied are case-specific determinations.

Public procurement law in Canada has evolved, but only by a combination of good documents and good practices can the agency truly reduce and manage the legal risk created by the laws of **competitive bidding**.

Tercon Contractors Ltd. v British Columbia

Issue: The province of British Columbia (BC) issued a request for proposals (RFP) for the construction of a highway. The terms of the RFP contained an exclusion of liability clause under which lodging a claim for compensation of any kind was prohibited. Moreover, only suppliers who had submitted an expression of interest in response to an earlier request could bid for the opportunity.

Background: The province included the exclusion clause in the initial RFP. Tercon Contractors Ltd. was an unsuccessful bidder. The contract was awarded to a company called Brentwood. In violation of the terms of the RFP, the selected supplier, Brentwood, formed a joint venture with an unqualified bidder. Tercon sued the province for breaching the terms of the RFP by selecting an ineligible bidder. The province argued that under the terms of the RFP, Tercon did not have the right to sue the province.

Outcome: Judgement was held in favour of Tercon. The court found that the province's decision to award the contract to an unqualified bidder was a breach of contract. Moreover, the court did not consider it reasonable to enforce the exclusion of liability clause under the circumstances. The court awarded $3.3 million to Tercon in damages for breach of contract.

Discussion Questions

1. Did the province breach the terms of the contract by accepting a bid from an ineligible bidder?
2. Although the misconduct was acknowledged, is interpretation enough for enforcement?
3. Should the court have refused enforcement based on public policy?

Sources: Adapted from CanLII Connects. (2017). *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), 2010 SCC 4 (CanLII), [2010] 1 SCR 69*. Retrieved from Tercon Contractors v BC: Case Summary & Notes | CanLII Connects. *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), 2010 SCC 4 (CanLII), [2010] 1 SCR 69*. Retrieved from 2010 SCC 4 (CanLII) | Tercon Contractors Ltd. v. British Columbia (Transportation and Highways) | CanLII; Ogilvie, M. H. (2011). *Exemption Clauses and Fundamental Breach in Contract: Tercon Contractors Ltd. v. British Columbia*. Canadian Bar Review, 89(1), 211. Retrieved from Exemption Clauses and Fundamental Breach in Contract: Tercon Contractors Ltd. v. British Columbia | CanLII

Checkpoint 2.4

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2.5: Business Legislation in Canada

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Overview

Business legislation and regulation in Canada serve several purposes, including promoting economic development and competitive advantage while also protecting the public interest. Finding the balance between appropriate regulation to encourage business growth and over-regulation, which may constrain businesses, is a difficult and constantly evolving challenge. As a result, at every level, most governments create regulations to support businesses, encourage investment, and grow the economy.

An important factor for business success is understanding the rules and regulations governing the business context. Across Canada, in every jurisdiction, there are regulations that businesses abide by in order to operate. The level and extent of regulation can vary depending on the type and form of business. A sole proprietor offering job placement services in rural Ontario will have different regulations than an offshore oil drilling corporation in Newfoundland.

As noted, there are many regulations governing how businesses are allowed to operate in Canada; in fact, there are too many to mention here, but some fundamental regulations, called **Acts**, include:

- The Constitution Act

- Sale of Goods Act
- Consumer Protection Act
- The Federal Competition Act
- Environmental Protection Act
- Personal Property Securities Act (Ontario)

The Constitution Act and the Duty to Consult Indigenous Peoples

The Constitution Act of 1982 recognizes and affirms the existing Aboriginal and treaty rights of Indigenous people (Section 35). To protect these rights, the doctrine of the **duty to consult** and, where appropriate, accommodate Indigenous groups was developed by Canadian courts. Furthermore, the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in 2010, provides that member states must consult and cooperate with Indigenous peoples on certain matters, such as "legislative or administrative measures that may affect them," to obtain their free, prior and informed consent. The duty to consult is a key foundation to the rules and regulations that govern how businesses and industry interact with each other and with First Nations as having inherent and treaty rights. The Government of Canada is developing and updating programs and policies to improve access to business and investment opportunities generated via international trade for Indigenous Peoples.

Sale of Goods Act

The ***Sale of Goods Act*** was developed to regulate the sale of goods where no contract explicitly exists. The intent is to provide a basic set of regulations to follow when selling goods in Canada. The regulations provide general rules to govern transactions. Businesses and individuals are allowed to enter into contracts according to the Sale of Goods Act regulations. Most individuals and businesses prefer to develop specific terms and conditions to govern their transactions (for example, payment terms, delivery dates, dispute resolution and other unique conditions).

It is important to note that some regulations do not allow businesses or individuals to enter into a contract outside the regulations—for example, the *Environmental Protection Act* or the *Landlord Tenant Act*.

The *Sale of Goods Act* only applies to goods sold or transferred between two parties. The act allows sellers to recoup goods in transit if the purchaser fails to pay to offset the potential loss. During bankruptcy proceedings of a purchaser, sellers often have difficulty reclaiming their goods. Typically, these items are part of the liquidation event, and the seller receives their respective portion of the proceeds from the sale.

Under the *Sale of Goods Act*, sellers have obligations which they must follow. The regulations are designed to help protect the buyer from unfair actions by the seller. The following is a list of factors that every business person should be aware of:

- The seller can only sell goods they own and have the right to sell. This is known as having a **"good title."** Sellers cannot transfer any goods for which they do not have a good title.
- Goods cannot be sold with **encumbrances** (a claim against a good by someone other than the person representing or claiming ownership). For example, a seller could not sell a car to the purchaser if the car had a lien placed on the vehicle from a bank. The seller must clear the lien before transferring the title to the purchaser.
- A seller must sell all goods at a standard of quality which allows them to be sold to others. For example, a seller cannot sell inventory to a retailer which, upon delivery, is found to be in such poor condition that it

cannot be sold to customers.
- Sellers must present samples of the goods that are a fair representation of delivered merchandise. A seller could not, for example, show a chair that fits an adult and then deliver a chair that only fits a child.

An important condition of the *Sale of Goods Act* is the **transfer of title** from the seller to the buyer. This is very important relative to the risk of ownership. For example, if a buyer in Ontario purchased goods from a seller in British Columbia and, during transit, the goods were damaged beyond repair, who is responsible for the cost of the loss? The question of who owns the goods at what point in the journey is critical; whoever owns the goods bears the burden of the loss.

Risk follows title or ownership, so unless otherwise agreed, the goods remain at the seller's risk until the property is transferred to the buyer. When the property is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. There are five rules in the Act which explain who has title.

- **Rule 1:** The title of the goods passes to the buyer when the contract is made regardless of whether the payment or delivery has been made.
- **Rule 2:** The title of the goods passes to the buyer after the seller makes modifications to the goods as agreed upon in the contract.
- **Rule 3:** The title of the goods passes to the buyer after the buyer verifies, weighs, measures or tests something with regards to the goods as agreed upon in the contract.
- **Rule 4:** Where goods are delivered to the buyer on approval or on "sale or return" basis, title passes to the buyer once they indicate their approval to the seller. (Usually the buyer has a fixed timeframe in which to return goods.)
- **Rule 5:** Where there is agreement for the seller and the buyer about the purchase of goods that are to be produced and delivered at a future date, even if such goods are unidentified at the time of the agreement being made, title to such goods passes to the buyer either when the goods are set aside for the buyer or when the goods are delivered either to the buyer or to a carrier like a shipping company for purposes of delivery to the buyer.

Essential Reading

Review the following key points from the Sale of Goods Act, R.S.O. 1990, c. S.1 (ontario.ca) that represent key elements that any business might benefit from knowing:

- Deliverable state
- Sale and agreement to sell
- What constitutes a sale or agreement to sell
- Where price not determined
- Sale by description
- Sale by sample
- Duties of seller and buyer
- Payment and delivery concurrent
- Where no time for delivery fixed

- Delivery of wrong quantity or quality
- Goods not in accordance with contract
- Rights of buyer as to examination
- Effect of refusal to accept
- Wrongful neglect or refusal to take delivery
- Withholding delivery
- Right of stoppage in transit

The Competition Act

The *Competition Act* provides for the general regulation of trade and commerce concerning conspiracies, trade practices and mergers affecting competition. The Competition Act plays an important role in the public procurement process, as governments should favour a competitive bidding process to protect public value. Regulations are included to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and provide consumers with competitive prices and product choices.

The *Competition Act* prevents people or organizations from working with a competitor of that person or organization with the goal to conspire, agree or arrange activities that prevent competition. Specifically:

- price fixing
- dividing up territories
- controlling production

Essential Reading

Review the following key points from the (Competition Act (justice.gc.ca)

- Bid-rigging
- False or misleading representations
- Telemarketing
- Deceptive telemarketing
- Deceptive notice of winning a prize
- Scheme of pyramid selling
- Whistleblowing
- Prohibition
- Bait and switch selling
- Sale above advertised price

- Restrictive trade practices
- Exclusive dealing
- Market restriction
- Abuse of dominant position
- Mergers

Real Cases in Public Procurement: Learning from Experience

Earthco Soil Mixtures Inc. v Pine Valley Enterprises Inc.

Issue: Pine Valley declined Earthco's recommended multi-stage testing process and purchased the soil without testing. The soil was delivered and used, but it was deemed insufficient for Pine Valley's project, which had a higher clay composition. Pine Valley was forced to remediate the work and was given damages by the city for the consequent delays. Pine Valley sued Earthco for supplying defective soil. The case went to a lower court that overruled Pine Valley's appeal. The court ruled that the exclusion clause that indemnified Earthco from being responsible for the quality of the material came into effect since Pine Valley waived its right to test the material before purchase. Pine Valley appealed the lower court's decision.

Background: Pine Valley Enterprises Inc. contracted with the city of Toronto to provide topsoil with a specific composition. Earthco was contracted to provide the soil for the rush job. Due to the customer delivery deadline, Pine Valley chose to expedite the order without further testing. Earthco provided lab reports from a different sample taken six weeks prior and warned against purchasing without updated lab tests.

Outcome: The Supreme Court of Canada's decision granted the seller's appeal and restored the trial judge's decision. Pine Valley (buyer) had agreed to accept the risk of any defects in the composition of the topsoil. Applying the Sale of Goods Act, the SCC determined that the exclusion clauses in the contract of sale effectively exempted Earthco from the liability to Pine Valley.

Discussion Questions

1. How express must an agreement be to oust an implied, statutory condition?
2. What are the legal requirements for an exclusion clause?
3. Do protections from the Sale of Goods Act overpower the contract framework?

Sources: Based on Goodmans LLP. (2024, June 13). *No "Magic Words" Required: Supreme Court of*

Canada Holds Exclusion Clauses Released Seller From Implied Statutory Conditions. Supreme Court of Canada. (2024, May 31). Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc. – SCC Cases. Nixon LLP. (2024) *The Dirt on the Sale of Goods: Pine Valley Enterprises Inc. v Earthco Soil Mixtures Inc.*

Checkpoint 2.5

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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Attribution

Chapter Review

Key Takeaways

- An understanding of business law in Canada is important for procurement processes to operate in compliance with the law, reduce the risk of legal liability, and ensure that the procurement operations are in line with legal requirements.
- Understanding the law also helps businesses recognize areas where they may need to seek legal advice or take other measures to protect themselves.
- Legal framework applies to public procurement in regulating procedures, the underlying purpose of a procurement process that is open, fair and transparent is to support the principle of value for money.
- Government procurement is subject to binding commitments to trade agreements and provides equal opportunity to compete in procurement opportunities or bidding.
- The provinces have their own legislation to regulate public purchasing.
- The Sale of Goods Act and the Competition Act are acts that regulate procurement at the federal level.

Explore and Engage

Discussion Questions

1. Why is important to understand government legislation in public procurement?
2. What is the main difference between common law and civil law?
3. Identify some differences between public and private law.
4. Is doing what is ethical always legal? Is doing what is legal always ethical? Explain your response to these questions.
5. Why is the Sale of Goods Act important in Public Sector Procurement?

Active Learning

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https://ecampusontario.pressbooks.pub/publicprocurement/?p=266#h5p-2

Recommended Readings and Additional Resources

Recommended Readings

- “Chapter 2: Organizational Framework of Public Procurement” by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.
- “Chapter 3: Framework of the Public Procurement System” by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.

Additional Resources

- Rule of Law: http://www.constitutional-law.net/index.php?option=com_content&view=article&id=23&Itemid=37
- The Constitution Acts, 1867 – 1982: https://laws-lois.justice.gc.ca/eng/Const/index.html
- The Canadian Charter of Rights and Freedoms: https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/
- Constitution Act, 1982. Part 1: Canadian Charter of Rights and Freedom: https://laws-lois.justice.gc.ca/eng/const/page-12.html
- The Indigenous Bar Association: https://www.indigenousbar.ca/
- https://www.firstpeopleslaw.com/public-education/blog/indigenous-law-canadian-courts
- Restorative Justice: https://www.justice.gc.ca/eng/rp-pr/jr/rjilt-jrtja/p2.html
- Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples: https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html
- Supreme Court of Canada: https://www.scc-csc.ca/home-accueil/index-eng.aspx
- A deeper analysis of the duty to consult as it relates to business, industry, and economic development: The Duty to Consult Indigenous Peoples

CHAPTER 3: LEGISLATION AND TRADE AGREEMENTS

Introduction

The legal framework in Canada includes trade agreements, statutes, regulations, case law and policies. This chapter will examine the legislation that applies to public procurement. At the federal and provincial levels, government rules are generally applied to procurements in a fair and transparent manner. Common law procurement rules, such as conducting a fair, competitive bid process, apply to all public bodies in Canada.

This chapter outlines some laws that apply to the public procurement office's daily activities. It is important to understand that many legislations, regulations and agreements are applied in tandem to create a complex decision-making process. It is the responsibility of the procurement team to understand the full extent of procurement law and continually maintain direction.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Develop an appreciation of the key elements of public sector procurement governance, including guidelines, procedures, and performance management.
2. Build an understanding of the common types of economic integration using trade agreements.
3. Summarize Canada's various international and regional trade agreements, understanding the impact on solicitations.
4. Interpret the trade agreement guidelines that the public sector entities must follow when procuring goods, services or construction services.

Public Procurement Playbook

Watch this video to learn more about Canada's trade agreements.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=295#oembed-1

Source: Jason Richea. (2013, October 16). Canada's Current Trade Agreements. [Video]. YouTube. https://www.youtube.com/watch?v=PKyOruyZVEU&t=7s

3.1: Public Procurement Governance

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All procurement activities must be conducted in a fair, legal and transparent manner, and the procurement governance framework ensures this happens. Public sector institutions are increasingly under the microscope of the public eye, with many decisions questioned by citizens. A governance framework provides a basis for public sector supply chain officers as they execute procurement decisions and ensure regulations are adhered to. The procurement governance framework consists of minimum requirements for each procurement activity, from planning, sourcing and contract management.

Public procurement rules originate from legal sources, trade agreements and common law. The following sources and principles must be taken into consideration in the development of a governance framework for public procurement:

- Trade Agreements
- Legal Framework
- Tender Documents
- Codes of Conduct
- Considerations that apply to government procurement

Practical Procurement: Scenarios and Solutions

Roozbeh Shah, the newly appointed procurement officer at GrenFirst Municipal Services, faced a significant challenge. Tasked with overseeing the procurement of essential supplies and services for the city of Grenville's public works, Roozbeh quickly realized that the existing procurement processes were outdated and lacked transparency. This was a critical issue because the city had recently come under scrutiny from local media and citizens' groups, questioning the fairness and legality of its procurement activities. Roozbeh knew that the city's reputation and operational efficiency were at risk without a robust procurement governance framework.

GrenFirst Municipal Services, a mid-sized organization, provided a range of services, including waste management, water supply, and public transportation to a population of approximately 150,000 residents. With a workforce of 500 employees, the organization relied heavily on external suppliers for goods and services. GrenFirst's budget was primarily funded through local investors and government grants, making it imperative to ensure that every procurement decision was both cost-effective and compliant with legal standards. The organization had a history of ad-hoc procurement practices, often leading to delays, cost overruns, and allegations of favouritism.

Roozbeh identified three potential options to address the procurement governance issues. The first option was to develop and implement a comprehensive procurement governance framework. This framework would include clear guidelines, procedures, and performance management metrics to ensure all procurement activities were conducted in a fair, legal, and transparent manner. It would also involve training staff on the new procedures and establishing a monitoring system to track compliance and performance.

The second option was to outsource the procurement function to a third-party specialist firm. This firm would manage all procurement activities, ensure compliance with legal and trade agreement requirements, and provide regular reports on procurement performance. While this option could bring in expertise and potentially streamline processes, it also raised concerns about losing control over critical procurement decisions and the potential for increased costs.

The third option was to enhance the existing procurement processes incrementally. This would involve updating the current procedures to align with best practices, improving documentation and record-keeping, and introducing periodic audits to ensure compliance. This approach would be less disruptive and could be implemented more quickly, but it might not comprehensively address all the underlying issues.

Roozbeh needed to decide which option would best address the company's procurement challenges while ensuring compliance with legal and ethical standards. The decision was urgent, as continued scrutiny and potential legal challenges could jeopardize GrenFirst's operations and the trust of the board and government.

Discussion Questions:

1. What are the key elements of a procurement governance framework, and how can they help ensure fair, legal, and transparent procurement activities?
2. Compare and contrast the three options available to Roozbeh. What are the potential benefits and drawbacks of each?
3. How can performance management metrics be integrated into the procurement governance framework to improve accountability and efficiency?

Source: Scenario and questions created with the assistance of Microsoft Copilot.

Essential Reading

Read "Section 2.4, Three Basic Public Governance Models" from Chapter 2: Public Values in Procurement by Lizet Kuitert in *Public Procurement: Theory, Practices and Tools* (2023) edited by J. Grandia and L. Volker, Palgrave Macmillan, licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

This reading outlines the three basic governance models that influence the daily operation of the public procurement office. Public sector procurement is responsible and accountable for creating value for the stakeholders or society. Understanding value tensions, dilemmas, and conflicts and how they add to the complexity of public procurement can make safeguarding public values a balancing act.

Checkpoint 3.1

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3.2: Trade Facilitation and Promotion

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The American statesman Benjamin Franklin (1706–1790) once wrote: “No nation was ever ruined by trade.” Provincial and federal governments work to build stronger ties with trading partners and remove barriers to international trade and foreign investment. Procurement obligations in international trade agreements ensure that suppliers are treated in an open, fair and transparent manner. Trade has accompanied economic growth in Canada and around the world. Many national economies that have shown the most rapid growth in the last several decades — for example, Japan, South Korea, China, and India — have done so by dramatically orienting their economies toward international trade. No modern example exists of a country that has shut itself off from world trade and yet prospered.

Public Procurement Playbook

Countries participate in trade activities and facilitate exchange through trade agreements and programs. Let's watch this video to understand how countries benefit from trade.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=300#oembed-1

Source: Brad Cartwright (2016, February 2). *Why Do Countries Trade?* [Video]. YouTube. https://youtu.be/wPR_KoSSofA?si=GAKaQdgO17cNISzn

"Trade facilitation looks at how procedures and controls governing the movement of goods across national borders can be improved to reduce associated cost burdens and maximize efficiency while safeguarding legitimate regulatory objectives." (Wikipedia, 2021).

As per the OECD's Trade Facilitation and the Global Economy Report of 2018:

> Trade facilitation benefits exporters and importers alike by allowing better access to inputs for production and enhancing participation in Global Value Chains. On the supply side, trade facilitation helps reduce business losses resulting from delays of goods at the border. Delays in delivery increase firms' costs for managing inventory and undermine their ability to respond rapidly to changes in consumer preferences. On the demand side, faster and more predictable delivery of intermediate goods through the supply chain can reduce firms' costs (p. 16, para 5).

Economic Integration

For various reasons, it often makes sense for nations to coordinate their economic policies. Coordination can generate benefits that are not possible otherwise. Suppose countries cooperate and set zero tariffs for each other. In that case, both countries are likely to benefit relative to the case when both countries attempt to secure short-term advantages by setting optimal tariffs. Liberalization in economic policy encourages **capital movements** across borders, greater market flexibility and fewer restrictions on domestic and foreign capital.

Any arrangement in which countries agree to coordinate their trade, fiscal, or monetary policies is referred to as **economic integration**. There are different degrees of integration:

- Preferential Trade Agreement (PTA)
- Free Trade Area (FTA)
- Customs Union
- Common Market
- Economic Union
- Monetary Union

Let's discuss these in detail.

Preferential Trade Agreement

A preferential trade agreement (PTA) is perhaps the weakest form of economic integration (Saylor Academy, 2012). In a PTA, countries would offer tariff reductions and not eliminations to a set of partner countries in some product categories. Higher tariffs would remain in all other product categories. This type of trade agreement is not allowed among World Trade Organization (WTO) members, who must grant most-favoured nation (MFN) status to all other WTO members. Under the MFN rule, countries agree not to discriminate against other WTO member countries. Thus, if a country's low tariff on bicycle imports, for example, is 5 percent, then it must charge 5 percent on imports from all other WTO members. Discrimination or preferential treatment in some countries is not allowed. However, the country is free to charge a higher tariff on imports from non-WTO members. In 1998, the United States proposed legislation to eliminate import tariffs from sub-Saharan African nations. This action represents a unilateral preferential trade agreement since tariffs would be reduced in one direction but not the other.

Free Trade Area

A free trade area (FTA) occurs when a group of countries agrees to eliminate tariffs among themselves but maintain their external tariff on imports from the rest of the world. The North American Free Trade Agreement (NAFTA), now the Canada-United States-Mexico Agreement (CUSMA), is an example of an FTA. Under CUSMA, there are zero tariffs on automobile imports between Canada and Mexico, provided the vehicle meets the agreement's rule of origin, which means that cars must have at least 75% North American content. However, Mexico may continue to set a tariff different from Canada's on automobile imports from non-NAFTA countries. Because of the different external tariffs, FTAs generally develop elaborate "**rules of origin**." These rules are designed to prevent goods from being imported into the FTA member country with the lowest tariff and then transshipped to the country with higher tariffs.

Customs Union

A customs union occurs when a group of countries agrees to eliminate tariffs among themselves and set a common external tariff on imports from the rest of the world. The European Union (EU) represents such an arrangement. A customs union avoids the problem of developing complicated rules of origin but introduces the problem of policy coordination. With a customs union, all member countries must agree on tariff rates across many different import industries.

Common Market

A common market establishes free trade in goods and services, sets common external tariffs among members, and allows for the free mobility of capital and labour across countries. The Treaty of Rome established the EU as a common market in 1957, although it took a long time for the transition to take place. Today, EU citizens have a common passport, can work in any EU member country, and can invest throughout the union without restriction.

Economic Union

An economic union typically maintains free trade in goods and services, sets common external tariffs among members, allows the free mobility of capital and labour, and relegates some fiscal spending responsibilities to a supranational agency. The EU's Common Agriculture Policy (CAP) is an example of fiscal coordination indicative of an economic union.

Monetary Union

A monetary union establishes a common currency among a group of countries. This involves the formation of a central monetary authority that will determine monetary policy for the entire group. The Maastricht treaty, signed by EU members in 1992, proposed the implementation of a single European currency (the Euro) by 1999.

Perhaps the United States is the best example of an economic and monetary union. Each U.S. state has a government that sets policies and laws for its residents. However, each state cedes control, to some extent, over foreign policy, agricultural policy, welfare policy, and monetary policy to the federal government. Goods, services, labour, and capital can all move freely, without restrictions among the U.S. states, and the nation sets a common external trade policy.

Checkpoint 3.2

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3.3: Canada's Trade Agreements

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Government procurement is an important element of economic activity in many countries. Trade agreements represent Canada's cooperation in multinational trade pacts and play a large role in the development of the Canadian economy. Canada's trade GDP of roughly 68% is achieved mainly by trading with countries that are part of free-trade agreements with Canada — primarily the United States through the Canada–United States–Mexico Agreement (CUSMA) and its predecessor, the North American Free Trade Agreement (NAFTA). Binding international agreements relating to government procurement helps promote growth and development.

International Trade Agreements with Canada

International trade agreements can help governments procure the best internationally available goods at the optimal price. The benefits of increased trade liberalization through established trade agreements spread into the private sector, encouraging economic growth, transparency and procedural fairness.

Canada currently has 15 Free Trade Agreements with 51 different countries. Some of Canada's free trade

agreements, foreign investment promotion and protection agreements, **plurilateral agreements** and World Trade Organization agreements are discussed here.

Canada-Chile Free Trade Agreement (CCFTA)

The agreement between Canada and Chile was signed to remove the tariffs on bilateral trade. Its first objective was to foster a more open and inclusive business environment. Canada-Chile Free Trade Agreement (CCFTA) provides an accelerated avenue toward the so-called "CCFTA Work Permit." The agreement allows citizens of Chile to work in Canada without a Labour Market Impact Assessment (LMIA).

Canada-Colombia Free Trade Agreement (CCoFTA)

This Agreement aims to promote the expansion of reciprocal trade and economic development between the two countries. Protecting workers' rights, enhancing environmental regulations and providing fair conditions of competition with trade are key objectives. The Agreement also protects international investors through reciprocal commitments and assures access to international arbitration.

Canada-Honduras Free Trade Agreement (CHFTA)

The Agreement was signed in 2014, recognizing the importance of promoting efficient trade facilitation. The objectives are to promote conditions of fair competition, enhanced cross-border trade services, investment and government procurement. Eliminating these tariffs will create more opportunities for importing and exporting, along with building bonds with both countries.

Canada-Korea Free Trade Agreement (CKFTA)

The CKFTA will secure Canada's position in the Korean market and build a mutually supportive trade relationship. The Agreement provides Canadian suppliers of products and services preferential access to procurement opportunities with South Korean central government entities. The Agreement will provide new opportunities in various sectors, from aerospace, agriculture, wine, seafood and forestry to wood products.

Canada-Panama Free Trade Agreement (CPFTA)

Panama is Canada's third-largest trading partner in Central America. Canadian goods exported to Panama include energy products, consumer goods and industrial equipment. Imports from Panama mainly consist of minerals, farm fishing, and consumer goods. The tariffs on Canadian goods exported to Panama have been eliminated, and access for Canadian service providers has improved.

Canada-Peru Free Trade Agreement (CPFTA)

The Canada-Peru Free Trade Agreement (CPFTA), signed in 2009, allowed both countries to develop international mobility program (IMP) conditions that were advantageous to Canada. It allows companies to attract workers with a level of development that promotes quality education and, therefore, a qualified and equipped workforce.

Canada-Ukraine Free Trade Agreement (CUFTA)

CUFTA has been in force since 2017. It was modernized in 2023 by including new chapters on cross-border trade, temporary entry for business people, digital trade, financial services and regulatory practices. The agreement aims to provide increased opportunities for investors and service providers. Its chapter on government procurement was also modernized with new articles, including an article on the exchange of best practices in areas like sustainable procurement practices and streamlined procurement processes.

Canada-United States-Mexico Agreement (CUSMA)

This agreement came into force on July 1, 2020. It preserves the key elements of the North American Free Trade Agreement (NAFTA). NAFTA, created in 1994, established the largest free-trade region in the world. The new Canada-United States-Mexico Agreement reinforces Canada's strong economic ties with the United States and Mexico.

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a free trade agreement between Canada and ten other countries in the Asia-Pacific: Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

Canada-United Kingdom Trade Continuity Agreement

The Canada-United Kingdom Trade Continuity Agreement (Canada-UK TCA) came into force on April 1, 2021, and provides continuity, predictability, and stability for trade between Canada and the United Kingdom (UK). This agreement preserves the main benefits of CETA.

Canada-European Union Comprehensive Economic and Trade Agreement (CETA)

The Canada-European Union Comprehensive Economic and Trade Agreement (CETA) is a bilateral agreement

between Canada and the EU. The agreement covers virtually all sectors and aspects of Canada-EU trade and aims to eliminate or reduce barriers.

World Trade Organization Agreements

The World Trade Organization (WTO) is an international forum that establishes international trade rules and allows members to address trade issues. WTO members negotiate and accept WTO agreements to help producers of goods and services, exporters, and importers operate effectively in the international trading system.

Regional Trade Agreements (RTAs)

Regional Trade Agreements (RTA) are binding between members, not in the global environment. These trade agreements provide ways in which government purchasing can benefit from each regional purchasing system. RTAs also include the potential for consolidating the spending between regional systems. RTAs can strengthen important procedural rights and transparency in procurement practices. The support of RTAs in the public sector has resulted in improved bidding procedures and negotiation strategies. Regional Trade Agreements align national and local firms and strengthen production and supply chain networks.

RTAs within Canada

The Canadian Free Trade Agreement (CFTA)

The Canadian Free Trade Agreement is an intergovernmental trade agreement representing the federal government and all provinces and territories. The agreement provides better access to government procurement opportunities and aligns regulatory requirements nationwide. The CFTA preserves the ability of provincial, territorial and federal governments to adopt and apply their laws and regulations for economic activity in the public interest to achieve public policy objectives. This includes protecting public health, social services, safety, consumer protection, promoting and protecting cultural diversity and workers' rights.

The Ontario-Quebec Trade and Cooperation Agreement (OQTCA)

This bilateral trade agreement between Ontario and Quebec aligns with the CFTA. The open competitive bid thresholds under the OQTCA for goods, services and construction are the same as those stipulated by the Broader Public Sector Procurement Directive.

Worldwide RTAs

Other regional trading agreements that are in place throughout the world include:

- *The European Union (EU):* This single market allows citizens to live or work in an EU country, move their

money, sell goods without restrictions and provide services on the same basis. (European Union, n.d.)

- *ASEAN* includes 10 Southeast Asian countries (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) that have made significant progress in lowering intra-regional tariffs. (Association of Southeast Asian Nations, n.d.)
- *MERCOSUR* is a regional integration process composed of Argentina, Brazil, Paraguay, Uruguay, Venezuela, and Bolivia. It has agreements with countries or groups of countries to promote free trade.
- *The Andean Community* is a free trade area. Its goal is to create a trade block composed of a free trade area with a common external tariff. It is comprised of Bolivia, Colombia, Ecuador, and Peru. (Andean Community, 2021.)
- *China Trade Agreements:* China has 16 Free Trade Agreements and is working on eight more Free Trade Agreements. Currently, China has FTA agreements with ASEAN, Singapore, Pakistan, New Zealand, Chile, Peru, Costa Rica, Iceland, Switzerland, Maldives, Mauritius, Georgia, Korea, Australia, Hong Kong, and Macao. (International Trade Administration, 2021.)

Checkpoint 3.3

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3.4: Public Procurement and Trade Agreements

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Free Trade Agreements (FTAs) aim to eliminate tariffs on goods made in one country and sold in the other so companies are on an equal footing. (EDC, 2018). FTAs outline government procurement obligations that set out rules and procedures to ensure that procurements are conducted fairly, transparently, and competitively. These trade agreements bind public entities that typically include ministries, certain agencies, municipalities and some organizations in the broader public sector (including school boards and publicly funded academic, health and social service entities). Public procurement commitments include provisions for providing information about reporting on procurement activities, explaining procurement practices, and measures to resolve bid disputes.

Public entities need to report annually on their procurement activities. The annual report must include the number of contracts awarded under the trade agreement and provide a category breakdown of procurement

(goods, services or construction). In Canada, new rules, standards, and procedures are adopted to ensure transparency of a public entity's procurements, which is enabled through a single point of access (SPA).

Procurement rules are revised periodically, including reviews of policies, systems, templates, and supporting tools. Transparency is improved by updating processes and procedures around evaluation criteria, debriefings and duration of bid postings. All participating suppliers must be contacted upon award decision and provided reasons if a tender is unsuccessful. Awarding information must be available within 72 days of awarding a contract.

Bid dispute processes must be timely, transparent and non-discriminatory. Supplier relations and communication are improved by establishing timely administrative procedures. The process allows a supplier to take steps to participate in the procurement process, where appropriate and challenge a procurement that it feels is not in accordance with the trade agreement.

Obligations

Obligations under trade agreements for public procurement are difficult to understand, which may create challenges regarding their application. The first step is determining if a trade agreement applies to a particular procurement. Such an evaluation must consider dollar thresholds and exemptions.

Solicitation is not to be restricted to local suppliers. Therefore, including a preference for local vendors in a bid document when a remote vendor would work equally well is contradictory to the obligations of the trade agreement.

Proposals must give a fair chance for a new vendor to succeed, even if the vendor is qualified and experienced in another region. Suppliers are not required to have experience working with the organization that has advertised the opportunity.

Detailed posting requirements are to be followed in accordance with the applicable trade agreement. Information about rules to be followed is listed in the agreement. Care must be taken when reviewing these bid documents as some implications are not immediately obvious, such as indicating whether a particular trade agreement applies to an opportunity.

The requirement for transparency in public posting requires the organization to use its electronic tendering tool and website to post the opportunity. Specific articles in the FTA identify the communication details and documentation requirements, including specific information about the solicitation posting period, how submissions will be received, and public posting to inform bidders of the contract award.

Benefits

Trade liberalization can improve public procurement performance, resulting in more transparent, competitive, inclusive and effective public procurement outcomes.

Open borders introduce:

- Enhanced competition for contracts delivering greater value for money.
- Greater competition stimulates product and service innovations and process improvements by bidders, including public suppliers, for government contracts.
- More cost-effective choices available to public buyers.
- More informed price benchmarking for comparable goods and services, deterring collusion among bidders.
- Use of increased transparency facilitating ex-post or after-the-event reviews of procurement outcomes.

- Greater incentives to stick to norms of due process, transparency, and the like to ensure full compliance with trade commitments.
- Erosion of entitlement among well-connected domestic suppliers.
- Greater benchmarking against international best practices in procurement.

Read about the Broader Public Sector directive and answer these questions.

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Real Cases in Public Procurement: Learning from Experience

The Bombardier-Embraer Dispute

Issue: Government subsidies are a problem for international trade and economic development because they distort investment decisions with the use of public resources. Embraer and the government of Brazil argued that Canada offered Bombardier unfair subsidies that allowed it to become more attractive to air carriers considering the purchase of Bombardier's jets. Canada made the same arguments about Brazil's export credit program. Brazil's Embraer and Canada's Bombardier are competitors in the short to medium-haul route aircraft in the world market, particularly in the profitable United States market.

Background: The goal of the General Agreement on Tariffs and Trade (GATT) is for goods and services to be exchanged among countries without tariffs, quotas, favouritism or discrimination. The GATT was replaced by The World Trade Organization (WTO). The WTO Agreement on Subsidies and Countervailing Measures regulates the provisions of subsidies and provides rules for **countervailing measures**. Currently, WTO members, including Canada and Brazil, can subsidize exports but only for products on which they have commitments to reduce the subsidies. Most developing countries argue that their domestic producers are handicapped if they have to compete with imports whose prices are

depressed because of export subsidies. Developed countries continue to spend large amounts on export subsidies. In contrast, developing countries cannot because they lack the funds.

WTO Dispute: a) A claim was submitted on a Brazil export financing programme that awarded loans to Embraer clients. b) Brazil challenged the Canadian government's subsidies for the C-Series aircraft by bringing the Canada—Measures Affecting the Export of Civilian Aircraft case to the WTO. c) Brazil claimed that export credits and loan guarantees were made for the Bombardier aircraft to gain market share.

Outcome: Embraer claimed victory in the long-running trade dispute with Bombardier. The WTO found that subsidies provided by Canada were inconsistent with its agreement on subsidies and countervailing measures and ordered Canada to withdraw all subsidies within 90 days.

Discussion Questions

1. Could a trade dispute have been avoided?
2. Should governments limit the use of subsidies?
3. What risks should be avoided?

Sources: Based on Bombardier Aerospace and Embraer S.A. government subsidy controversy. (Updated September 2023.) In Wikipedia. Retrieved on September 26, 2024. Bombardier Aerospace and Embraer S.A. government subsidy controversy – Wikipedia; Embraer. (Updated September 2024.) In Namuwiki. Retrieved on September 26, 2024. Embraer – NamuWiki; WTO to also probe alleged Bombardier subsidies into CSeries jets. (2017, September 29). CBC; Bombardier suffers another blow as WTO to probe subsidies in Brazil row. (2017, September 29). *The Globe and Mail*.

Checkpoint 3.4

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Chapter Review

Key Takeaways

- Public procurement is responsible for remaining compliant in executing purchasing processes and adhering to purchasing governance frameworks, including policies and procedures, trade agreements, code of ethics and the rule of law.
- Trade agreements are an economic boost and contribute to export and import competition.
- Canada secures access for Canadian suppliers to the foreign government procurement market. Purchases are subject to the provisions of international trade agreements.
- Government purchasing ensures that purchasing practices comply with procurement-related commitments in the trade agreements.

Explore and Engage

Discussion Questions

1. What is a procurement governance framework, and why is it important in the public sector?
2. What are the obligations of public procurement officers with regard to international agreements?
3. Public Sector procurement must follow trade agreements within the bidding process. List some benefits of using these agreements when sourcing goods and services.
4. The Canadian Free Trade Agreement is based on regional trade within Canada. Why was the CFTA established?
5. How does trade liberalization impact public sector procurement?

Active Learning

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Recommended Readings, Resources, and References

Recommended Readings

- "Chapter 2: Organizational Framework of Public Procurement" by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.
- "Chapter 4: Public Procurement Laws and Regulations" by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.

Additional Resources

Broader Public Sector Accountability Act, 2010, S.O. 2010, c. 25: *https://www.ontario.ca/laws/statute/10b25*
Public Services and Procurement Canada Trade Agreements: Government Procurement (international.gc.ca)

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CHAPTER 4: ROLE OF PUBLIC BUYING — PUBLIC VERSUS PRIVATE

Introduction

Procurement is a critical function in both the public and the private sector. While there are similarities between the two sectors, we focus on the differences between public and private sector procurement in this chapter. Procurement is the process of purchasing goods, services, and materials from suppliers; we will review the regulations and the management of the procurement process.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Develop a working knowledge of effective supply chain management in the public sector.
2. Build an understanding of the complexity of supply chain and procurement in the public sector.
3. Develop a working knowledge of the key differences between the public and private sector buying practices.
4. Discuss the primary goals and responsibilities in public procurement.

Public Procurement Playbook

Watch this video to learn about the similarities and differences between public and private sector procurement practices.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=351#oembed-1

Source: Procurement Matters. (2023, August 20). Understanding Public and Private Procurement. [Video]. YouTube. https://www.youtube.com/watch?v=NGGcq1jTeuk

4.1: Importance of Supply Chain Management in the Public Sector

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Supply chains and their associated management processes often remain invisible to the public sector client. The government has traditionally focused on contracting with first-tier suppliers, the supply chain members with whom the procuring organization directly contracts. Within supplier selection, very few public agencies analyze their suppliers' supply chains as part of their selection criteria. Thus, public agencies lack assurance about the reliability and resilience of their key suppliers' subcontractors. Looking at the public sector procedures, limited information is known about their main suppliers and how they manage their internal supply chain and subcontractors.

Planning and governance are two of the weaker areas of contract management in the public sector, and many existing suppliers have not completed any form of risk register or assessment. The lack of internal control mechanisms and inconsistent interpretations of the government's objectives and strategies create a disadvantage in contracts and procurement framework agreements. Competitive tendering fails, and the management of public funds for government purchasing becomes questionable when procurement best practices are not followed and targets are not met.

Public sector procurement has been slow in making changes to improve its visibility of the supply chain

and understand how to manage this chain. The limited effort to improve supply chain performance could be due to resource constraints, a lack of understanding or perceived need for understanding, or perhaps even a perception on the client side that policy and legal framework do not allow for such activities. Increasingly, the complexity of many projects, a greater appreciation of the need to improve competition and innovation, and an increasing awareness of the impacts of terrorism or natural disasters on supply chains and business continuity mean that wider supply chain issues need to be taken into account when seeking improved efficiency and value for money. The supply chain is important to an organization due to the significant percentage of overall cost it accounts for. But is it strategic? In the commercial world, companies seek to create a competitive advantage by lowering their cost base to contribute to their bottom line: profit. In the public sector, the cost advantage gained through the procurement function contributes to lower costs for the organization, enabling funds to be diverted to frontline services such as hospitals and schools. This means better value for money for public sector shareholders who are taxpayers.

Supply chain management differs significantly between the private and public sectors. From a public sector perspective, the goal of service supply chain management is to deliver high-quality public services, not to profit from selling services. Public sector supply chains operate within the scope that legal regulations establish and implement their initiatives through taxes, fees, and public involvement (e.g., voluntary work). Private supply chains operate through business models that they implement with hired labour and the profits they generate. The public sector supply chain functions are also transparent in their processes. As a result, their structure and the relations between their links are open and implemented on the basis of applicable legal regulations, system solutions and partnership agreements. An important feature that distinguishes the public from the private is also the publicness of the investments they make and the results they achieve. (Sienkiewicz-Małyjurek, K. & Szymczak, M., 2024.)

The public sector supply chain comprises multilevel networks with stakeholders from different organizations. The participants in the chain may include i) private firms, which receive orders from public procurement officers; ii) accounting and financial departments; iii) policy-makers or regulatory bodies. The supply chain function is not only responsible for the procurement of goods and services but also for how these stakeholders are involved with others operating at different levels.

The goal of the supply chain management framework is to promote consistency in the application of processes throughout the government. Ensuring value for money, open and effective competition, ethics and accountability also enhances the standard of government procurement legislation and policies. The complete cycle in all SCM-related functions is accountable to financial departments and governing authorities.

Checkpoint 4.1

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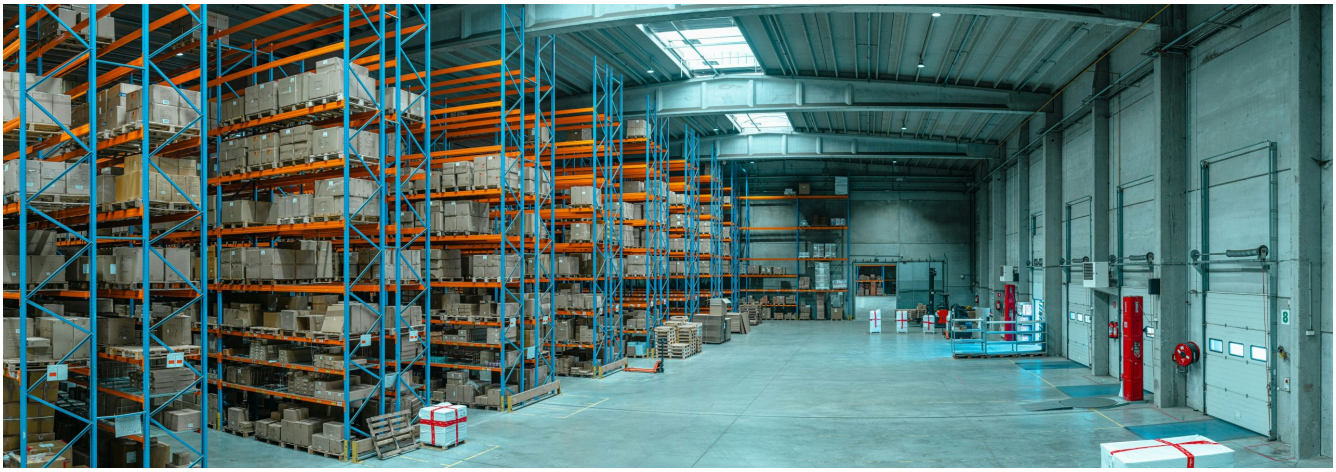
4.2: Features of Public Sector Supply Chains



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There are enormous challenges in the application of SCM both in the private and the public sector. Some of the challenges that need to be addressed for successful management of the public sector supply chains include:

- tensions between citizen and customer requirements
- cost pressure in public supply chains
- complexity of multidimensional supply chains

Public sector SCM focuses on a network of enterprises, which are interlinked vertically and horizontally to add value in connection with enterprises at other levels. Characteristically, SCM takes place in the context of a multi-level network. Departing from established private SCM practices, this approach includes guidelines for both political governance and public administration.

Public sector SCM distinguishes between supply chain efficiency and supply chain effectiveness. This distinction results from the assumption that public spending is subjected to efficiency criteria. The concept of efficiency is a characteristic trait of public management. Public SCM supports this target by reorganizing and optimizing entire public supply chain networks. Efficiency in terms of public sector supply chains is targeted toward the demands of the end customer, the citizen.

Public sector SCM is considerably more complex than its counterpart in the private sector. In the public sector, citizens are considered to be 'customers' of the public supply chain network. With this outlook, a supply-chain-oriented approach to analyzing the flow of services, information and finance becomes possible. Customer demands come from stakeholders who are citizens with an interest in public goods.

It is more challenging to calculate and forecast customer demand in public procurement due to the characteristic peculiarities of public goods. The demands, instead, are communicated through the democratic principle via elected representatives. Delivered goods and services affect citizens' needs and interests, for instance, by meeting their demand for peace and security.

Furthermore, working within the public sector requires knowledge beyond the supply chain. The multi-

level regulations governing public purchasing require management of public procurement directives and an understanding of government policies. As head of the executive branch, the government represents the political disciplinary authority in an organizational sense; parliaments (legislative branch) provide checks and balances in terms of control and criticism of governmental activities. The SCM function takes the role of a strategic planner. It requires careful planning of administrative tasks and the implementation of decisions and regulations passed by the government and the legislature at the political network level. The administrative level is responsible for the outcomes of both demands and the budgetary restrictions imposed by the government at the political network level. The procurement level intersects the public sector and the network level of private enterprises, i.e., the suppliers.

Billions are spent on goods and services annually to support the needs of the government and the citizens. Public procurement is often responsible for the largest spending and thus can contribute to the economic development of countries. In the public sector context, SCM is a procurement tool that strategically integrates the entire procurement process. Proper SCM implementation ensures value for money, open and effective competition, ethics and fair dealings, accountability reporting and equity, thus creating uniformity in procurement practices and a high standard of governance.

Checkpoint 4.2

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4.3: Differences between Public and Private Sector Supply Chains

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Public procurement professionals have different outlooks of SCM compared to their private sector counterparts. It is important to understand and compare public and private sector SCM to understand the concept of public procurement. In public works and government services, billions are spent on goods and services annually to support the activities of agencies and departments. Public sector procurement forms the biggest national spending and is directed within a strictly controlled legislative environment wherein processes are prescribed, and the relevant norms and standards are constantly monitored.

Supply Chain Management (SCM) involves managing all the interlinked activities within a value-adding chain. These include, but are not limited to, Planning, Procurement, Manufacturing or Production, Distribution and Customer Service. Also included are all the value-adding linkages outside an organization.

Procurement management, on the other hand, is one of the elements within a supply chain that primarily focuses on the sourcing and purchasing of goods and services. Procurement can be described as one of the

macro processes within a supply chain. It is the activity required to plan, implement and control the sourcing and purchasing of tangible or intangible goods.

Public and private procurement responsibilities differ in their fundamental goals and practices. While public sector practitioners are governed by legislative bodies, laws, and regulations, private sector practitioners are guided by boards of directors and business plans. Public agencies draw revenues from taxes and fees and use these funds to serve the public. On the other hand, private firms generate revenue through sales of goods and services. Unlike their public sector counterparts, these private firms have profit-making motives. Constrained by rules and regulations, the public sector cannot develop strategic supply chain partnerships in the same way that the private sector can. For instance, in the South African public sector, the head of the SCM unit is the National Treasury. The National Treasury (NT) develops laws, policies and regulations governing SCM implementation.

There are a number of unique characteristics of public sector purchasing, including the following:

- Perceived lack of interest expenses and inventory carrying costs
- Lack of traffic and transportation expertise
- Lack of confidentiality about dealings with suppliers
- Emphasis on competitive bidding (vs. negotiation) in the procurement process
- Greater focus on outside pressures such as public scrutiny, political competitors and media
- Source of authority established by law
- Greater focus on supporting public service programs, balancing acquisition costs with providing local benefits, e.g., sourcing from a local Indigenous-owned business instead of a large multinational organization to generate and drive local employment

These characteristics affect public sector procurement and SCM and contribute to a lack of collaborative, long-term relationships with suppliers. SCM occupies centre stage in the public sector's financial management reform process. SCM aims to add value at each stage of the process, from the demand for goods or services to their acquisition, management of the logistics process and finally, after use, to their disposal.

Supply chain management consists of traditional business functions that include marketing, sales, research and development, forecasting, production, purchasing, logistics, information systems, finance, and customer service. Unfortunately, historically, the government's implementation of supply chain management practices is far from satisfactory. This is due to a lack of personnel with the necessary knowledge, skills and capacity to effectively implement supply chain management as required by the SCM policy in various departments and municipal entities.

Private sector procurement is typically more receptive to entrepreneurship and innovation, whereas public procurement is based on legislation, policy and process. Public sector procurement serves a broader range of stakeholders, emphasizes accountability and transparency, and allows little or no flexibility for negotiating with bidders/responders to a request for proposal (RFP).

The role of the public sector purchasing manager is geared more toward supervising the procurement process and preparing reports than negotiation and strategic partnerships. Accounting Officers in municipal entities and departments must ensure compliance with the SCM process and report to the treasury. Although public sector procurement operates in a rulebound environment, many of its tasks can be automated. Public procurement is known for being tactical, even clerical, adhering to stringent rules and regulations. However, public sector procurement is shifting from tactical to more strategic with a focus on alliances, global sourcing, life cycle costing, and empowerment through the use of tools such as procurement cards. The move to professional training and education of those personnel responsible for the strategic direction and practical application of procurement action is needed in the public sector. Most governments are considering several initiatives to increase efficiency nationwide. These include rolling out strategic sourcing objectives and contracts across multiple regions or departments.

Based on the review indicated above, it is evident that there is a difference in the application of SCM in the public and private sectors. This is because the two sectors have diverse goals and objectives. While the key goal in the public sector is delivering value service to the public, the private sector's goal is to maximize value and profitability in its supply chain. Table 1 shows the difference in practices between the supply chain management practices of the private and public sectors.

Table 1: Public versus private sector supply chains.

Feature	Private Sector SCM	Public Sector SCM
Goal	Profit making from customers	Quality service delivery to citizens
View of SCM	Procurement is viewed as an element of SCM	SCM is viewed as a procurement tool
Sources of revenue	Sales of goods and services	Taxes and fees
Governance	Guided by a board of directors and business plans	Legislative bodies, laws and regulations
Skills	Have highly skilled actors	Have less skilled actors
Receptiveness	Emphasis on innovation and entrepreneurship	Emphasis on accountability and transparency
Organizational structure	Firms of many sizes with room for new entrants (less complex)	A highly complex system of organizations with various tasks
Competencies	Very high	Low
Confidentiality	Very high	Low
Degree of collaboration	Very high	Low
Degree of integration	Very high	Low
Strategic partnership	High level	Low
Degree of implementation	High	Low
Technological application	High application	Low application

The private sector is profit-oriented, while the public sector is oriented toward quality service delivery. Furthermore, the enablers of SCM (which include integration, collaboration, coordination and information systems) apply to both the private and public sectors. However, the rate of application in the public sector is limited due to complex rules and procedures. Despite the comprehensive legislation and measures implemented by the public sector, there are always challenges in managing the risks of fraud and corruption in the supply chain. The incidence of financial mismanagement, which includes the SCM process, remains prevalent in the public sector. Therefore, a system of continuous monitoring and improvement of the supply chain is critical for the success of the public sector.

Public Procurement Playbook

Watch this video to get a basic understanding of the differences between public and private procurement.

https://procurementoffice.com/video/public-procurement-in-canada/

Source: The Procurement Office. *Public Procurement in Canada*. [Video]. The Procurement Office. https://procurementoffice.com/video/public-procurement-in-canada/.

Practical Procurement: Scenarios and Solutions

Issue: A local municipality decides to renovate government buildings, including administrative offices, libraries and community centres. The exterior of these structures requires a fresh coat of paint to enhance appearance, protect against the elements and maintain consistency with local government branding.

Background: The government entity begins by outlining the project requirements, such as the number of buildings to be painted, the desired colour scheme, and any specific paint quality standards. This information allows contractors to understand the scope of work. To initiate the procurement process, the municipality issues a Request for Proposal (RFP), a document detailing the project's specifics, timeline, and evaluation criteria. A committee, composed of representatives from different departments or agencies, reviews the proposals. Evaluation criteria include the company's experience, financial stability, proposed timeline, and cost. After careful evaluation, the municipality awards the contract to the selected painting company, in this case, the Colourful Painting Company. The contract specifies the terms and conditions, including project milestones, deadlines, and payment terms.

Outcome: Upon project completion, the Colourful Painting Company submits a final report or walkthrough to confirm that all requirements have been met. Once satisfied, the government entity releases payment in accordance with the agreed-upon terms, closing the procurement cycle.

Discussion Questions

1. In public procurement, what should the Procurement department review before soliciting bids?
2. How does the use of technology support procurement compliance?
3. What is reduced by upfront efforts in planning and developing contracts?

Checkpoint 4.3

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=357#h5p-28

Attributions

4.4: Goals of Public Procurement

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The public sector views procurement as a tool aimed at helping users in government organizations achieve their mandates by buying what those organizations need. Public sector organizations are mainly driven by service delivery motives, which are mostly guided by the community needs as they keep increasing and changing over time. Transparency and accountability are given high importance to avoid corruption and fraud. The public sector's view of procurement further illustrates that procurement is a stand-alone concept mainly governed by legislation, laws and regulations. The government generates income from tax revenues to procure goods, services and works to satisfy public needs. Because of the strict legislation, laws and regulations governing public procurement, very few (if any) strategic partnerships are formed in the value chain of procuring goods, services and works. Strategic partnerships would be seen as a form of favouritism and in violation of procurement processes that must be fair, equitable, transparent, competitive and cost-effective. The emphasis on transparency and competition creates a challenge in negotiation, resulting in the unique environment in which public-sector procurement operates.

To identify the primary procurement goals applicable to the public sector, procurement must first be considered from a generic perspective. These perspectives are described below:

- Value for money implies the maximization of benefits and minimization of payment when procuring

services and products. Customer (public citizen) satisfaction should be emphasized when creating value for money.

- Acting with the public's interest in mind is critical for procurement officers who are charged with the spending of public funds. This is supported by the government's legal and procedural purchasing framework and principles.
- Competition occurs when a public entity invites all bidders and clearly describes the required services and evaluation criteria. A fair, competitive environment will lead to price reduction and improved quality of service.
- Transparency refers to the openness of the bidding process so that every step is open to public scrutiny. This promotes good governance and accountability.
- Accountability and integrity represent an obligation and improve the decision-making process as officials know that there are repercussions for poor or negligent decisions. All entities must be accountable to their stakeholders, thereby becoming more responsive to their needs.
- **Fair procurement** implies that procurement remains impartial, free from discrimination, and complies with laws and policies. When fair treatment is not applied, service providers may not submit tenders, and citizens will be deprived of goods or services that could have been more efficient and cost-effective.
- **Social procurement** objectives are attained by including socio-economic measures within procurement processes. These objectives can include economic and social advantages. They encourage the conduct of socially responsible businesses and advance diversity and inclusion.
- Efficiency in the public procurement process ensures that it is carried out smoothly.

These objectives are critical to the procurement function's success within public entities. To achieve these procurement objectives, appropriate procurement practices must be applied.

While government structure and procurement policies promote uniformity in public-sector procurement practices, it does not necessarily guarantee excellence or success. To achieve this, the public sector must comply with practices that promote excellence within the procurement function.

Public procurement has the following shortcomings that could improve service delivery if solved. Some of these weaknesses include the perceived lack of concern for

- interest expenses and other inventory-carrying costs
- logistics and transportation expertise
- confidentiality about the dealings with suppliers, as all dealings are to be transparent

In public procurement, there is a greater emphasis on competitive bidding as opposed to negotiation in the entire procurement process. Also, there is a huge focus on the purchasing price rather than the total cost of ownership (TCO); supplier collaboration and long-term partnerships with suppliers are limited to ensure conformance to legal and procedural frameworks.

The goals espoused by public purchasing often prevent the public procurement system from delivering effective and efficient public services. For example, buying a simple pen or item of stationery might end up costing a government entity three times the actual cost of that stationery, considering the time it takes to start and conclude the procurement process.

Checkpoint 4.4

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=366#h5p-29

Attributions

Chapter Review

Key Takeaways

- Supply chain management is becoming increasingly important in the public sector. SCM focuses on the delivery of goods and services in the global environment and competitive, cost-effective strategies to efficiently manage the public budget.
- Complexity in public procurement relates to the scope of issues involved, including regulations, the variety of needs that must be fulfilled, and the complicated processes involved in procuring for the public sector.
- Public sector enterprises prioritize fulfilling public needs, whereas private sector enterprises aim to maximize profits.
- The main focus of public procurement includes legal considerations, economic benefits, technological considerations, process management and human resources.

Explore and Engage

Discussion Questions

1. There are a number of benefits to effective supply chain management in the public sector. Name a few.
2. The supply chain encompasses multiple activities both in the private and public sectors. What makes the public sector very complex compared to the private sector?
3. What is the difference between public and private procurement?
4. Procuring goods and services in the public environment must comply with multiple rules and regulations; name a few approaches to remain transparent.

Active Learning

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=370#h5p-5

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CHAPTER 5: AN INTERNATIONAL OVERVIEW OF PUBLIC PROCUREMENT

Introduction

Public sector procurement refers to the purchases of goods and services by governments and publicly owned firms. International trade agreements support secure access to goods in foreign environments. In this chapter, we will look at the public procurement environment and practices of international public procurement entities.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Understand the link between increased globalization, greater competition, sourcing and outsourcing.
2. Build an understanding of the developments in public procurement in the global environment.
3. Explain public procurement standards and principles worldwide.
4. Understand the procurement life cycle in Canada as well as international practices and laws of public procurement.

Public Procurement Playbook

Watch this video to learn more about global sourcing.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=128#oembed-1

Source: Marketing Business Network. (2021, November 14). What is Global Sourcing? [Video]. YouTube. https://www.youtube.com/watch?v=9-J5-CwV5YA

5.1: Globalization of Procurement, Sourcing, and Outsourcing

Photo by Greg Rosenke from Unsplash, used under the Unsplash License.

Globalization gives tremendous opportunities for companies to increase competitive advantage by using international sourcing or acquiring cutting-edge technologies. The process of purchasing services or goods worldwide to bid on contracts is called international procurement. The process is increasingly essential for organizations globally. It helps organizations enhance their competitive position, meet customer expectations, improve profits, and add value by finding suppliers who meet the organization's strategy.

All businesses have to be competitive to succeed in the market. The procurement of goods and services plays a vital role in the following areas:

- economic growth
- fulfilling stakeholder needs
- uniting suppliers
- identifying and organizing sources
- managing the supply chain
- renewing contracts

- specifying requirements
- evaluating available options

Procuring goods or services can be done across continents or countries provided specific international and national requirements and trade regulations are followed.

Public Procurement Playbook

Watch this video to get a basic understanding of Procurement as an essential business function.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=130#oembed-1

Source: Procurious HQ. (2014, May 22). *Introduction to Procurement—Module 1: What is Procurement? (Part 1)*. [Video]. YouTube. https://youtu.be/wPR_KoSSofA?si=GAKaQdgO17cNISzn

Procurement and its Value in the Global Value Chain

What Is Procurement?

Mangan and Lalwani (2016) share the following insights about procurement:

- "Procurement includes sourcing and purchasing and covers all of the activities from identifying potential suppliers through top delivery from supplier to the customer." (p. 379).
- "Procurement is about specifying requirements, identifying sources, evaluating options, and acquiring resources that are fit for purpose, cost-effective and sustainable." (p. 144).
- "Managing risks and value on behalf of the company is the role of procurement." (p. 148).

Globalization and trade liberalization have provided tremendous opportunities for companies to increase competitive advantage by using international sourcing and have been a significant stimulus to economic growth throughout the world.

International procurement is the process of purchasing services or goods worldwide by bidding on contracts. The process is increasingly essential for organizations globally. It helps organizations enhance their competitive position, meet customer expectations, improve profits, and add value by finding suppliers who share the organization's viewpoints and overall business strategy.

International procurement creates efficiencies in supply chain management. It makes it possible for smaller companies to obtain a wider selection of goods and services at more competitive prices from all over the world. (Scully & Fawcett, 1994). However, specific knowledge and special skills are required to succeed in international procurement.

The Procurement Process and its Steps

Before delving deeper into the procurement steps, let's look at the types of procurement processes.

Public Procurement Playbook

Watch this video on the different types of procurement processes used by Irish public bodies and how businesses can access these opportunities.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=130#oembed-2

Source: Office of Government Procurement Ireland. (2018, January 11). Types of Procurement Process. [Video]. YouTube. https://youtu.be/_490ZEaYdwA?si=D2Uh7f1kQ2E3qiHM.

Here is a clear explanation of the procurement process in services such as project management from the chapter on procurement management in Adrienne Watt's: *Project Management* (Watt, 2014).

Procurement management follows a logical order. First, you plan what you need to contract; then you plan how you'll do it. Next, you send out your contract requirements to sellers. They bid for the chance to work with you. You pick the best one, and then you sign the contract with them. Once the work begins, you monitor it to make sure that the contract is being followed. When the work is done, you close out the contract and fill out all the paperwork.

You need to start with a plan for the whole project. Before doing anything else, you need to think about all of the work that you will contract out for your project. You will want to plan for any purchases and acquisitions. Here's where you take a close look at your needs to be sure that

contracting is necessary. You figure out what kinds of contracts make sense for your project, and you try to define all of the parts of the project that will be contracted out.

Contract planning is where you plan out each individual contract for the project work. You work out how you'll manage the contract, what metrics it will need to meet to be considered successful, how you'll pick a seller, and how you'll administer the contract once the work is happening.

The procurement process helps companies obtain and manage costs related to freight, human resources, capital assets, fuel, IT equipment, sales, utilities, marketing, legal and professional services, raw materials, and facility management.

According to FITT's "*Global Value Chain*" (2021), there are seven major steps in the procurement process. They are visualized in Exhibit 5.1.

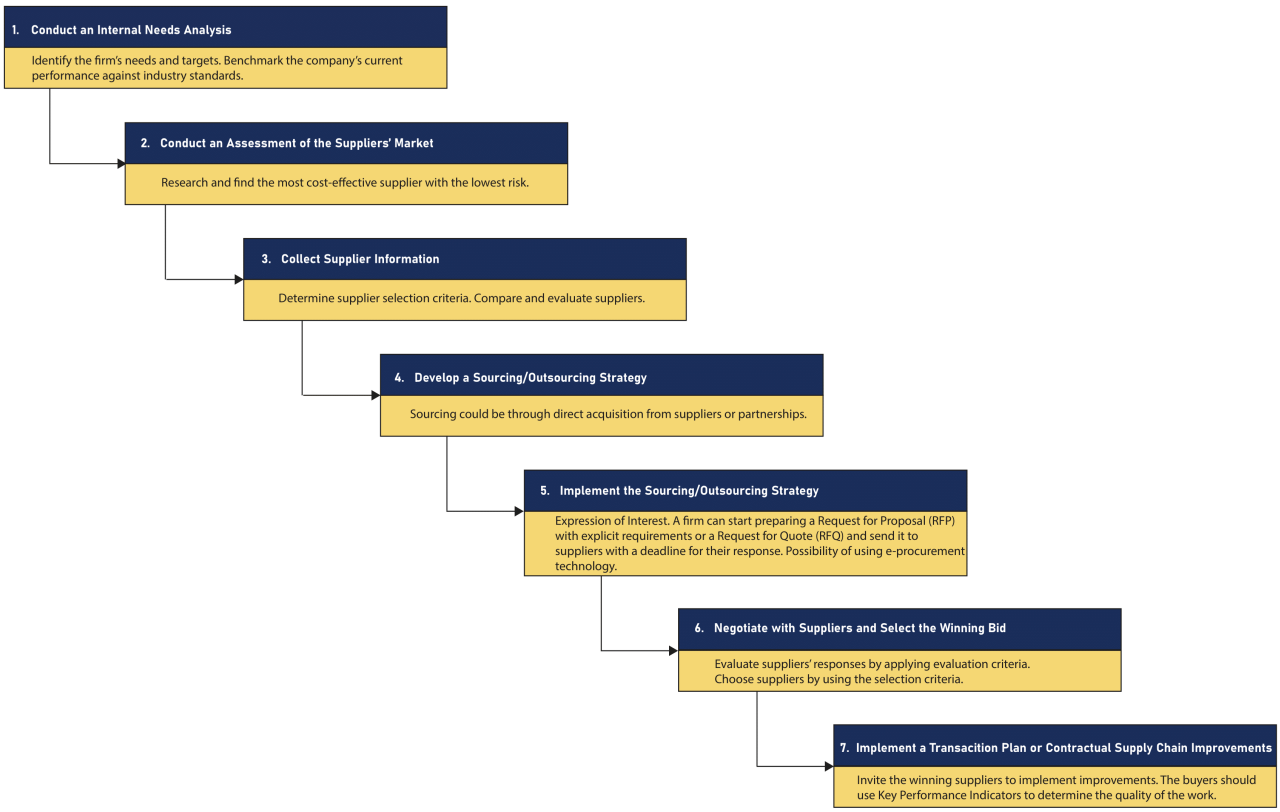

Exhibit 5.1: Supplier Selection and Sourcing Strategy. [See image description].

Sourcing and Outsourcing of Goods, Manufacturing, and Services

The Canadian government is committed to modernizing procurement and has evolved from sourcing products domestically to global **sourcing** and **outsourcing** manufacturing, and services. Companies cannot manufacture all the products and do all the services needed to run a business and hold a competitive position in the market.

That is why many organizations use sourcing and outsourcing strategies and become globally competitive. Other benefits accrued include cost reduction, increasing efficiency by meeting customer demands on time, taking advantage of different time zones, accessing cutting-edge technology, cheap cost of labour, increase in innovation and shared expertise, improved quality of products/services, access to talents and experts, and so forth. Examples of big companies that outsource include Google, Apple, Skype, Alibaba, etc. Let's delve deeper into the definitions of sourcing and outsourcing of goods, manufacturing and services.

Sourcing

Sourcing is a process of obtaining goods or services from a particular place.

Here is a clear explanation of sourcing adapted from Babu John Mariadoss's *Global Sourcing and Distribution.*

Global sourcing refers to buying the raw materials or components that go into a company's products from around the world. For example, Starbucks buys its coffee from locations like Colombia and Guatemala. The advantages of global sourcing are quality and lower cost. Global sourcing is possible to the extent that the world is flat—for example, buying the highest-quality cocoa beans for making chocolate or buying aluminum from Iceland, where it's cheaper because it's made using free geothermal energy.

When making global sourcing decisions, firms face a choice of whether to sole-source (i.e., use one supplier exclusively) or to multisource (i.e., use multiple suppliers). The advantage of sole sourcing is that the company will often get a lower price by giving all of its volume to one supplier. If the company gives the supplier a lot of business, the company may have more influence over the supplier for preferential treatment. For example, during a time of shortage or strained capacity, the supplier may give higher quantities to that company rather than to a competitor as a way of rewarding the company's loyalty.

On the other hand, using multiple suppliers gives a company more flexibility. For instance, if there's a natural disaster or other disruption at one of its suppliers, the company can turn to its other suppliers to meet its needs. For example, when Hurricane Mitch hit Honduras with 180-mile-per-hour winds, 70 to 80 percent of Honduras's infrastructure was damaged, and 80 percent of its banana crop was lost. Both Dole Food Company and Chiquita bought bananas from Honduras, but Dole relied more heavily on bananas from Honduras than from other countries. As a result, Dole lost 25 percent of its global banana supply, but Chiquita lost only 15 percent.

Sole-Sourcing Advantages

- Price discounts based on higher volume
- Rewards for loyalty during tough times
- Exclusivity brings differentiation
- Greater influence with a supplier

Sole-Sourcing Disadvantages

- Higher risk of disruption
- Supplier has more negotiating power on price

Multisourcing Advantages

- More flexibility in times of disruption
- Negotiating lower rates by pitting one supplier against another

Multisourcing Disadvantages

- Quality across suppliers may be less uniform
- Less influence with each supplier
- Higher coordination and management costs

Whichever sourcing strategy a company chooses, it can reduce risk by visiting its suppliers regularly to ensure the quality of products and processes, the financial health of each supplier, and the supplier's adherence to laws, safety regulations, and ethics.

Outsourcing

Outsourcing is the process or a situation when a company employs a third-party provider or organization to do some work instead of using its own staff or resources.

The difference between sourcing and outsourcing is that sourcing procures goods/products for running a business; on the other hand, outsourcing transfers a company's function to a third-party provider or external service provider. A lot of Canadian companies, as well as the Canadian government, use outsourcing technology. For example, according to Forrester Research (2020), the Canadian government and businesses spent 15 billion dollars on technology outsourcing in 2021 (Forrester Research, 2020).

Advantages and Disadvantages of Outsourcing

Here are some advantages and disadvantages of outsourcing:

Advantages

- Lower costs
- Product differentiation

- Increased production capacity
- Ability to meet customer demands
- Efficient replenishment
- Focus on the core competencies
- Build innovative products or services
- Effective and efficient service
- Increase value by bringing capabilities and expertise
- Reduce operational and production costs
- Being adaptable to changing market conditions and preferences
- Increased human resources
- Low cost of labour

Disadvantages

- Exposes confidential information and technology
- Hidden costs
- Exchange rate fluctuations
- Lack of customer focus
- Cost of transactions can be raised
- Wrong partners
- Risk of cultural differences
- Risk of poor-quality finished products
- Delay in delivering goods or services

Outsourcing of Manufacturing

Globalization has significantly improved businesses by increasing the availability of labour and production flexibility. In addition, labour costs in many countries are cheap, which helps companies move their production process to third-party or external providers with whom the firm has a contract. As a result, companies can benefit from specialized resources and reduced fixed costs. For example, an airplane can be split into thousands of parts and produced in many geographic locations.

Here is a clear explanation of outsourcing adapted from Introduction to Business reading: "Outsourcing" by Linda Williams and Lumen Learning.

PowerSki's Web site states that "PowerSki International has been founded to bring a new watercraft, the PowerSki Jetboard, and the engine technology behind it, to market." That goal was reached in May 2003, when the firm emerged from a lengthy design period. Having already garnered praise for its innovative product, PowerSki was ready to begin mass-producing Jetboards. At this juncture, the management team made a strategic decision that's not uncommon in manufacturing today.

Rather than producing Jetboards in-house, they opted for outsourcing: having outside vendors manufacture the engines, fiberglass hulls, and associated parts. Assembly of the final product took

place in a manufacturing facility owned by All American Power Sports in Moses Lake, Washington. This decision does not mean that the company relinquished control over quality; in fact, every component that goes into the PowerSki Jetboard is manufactured to exact specifications set by PowerSki.

One advantage of outsourcing its production function is that the management team can thereby devote its attention to refining its product design and designing future products. However, as processes or pieces of a process are outsourced companies have legitimate concerns about quality standards being met and maintained at the outsourced location. The decision whether or not to outsource often comes down to identifying organizations that can meet and maintain the standards set by the company and the customer.

Understandably, outsourcing is becoming an increasingly popular option among manufacturers. For one thing, few companies have either the expertise or the inclination to produce everything needed to make a product. Today, more firms, like PowerSki, want to specialize in the processes that they perform best—and outsource the rest. Like PowerSki, they also want to take advantage of outsourcing by linking up with suppliers located in regions with lower labour costs.

Outsourcing of Services

Globalization allows organizations to be competitive and move data cost-effectively and very fast. In addition, technological advances help continue the trend toward outsourced services significantly. For example, according to Statista (2019), the trend toward outsourcing IT services continues to grow steadily.

Services can be outsourced in the following sectors:

- *Administration:* Administration services consist of business processes, public administration, security, procurement, accounting, finance and so forth.
- *Infrastructure:* Infrastructure services include communications services, information security, media and content, data processing, development of applications, and data storage.
- *Knowledge:* The knowledge segment includes product and service developments, research, analytics, inventory management, insurance processing, and software design.

Practical Procurement: Scenarios and Solutions

Robin Oke, the Chief Procurement Officer at Carter Technology Solutions, faced a critical decision. The company, known for its innovative tech products, was experiencing increased competition from global players. To maintain its market position, Robin needed to find ways to reduce costs and improve efficiency. The main business problem was whether to outsource certain functions to third-party

providers or continue using in-house resources. This decision was crucial for Robin because it would impact the company's ability to compete globally and meet customer demands.

Carter Technology Solutions, headquartered in Toronto, Canada, specialized in developing and manufacturing high-tech gadgets and software solutions. With a workforce of 1,200 employees, the company served a diverse customer base, including individual consumers, businesses, and government agencies. Carter Technology generated revenue through the sale of its products and services, as well as through maintenance contracts and software subscriptions. The company prided itself on its ability to innovate and deliver high-quality products, but the increasing costs of production and the need for rapid scalability were becoming significant challenges.

Robin considered three main options to address the company's challenges. The first option was to outsource the manufacturing of certain components to a third-party provider in Asia. This option promised lower labour costs and increased production capacity, allowing Carter Technology to meet growing customer demands. However, it also posed risks, such as potential quality issues and cultural differences that could affect the final product.

The second option was to outsource the company's IT support and customer service functions to a specialized firm in India. This move could reduce operational costs and allow Carter Technology to focus on its core competencies, such as product development and innovation. On the downside, this option could expose confidential information and lead to a lack of customer focus, potentially harming the company's reputation.

The third option was to keep all functions in-house but invest in new technologies and training programs to improve efficiency. This approach would ensure that Carter Technology maintained control over its processes and quality standards. However, it required significant upfront investment and might not provide the immediate cost savings needed to stay competitive in the short term.

Robin needed to make a decision quickly to ensure that Carter Technology could adapt to the changing market conditions and continue to thrive. The choice between outsourcing and maintaining in-house operations was not just about cost savings; it was about positioning the company for future growth and success.

Discussion Questions

1. What are the potential advantages and disadvantages of outsourcing the manufacturing of components to a third-party provider in Asia for Carter Technology Solutions?
2. How might outsourcing IT support and customer service functions impact Carter Technology Solutions' ability to focus on its core competencies and maintain customer satisfaction?
3. What factors should Robin consider when deciding whether to invest in new technologies and training programs to improve in-house efficiency versus outsourcing?

Source: Scenario and questions created with the assistance of Microsoft Copilot.

Public Procurement Playbook

As countries like China and India become leaders in manufacturing, the costs of their expertise rise, diminishing their advantage against North American counterparts. Adversely, convoluted and increasingly risky supply chains dependent on inexperienced vendors have turned once-stable brands like Boeing into the perfect "reshoring" case study.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=130#oembed-3

Source:

Minute MBA by OnlineMBA.com. [2013, May 28]. *Why Outsourcing is Bad for Business* [Video]. YouTube. https://youtu.be/V7fsEIp2r_8?si=N03IqE0vRcH_Bi6i

Checkpoint 5.1

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Image Description

Exhibit 5.1: The image displays a seven-step process diagram for supplier selection and sourcing strategy. Each step comprises a blue title box followed by a connected yellow description box. The steps are sequentially connected by arrows, indicating the flow of the process from top left to bottom right. The background is white, and the boxes are aligned diagonally, creating a staircase pattern.

1. Conduct an Internal Needs Analysis: The title box is blue, stating the step number and title. Below, a yellow box includes the description, focusing on identifying firm needs and benchmarking against industry standards.
2. Conduct an Assessment of the Suppliers' Market: Similarly styled blue and yellow boxes detail the research for cost-effective suppliers with low risk.
3. Collect Supplier Information: This section includes criteria determination and supplier evaluation.
4. Develop a Sourcing/Outsourcing Strategy: Text discusses sourcing options, either directly or through partnerships.
5. Implement the Sourcing/Outsourcing Strategy: Emphasizes preparing RFPs or RFQs and possible e-procurement use.
6. Negotiate with Suppliers and Select the Winning Bid: Describes evaluation of supplier responses using selected criteria.
7. Implement a Transaction Plan or Contractual Supply Chain Improvements: Discusses inviting suppliers for improvements and applying KPIs.

[back]

Attributions:

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5.2: Recent Global Developments in Procurement

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Public procurement is one of the fastest-changing government functions. Over the last 15 years, procurement has moved from an administrative function to a strategic responsibility that plays a critical role in public expenditure management, quality of governance, promotion of economic development, and commercial integration. The pace and progress of this evolution have been uneven, and in many developing economies procurement is still treated as a process function to some extent. In addition, in most countries procurement has not been fully integrated and aligned with the strategic vision and objectives of the government, thus becoming an obstacle to, rather than a support for, meeting those objectives.

Until the early 1990s, the procurement function was typically confined to the application of rules for the government purchase of goods, services, and civil works. Procurement units were housed in individual ministries, and individual government agencies worked in isolation, with responsibilities limited to processing purchase orders or administering competitive bids. These procurement units delivered contract award recommendations for approval by senior officials and subsequent processing by the legal or financial units in the organization. They were generally understaffed, with officers who had no formal education in the subject. The function itself was regarded as a backroom activity that received little or episodic attention only when a procurement scandal or mishap emerged.

The modern concept of procurement is that of an essential support to good public sector performance and to the achievement of the country's economic and social goals. In other words, it is an integral part of public expenditure management and is moving from being a mere processing task to a management and knowledge-based activity that supports good governance and enhanced accountability.

Important developments in the early 1990s triggered this change in perspective. Some of these events forced governments to focus on procurement as they sought to adapt national systems to international trade agreements and to new business concerns. In addition, civil society's growing concerns about corruption and the greater demands for accountability and results made politicians aware of the importance of procurement as a strategic government function. Several events or developments during this period served as important drivers in reforming procurement:

- In 1992 members of the European Community signed the Maastricht Treaty, creating the European Union. The multiplicity of national procurement systems was an impediment to free trade and forced governments to align their national systems. In the early 1990s, the European Commission issued a green paper on public purchasing to open the discussion on the topic of procurement with the private sector, the contracting bodies, and other stakeholders (Nielse and Treumer 2005). The result was a call for system simplification, modernization, and flexibility, which culminated in the procurement directives adopted in March 2004.
- In 1994 the Uruguay Round of the General Agreement on Trade and Tariffs (GATT) culminated in the signing in April 1994 of the Government Procurement Agreement (GPA) and the creation of the World Trade Organization in 1995. The GPA introduced a multilateral framework for government procurement that aimed to achieve greater liberalization and expansion of world trade.
- In 1994 the United Nations Commission on International Trade Law (UNCITRAL) published the Model Law on Procurement of Goods, Construction and Services. This law was "in response to the fact that in a number of countries the existing legislation governing procurement is inadequate and outdated," resulting in inefficiency and ineffectiveness in the procurement process, patterns of abuse, and the failure of governments to obtain value for money in the use of public funds (UNCITRAL 1999).
- In the mid-1990s, international development institutions shifted the focus of procurement due diligence from supervising borrower compliance with their policies and procedures to systemic analysis, risk assessment, and policy advice on how to improve national systems.
- Beginning in the early 1990s, technological innovation made available new tools for electronic procurement that revolutionized the ways in which governments could do business. These technologies made it possible to minimize or eliminate the interaction between procurement officials and bidders, reducing the opportunity for collusive practices. The new technology also permitted more efficient procurement methods (such as reverse auctions and catalog purchasing under framework contracts), wider competition, and the possibility of better monitoring of procurement and more informed planning.
- In 2006, OECD began work on producing a standardized diagnostic tool to assess public procurement systems and their performance (OECD 2006). The long-term goal is that this tool will gradually evolve into an internationally accepted set of standards for good procurement that can be used by governments as a benchmarking and monitoring instrument.

Checkpoint 5.2

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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Attribution:

5.3: Public Procurement in Major Countries

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Public procurement accounts for 15-20% of global GDP and GPA commitments worldwide, and the international dimension has gained importance in the era of globalization. Despite the vast size of spend and the impact on economic development, there is a lack of comparable standards globally. Below, we introduce public procurement around the world.

United States

In the United States, federal government agencies have established requirements for obtaining goods and services from the local or foreign private sector through government contracts. The U.S. federal agencies follow U.S. federal laws and grant legal power to the government agencies. This contract system is based on the successive and intricate changes of objectives since its establishment. Accordingly, one must study the history of the federal government contracts system and the history of the broader legal system of the United States to understand the modern government contracts system and its function (Nagle, 1999). Historically, the U.S.

federal legal system's roots date back to the English Common law, which was brought to the United States by the English colonists. Although the American Revolution markedly affected the United States legal system, it did not alter or reject the common law. The legal system incorporates the traditional legal principles, which were found in English laws. The United States legal system's roots rest upon English common law that has been legislated (Legal Systems, 2020). The Federal Government has specified contract goals for using The Small Business Act that contracts greater than 2,500 USD but less than 100,000 USD be reserved for small businesses. With these opportunities set aside for small businesses, government procurement is supporting the local economy.

China

Under the government procurement law, goods, construction projects and services are to be purchased domestically through public procurement channels unless the items or services required are not available in China. Procurement processes may be either centralized or decentralized, with the majority being centralized. The Government Procurement Law (GPL) provides the rules on government procurement principles, contract award, supervision and legal liabilities. The GPL does not apply to military and defence procurement, which is governed by the Central Military Commission. Emergency and national security procurement is also excluded from the GPL due to the urgent nature of the requirements or confidentiality concerns regarding state secrets. Government procurement has become increasingly more transparent with the adoption of public tendering processes. Information about material offences and dishonesty of procurement agencies, suppliers and review experts has now been made public, supporting an open and fair process. China's free trade agreements (FTAs) do not include any form of preferential terms regarding public procurement. The China Mainland and Hong Kong Closer Economic and Partnership Arrangement states that **most favoured nation** and national treatment as regards to government procurement shall not apply to the FTA.

Mexico

The public procurement framework in Mexico is in accordance with the Procurement Law of the State of Mexico and Municipalities (Ley de Contratación Pública del Estado de México y Municipios, LCPEMyM). Most procurement is centralized with the Ministry of Finance having the responsibility for purchasing goods and services. Mexican laws restrict participation in national competitive bids to domestic firms. Foreign firms cannot compete even if they are willing to do so under the rules of national competitive bidding. Mexico has federal arrangements with states or provinces, which have their own laws and regulations. States and provinces have special procurement regulations in place for government-owned enterprises such as oil industries or utilities.

Most countries see e-procurement as a potential driver of modernization, greater transparency, and efficiency. Mexico pioneered the use of e-procurement in the late nineties and early 2000s. Several factors impeded the use of e-procurement to its full potential. Outdated legislation originally developed for paper-based methods hampered progress in Mexico.

A new system was developed in 2019 as the Integrated Strategy for the New National Public Procurement System (Estrategia Integral del Nuevo Sistema Nacional de Contrataciones Públicas). Its goal was to improve transparency, contribute to national economic development, social responsibility and diversity of suppliers. Unfortunately, corruption still exists in many forms in Mexico and has the potential to influence tenders. The use of exceptions such as shortened procurement windows and sole source awards are common.

Federal-level procurements generally have better control and anti-corruption safeguards than procurements at the regional level.

India

The public procurement system in India is decentralized and is comprised of multiple entities at different levels of government. India is not regulated by a general procurement law throughout the country, but the process is based on multiple rules. There is no central database or breakdown of contract spend and information. The Ministry of Finance primarily governs public procurement in India. It developed the General Financial Rules (GFR) for the general processes followed by all government offices dealing with finance. The principles of efficiency, economy, transparency, fair and equitable treatment of suppliers, and promotion of competition in public procurement are included in the framework. The various regions or government departments have the authority to make their own arrangements for the procurement of goods. However, if they do not have the expertise to procure goods, it must be carried out through the Directorate General of Supplies and Disposal (DGS&D). The DGS&D keeps a registry of suppliers and manages the import of goods by government departments. Procurement methods depend on the value of the contract and other factors, like emergencies, listed in the GFR. India has signed various trade agreements; however, details about public procurement are sparse, and public procurement gets limited coverage in trade agreements. India operates a public procurement system which is closed to a degree, leaning toward the use of domestic suppliers of goods and services.

United Kingdom

The United Kingdom's procurement policy prioritizes value-for-money (VFM) maximization. Value-for-money maximization ensures efficient use of resources to achieve the best outcomes by balancing economy, efficiency, and effectiveness.

VFM encourages competitiveness and ensures that public funds are used economically and efficiently. Small and medium-sized enterprises are actively involved in government bidding in the United Kingdom and contribute to the improvement of the regional economy. Emphasis is given to removing the likelihood that small and medium-sized enterprises will experience a drawback when engaging in the public procurement market because, compared to larger companies, they do not have access to information on bidding. The participation programs of public institutions focus on encouraging the participation of small and medium-sized enterprises. The procurement agreement of the government of the United Kingdom is a mandatory agreement that supports public purchasing regulations, including the fair treatment of all suppliers by the local governments.

Germany

Public procurement in Germany uses innovation to enhance technologies, products, and services. It also ensures that the manufacture of products and services is compliant with economic, social, environmental, and ethical standards through sustainable public procurement. With a significantly high demand for products and services, the Competence Centre for Sustainable Procurement (KNB) uses the public procurement market as a model for the German public sector to operate and provide information in a web-based environment. To focus on government-specific priorities and sustainability standards, the federal government and certain state governments (e.g., Berlin, Niedersachsen, Hessen, etc.) will operate separately but will also work jointly to promote sustainable procurement and greater participation in public procurement by government departments and organizations via national and regional public procurement consultancy. Support is mostly

given to areas of resource efficiency, transportation, and sustainable construction, among others. The competence center publishes annual reports with results.

Japan

The public procurement system of Japan requires the local government to create a general competition based on an estimated price that is set by the contract manager who is issuing the contract on behalf of the local government. Bidders are not permitted to make an offer at a price exceeding that of the estimated price. Every year, the Japanese government sets up an annual government procurement contract policy for regional small and medium-sized enterprises. The annual policy of the Japanese government aims to improve and expand the opportunities for small enterprises so as to encourage their participation in government procurement by giving them insight into the government's procurement plans and approving cooperative business associations to act as appropriate partners in government procurement contracts. To revitalize the regional economy, the local public organizations in Japan recommend that the local bidders use local products.

The Japanese government is analyzing different aspects of the price, quantity, and process of ordering merchandise. This is to ensure that contracts are awarded to local companies that are offering the best product at a reasonable price.

It also diversifies the market dynamics for small and medium-sized enterprises as much as possible by separating orders so that both small and medium-sized firms can benefit from public tenders.

The Japanese government must ensure that products supplied by small and medium-sized enterprises are procured at a reasonable price in relation to supply and demand, the price of raw materials, and the tax burden imposed upon the people (Yoon, 2023).

South Korea

Public procurement is considered a central activity conducted by the central government through the public procurement service (PPS). The rationale for this approach is the efficient management of procurement projects.

The law underlying this is the Government Procurement Act, which is essentially a procedural law that establishes the procedures and standards of the public procurement service (PPS).

The government, which can exert its effect on the market via public procurement, aims to enhance public good while connecting public procurement with industrial, social, and economic policies. The government's use of public procurement serves both social and economic purposes, such as the protection of domestic industries from foreign competition, enhancement of the competitiveness of specific industrial sectors, elimination of regional imbalances, promotion of economic activities, and guardianship of the socially weak.

The objective of the public procurement contract system is to increase the public good while serving the needs of central or local governments by entering into contracts with companies in various industries in accordance with the relevant laws, regulations, and rules for the procurement of construction, services, and goods required by the public sector.

The core principles of South Korea's government procurement include competition, disclosure, commercial function, and transparency. The principle of competition is upheld by the selection method, which is based on a competition involving multiple bidders. The principle of disclosure ensures that all bidders are allowed to take part in the bidding process. The principle of commercial function and transparency is achieved by judging an entity's ability to carry out the contract on the basis of commercial functions, such as the price and quality offered by the entity (Yoon, 2023).

Saudi Arabia

The procurement system in the Kingdom of Saudi Arabia consists of public purchases of goods and services for government entities. All purchases are made through a competition system, in which all suppliers are free to bid by offering a fair price. The Ministry of Finance is responsible for administering the Saudi Government Tenders and Procurement Law (GTPL). According to the public procurement system, the Unified Procurement Agency (UPA) is a government entity responsible for unified strategic procurement in the country. A government contract may be defined as an agreement among government institutions or government institutions and private vendors. GTPL is facilitated by an electronic auction system that allows offering bids and selecting the lowest bid. Government contracts are governed by a hybrid of legal rules and administrative law. The government's power is unique, as they have a right to use the contractor's inventions. For example, according to the terms of the Saudi public works contract model, all intellectual property rights or inventions developed by contractors during the contract's performance transfer to the government and become the exclusive property of the government agency. Furthermore, government contracts' unique nature is justified because the government must contract for products to fulfill its public function. As per Saudi law, international procurement should follow local regulations, but some exemptions may be provided as per regulations for example, foreign persons may only be employed for work inside the Kingdom if local capacity is unavailable. Saudi Arabia has a robust Government Tenders and Procurement Law that describes all essential rules and regulations regarding the government procurement system and protects government agencies and the contractor's legal rights (Alanzi, 2021).

Southern Africa

Public procurement is essential for economic development and has an important role to play as a driving factor in future development. Until recently, many countries in Africa did not have, and many still do not have well-developed public procurement regimes. This presents a major obstacle to achieving the generally accepted goals of public procurement, which are, amongst others, transparency, competition, value for money, fairness, cost-effectiveness and integrity. Unfortunately, corruption, as in many other parts of the world, is also rife in public procurement in Africa, and poor public procurement regimes lend themselves to being misused. This presents a serious impediment to the economic development of Africa (de la Harpe, 2015).

Portugal

In Portugal, the Instituto dos Mercados Públicos do Imobiliário e da Construção (IMPIC) is the public institute responsible for monitoring procurement activities of contracting authorities, encompassing both the procedural and contract performance phases. IMPIC issues an annual report on public procurement activities, which includes a section on contract performance regarding both price and time duration deviations. The Portuguese legal system does not provide a centralized database on appeals related to public procurement contracts. IMPIC publishes annual reports on procurement activities in Portugal and is responsible for licensing, monitoring, and supervising electronic platforms for public procurement, as well as issuing guidelines on good practices. Public procurement contracts are regulated in administrative courts including contract modifications and procurement disputes. (Tatrai et al., 2024).

Hungary

In Hungary, the publication of public procurement contracts is mandatory. Contracting authorities must upload their contracts to the only mandatory Electronic Public Procurement System (EPS), from which they are entered into the Contract Repository maintained by the Public Procurement Authority (PPA). Contract modifications and contract performance notices are also uploaded and monitored by the system, which indicates if the contract is performed at a higher value than the original contract value. However, uploading invoices in the system is not mandatory, making it difficult to track the flow of public money in the EPS for the invoices received. Hungarian regulation requires contracting authorities to keep written records of their public procurement procedures, from the preparation to the performance of the contract concluded under the procedure. The Public Procurement Arbitration Committee (PPAC) is the deciding authority regarding any non-conformity, breaches, modifications or disputes to public procurement contracts. The PPAC's statutory tasks are to monitor the performance and modification of contracts resulting from public procurement procedures, to control the publication of notices, and to validate purchases that have been negotiated without prior publication of notices. Annual reports on procurement statistics are submitted to the Parliament for auditing. (Tatrai et al., 2024).

Serbia

In Serbia, there are currently no statistics on the performance of public procurement contracts, even though the Law on Public Procurement stipulates that the contracting authority is obliged to control the performance of public procurement.

The Public Procurement Portal covers only one aspect of the public procurement process – its 'entrance' where, after awarding the tender to a particular bidder, there is a range of interconnected activities that need to be followed until the completion of the assigned contract.

The current report from the Public Procurement Office on public procurement includes details of central public procurements, bidders, participation of SMEs, the largest contracting authorities, and activities of the Public Procurement Office.

The court system that handles disputes related to public procurement contracts is the territorially competent commercial court. There is no specific organization responsible for examining the legal basis for the modification of contracts, although the contracting authorities are required to send notifications of contract modification to be published on the Public Procurement Portal (Tatrai et al., 2024).

Real Cases in Public Procurement: Learning from Experience

2010 Commonwealth Games, India

Issue: During the organization of the 2010 Commonwealth Games, numerous problems related to public procurement were discovered.

Background: The Commonwealth Games finally began after several teams threatened to pull out due to concerns about hygiene conditions, the terrorism threat and various human rights issues.

There was evidence of lack of transparency and accountability from the time of the bid. Indian officials offered a last-minute "incentive" of USD 100,000 to each of the 72 countries that were part of the Commonwealth Games Federation to win the vote to host the games over the Canadian city of Hamilton. In addition, India offered travel grants for athletes amounting to USD 10.5 million. Most consultants were paid on appointment and did not have formal contracts. Procurement decisions were compromised with regard to transparency and accountability by "bunching contracts" to manipulate requests that fell below thresholds thereby expediting processes.

Outcome: The Central Vigilance Commission's detailed preliminary findings included the award of contracts at higher prices, poor quality assurance and management, and contracts not awarded to open competition agencies. Left in the wake of the games were multimillion-dollar legal disputes and 53 corruption cases being examined by the Central Vigilance Commission.

To minimize the negative impacts of procurement corruption, the United Nations Convention against Corruption (UNCAC) requires government parties to establish open competition systems of procurement and use transparent criteria in decision-making.

Discussion Questions

1. Could appropriate due diligence by the government have avoided this chaos?
2. How does having reporting guidelines reduce any government irregularities?
3. What are the impacts of corruption on the public?

Sources: Based on information from Tomar, V. (2024). "The Commonwealth Games 2010 scam: An analysis of corruption and accountability." *Lawful Legal*. Retrieved from https://lawfullegal.in/the-commonwealth-games-2010-scam-an-analysis-of-corruption-and-accountability/; Tomar, V. (2024). "The Commonwealth Games scam of 2010: A legal labyrinth unraveling India's biggest sporting scandal." *Lawful Legal*. Retrieved from https://lawfullegal.in/the-commonwealth-games-scam-of-2010-a-legal-labyrinth-unraveling-indias-biggest-sporting-scandal/.

Checkpoint 5.3

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=180#h5p-33

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5.4: The Procurement Life Cycle in Canada and the World

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Overview

Public procurement accounts for around one-fifth of global gross domestic product (GDP). In most high-income economies, the purchase of goods and services accounts for a third of total public spending, and in developing economies, about half. Given its size, the public procurement market can improve public sector performance, promote national competitiveness and drive domestic economic growth. Moreover, it can boost economic development. However, the benefits go beyond getting value for money and other monetary goals. Today, public procurement addresses policy objectives such as promoting sustainable and green procurement. Integrated with procurement policy are social objectives to support enterprises owned by disadvantaged groups and promote small and medium enterprises.

Internationally accepted good practices must be measure across various phases of the public procurement life cycle: preparing, submitting and evaluating bids, and awarding and executing contracts. Impediments to a well-functioning procurement system can arise throughout the different phases of the cycle. Private firms'

participation in the public market may be affected by issues of transparency and efficiency as early as the identification of a need by a procuring entity and can expand throughout the final execution of a service.

The Procurement Life Cycle

Unnecessary hurdles and obstacles to efficiency can occur at every step of the **procurement life cycle**. Each step comes with its own set of risks, but the lack of transparency, bottleneck regulations, unexpected delays and unequal access to information are challenges that suppliers can face all the way from the need assessment phase to awarding and implementing the procurement contract. Through targeted policies and strict implementation of regulations, governments have an important role in making the overall process easier for companies. Generally, international good practices can be used as goals when designing procurement policies. But beyond the guiding principles of transparency, efficiency and fairness that are beneficial to all regimes, governments must look into the specificities of their own system, identify risks and opportunities, and adopt targeted rules that will address these risks and make their systems stronger.

Transparency and access to information remain a priority in each stage of the procurement process, from the first conception of the procuring entity's need, through contract award and all the way to final delivery and payment.

Ensuring that suppliers can easily become aware of tendering opportunities, obtain copies of tender documents, and understand how and on what grounds bids are evaluated are just a few examples of how policymakers can make procurement regimes more transparent. Transparent processes, easy access to information and open procurement markets drive down costs, improve quality and provide better value for money. They also lower the risk that any party will be improperly advantaged due to flaws in the system. Conversely, when it is difficult or costly to obtain information on the government's needs, technical specifications and processes for submitting and evaluating bids, the procurement system is drained of efficiency, transaction costs rise, and potential bidders may be excluded from participating.

Preparing Bids

When assessing their needs and researching potential solutions, procuring entities often need to consult with the private sector to determine the solutions available, a process called market research. Early communication with the private sector often shapes the procurement, most notably the technical specifications required in the tender documents. If one or only a few suppliers are consulted during the market research, other suppliers may not be able to submit offers that comply with the technical specifications. This limits not only competition but also the procuring entity's ability to consider the full menu of options available, and thus the opportunity to get the best value for public money. After its market research the procuring entity chooses the appropriate procurement mechanisms to conduct its procurement and specify clear technical specifications for the evaluation of offers. To ensure that potential suppliers are encouraged to compete, certain baseline information has to be included in tender documents, and a notice of tender is to be advertised, preferably through multiple channels and ideally through a central online procurement portal. These documents should be available as early as possible, if not immediately after they are final, and they should be free. Various elements of the preparation period can weigh heavily on a supplier's decision to respond to a call for tender. Easy access to a procurement plan is critical for anticipating and planning the preparation of a proposal.

Detailed tender specifications—clearly stating the requirements to meet and the assessment method used by the procuring entity in evaluating proposals—are essential for a supplier to gauge its chances of winning the

contract. **Exhibit 5.2** captures elements of the procurement life cycle that take place until a supplier submits a bid.

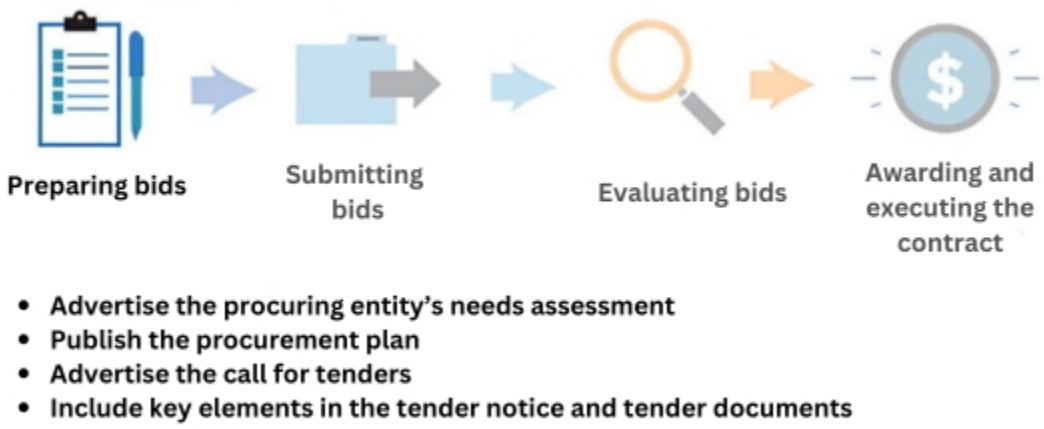

Exhibit 5.2: Preparing Bids. [See image description.]

Calibrated data points measure the ease with which prospective bidders become aware of tendering opportunities, make an informed decision on whether to submit a bid, and acquire the information and material necessary to prepare a proposal.[1]

Advertise the Procuring Entity's Needs Assessment

During the needs assessment phase, the procuring entity can engage the private sector to assess the procuring entity's needs—the type of good or service needed, the quantity and the technical specifications—before drafting the tender notice.[2] To provide an equal opportunity to all firms and potential bidders, it should publicly advertise any interaction with the private sector during market research. Such advertisement promotes the transparency and integrity of the procurement process. Companies in Argentina or Brazil are able to participate in a preliminary consultation process for all interested parties to provide their input on the technical specifications of the procurement, under certain conditions. Indeed in Argentina, when the amount of the contract or the complexity of the procurement is very high, a call for consultation is published online for a minimum of 10 days and allows any person to submit comments.[3] In Brazil a public consultation is mandatory 15 days before publishing the tender documents for high-value construction and engineering contracts. Algeria, Canada, Chile, Poland and Taiwan also require publicly advertised consultations with the private sector during market research. In Canada, Chile and Taiwan consultations with the private sector are always required to be

1. The thematic coverage of the subindicator is broader than is presented here, and additional data points are available on the Benchmarking Public Procurement website (http://bpp.worldbank.org).
2. Or any other governmental entity conducting the needs assessment
3. Article 32 of Executive Decree No. 893/2013 on Public Procurement of Argentina.

public, and notices are published online to reach a wide audience. In Poland, the procuring entity must publish a notice online and include information on the consultations in the tender documents.[4]

Publish the Procurement Plan and Advertise the Call for Tenders

To promote transparency and help bidders identify upcoming tendering that might interest them and grant them more time to prepare a viable offer, procuring entities should be required to publish their procurement plan.

More importantly, widely advertising the call for tenders is essential to attract a maximum number of offers and guarantee private sector suppliers access to tendering opportunities. In its Methodology for Assessing Procurement Systems (MAPS), the OECD promotes the publication of open tenders "in at least a newspaper of wide national circulation or on a unique official Internet site, where all public procurement opportunities are posted that is easily accessible."[5] Channeling information to private companies on the Web is generally a good practice. But in countries where internet access can pose a challenge for users, especially SMEs and other bidders with few resources, governments may allow for a transition period so that the tendering information and materials remain accessible through traditional communication channels. With online procurement platforms, the legal framework in many economies has been revised to require only online publication. However, many economies continue to broadcast calls for tenders through traditional channels. Indeed, traditional channels provide information in countries where SMEs have less capacity and less access to online portals.

In a few economies, the transition to electronic communication support has started but not been completed. In Mozambique and Sierra Leone users can click on a link to access tender notices, with projects updated on a daily basis.

Include Key Elements in the Tender Notice and Tender Documents

To make an informed decision on whether to respond to a call for tender, a company needs easy access to the requirements to meet and to the criteria the procuring entity will use to assess bids. Both elements should be included either in the tender notice or in the tender documents. When they are available only in tender documents, they should be freely accessible. According to the OECD's MAPS the "content of publication" should include "sufficient information to enable potential bidders to determine their ability and interest in bidding."[6]

Submitting Bids

For a small company, several elements come into play between the moment a call for tender is advertised and the moment it submits a bid in response to the call. Before anything else, the company must decide whether to participate in the tendering. If it decides to do so, it must properly prepare and submit its bid and comply

4. Article 31 of the Public Procurement Law of Poland, as amended in 2014.
5. OECD 2010
6. Idem.

with the timeframe and specifications that the procuring entity imposes. The **regulatory framework** can substantially ease the tasks for prospective bidders. For instance, making it mandatory for the entity to address bidders' questions on technical specifications in a timely fashion guarantees better access to information. Ensuring that the answers that are not specific to one bidder are shared with all bidders levels the playing field and conveys the notion that they are treated fairly and equally. By the same token, requiring that tender documents be distributed for free or at a regulated price prevents excessive transaction costs that could deter participation. The regulatory framework can also prevent unnecessary hurdles for prospective bidders when it comes to bid submission. In countries where accessing the internet is not challenging, the ability to submit a bid online facilitates the process for bidders. Imposing a maximum amount of **bid security** that the procuring entity can request from bidders also helps prevent excessive administration costs and deters participation from suppliers that are not serious candidates. Allocating a reasonable time to submit a bid is an important element for bidders.

Exhibit 5.3 shows how regulatory framework and procedures facilitate bidders' access to information while preparing their bids and ease the bid submission process.[7]

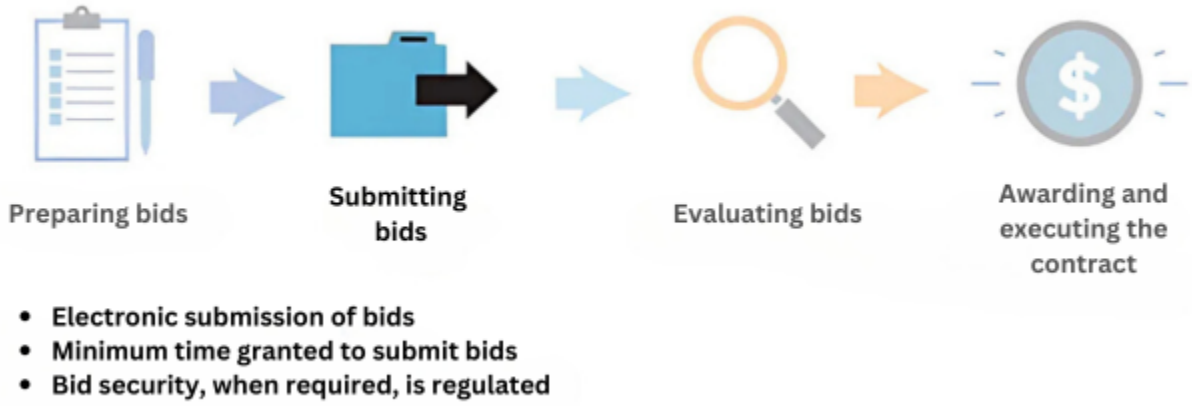

Exhibit 5.3: Submitting Bids. [See image description.]

Electronic Submission of Bids

Using electronic means to conduct public procurement is widely perceived as a step toward procurement efficiency. It increases access to tendering opportunities, eases compliance with procedures and reduces transaction costs for bidding firms. The submission of bids through an electronic portal is only one of the options available on an online portal. For bidders, submitting a bid online offers a safer option for delivering proposals efficiently. Except for a few countries like Chile and the Republic of Korea, where electronic submission of bids has become the rule, e-bidding is possible only in limited circumstances in most economies measured. In Poland the ability to submit a bid online is contingent on the procuring entity's approval. E-bidding can also be possible for just a few government agencies, as in Hong Kong SAR, China, where only one

7. The thematic coverage of the subindicator is broader than is presented here, and additional data points are available on the Benchmarking Public Procurement website (http://bpp.worldbank.org)

government department can receive bids online. Restrictions can also apply to bidders. In the United States a company has to go through an authorization process to bid online. As a result, e-bidding mandated at the national level and across all procuring entities remains the exception for open calls for tender. In addition to online submissions, sending a bid by email is another efficient option to reduce transaction costs for bidders.

Minimum Time to Submit Bids

Granting suppliers enough time to prepare and submit their bids can ensure fairness, especially for SMEs as preparing a bid can require hiring consultants, preparing plans, producing samples and performing other time-consuming tasks. If the timeframe to do so is too short, smaller companies have less chance to meet the deadline and submit a solid proposal. But for efficiency the timeframe should not be excessive either.

Policy makers thus have to strike the right balance between fairness and efficiency in determining the bidding timeframe, taking the reliability of the postal system into account versus online platforms and email. The 2014 European Union directive on public procurement shows that a longer timeframe to submit a bid is not necessarily better. Indeed, the directive lowered the minimum time for suppliers to submit a bid for procurement. The timeframe is now 15 to 52 days depending on the type of bid process.

Bid Security, When Required, Is Regulated

Bid security is an efficient instrument for procuring entities to ensure that they receive only serious offers, which bidders will maintain until the selection is made. On the amount of bid security, there is no internationally accepted good practice. The amount should be substantial enough that it deters suppliers from submitting frivolous offers. But when the amount of the bid security is too high, it can deter potential bidders. Since the amount of bid security adds to the cost of submitting a bid, expensive bid security can deter SMEs and other bidders with limited resources. Procuring entities may thus strike a balance in determining what's appropriate. The law can also provide a list of acceptable forms of bid security and mandate that bidders, not procuring entities, can choose the form that best suits them.

Evaluating Bids

The bid opening session should be transparent, and the bid evaluation should follow the technical specifications and other award criteria detailed in the tender documents. But if the legal framework does not provide clear enough guidance, or if the procuring entity is not transparent enough about how bids are evaluated, suppliers can perceive the evaluation phase as a subjective decision to select the supplier it prefers to do business with. If this perception is allowed to persist, suppliers may lose faith in the system's integrity, feeling that the process is rigged against them and they may ultimately opt out of the procurement market. The regulations should describe the bid opening process, such as specifying which parties can attend the bid opening sessions and whether any aspects of it will be recorded. **Exhibit 5.4** looks at whether the bid evaluation is open, transparent and fair to guarantee bidders that the process follows the best standards of transparency.[8]

8. The thematic coverage of the subindicator is broader than is presented here, and additional data points are available on the Benchmarking Public Procurement website (http://bpp.worldbank.org).

Exhibit 5.4: Evaluating Bids. [See image description.]

Timeframe to Proceed with the Bid Opening

The legal framework in half the economies surveyed requires the bid opening session immediately after the closing of the bid submission period—or indicates the timeframe for the bid opening session to take place. In Bolivia, a company can refer to the mandatory timeline determined by the procuring entity for each procurement, which states the date, time and place for the bid opening session. In Spain, it knows the exact date, time and place of the bid opening session, but that can be up to 30 calendar days after the closing of the bid submission period. In Australia, Jamaica, Namibia or Sweden, the legal framework is vague and guarantees only that the session takes place as soon as possible or practicable. In Afghanistan, Cameroon and Morocco, a company has, in practice, no guarantee that the procuring entity will comply with the law and respect the time imposed to proceed with the bid opening.

Who Attends the Bid Opening

To ensure the transparency of the competitive bidding system, all bidders or their representatives should be able to attend the bid opening session. Many economies allow the presence of bidders and their representatives at the bid opening and some are open to the public. In cases where procurement is conducted electronically, as in Chile, the Republic of Korea, the Netherlands and Taiwan, China the electronic bid opening can be conducted without the bidders. But in these instances, bidders can be notified electronically of the opening of their bids. In the Netherlands a company would systematically receive an automatic electronic notification when its bid is opened. In Chile the bid opening is conducted automatically, through the information system, on the day and time established in the notice of invitation to tender and in the tender documents. The information system provides the bidders with information about the session. In such cases a company could attend the bid opening in person. In Canada, Hong Kong SAR, China, Ireland, Lebanon and Malaysia, the regulatory framework is silent on who can attend the bid opening session.

Procurement Official Participation in the Bid Evaluation

Once the bid evaluation is underway, the bidder will want to know whether the best person possible has been appointed to evaluate bids. It knows that in some economies, public officials involved in the initial stages of the procurement cannot take part in the evaluation. To guarantee the efficiency of the bid evaluation, the procurement official conducting the needs assessment and drafting the technical specifications should not be prevented from participating in the bid evaluation. Indeed, if procuring officials are prevented from participating in any procurement, there is a real danger of excluding the most qualified officials from the bid evaluation. There are also benefits from having an integrated evaluation team.

Awarding and Executing Contracts

Once the bidder that best satisfies the technical specifications and award criteria is identified, the contract has to be awarded promptly and transparently. The legal framework should require that a contract award be published, as stated in Article 23 of UNCITRAL Model Law on Public Procurement. In addition, losing bidders should be informed of the award and given an opportunity to learn why they did not win. Awarding the contract is the end of the formal procurement process, but the contract must still be managed, and the supplier must be paid in return for its performance. Many procurement systems do not cover this phase of the procurement life cycle. Indeed, even internationally accepted procurement models—such as the World Trade Organization's Revised Agreement on Government Procurement and the UNCITRAL Model Law on Public Procurement—do not provide guidance or good practices for contract management. The legal framework should specify a timeframe for making payments and provide additional compensation when the procuring entity fails to pay on time. Indeed, delays in payment can have severe consequences for private sector suppliers, particularly SMEs, which typically do not have large cash flows. **Exhibit 5.5** assesses whether, once the best bid has been identified, the contract is awarded transparently and the losing bidders are informed of the procuring entity's decision.[9]

Exhibit 5.5: Awarding and Executing Contracts. [See image description.]

9. The thematic coverage of the subindicator is broader than is presented here, and additional data points are available on the Benchmarking Public Procurement website (http://bpp.worldbank.org).

Once the execution of the contract is taking place, the procuring entity should be encouraged to manage the payment process through an online system, offering the possibility for the supplier to sign the contract and request payments online. It should also comply with clear regulations when it comes to paying the supplier on time—and specify penalties for delayed payment.

Standstill Period for Bidders to Challenge the Award

A standstill period—between announcing a potential awardee and signing the contract— ensures that bidders have enough time to examine the award and decide whether to initiate a review procedure. This is particularly important in economies where an annulment of the contract is not possible,[10] or when a complaint does not trigger a suspension of the procurement process. In accord with UNCITRAL the period should be long enough to file any challenge to the proceedings, but not so short as to interfere unduly with the procurement.[11] A minimum of 10 days is a recognized standstill period, as reflected in judgments by the European Union Court of Justice,[12] and the WTO's Government Procurement Agreement. The standstill period and the time limits for the review body should be synchronized.[13]

Regulatory Timeframe to Process Payment

A company has fulfilled its contractual obligations and submitted a request for payment to the procuring entity. It is now waiting to be paid for services rendered. It knows that an efficient public procurement system processes payments to suppliers within a limited number of calendar days once a request for payment is submitted. In Poland, in compliance with the 2014 European Union directive on public procurement, the company is guaranteed payment within 30 days of the date of issuing certificates of works or documenting performance, as per the law.[14]

In several economies, delays of more than 30 days are common in practice. In many economies, suppliers have to wait longer than 60 calendar days for payment. In Bolivia, Colombia, Ecuador, The Gambia, Honduras, Mozambique, Mauritius, Nepal, Serbia, Turkey and Vietnam a company can find the payment schedule and forms in the contract. But in some economies, payment processing takes more than 30 days. The two most prominent reasons are the length of administrative procedures and budgetary constraints. In Senegal a company receives payment within 15 days of submitting its request.[15] But in Kenya the procuring entity has to process the payment in 30 days if the said company is owned by youths, women or persons with disabilities.[16]

10. UNCTAD 2014
11. Idem.
12. Case C81/98 Alcatel Austria and Others v Bundesministerium für Wissenschaft und Verkehr, and C212/02 Commission v Austria.
13. OECD 2007b.
14. Article 8 of the Act on Payment Terms in Commercial Transactions of 8 March 2013.
15. Article 104 of the Public Procurement Law of Senegal.
16. Regulation 34 of the Public Procurement & Disposal (Amendment) Regulations of Kenya, 2013.

Penalties in case of Delayed Payments

Many economies do not mandate procuring entities to pay penalties to suppliers in cases of late payment. A company is entitled to receive penalties if the procuring entity fails to pay on time in two-thirds of the economies surveyed. In Canada it automatically receives interest when an account is overdue.[17] Even in economies where penalties are legally granted to suppliers, half do not follow their laws in practice, including many in Europe and Central Asia and in Latin America and the Caribbean. In Mexico a supplier would probably see, as part of the procurement contract, provisions for penalties if payment is delayed. Even so, the entitled suppliers rarely request such penalties.

Checkpoint 5.4

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=185#h5p-34

Image Descriptions

Exhibit 5.2: The image is a flowchart illustrating the process of preparing bids. The chart is composed of four stages represented by icons and text, connected by arrows pointing to the right. The first stage shows a clipboard icon labeled “Preparing bids.” The second stage has a folder icon labeled “Submitting bids” in gray text. The third stage displays a magnifying glass icon labeled “Evaluating bids” in gray text. The final stage features a dollar sign inside a circle, labeled “Awarding and executing the contract” in gray text. Below the flowchart is a list of tasks in bullet points under preparing bids, including advertising the procuring entity’s needs, publishing the procurement plan, advertising the call for tenders, and including key elements in tender documentation.
[back]

Exhibit 5.3: The image is a visual representation of a bid submission and evaluation process in project procurement. It features a linear flowchart consisting of four main steps. The first step, “Preparing bids,” shows a clipboard with a piece of paper and a pen. The next icon is a blue briefcase with a black arrow, signifying

17. Section 4.70.30.1 of the PWGSC Supply Manual of Canada

“Submitting bids.” This section highlights that electronic submissions are possible, a minimum submission time is regulated, and bid security may be required. The third step, “Evaluating bids,” is depicted by a magnifying glass. Finally, the last step, “Awarding and executing the contract,” is represented by a circular icon with a dollar sign, suggesting financial elements. Each step is labeled below its respective icon.
[back]

Exhibit 5.4: The image presents a flowchart illustrating the bid submission and evaluation process. It consists of a horizontal sequence of icons, each representing a step in the process, with adjacent text labels. From left to right, the steps include: “Preparing bids,” depicted by a clipboard icon; “Submitting bids,” shown with a briefcase icon; “Evaluating bids,” highlighted in orange with a magnifying glass icon; and “Awarding and executing the contract,” represented by a dollar sign inside a circle. Below the main icons, three bullet points detail specific aspects of the “Evaluating bids” step: the timeframe for bid opening, who attends the bid opening, and the participation of procurement officials in the bid evaluation. The overall color scheme is light blue and orange, with the “Evaluating bids” step prominently emphasized.
[back]

Exhibit 5.5: The image is a flowchart illustrating the bid process. It consists of four main stages represented by icons and captions from left to right: “Preparing bids” features a clipboard; “Submitting bids” shows a briefcase; “Evaluating bids” is depicted with a magnifying glass; and “Awarding and executing the contract” is represented by a dollar sign in a circle. Below these stages, three bullet points detail key aspects of the final step: a standstill period for challenges, regulatory timeframe for payments, and penalties for delayed payments.
[back]

Attributions

Chapter Review

Key Takeaways

- Cheap labour costs in many countries help companies move or out source their production process to third-party or external providers with whom the firm has a contract. Companies have benefitted from access to specialized resources and reduced fixed costs.
- The process of purchasing services or goods worldwide to bid on contracts is called international procurement.
- The process helps organizations enhance their competitive position, meet customer expectations, reduce costs, and add value by finding suppliers who meet the organization's strategy.
- Public procurement has developed strategically, accelerating business with global best practices.
- The legal side of international trade standards emphasize fair, transparent, competitive and cost-effective practices.
- Different procurement laws may be inconsistent in trade partnerships.
- Core global standards apply to the procurement life cycle, international laws and procedures support the entire sourcing process.

Explore and Engage

Discussion Questions

1. In the modernization of public procurement, what is the benefit of globalization?
2. What international developments changed the global environment for public purchasing?
3. How do public authorities regulate international trade and domestic supplier sourcing in the global context?
4. Public procurement rules vary around the world; why is it important to understand the similarities and differences?

Active Learning

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=207#h5p-7

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CHAPTER 6: ORGANIZING PUBLIC PROCUREMENT PROCESSES

Introduction

The procurement function in both the public and private sectors has grown, becoming more complex, shifting environments from reactive to proactive and from tactical to strategic. This chapter focuses on the procurement process in the public sector from end-to end. Public purchasers or buyers need to keep up with public sector procurement law and processes to reduce legal and compliance risks or safeguard themselves from any reputational or operational problems.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Describe the main stages of the public procurement competitive bidding procedure and the activities involved.
2. Explain the stages within the procurement process and the importance of each stage.
3. Identify why continuous improvement and development of public procurement is important for the operation of the public sector administration.
4. Summarize how to implement an open approach to procurement policies and engagement of stakeholders.

Public Procurement Playbook

Watch this video to learn more about the steps in the public procurement process.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=382#oembed-1

Source: My Procurement Classroom. (2021, May 18). Steps in the Public Procurement Process. [Video]. YouTube. https://www.youtube.com/watch?v=q56z7x01SYE

6.1: Execution of the Public Procurement Procedure

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A transparent public administration implies the development of skills for conducting projects and investments in the interest of the community. Of all government activities, public procurement is the activity most vulnerable to corruption, having a fundamental role in the economic development of states.

The public procurement process aims to create the framework required for conducting the procurement or investment process in the field of public services (Băşanu & Pârjol, 1998); at the same time, this process ensures the disbursement of the funds distributed to the contracting authorities and public institutions. These authorities and institutions must manage such funds so that, throughout the year, they might properly conduct their activity. The public procurement process is a sequence of stages, and after going through them, the product, service or work is obtained as a result of the awarding of the public procurement contract.

Main Stages of the Procurement Procedure

After elaborating on the procurement plan, the execution of the procurement procedure is initiated. The main stages that need to be run through are the following:

Notice of Intent

The **notice of intent** is obligatorily submitted for publication when one is trying to benefit from the reduced deadlines and implicitly from the duration of the execution of the process. If the contracting authority does not want to reduce the deadlines, then the publication of the notice of intent is optional. For the products and services agreements, the notice of intent is submitted for publication as soon as possible after the fiscal year starts. For the service agreements or the framework agreement, the notice of intent is submitted for publication as soon as possible after the approval of the public procurement plan where the respective works agreement or framework agreement is provided.

Why publish the notice of intent? To reduce the deadlines for drawing up the tenders when using open tendering and selective tendering (if subject to one or more international trade agreements). Posting is not required if using limited tendering but is still recommended.

When is it published? As soon as possible after the fiscal year starts or as soon as possible after the approval of the program where the service agreement or the framework agreement is provided.

Where is it published? The Official Government of Canada Government Electronic Tendering Service (GETS) and MERX Canadian Public Tenders.

What does it contain? Information provided includes a detailed description of the solicitation, trade agreements, closing date/time, and any specific conditions. Standard Form — Notice of Proposed Procurement Template.

Awarding Method

The awarding methods of the public procurement agreement are traditional methods (open tendering, restricted tendering, competitive dialogue, negotiation with a previous participation notice, negotiation without a previous participation notice, call for tenders, solution bid, direct procurement) and special methods (framework agreement, the dynamic procurement system, electronic tendering).

In terms of the procurement framework for each individual type of **solicitation**, the detail is presented in Table 1.

Table 1: An overview of the awarding method

Method of Supply	Requirements
Contracts above $25,000	Over $25,000 for goods and over $40,000 for services and construction can be published on GETS. Up to $100,000 of services, property consulting, and construction can be published on various databases (such as ProServices and SELECT)
Contracts below $25,000	If below $25,000, procurement officers or buyers may request quotations from suppliers directly. Suppliers may be selected from the Supplier Registration Information system, where government buyers identify approved suppliers.
Standing offers and supply arrangements	Non-binding agreements between the federal government and potential suppliers. Terms and conditions are outlined and apply to any future requirements. Various types of Standing Offers and Supply Arrangements (SOSA) are posted on CanadaBuys.
Non-competitive procurement process	• Only used in special circumstances such as a pressing emergency where the estimated expenditure does not exceed: ◦ $25,000 for goods and services ◦ $100,000 for architectural, engineering or other construction planning ◦ $100,000 for Canadian International Development Agency (CIDA) service contracts • Only one supplier can perform the work • It would not be in the public interest to solicit bids
Advance Contract Award Notice (ACAN)	ACAN is a public notice published on GETS for a minimum of 15 calendar days, indicating to the supplier that a department intends to award a contract for goods/services. It is believed that only one supplier is capable of performing the work. If no other supplier submits a statement of capabilities, the contract is then awarded.

The Elaboration of the Awarding Documentation

The awarding documentation contains all the requirements including the Statement of Work (SOW), rules, and information regarding the object of the agreement and its awarding procedure, including the tender book or, where appropriate, the descriptive documentation. The awarding documentation contains the formal, technical, and financial requirements that describe the object of the agreement. The financial officer will elaborate on their tender based on this information. The responsibility for the elaboration of the awarding documentation belongs to the internal department of the contracting authority, which specializes in awarding public procurement agreements.

The structure of the awarding documentation must contain the procurement data sheet, the tender book, or, where appropriate, the descriptive documentation, the proposal agreement, forms and examples. The awarding documentation should not contain conflicting information and information that contravenes the stipulations in the participation notice or procurement policy and procedures.

Call for Competition

To ensure transparency in the awarding of the public procurement agreements, the contracting authority,

whenever it wishes to award a public procurement agreement or to conclude a framework agreement, has the obligation to publish a tender notice or an invitation to tender, according to the procedure being applied.

Why publish the notice of tender? Where a trade agreement covers a procurement, the procedural obligations of the trade agreement must be followed. Procedural obligations of the trade agreements are aimed at ensuring compliance with the general principles of open, transparent, and competitive tendering.

When is it published? It must be posted for at least 25 calendar days before any bid solicitation(s). If there is a state of urgency, this period may be reduced to no less than 10 days.

Where is it published? It is published on the official Government of Canada sites like the Government Electronic Tendering Service (GETS) and MERX Canadian Public Tenders.

What is the content of the notice? Description of goods or services, condition for participation, methods of procuring, the entity's contact information, period of validity, and any trade agreements that apply.

For the application of the procedures for restricted tendering, competitive dialogue or negotiation with publication of a notice, the notice of tender for the candidates' selection/pre-selection stage must contain selection/pre-selection criteria, applicable rules, minimum number of applicants to be selected or pre-selected, maximum number of suppliers to be selected or pre-selected, deadline and location for submission of applications.

Presentation of the Application and Tender

Application includes the documents by means of which the supplier demonstrates their current state of business, competency to conduct their professional activity, economic and financial situation, and technical and professional competency. The application is required to obtain the invitation to tender for the subsequent submission of the tender for cases where a restricted tendering, negotiation, or competitive dialogue procedure is applied.

The tender represents the document by means of which the supplier expresses their willingness to legally commit to a public procurement agreement. Any tender can be amended before the deadline for the submission of tenders. The definitive elements of the tender are the financial proposal, the technical proposal and the qualification documentation. The tender is elaborated in accordance with the provisions in the awarding documentation and must be complete, decisive, real and serious. A variation of the tender is represented by the alternative tender, the tender that can deflect to a certain extent from the tender book requirements. This can be submitted along with the main tender only in cases where the awarding criterion is "the most economically advantageous tender" and only if the contracting authority allows this by the instrumentality of notice of tender (Fundătură et al., 1992). The alternative tender must meet the minimum requirements provided in the tender book in terms of quality solutions and requirements. The alternative tenders can deflect from the provisions of the tender book if they meet the minimum provided requirements and offer more favourable conditions for the contracting authority.

Regarding the presentation of the tender and application, they are submitted in original and in a number of copies if the Procurement data sheet requires this. Copies of applications/tenders are necessary for the committee members for the evaluation process. In the event of a discrepancy between the original and the copies, the original prevails.

The documents issued by official institutions/bodies empowered to that effect must be signed and sealed according to the legal provisions. Any deletion, addition, underlining or superposed writing is valid only if approved by the person/persons authorized to sign the tender. Generally, supplier questions must be submitted in writing prior to the tender's due date. In some cases this information is included in the tender schedule as the question submission date. Failure to comply with these requirements may result in a bid being declared non-responsive or disqualified.

The Awarding Procedure

The application selection is performed by applying selection criteria. The suppliers are selected using objective and non-discriminatory criteria relating only to technical, economic, and financial competency. The supplier can submit the tender using the preferred method either electronically, by mail, or directly at the specified address; or a combination of these methods as outlined in the tender instructions.

The evaluation committee has the obligation to perform the examination and evaluation activities only at the contracting authority's headquarters (the buyer's facility) (Taylor & Smidt, 1970). The evaluation committee has the obligation to establish the winning tender between the admissible tenders based on applying the criterion for awarding the public procurement agreement.

Signing the Agreement

The awarding procedure of the agreement is completed by signing the agreement. The provisions in the tender regarding the technical and financial proposals, the agreement performance chart, the payments chart, and the bank guarantee execution, where appropriate, become an integral part of the agreement to the extent that they do not affect the mandatory provisions. If parts of the public procurement agreement are to be performed by one or more subcontractors, then the contracting authority must solicit, upon the conclusion of the agreement, the submission of agreements concluded between the future contractor and the designated subcontractors.

Execution of the Agreement

The agreement becomes effective either subsequent to the constitution of the performance bond, if it was requested, or at the deadline agreed by the Parties.

The **execution** of the agreement must be performed so that the Parties fulfill their obligations in good faith, both quantitatively and qualitatively, at the deadline established in the contract (Delaney et al., 1998). Throughout the execution of the agreement, various activities can be undertaken: announcing the vendor or contractor on the startup of the activity; monitoring the contained activities for compliance with stipulations in the agreement (verifying the quality standards, the quantities, the objectives and the established period); documentation for the acceptance of deliveries; monitoring the expenditure, ensuring the availability of funds; verifying the accuracy of invoices and approving the invoices for payments; verifying amendment requests and/or the agreement renewal in time; verifying if all activities are completed and accepted by the direct beneficiaries before the agreement's expiry date; announcing the specialized department in case of disputes/litigations; performing termination of the agreement; performing an updated audit report on the agreement administration.

Completion of the Agreement

The partial and/or final reception means the operation whereby the contracting authority expresses its consent on the products, services and works resulting from a public procurement agreement and based on which the payment is performed. Usually, after the final reception, the last payment or the final release of the agreement performance bond is performed. Reception is performed by a reception committee. The reception committee

has the obligation to determine the stage and fulfilment of the obligations under the agreement (Basanu & Pricop, 2001).

For the reception of works agreements, the contractor shall ensure that on the reception date, the performed work will present the qualities declared by them in the agreement, will comply with the technical regulations in force and will not be affected by flaws which would decrease or cancel its value of usability according to the normal conditions of use or to those specified in the agreement.

Checkpoint 6.1

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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Attributions

6.2: The Three-Phase Procurement Model: Preparation, Purchase, and Perform

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Essential Reading

Read “Section 1.5 Procurement Process in Three Ps” from “Chapter 1 Introducing Public Procurement” by J. Grandia, L. Kuitert, F. Schotanus, L. Volker in *Public Procurement: Theory, Practices and Tools* (2023) edited by J. Grandia and L. Volker, Palgrave Macmillan, licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

The 3P model is developed specifically for the public sector, where the process is viewed as a circular and continuous process.

Public Procurement Playbook

Watch this video to learn more about the public procurement procedure with the tender, award and execution.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=408#oembed-1

Source: Fundación Civio. (2021, March 31). *Public Procurement: Main Concepts*. [Video]. YouTube. https://youtu.be/V8W1o4gGDis?list=PLZM9-jw0nULM_njXHkof28HXyCJLUMOXI

Essential Reading

Public sector procurement uses a fair, competitive process aimed at getting the best value for Canadians. This process involves using open tendering, standing offers, supply arrangements or contracts to pre-qualify suppliers. The procurement process followed by the Government of Canada has three phases:

1. Planning
2. Bidding and Contract Award
3. Contract Management and Closeout

Learn more about the three phases of the procurement process by reading: Procurement process | CanadaBuys.

Public Procurement Playbook

Watch this video to learn more about the role of the procurement division manager who manages the purchasing processes in government procuring.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=408#oembed-2

Source: P-20 Network. (2020, May 14). *Career Pathways Virtual Trailheads — Joan Schouten — Government Purchasing Manager*. YouTube. [Video]. https://youtu.be/ghOBx8fpY9Q?si=51mRAhskBy_Fw9Ys

Checkpoint 6.2

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Attribution

The multiple choice questions in the Checkpoint boxes were created using the output from the Arizona State University Question Generator tool and are shared under the Creative Commons – CC0 1.0 Universal License.

6.3: Strengthening the Effectiveness of the Procurement Function in the Public Sector

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Good procurement practice and business efficacy require the purchaser to find a supplier who will be both reliable and able to provide products or services that are good value for money (Brown, Bessant, and Lamming, 2013). Good value for money does not simply mean the cheapest but will include a variety of other factors such as quality, compliance with tendering criteria and after-sale service. Handfield (2011) notes that public procurement professionals are accountable to the public whose money is spent, including disappointed tenderers and potential suppliers. As such, they must produce procedures and practices that will stand up to scrutiny during either government audits or challenges through the courts regarding any purchasing decision that is deemed to be unprocedural. The primary purpose of public accountability is to prevent abuses of taxpayer money.

Procurement processes experience challenges the world over. This occurs even in developed countries, and some of the challenges are related to internal and external factors as well as poor communication between departments.

Thai (2011) identified the following seven challenges facing public sector procurement: (i) setting clear objectives at the outset of all projects and for all strategic procurement units; (ii) developing a procurement strategy for every public sector organization; (iii) focusing strategic procurement on outcomes not processes; (iv) embracing collaboration as a strategic tool; (v) recognizing that sustainability has become a strategic driver for professional procurement; (vi) positioning the public sector as a customer of choice, and (vii) resolving the talent scarcity problem.

Public procurement practitioners have always walked a tightrope. Their ability to accomplish procurement objectives and policies is influenced very much by internal forces, including interactions between various users from different departments demanding different goods and, in most cases, are not predictable (Arora, 2014). Staffing levels and budget resources are possible challenges, considering that funds are not available at the time of planning. Procurement planning enables departments to anticipate recurring contract requirements and be in a better position to take anticipatory actions aimed at ensuring compliance, but in most cases, the plan is not achieved due to a lack of sufficient funds (Arora, 2014; Handfield, 2011; Thai, 2011; Neals 2011).

Another challenge identified by the literature is excessive documentation. Public procurement is usually characterized by too much paperwork meant to communicate information from one function to another to facilitate action, indicate requirements to suppliers, and obtain the necessary goods and services in a timely manner and according to specifications (Baily et al., 2008). To address this problem, Baily, Farmer, Crocker, Jessop, and Jone (2008) recommend the use of e-procurement in the public sector. On their part, Lewis and Roehrich (2009) put an emphasis on the importance of supplier selection. They stress that selecting the right suppliers has an immediate and long-term effect on the organization's ability to serve its clients. A wrong supplier may supply poor goods or sub-standard materials, which will then lead to poor customer service or may result in delays and require extensive corrective work, thereby affecting the product or service cost.

It is imperative that management recognizes weaknesses in the procurement function and adjusts to the dynamic global environment and socio-economic changes. Effective buying involves six "*rights*:" buying goods and services at the right price, from the right source, in the right quantity, at the right time, at the right specifications that meet users' needs and to the right internal customer (Handfield, 2011). Researchers (such as Thai, 2011; Neals, 2011) noted that the performance of the procurement function is influenced by the interactions between various elements, including professionalism, staffing levels and budget resources, procurement organizational structure, procurement regulations, rules and guidance and internal control policies.

Practical Procurement: Scenarios and Solutions

Huan Lee, the newly appointed Chief Procurement Officer (CPO) at the City of Bramfield, faced a significant challenge. The city's procurement processes were outdated, leading to inefficiencies, increased costs, and frequent complaints from both internal departments and external suppliers. Huan's primary task was to overhaul the procurement function to ensure it was more effective and aligned with modern best practices. This was crucial not only for operational efficiency but also for maintaining public trust and accountability.

The City of Bramfield, a mid-sized municipality with a population of 150,000, provided a range of public services, including waste management, public transportation, and community health services. The city employed around 2,000 people and had an annual budget of $500 million. The procurement

department was responsible for acquiring everything from office supplies to large-scale infrastructure projects. However, the current procurement processes were plagued by excessive paperwork, lack of clear objectives, and poor communication between departments. These issues often resulted in delays, cost overruns, and dissatisfaction among stakeholders.

Huan identified three potential strategies to address the procurement challenges. The first option was to implement an e-procurement system. This would streamline the procurement process by reducing paperwork, improving communication, and providing real-time tracking of procurement activities. The second option was to develop a comprehensive procurement strategy that focused on outcomes rather than processes. This strategy would involve setting clear objectives for each procurement project, fostering collaboration between departments, and emphasizing the importance of sustainability in procurement decisions. The third option was to invest in training and development for procurement staff. This would ensure that the team was well-equipped to handle the complexities of modern procurement and could effectively manage supplier relationships.

Each of these options had its own set of advantages and challenges. Implementing an e-procurement system would require significant upfront investment and training but could lead to long-term savings and efficiency gains. Developing a comprehensive procurement strategy would necessitate a cultural shift within the organization and strong leadership to drive the change. Investing in staff training would improve the team's capabilities but might not address the systemic issues within the procurement process.

Huan knew that addressing the procurement challenges was critical for the city's operational efficiency and public accountability. Delays and inefficiencies in procurement not only wasted taxpayer money but also eroded public trust. It was essential to choose the right strategy and implement it effectively to ensure the city's procurement function could meet the demands of the modern public sector environment.

Discussion Questions:

1. What are the potential benefits and drawbacks of implementing an e-procurement system in the City of Bramfield?
2. How can developing a comprehensive procurement strategy improve the effectiveness of the procurement function in the public sector?
3. Why is investing in training and development for procurement staff important, and how can it address some of the challenges identified in the case?

Source: Scenario and questions created with the assistance of Microsoft Copilot.

Organizational Processes

Organizational processes can be broadly defined as structured, measured sets of activities that together — and only together — transform inputs into outputs (Dumas et al., 2013). In contemporary organizations, organizational processes have become one of the most important — if not the most important — management paradigm (Jenabati et al., 2014). By providing adequate information flow — both vertically and horizontally, organizational resources are a vital element in ensuring that an organization's goals are effectively achieved (Dumas et al., 2013, p.4).

Procurement professionals should develop integrated purchasing processes that support organizational goals and objectives. According to Handfield (2011), these strategies involve developing and maintaining policies and processes; monitoring supply markets and trends in terms of material prices, supply shortages and supplier changes; and interpreting the effect of these trends on company strategies supporting the organization's need for a diverse and globally competitive supply base by identifying the critical materials and services required to support company strategies in key performance areas — predominantly during new product development.

Although the effectiveness of organizational processes is constantly associated with improved organizational performance, few studies have empirically investigated that relationship. The study by Jenabati et al. (2014, p.119), which was aimed at exploring the correlation between effective organizational processes and improved organizational performance, found that processes are essential in fostering an environment of reduced conflict and increased connectedness in an organization, thereby enhancing organizational performance. A surprisingly strong association was revealed by the findings of their study between organizational processes and overall performance.

Skills Development

Skills development denotes the "planned and systematic modification of behaviour through learning events, programmes and instruction, which enable individuals to achieve the levels of knowledge, skill and competence needed to carry out their work effectively" (Jehanzeb and Bashir, 2013, p.246). According to Hameed and Waheed (2011, p. 227) and Jehanzeb and Bashir (2013, p.247), skills development is concerned with the development of people's expertise and knowledge. Skills development has also been referred to as a situation where an expert works with a learner to transfer to them certain areas of knowledge and skills in order to help them improve performance in their current job (Hameed and Waheed, 2011, p.226).

Irrespective of how long one has been working for a certain organization, sustained skills development can be a crucial element for the enhancement of employee effectiveness (Jehanzeb and Bashir, 2013, p.244). What is interesting is the characteristic of the process, which is underlined by Hameed and Waheed (2011, p.226), with regards to attitude modification, knowledge improvement, and skill or behaviour adjustment through learning involvements for the achievement of enhanced performance. Through the process of skills development, employees acquire new — and enhance their existing — skills, practises and approaches, which help them to establish and maintain their jobs.

The focus of several employee skills development programs is novel skills, methods, and notions that may have been unknown or unavailable at the time of initial recruitment. However, effective programs in this regard need to focus not only on job-related skills but also on emotional reinforcement to handle wide-ranging circumstances (Hameed and Waheed, 2011, p.227). For example, one important aspect that should be emphasized is confidence-building, as this can be beneficial in all aspects of one's life. It has been demonstrated that organizations that invest adequately in programs for employee skills development enjoy improved organizational performance (Jehanzeb and Bashir, 2013; Hameed and Waheed, 2011).

Personnel handling the procurement function should exhibit a high level of purchasing knowledge and skills (Neals, 2011). They should be qualified and possess the skills to examine and interpret supply and demand changes, as well as handle aspects of relationships with suppliers. Lack of updated knowledge and skills toward local and international purchasing is a risk because it may destroy the firm's relationship with other immediate stakeholders such as customers, the production department and suppliers, to mention a few, in addition to exposure to legal or regulatory non-compliance. Unprofessional practices in purchasing might result in poorly handled orders and shipments, which may lead to unnecessary expenses, delays, anger and frustration and reflect organizational incompetence and untrustworthiness (Neals, 2011). Organizations that commit adequate investment to employee skills development achieve enhanced productivity, quality, and performance (Evans and Lindsay, 1999).

Organizational Resources

Organizational resources refer to the "assets, knowledge, capabilities, and process of an organization" (Ombaka et al, 2015, p.13). Organizational resources are subdivided into tangible or intangible categories. The category of tangible resources consists of physical and financial assets such as land, machinery, furniture and capital (Jugdev and Mathur, 2012, p.107). Intangible resources include brand name, reputation of the organization, knowledge, skills, and experiences of employees, as well as organizational procedures. When an order is placed, a number of different costs can be incurred while processing and handling the order. Procurement costs include the cost of processing an order through the accounting and purchasing department, transmitting the order from the supplier, transporting the order when transportation charges are not included in the purchased goods and material handling or processing of the order at the receiving dock.

For international buying, it may be difficult for most procurement organizations engaged in international trade to fulfil their obligation to meet all the procurement requirements stipulated in the purchasing contract because of limited foreign currency (Hypo Group Alpe-Adria, 2010). International buying involves large cash transactions and is associated with high procurement costs. Procurement professionals may be forced to reduce their orders as a result of these costs. However, this decision may result in failure to meet the demand for goods and services in the receiving country (Hypo Group Alpe-Adria 2010). Thus, procurement professionals must be able to predict the costs associated with international buying. Strategic management academics have underlined the influence of an organization's resources on its performance (Barney, 1991).

Information Technology

Information Technology (IT) is a broad subject concerned with all aspects of managing and processing information, especially within a large organization (Jean et al., 2008, p.564). While IT is often used to describe computers and computer networks, it actually includes all layers of all systems within an organization, from the physical hardware to the operating systems, applications, databases, storage, servers and more. Telecommunication technologies, including Internet and business phones, are also part of an organization's IT infrastructure (Jean et al., 2008). Technology is a dynamic process. Changes in technology are associated with high set-up costs. Financial constraints are a major drawback, especially in some developing economies, when it comes to capital projects.

Modern procurement is now taking place online (Savage et al., 2013), yet many companies in developing economies are still lagging behind. For instance, most procurement functions in some less developed countries are still being done manually. Poor infrastructure, weak strategic alliances, and reluctance to change have resulted in the poor or even non-adoption of technologies such as electronic data interchange (EDI). In their study, Jean et al. (2008) found evidence that IT capabilities directly contribute to improved organizational processes such as coordination, transaction-specific investment, absorptive capacity and monitoring, and this, in turn, contributes to strategic and operational performance outcomes.

Checkpoint 6.3

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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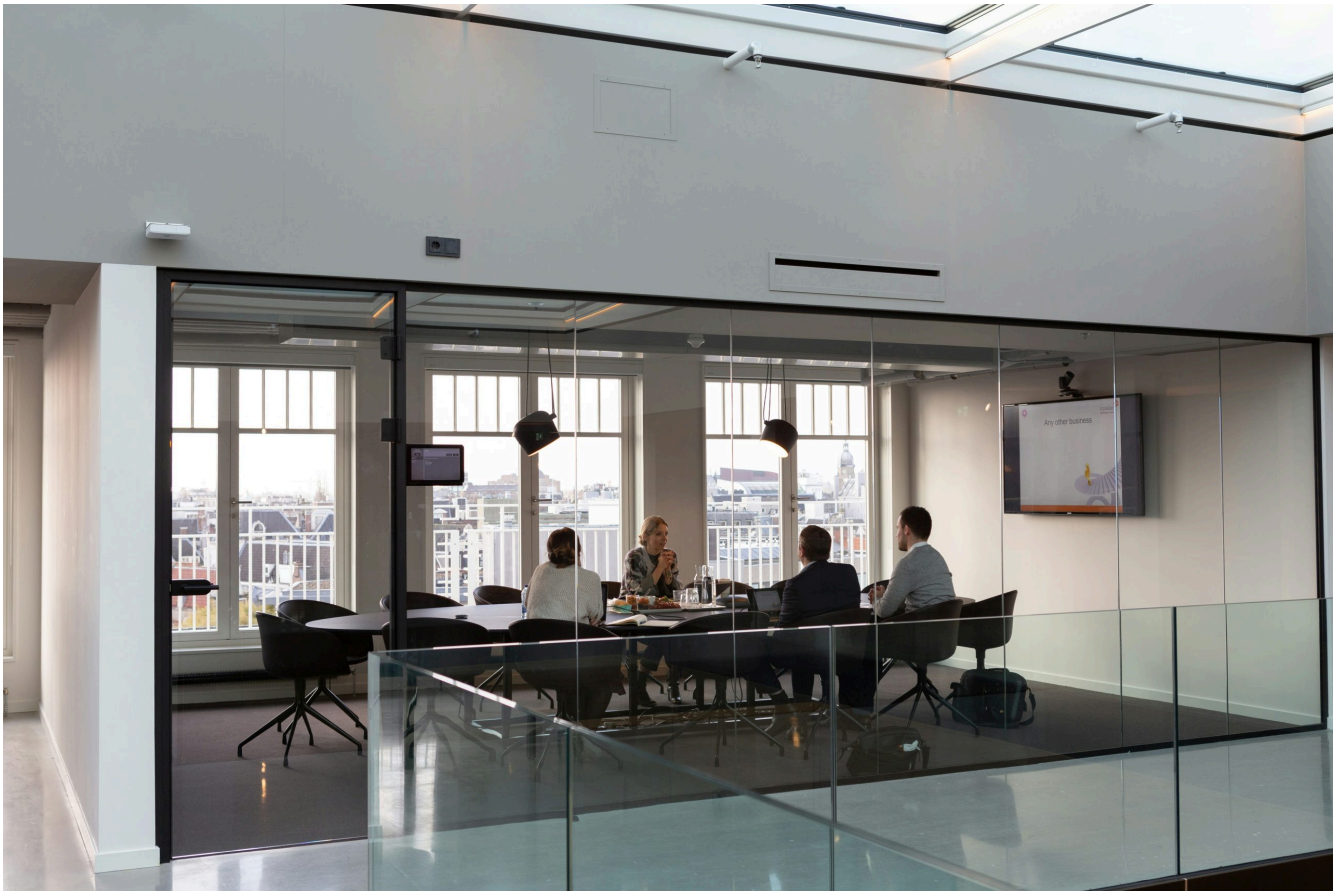
6.4: Open Policy Design



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Creating an open public contracting policy that is easily accessible and useful to all creates public trust and empowers the private sector to make wiser investments. A modern economy needs open public procurement as a smart, user-friendly, digital public service, bringing governments, businesses, and citizens together to build one partnership.

Designing an Open Public Contracting Policy — Essential Considerations

Establish Open Principles on Policies and Laws

Writing policies that align guiding principles with statutory mandates ensures that the regulation's implementation reflects lawmakers' goals. A successful open contracting policy will align with existing law, recognize the public's right to access information generated by the contracting process, commit to releasing data as a default and include stakeholders in the oversight process.

Real Cases in Public Procurement: Learning from Experience

The Open Data Policy at Scottsdale, Arizona

Issue: In May 2016, the Scottsdale City Council approved an agreement with What Works Cities (WWC). The agreement advanced the Council's priorities by improving the city's practice of evidence-based decision-making and aimed to develop an open data policy.

Background: Several cities refer to the idea that data should be "open by default" (proactively released and as complete as possible), in the resolution, introducing open data policies for all government information, including procurement. However, most do not include it in the actionable portion of the bill. An exception is Scottsdale, which clarifies in Resolution 10548 (Section 1) that all departments should see their data in this light. Section 2 orders the city manager to take actions consistent with this, among other policies.

Outcome: Without statutory authority, open data champions within the government may not be able to effectively advocate for compliance with these policies.

Discussion Question:

- If all governments implemented a totally open policy, how would this affect other regulations?

Sources: Based on information from the Scottsdale City Council's agreement with What Works Cities (WWC). (Updated May 2016.) In Scottsdale City Council Meeting Minutes. Retrieved on November 12, 2024. Scottsdale City Council Meeting Minutes – ScottsdaleAZ.gov; Scottsdale, Arizona, USA in Bloomberg Philanthropies What Works Cities. Retrieved on November 12, 2024. Scottsdale, AZ Resolution (Aug 31, 2016) from the Sunlight Foundation's Open Data Policy Hub. Retrieved on November 12, 2024.

Draft Policies with Clear Aims, Data Outputs and Consultation

A few measures should be considered as policy is being written to ensure it achieves the goals of the open contracting program. Consult stakeholders when drafting the policy, as their support will help drive it forward, and their expertise may help drafters avoid preventable mistakes. For example, many municipal professionals have identified technology procurement as a key pain point due to high costs and low competition. Higher-risk procurements like these can be highlighted in policy drafting. Ensure the policy includes a clear discussion of objectives and a description of what will be published (while making clear that the list is a minimum, not an exhaustive maximum). Use the drafting process to reinforce and reform existing procurement laws.

Develop the Technical Framework

The technical aspect of rolling out an open contracting program is more than a mere detail. Properly done, it will reinforce other open data policies and improve procurement outcomes, which in turn will impact every government program. Key objectives include ensuring that the data is captured in a way that reflects and describes the entire procurement process, that this data is stored in a platform that is open and doesn't tie the program to one supplier or vendor, and that it is stored in a standard fashion that is machine readable, licensed for open access, and well-documented, so people understand how to use it.

Ensure Data Quality and Timeliness

Policy regulations and their implementation have an impact on government processes and staff workflows that determine whether data is accurate and collected regularly. A commitment from top managers to prioritize the release of data can ensure those processes are initially implemented in an effective way. Assigning clear roles and responsibilities among the departments involved will keep these processes running effectively as the program becomes established.

Real Cases in Public Procurement: Learning from Experience

Montreal Prioritizes Data Release

Issue: Montreal has been successful in keeping its datasets timely, especially when compared with local area governments.

Background: Montreal recognizes the important role that data has in strategic planning. The Data Governance Directive in Montreal creates opportunities to use data to improve the delivery of municipal services and decision-making, allowing the city to improve its contribution to the common good and exert a greater impact on the community. While Montreal ensures its contract data is updated at least monthly, some of its autonomous local governments, like Côte-des-Neiges–Notre-Dame-de-Grâce only release updates in annual batches.

Outcome: The difference in approach highlights the impact of policy champions in management in an environment where both administrations work under the same regulatory regime and are subject to the same mandates.

Discussion Questions

1. Does the cost of data improvements support cost savings?
2. How does a clear process support the confidence of a team?

Sources: Based on information from Montreal's Data Governance Directive. (Updated October 2023.) In City of Montreal Open Data Portal. Retrieved on November 12, 2024. City of Montreal Open Data Policy (June 2022) from Montreal Open Data Portal. Retrieved on November 12, 2024.

Focus on Key Data Release Points

To prevent backlash or poor implementation, start with a data catalogue that lists the available datasets, and focus on establishing sustainable practices on one or a few processes in the procurement cycle that generate larger amounts of data.

Consider Sensitive Information

While city policy should presume that most government business can take place in the open, valid reasons may arise for withholding sensitive data, such as confidentiality, privacy, or security. These concerns can be addressed by adding release consent clauses to bid submissions, contract offers and issued contracts. A record of any information withheld should be made in a "redaction profile," as a separate form of metadata that describes what is withheld, why, and how.

Gain Buy-in from Stakeholders

It is important to win the support of and take input from a broad range of stakeholders, from municipal staff to vendors and citizens. Make a case for the initial effort and cost of opening up contracting data by regularly communicating the benefits of the approach and evidence that it works. Particular attention should be paid to emphasizing the internal communication benefits, external communication labour/cost savings, increase in internal compliance enforcement, reduction in staff-related misconduct, and increase in public trust. Each of these overarching themes can connect to specific challenges faced by stakeholders.

Planning

The earlier a municipality gives suppliers or vendors a sense of its future needs, the more preliminary planning they can do. This leads to more submissions and higher-quality proposals that are more responsive to governments' needs. Beginning with a unique identifier for the contract and an entity identifier for the purchaser (that are included in all contract phases), publish data related to the budget, rationale for the purchase, and other relevant documentation. Documents about upcoming opportunities, such as draft solicitations or information about the pipeline of upcoming contracts and contract rebids are ideal to publish, as they may raise market awareness and permit nontraditional contractors to assemble the resources and capabilities needed to submit a credible proposal.

Solicitation

Share all available information about new contract offers with potential vendors. This should include information about the good/service to be purchased, the value of the procurement, and any accompanying documents that justify or explain exemptions from regular procedures and requirements (such as sole source contracts). This information should remain publicly available even after the solicitation period has ended. Any direct communication between the city and a potential vendor should be shared with all vendors at a minimum, and ideally with the public as well, to avoid bias in the bidding process.

Award

Publish details about the government's decisions, stipulating the winner, price, and reasons for contracting with a particular vendor. This should include non-competitively awarded contracts, such as direct purchasing and purchases using procurement cards. Release documents for successful and unsuccessful bids after the decision, to ensure the selection process is fair and to give potential vendors insight into the needs and decision-making of the department. In Canada, the government's decisions are published on Canada Buys.

Contract

Publish the full text of signed contracts, including all amendments. In Canada, the contract and the amendments are published on Canada Buys. Ensure a digital copy of that document is accessible on the same open data platform as the contract listing, and make key details such as awardee, amount, date, etc., available as structured data. Any modifications to the contract should be published proactively and promptly.

Implementation

Disclose information on the implementation of contracts. This might include the projected completion date, implementation milestones, actual completion date, and information on funding extensions outside the scope of the original agreement. Publish periodic evaluations of contracts underway, and past evaluations of contracts and vendors. Once the project is complete, ensure all materials related to the contracting process are linked together, and shared with vendors and the public. In Canada, this information is disclosed on Canada Buys.

Real Cases in Public Procurement: Learning from Experience

Financial Transparency at Austin, Texas

Issue: Like many cities, Austin publishes a list of currently active contracts. What is unusual is that Austin releases details for each contract about the maximum expenditure, the amount currently ordered, and the amount spent up to this point.

Background: Texans follow the direction of transparency in government spending with the goal of leading to greater accountability. The revenue and expenditures dashboard publishes information on municipalities, counties, school districts, and special purpose districts. These details provide some insight into the progress of each contract over time. The dashboard also displays a list of current contracts for each supplier or vendor. While this information can be assembled from the published data of other cities, doing so automatically makes the data more accessible to less technically savvy stakeholders.

Outcome: Cities can take various steps to improve their residents' financial health. Feedback from taxpayers supports enhanced programs and policies that focus more directly on residents' financial health.

Discussion Question

- Should the transparency at Austin, TX be considered a best practice?

Source: Based on information from the City of Austin's Financial Transparency Initiative. (Updated October 2023.) In City of Austin Open Data Portal. Retrieved on November 12, 2024.

Highlight Specialized Data

Identify unique subsets of city contracting data that have specialized uses. Republish them in tailored resources so that relevant stakeholders can interact with the information in the most productive way possible.

Build User-Centred Interfaces

People with different needs will be more likely to use open contracting data if it's presented to them in ways that are conducive to their aims and capabilities. Data visualization and simple interfaces are good for the general public, who wants a clear aggregate view and to drill down to particular projects. Search tools are good for journalists who want to dig into the data to, for example, find connections between departments, vendors and staff. Vendors will want automated alarms and notifications, as well as detailed information about

deadlines, past contracts, and the past decisions of key staff. Documented Application Programming Interfaces (APIs) and unique IDs will help tech experts interested in developing their own tools with the data. This applies to government users, too — clearly defining ways for internal oversight bodies to use the data will help to make intergovernmental information-sharing processes more agile and the work of these institutions more efficient.

Checkpoint 6.4

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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Attributions

Chapter Review

Key Takeaways

- Effectively using the procurement process creates a fair, competitive process and achieves the best value for taxpayers.
- Following the standard procurement procedures establishes effective process flow in organizing a purchase.
- Procurement processes experience multiple challenges, incorporating continuous improvement reduces supply chain risk.
- Open policies empower stakeholders to fully participate in the activities of its government and the decision-making that impacts people and the spending of public money.

Explore and Engage

Questions for Discussion

1. What is the competitive bidding process in the public procurement sector?
2. Why is planning so important in the pre-contractual phase?
3. List three benefits of incorporating best practices in complex procurement processes.
4. How can an open government procurement be achieved?

Active Learning

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https://ecampusontario.pressbooks.pub/publicprocurement/?p=443#h5p-13

Recommended Readings and References

Recommended Readings

- "Chapter 5: Phase One: Pre-Procurement Planning Phase " by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.
- "Chapter 6: Phase Two: Solicitation Development and Methods " by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.

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CHAPTER 7: E-SOURCING AND GROUP PURCHASING

Introduction

In recent years, procurement professionals have implemented various technology integrations into purchasing processes. In this chapter, we will discuss the active modernization of public procurement by adopting e-procurement systems, blockchain, artificial intelligence, and group purchasing, aiming to bolster efficiency and transparency.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Understand various technology tools and their impact on public procurement strategy.
2. Understand the use of blockchain technology in data transactions and e-procurement.
3. Define the usefulness and application of innovative tools.
4. Understand the advantages, disadvantages, and obstacles of group purchasing.

Public Procurement Playbook

Watch this video to learn more about electronic sourcing and procurement.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=458#oembed-1

Source: ControlHub. (2023, May 17). E-Sourcing and E-Procurement: Your Superheroes for Streamlined Business Efficiency [Video]. YouTube. https://www.youtube.com/watch?v=B4EfBYDPtX4

7.1: Technology in Public Procurement

Image by Gerd Altmann from Pixabay, used under the Pixabay Content License.

In recent years, the global landscape of public procurement has witnessed a significant transformation with the widespread adoption of technology. Countries worldwide have increasingly embraced digital solutions to enhance the efficiency and transparency of their public procurement processes. Utilizing technologies such as procurement systems, blockchain, and artificial intelligence can revolutionize traditional procurement methods, providing governments with tools to streamline operations, mitigate risks, and foster greater accountability.

Public sector organizations worldwide are experiencing an unprecedented pace of change. As a result, they are rapidly re-evaluating their operating models and market strategies not just to withstand these market forces but also to capitalize on them. Procurement has a significant role in helping the public sector achieve its objectives and prepare for the uncertainty ahead. This will require procurement to focus on driving costs down. However, the opportunity also exists for the function to add value in a much more strategic way (Leenders et al., 2008).

Procurement has the potential to significantly impact national economies as well as the competitive position of individual organizations. Oyuke and Shale (2014) state that organizations must maximize the use of procurement in every aspect of the business, linking across all members of the supply chain, increasing the speed of information transfer, and reducing non-value-adding tasks.

As the procurement role embraces technological advancements, particularly in **e-procurement systems**, there has been a noticeable enhancement in the efficiency of procurement processes. Automated systems have streamlined workflows, reduced manual errors and accelerated the procurement lifecycle. Additionally, technology has played a pivotal role in enhancing transparency by providing real-time access to procurement information, fostering accountability and mitigating corruption risks. This shift toward digital solutions improves the overall effectiveness of public procurement and establishes a more accountable and transparent framework for government expenditures.

Conceptual Framework

The conceptual framework diagram illustrates the intricate relationship between technology adoption and its impact on efficiency and transparency in public procurement processes. It visually depicts how the integration of advanced technologies, such as e-procurement and supply chain management systems, influences the various stages of procurement. **Exhibit 7.1** explains the interplay between technology implementation, procedural efficiency, and the enhancement of transparency within the public procurement domain, providing a holistic view for policymakers, researchers, and stakeholders seeking to navigate the evolving landscape of technological advancements in government procurement.

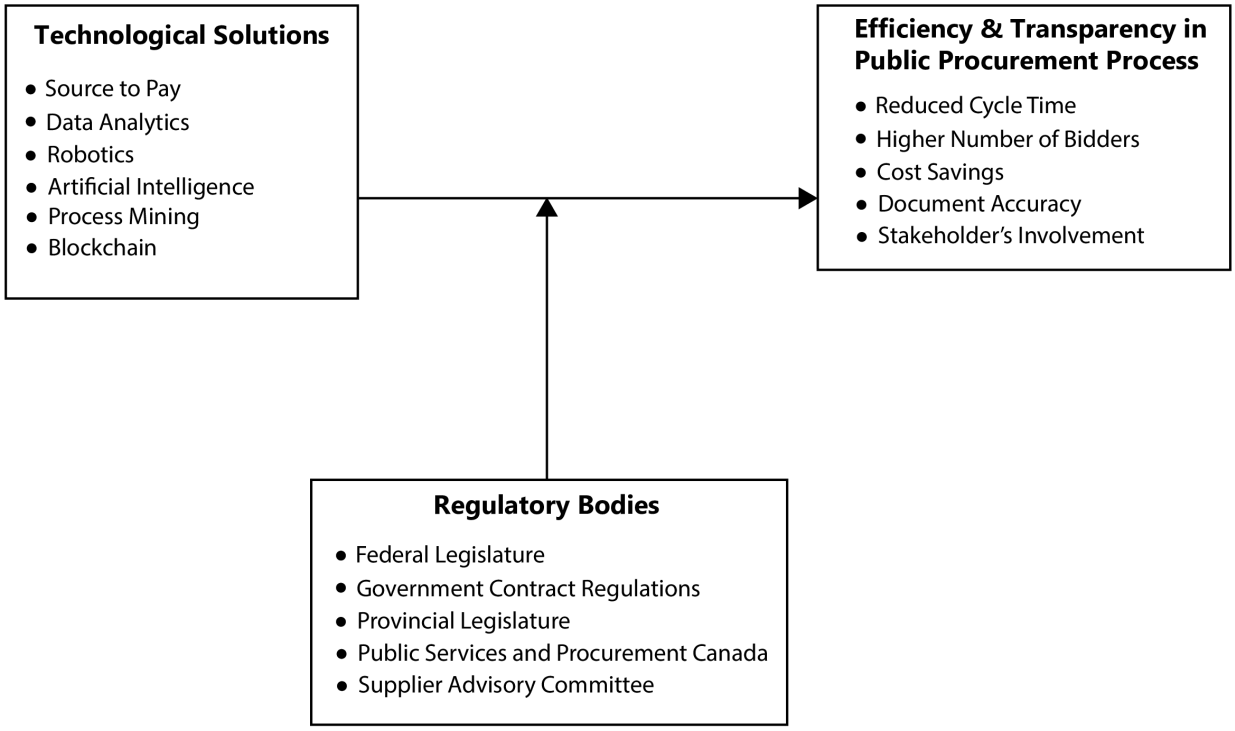

Exhibit 7.1: The Impact of Technology Adoption on Efficiency and Transparency in Public Procurement Processes. [See image description.]

Technological Solutions in E-Procurement Systems

Technology plays a pivotal role in transforming public procurement processes, offering significant benefits in efficiency, transparency, and accountability. Adopting e-procurement systems is crucial for streamlining procurement operations and reducing inefficiencies. Moreover, through e-procurement platforms, technology contributes to transparency in the procurement process. Real-time access to procurement data ensures visibility, accountability, and fair competition among suppliers (Ombui & Waema, 2018). The transparency brought about by technology helps mitigate corruption risks and promotes a level playing field for businesses seeking government contracts. Implementing technology in public procurement is crucial for achieving the public procurement processes, supporting the government's goal of enhancing governance and integrity in procurement processes.

Regulatory Bodies in Public Procurement

Public Services and Procurement Canada (PSPC) supports federal departments and agencies in their daily operations as their central purchasing agent. The Treasury Board of Canada establishes and maintains the regulatory framework for public procurement, ensuring fair and transparent processes. Public Service and Procurement Canada (PSPC) uses Infosys Public Services to support and integrate technology into procurement processes, including the implementation of electronic procurement systems to enhance efficiency. Meanwhile, the Office of the Information Commissioner of Canada oversees the implementation of the Access to Information Act. If someone feels that their request for information related to public purchasing has not been handled correctly, they can file a complaint with the OIC.

Efficiency and Transparency in Public Procurement Processes

Public procurement processes play a pivotal role in government expenditure and resource allocation. The adoption of technology, particularly e-procurement systems, has been instrumental in enhancing the efficiency and transparency of these processes. Studies indicate that e-procurement contributes to streamlined workflows, reducing procurement cycle times and associated costs (Carter & Narasimhan, 2018). Moreover, the digitization of procurement activities enhances transparency by providing real-time access to procurement data, ensuring accountability and minimizing corruption risks (Choudhury & Sabherwal, 2018). As governments globally seek to optimize resource utilization and foster fair competition among suppliers, integrating e-procurement technologies is a crucial mechanism for achieving efficiency and transparency in public procurement (Hsu & Lee, 2019).

Efficiency Gains

Implementing e-procurement systems has significantly reduced the time required for each stage of the procurement lifecycle. Automated processes, such as e-sourcing and e-auctions, have expedited decision-making processes, contributing to a more agile and responsive procurement environment.

Transparency Enhancements

Technology adoption in public procurement enhances transparency. The introduction of digital platforms and the migration to online documentation have made procurement information more accessible to stakeholders. Suppliers, citizens, and oversight bodies now have unprecedented access to procurement data, fostering a culture of openness and accountability. While technology has undoubtedly improved transparency, challenges remain concerning data security and integrity. Cybersecurity breaches threaten the confidentiality of sensitive procurement information. Thus, procurement entities must invest in robust cybersecurity measures to mitigate risks and uphold the trustworthiness of digital procurement platforms.

Challenges in Technology Adoption

Resistance to change remains a challenge. Accustomed to traditional methods, procurement professionals are

hesitant to embrace technological innovations. Overcoming the resistance requires comprehensive change management strategies that address fears and misconceptions and provide adequate training and support.

Infrastructure limitations also pose a challenge to widespread technology adoption. In some regions, inadequate internet connectivity and outdated hardware hinder the seamless integration of digital systems. Addressing infrastructural gaps is crucial for ensuring equitable access to the benefits of technology across the public sector.

Practical Procurement: Scenarios and Solutions

Gurleen Mann, the newly appointed Director of Procurement at the City of Riverton, faced a significant challenge. Tasked with modernizing the city's procurement processes, Gurleen was aware that the current system was outdated and inefficient, leading to delays and increased costs. This inefficiency was a financial burden and affected the city's ability to provide timely services to its residents. Gurleen knew that improving the procurement function was crucial for enhancing the overall effectiveness of the city's administration.

The City of Riverton, with a population of 500,000, provided a wide range of public services, including waste management, public transportation, and infrastructure maintenance. The city's procurement department was responsible for acquiring goods and services necessary for these operations. With a team of 50 employees, the department managed an annual budget of $200 million. The city's revenue came from taxes, federal grants, and service fees. However, the procurement process was plagued by manual procedures, lack of transparency, and frequent delays, often leading to public dissatisfaction and scrutiny.

Gurleen considered several options to address the procurement issues. The first option was to implement an e-procurement system. This technology would digitize the procurement process, making it more efficient and transparent. Providing real-time access to procurement data would ensure accountability and reduce the risk of corruption. Studies had shown that e-procurement could significantly reduce procurement cycle times and associated costs.

The second option was to conduct comprehensive training for the procurement staff. This training would focus on best practices in procurement, including ethical standards, negotiation skills, and the use of technology. By enhancing the skills and knowledge of the staff, Gurleen believed that the department could operate more effectively and efficiently.

The third option was to establish a centralized procurement office. This office would oversee all procurement activities across the city's various departments, ensuring consistency and compliance with procurement policies. Centralization could lead to better coordination, bulk purchasing benefits, and improved supplier relationships.

Gurleen needed to decide which option, or combination of options, would best address the procurement challenges. The decision was critical as it would impact the city's financial health and its ability to serve its residents effectively. Gurleen was aware that any delay in addressing these issues could lead to further inefficiencies and public dissatisfaction.

Discussion Questions:

1. How can the implementation of an e-procurement system improve the efficiency and transparency of the City of Riverton's procurement process?
2. What are the potential benefits and challenges of conducting comprehensive training for the procurement staff?
3. How could establishing a centralized procurement office strengthen the effectiveness of the procurement function in the public sector?

Source: Scenario and questions created with the assistance of Microsoft Copilot.

Checkpoint 7.1

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=460#h5p-39

Image Description

Exhibit 7.1: The image is a structured diagram categorizing various types of risks related to business or supply chain management. It divides risks into three main categories: External Risks, Distribution Channel Risks, and Internal Risks. Each category is presented within a framed box. The External Risks box lists factors such as natural, geopolitical, government, consumer preferences, economic, competitors, cyber attacks, changes in environment, technological, market failures, social, commercial, regulatory climate, ecological, and legislation. The Distribution Channel Risks box includes loss of merchandise, labour unavailability, information accuracy, cargo damage, disasters, infrastructure unavailability, quality of insurance risks, outsourcing risks, partnership risks, and supplier performance risk. The Internal Risks box identifies privacy, security, supply network, forecasting accuracy, reputation, corporate controls, employees, operations and production, legal, non-performance, management and procurement, human error, technical, non-technical, and deficient knowledge. Below these boxes, arrows point towards four business aspects: Value Adding Activities, Supply Chain Stages, Supporting Environment, and End Market, indicating the areas impacted by these risks.

[back]

Attributions

7.2: Blockchain

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In the new era, management is concerned with providing the right goods at the right time, with the right amount, at the right place, at the right price, and under the right conditions for the right customer. Using international standards and advanced technology, the Blockchain technology changes the traditional system and processes into a smart system.

Global Blockchain technologies are complex and face multiple uncertainties. Despite the increasing use of **Blockchain** in a project management context, there remain challenges. Most challenges are related to security concerns and privacy. Therefore, introducing a reliable and secure system has become the primary concern of this era. Using artificial intelligence (AI) through robotics and nanotechnologies has become famous for the fourth industrial revolution. Previously, with international and many local transactions, third parties were always involved with the payment system. On the one hand, the transaction costs a lot; on the other hand, the process consumes much time.

Nowadays, different vendors from different countries are known for their best-quality products, an important component of procurement for most development projects. To make the procurement process easy and transparent, the introduction of the smart contract and making quick payments without a third party are the challenges of the project management arena. Blockchain-based project management could bring a revolutionary change to project management.

Blockchain came into focus by resolving the payment problem of the e-commerce system through the use of Bitcoin. Bitcoin, a cryptocurrency based on Blockchain, was invented by Nakamoto in 2008. However,

some recent articles have explained that Blockchain-based project management may mitigate project implementation-related problems. Therefore, it is essential to understand Blockchain technology and its working principles properly.

Integrating Blockchain Technology in Public Procurement

What Is Blockchain Technology?

Blockchain is a chain of interconnected secured blocks that can store all transactions. Welfare (2019) provides shorter and longer definitions of Blockchain in his book *Commercializing Blockchain: Strategic Applications in the Real World*, which are mentioned sequentially below:

> Trusted and efficient way of sharing data and transaction.
>
> Blockchain technology can be viewed as a distributed ledger of information, which maintains a continuously growing list of records, called blocks, secured from tampering and changes.

Blockchain is considered an unlimited interconnected database that records all transactional information in blocks.

Blockchain consists of two elements, transactions and blocks, as shown in **Exhibit 7.2**. When the user performs any task, it is called a transaction. On the other hand, blocks record all transactions. Additionally, each block contains data and the previous block's hash value. The hash function ensures a secure transaction.

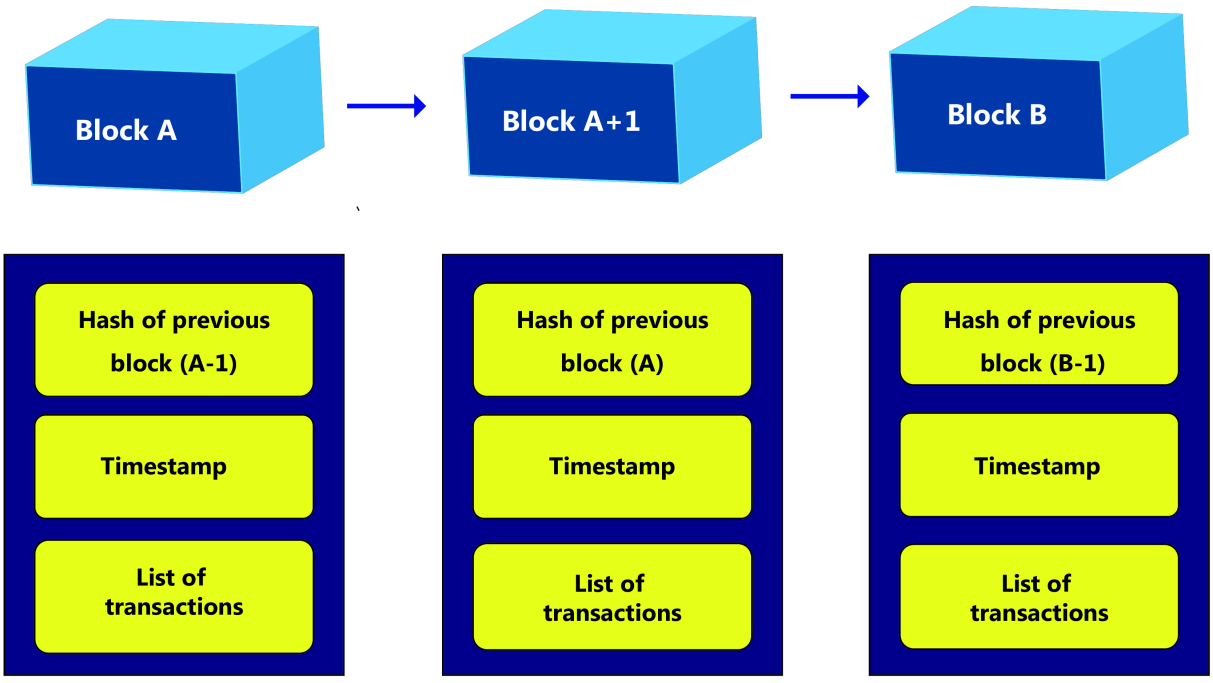

Exhibit 7.2: Structure of Blockchain. [See image description].

Why Is Blockchain Unique?

Welfare argued that there are a few characteristics that make Blockchain technology unique.

Trust: Nowadays, a lack of trust is a significant problem, whether it is in business, government, communities, or processes. Due to this, it takes longer to make a supply chain-related contract or to complete an audit. However, this technology ensures trust between different parties.

Transparency and openness: All the information in this system updates automatically, and it is open to all. Therefore, customers, owners, and organizations rely on the available information. Every project manager can easily imagine the benefit of a project with a transparent and open procurement system.

Immutability: The basic characteristic of a Blockchain system is that, after inserting any information, it is impossible to either alter, delete, or change it. It will update automatically after the approval of the concerned persons.

Transaction automation and smart contracts: The most crucial advantage of Blockchain is the automation of specific tasks, which is known as a smart contract. After making a smart contract, it becomes possible to enable the automation of specific tasks and transactions.

Possible Applications of Blockchain Technology in Project Management

Cloud-based applications can be accessed through local devices. Apple iCloud, Google, Amazon, Microsoft, and Oracle provide cloud-based services. Oracle also provides Blockchain technology, including a supply chain application. Oracle-based Blockchain technology will be discussed to identify the possible application of Blockchain in the project management arena.

E-Procurement/Comprehensive Administration by Oracle Blockchain Platform

E-Procurements or Comprehensive Administration

Procuring goods, works, or services is a common requirement for development projects. Awarding the contract to the lowest bidder has been found to be one of the leading causes of delaying projects. Changing data or improper evaluation can alter the ranking of bidders during tender evaluation. Furthermore, procurement is an area most known for corruption. However, introducing Blockchain for tender evaluation resolves the main issues related to procurement. Therefore, Blockchain-based e-procurement may change the project implementation process.

Components for a Blockchain-Based e-Procurements System

Three components are essential to establish a Blockchain-based e-procurement system. Thio-Ac et al. (2019) explain that those three components are a digital asset, digital signature, and multi-signature protocol, as shown in **Exhibit 7.3**.

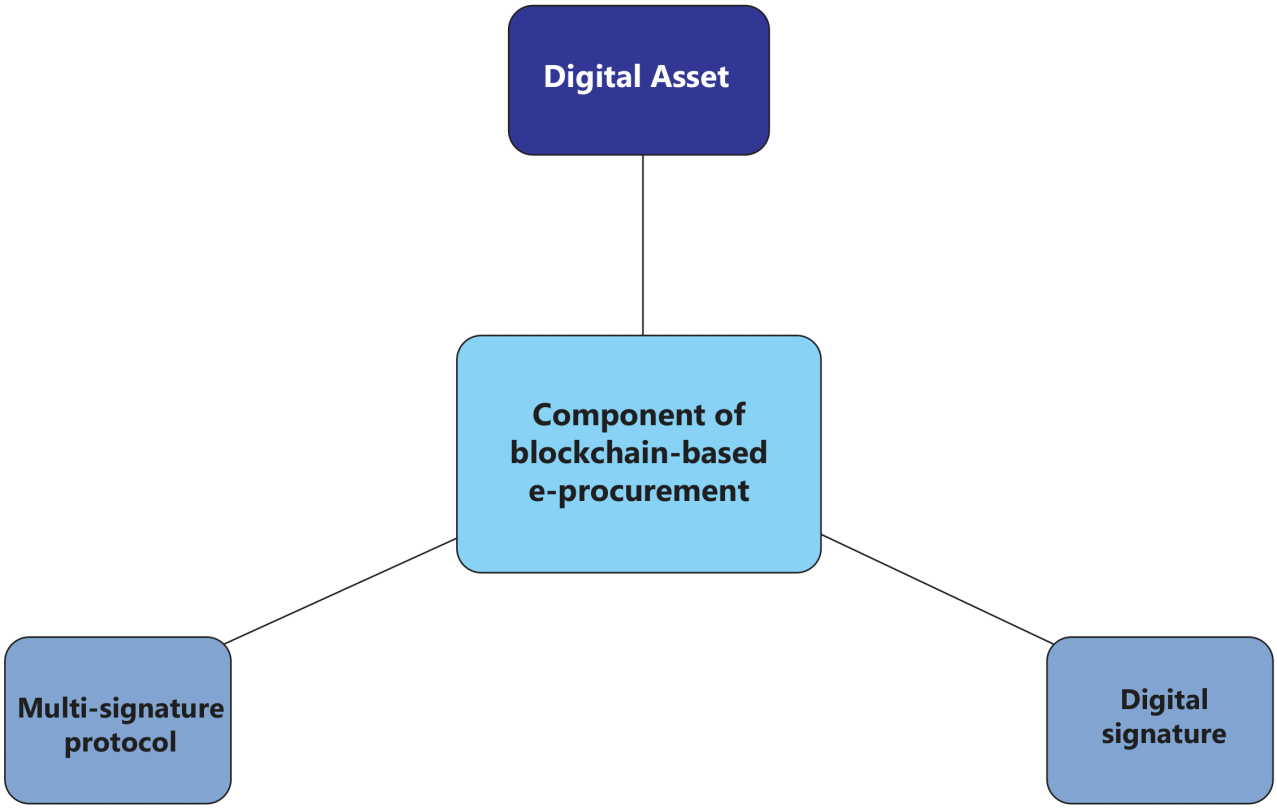

Exhibit 7.3: Components for Blockchain-Based e-Procurements System. [See image description].

The digital asset is known as the digital notarization. In traditional procurement, the procurement entity/owner informs different contractors/organizations about the requirement by publishing advertisements. The digital asset contains all the authentic documents related to the whole procurement process. A Blockchain system's associated users will have individual private and public keys. These keys, known as digital signatures, will be used to validate a contract between two parties. The digital signature makes any document a legal document. A multi-signature protocol is used for any financial transaction. After the contractor finishes any task, the authorized group confirms it, and then the contracted money is transferred to the desired account through the multi-signature protocol.

Legal Advantages

Blockchain-based project management will provide some legal advantages to the concerned organizations of developing countries. The potential advantages are discussed below.

E-procurement: e-procurement is the leading legal advantage of Blockchain-based project management. With a blockchain-based project management system, all the procurement processes can be done online, facilitating the shift from a paper-based procurement system to a paperless/online procurement system.

On-time tendering system: The delay in the tendering process is a common problem in developing countries and often causes delays in infrastructure-related public sector projects. However, due to its automation, all

the procurement steps can be completed within the assigned/allocated time. Therefore, if Blockchain-based project management is followed, the tendering process is expected to be finished within the planned time.

Transparency: A lack of transparency is one of the main reasons for delayed public sector infrastructure-related projects in developing countries. Blockchain-based project management ensures a secure and private network between the users. All the associated members of different organizations, and even top management, will be able to follow the task in real time. Therefore, the project-related tasks during the project's processing and implementation phases will be transparent to everyone involved.

Accountability: Poor accountability is another major problem in project management. A project may fail due to poor decision-making by individuals. When something goes wrong with a project, no one takes responsibility for delaying public sector projects in developing countries. However, Blockchain is considered a digital ledger for any online transactions. Additionally, it is impossible to alter, delete, or change any Blockchain-based information without the permission of all concerned persons. Therefore, it will become straightforward to identify the accountable person/organization by whom a task has been delayed.

Secured network system: All the nodes and APIs (Application Programming Interface) need to be designed for a specific project; therefore, the Blockchain network is considered the most secure network. Furthermore, the system updates automatically. Therefore, the network will be trusted by the owner and the vendor.

Lowest bidder issue: The lowest bidder issue is one of the most common and important issues discussed by researchers. Due to a variety of reasons, the lowest winning bid increases the cost and duration of the project. However, with the Blockchain project management system, if a vendor fails to finish a project within the contracted time and cost without a valid reason, the vendor may be punished with damages, or ministries may have the authority to blacklist the vendor.

Provenance of materials: Blockchain provides the facility for vendors/contractors worldwide to participate in bidding. It opens opportunities to choose the best vendor. Furthermore, the buyer can monitor the production of materials to ensure their quality.

Managerial Advantages

Blockchain-based project management will ensure some managerial advantages, which are discussed below.

The tracking of equipment and materials: Project tracking keeps tabs on the achievement of milestones of infrastructure projects. A lot of time is spent collecting and preparing project updates as well as sending the updates to different ministries. However, Blockchain-based project management will facilitate the tracking of projects and equipment. Christodoulou et al. (2018) argued that it will also play a vital role in supply chain management. A blockchain-based tracking system will save project managers time and allow them to revise their plans based on the situation.

Faster inspection: Slow inspection is a managerial problem and one of the causes of project delays. Faster inspection is important from both the owner's and vendor's points of view. A fast inspection will allow for the identification of future needs and identify risks to the project, which will enhance the successful completion of the project.

Proper communication: A lack of communication between parties also hinders successful project completion. However, Blockchain-based project management will enable automatic communication between various parties and ministries within a government. Moreover, it will also offer proof of responsibility.

Financial Advantages

Blockchain-based project management will ensure financial advantages to the concerned organizations in developing countries. The potential advantages are discussed below.

Automatic and secured fund transfers through smart contracts: Automatic and secured fund transfers through smart contracts are one of the main advantages of Blockchain technology. This practice enhances trust and reduces corruption, as all the transactions are recorded permanently. Furthermore, it helps the auditor to easily trace transactions in case of fraud.

Proper cost estimation for future projects: A higher cost estimation for machinery is a common problem in developing countries. However, Blockchain-based record management retains the actual price of the equipment against the projects, which will help to estimate similar project costs in the future.

Support to ensure adequate funds for the project: Sometimes, a lack of funds delays a project. However, as the top management of various ministries and organizations is part of the Blockchain, financial planning will become easier and more accurate. It will protect a project against financial deficiencies by making it easy to identify the people responsible for the issue.

Organizational Advantages

Blockchain-based project management will ensure some organizational advantages. These potential advantages are discussed below.

Vendor management: Organizations will be able to identify the performance of the different vendors or contractors. Sometimes, vendors fail to achieve their targets on time but do not want to pay compensation, and the project suffers. All the organizations will be able to maintain the best vendor list based on their experiences.

Proper planning and estimation for future projects: Poor contract management and improper planning of projects can be considered an institutional problem that can only be resolved by improving an organization's information management system. The proper information will help the organization plan and estimate the cost of a project properly. Gausdal et al. (2018) argued that improper data management can increase the cost of a project by up to 20%. Blockchain-based project management will not only manage a project's data but also store the data for similar future projects.

Customer- and end-user-centric worldview: The fourth industrial revolution is changing the construction industry. The projects receiving priority are those that have the potential to deliver the highest value to the customer. Blockchain technology is playing a vital role in improving collaboration and communication in the case of a cloud-based project management system. Therefore, it is only a matter of time before organizations will need to adopt new technology, such as Blockchain, to manage projects.

Risks of Blockchain

Blockchain technology may have a few issues. Firstly, it is very difficult to change user habits. As it is a new system, people will be reluctant to use it (Welfare, 2019). Secondly, governments will benefit the most from this technology. However, if the government is not interested, there will be a problem. Finally, this technology will be used all over the world. However, the internet and telecommunication policies are different for each country. Hence, creating a standard among all providers will be challenging.

Lu et al. (2019) pointed out that although Blockchain technology has many advantages, the current operating system is still not perfect, and there are many risks. Risks can be divided into operational, cyber, and legal risks.

Operational risks mean that if Blockchain is applied to technical or social issues, it may produce unsuccessful results. Such risks include:

- A loss of data and identity
- The high transaction costs of a public Blockchain
- A lack of recipients and users
- A lack of long-term experience leading to imperfect management
- Technical problems with initial applications
- A lack of a standardized mode of operation and function and security deficiencies.

Cyber risks refer to behaviours such as fraud, which can occur due to insufficient security or design flaws. Such risks include:

- Fraud in the interface between the real world and the Blockchain world
- Hackers may attack the exchange, the user passwords may be hacked, and the funds may be transferred
- The hard fork, a blockchain protocol that renders the previous versions invalid in the block, may cause the trust of the entire network system to be questioned

Legal risks refer to illegal acts that may occur during the operation of Blockchains. These include:

- Tax evasion
- Illegal use of information
- Illegal transactions

Checkpoint 7.2

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=464#h5p-40

Image Descriptions

Exhibit 7.2: The image illustrates a simplified structure of a blockchain composed of three linked blocks labeled “Block A,” “Block A+1,” and “Block B.” These blocks are represented as three-dimensional blue rectangles

arranged horizontally, with arrows pointing from Block A to Block A+1, and from Block A+1 to Block B, indicating the sequential flow. Below each block, there are vertical lists contained within dark blue rectangular outlines with three yellow sections inside. Each section contains specific text. The text in these sections details the components of each block, which include the hash of the previous block, a timestamp, and a list of transactions. Block A shows the hash of the previous Block (A-1), Block A+1 shows the hash of Block A, and Block B shows the hash of Block (B-1).
[back]

Exhibit 7.3: The diagram illustrates the components of a blockchain-based e-procurement system through a central flowchart. At the top, a purple rectangle labeled “Digital Asset” connects to the center component using a vertical line. The central component, depicted as a light blue rectangle, is labeled “Component of blockchain-based e-procurement.” From this central rectangle, two lines extend diagonally downward. On the left, a bluish-gray rectangle labeled “Multi-signature protocol” represents one component. On the right, another bluish-gray rectangle labeled “Digital signature” completes the diagram. The layout effectively shows the relationship and flow among these elements.
[back]

Attributions

7.3: Integration of Technology Tools

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The technology revolution has caused procurement to adapt to new and current technological advancements. Tendering is one of the areas of procurement that became automated to facilitate better procurement performance by reducing paperwork and costs, which is the ultimate aim of any procurement function (Baily et al., 2015).

E-Tendering

E-tendering is the sending of requests for information and prices to suppliers and receiving the responses using the Internet (Raffa & Esposito, 2006). E-tendering systems improve process efficiency by the adoption of automation

E-tendering is justified on the basis that it assists in identifying opportunities and combines efforts in recognizing an aggregation of different users in and around the organization, reduces the overall cost of the transaction by reducing paperwork, reduces off-contract expenditures by using technology to create awareness of available contracts (Plant & Valle, 2008; Gathima & Njoroge, 2018). The introduction of e-tendering tapped into competitive pricing and encouraged fair marketing methods.

It also enabled automatic commodity auctions of agricultural products, provided transparency, reduced transaction time, and improved market income (Pavithra, Gracy, Raka, & Ganesh, 2018). The investment in e-tendering has facilitated productivity and profitability within the construction industry, where most Information and Communication Technology (ICT) capabilities have been implemented.

Even though e-tendering streamlines the procurement process and boosts efficiency with access to a higher-quality vendor pool, most public organizations have not fully embraced it. Therefore, the benefits gained vary from organization to organization. For e-tendering to function as an e-supplier management tool, certain components of automatic supplier screening, virtual supplier registration, automatic evaluation and selection must be integrated (Abdullahi et al., 2019). These cater to supplier base optimization, mitigation of supplier risk, and reduction of total cost of ownership while promoting effective buyer-supplier relationships for better

quality and services (Baily et al., 2015). Inadequate utilization of e-tendering leads to corruption and an overall increase in tendering costs.

Get to know various eProcurement platforms that connect buyers and suppliers in the digital environment.

From strategic sourcing software to spend analysis, the implementation of electronic procurement solutions have transformed paper-based transactions to innovative integration tools. Here are some of the top eProcurement systems used to connect businesses in the public sector.

- **https://buyandsell.gc.ca/**
- **https://www.merx.com/**
- **https://www.biddingo.com/**
- **https://www.tendersontime.com/**

Artificial Intelligence Procurement Assistant (AIPA)

This excerpt is from a paper presented at a conference introducing the Artificial Intelligence Procurement Assistant (AIPA), a system co-developed with Solita, a Finnish software company. AIPA is one of the AI procurement tools being used in Europe. Public Services and Procurement Canada is developing artificial intelligence tools to modernize supply methods. Current developments have included predictive modelling with requests for information, bidding invitation qualifications and procurement sourcing lists. The next steps will continue the development and refinement of these tools so that they can be used more broadly with PSPC services.

In modern business, maintaining competitiveness and efficiency necessitates the integration of state-of-the-art technology. The **Artificial Intelligence Procurement Assistant (AIPA)** leverages Large Language Models (LLMs) and sophisticated data analytics to enhance the assessment of procurement call bids and funding opportunities. The system incorporates LLM agents to enhance user interactions, from intelligent search execution to results evaluation.

In procurement, conventional manual bid assessment procedures often grapple with inadequacies. AIPA emerged within this context, aiming to transcend the limitations of the status quo. Making adept use of LLMs, with ChatGPT taking center stage, AIPA swiftly comprehends intricate bid documents, applies predefined evaluation criteria, and distills crucial information for expedited human decision-making on whether to accept or reject proposals. One of AIPA's distinctive strengths lies in its consistent application of evaluation criteria, eliminating subjective deviations. This stands in stark contrast to the inherent variability of manual evaluations, where individual interpretations can diverge significantly.

Leveraging AI capabilities, AIPA has implemented an efficient way for users to find and assess relevant procurement notices from the European Commission's TED portal. The goal is to accelerate the procurement process by utilizing existing AI tools to assist businesses in making informed decisions about suitable procurement opportunities.

Overview of AIPA's key features include:

User Interface (UI): The AIPA UI serves as the primary point of interaction between users and the platform. Users who are representatives of businesses access the platform through this interface.

User Registration and Profile Creation: A core functionality of AIPA is enabling users to register and create profiles. We have implemented an AI-assisted process to guide users in providing all the necessary parameters for effective procurement notice searches.

Result Filtering and Evaluation: We have implemented a system that filters the search results obtained from TED and other similar procurement websites and utilizes them for evaluation.

List Creation: Our platform creates a list of the most suitable procurement notices based on the filtered and evaluated search results. This list is presented to the user, providing a consolidated view of opportunities that match the user's requirements.

ChatGPT Agents: As a core of AIPA, we have integrated several ChatGPT agents to execute the required tasks. These implemented agents assist in profile creation, parameter extraction, search execution, result evaluation, and justification generation. This component interacts with the TED portal to retrieve relevant procurement notices and performs AI-based analyses to enhance the overall quality of the procurement suggestions.

AIPA may act as a valuable resource for businesses seeking efficient and effective ways to navigate the complexities of procurement processes. By integrating ChatGPT seamlessly, we assist users in finding procurement opportunities that align with their specific needs, thereby simplifying and expediting the procurement journey.

Checkpoint 7.3

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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7.4: Buying Strategies

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Procurement strategies define how a good or service will be procured. In the public sector, this includes the decision to proceed competitively or non-competitively while supporting government needs, regional benefits, or other national objectives.

Cost-Plus Buying

Cost-plus buying is a purchasing procedure commonly used in many industries, including large food chains. An arrangement is made with a supplier to purchase all of a certain kind of food at a specific percentage markup over the supplier's cost. The advantage of this method is that the markup is smaller than it would otherwise be. In addition to the cost savings realized for a lower markup, the purchasing agent saves time contacting other suppliers to get price quotations. The disadvantage of this system is that it is usually impossible for a purchasing agent to verify the supplier's cost unless the supplier agrees to unannounced inspections of the firm's books.

Another variation of cost-plus buying is the use of a prime vendor. The advantages and disadvantages of prime vendor purchasing are the same as cost-plus; however, some organizations need to be cautious in their use of these methods because of the purchasing regulations they are required to follow. This is particularly true of school systems since they are public institutions supported by taxpayers and must use competitive bidding.

Cooperative Buying

Public procurement officers need to understand the benefits of group or cooperative purchasing. Cooperative buying involves similar operations joining together to purchase products. It is commonly referred to as group purchasing. The organization of these units may be based on several considerations: membership in a regional hospital, educational association or council, the proximity of other institutions wishing to participate, a common religious affiliation or some other allegiance, or membership in a national purchasing program.

The obvious benefit of group purchasing is that it enables a relatively small facility to reap the same cost benefits it would enjoy if it were receiving mass purchasing discounts. In order to realize volume discounts, however, the group must agree to minimize the number of varying items ordered. This tends to limit flexibility in planning. Often, facilities that belong to a group purchasing program also go to a local secondary supplier.

Institutions can increase their cost savings *and* tighten their control over group purchasing procedures by designating a representative — preferably someone with purchasing experience — to monitor the group's policies and standards. Collectively, members of the group can develop purchasing specifications to be used, in turn, by their purchasing agent in obtaining bids or quotations from vendors. The formulation of these specifications would be an obvious fringe benefit to the small operation with no specifications of its own to define the quality of the product it requires. The membership representative might also participate in product review activities and tests that encourage more objective and thorough purchasing decisions but are inconvenient and impractical for a single facility to conduct on its own.

Real Cases in Public Procurement: Learning from Experience

inDemand

The European project inDemand brought together procurement teams from three regions.

Issue: Lack of resources in procurement technology and lack of care in the health sector.

Background: The inDemand project created a new procurement model that is leaner and faster and requires fewer organizational resources and overheads than traditional procurement. More than 200 organizations (most of them SMEs) submitted a bid, alone or in consortia, for the different calls from multiple healthcare organizations. InDemand aims to promote innovation by combining what healthcare professionals need with the development of solutions in the process of co-creation.

Outcome: Combining the total procurement spend for each region saves residents money and becomes a more efficient process for procurement professionals. Since the project's launch, several regions have used their own resources and budgets and launched tenders to create procurement systems based on the inDemand model.

Watch this video to see how the model works.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=468#oembed-1

Source: in-Demand eHealth. (2020, October 15). The inDemand Project: Demand-Driven and Co-Creation in Digital Health. YouTube. https://youtu.be/iOMJKdLgQcQ?si=MWM3Fbifuk3FwzcI

Discussion Question

- In this instance, do you feel that demand-driven procurement works?

Joint Procurement

Essential Reading

Read "Section 4.3 Joint Procurement" and "Section 4.4 Forms of Joint Procurement" from Chapter 4: Organizing Public Procurement in *Public Procurement: Theory, Practices and Tools* edited by Jolien Grandia, Leentje Volker, Palgrave Macmillan, licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

This reading discusses the ways in which **joint procurement** is organized between two or more independent public organizations that combine purchasing activities in different forms. This is often described as cooperative purchasing, group purchasing, group buying, collaborative purchasing, or joint purchasing.

Checkpoint 7.4

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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Attributions

Chapter Review

Key Takeaways

- Innovation has empowered contracting officers to improve process efficiency with technology tools.
- Blockchains can be implemented to improve self-governance and transparency of government transactions.
- Digital tools transform public procurement processes with automation.
- Cooperation in purchasing can result in sharing best procurement practices.

Explore and Engage

Questions for Discussion

1. Technology moves traditional procurement processes to a smarter way; what are some challenges of implementing innovative systems in the public sector?
2. Blockchain technology solves multiple issues in the procurement role. List three benefits of Blockchain.
3. What is the impact of e-tools on the private sector and taxpayers?
4. Group or collaborative purchasing can reduce procurement costs; what challenges can it create in the transparency of the public process?

Active Learning

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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Recommended Readings and References

Recommended Readings

"Chapter 11: Recent and Future Developments in Public Procurement" by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.

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CHAPTER 8: GOVERNMENT ASSET AND INVENTORY MANAGEMENT

Introduction

Public procurement goes beyond the purchase of goods and services. It includes the efficient management of projects, assets and inventory. The duration of contracts and limited flexibility in the public sector can impede the adoption of effective inventory practices. Asset management is a massive topic, and many strategies can help an organization improve the way it does business and makes decisions and how it processes, uses, and communicates data related to its inventory and asset management.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Understand the scope and importance of Asset Management within governments.
2. Analyze the process of asset management.
3. Understand the benefits and challenges associated with asset management in the public sector.
4. Explain the various approaches to project governance.

Public Procurement Playbook

Watch this video to learn more about asset management challenges for public entities.

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Source: Masoom Alli CA(SA). (2024, October 4). The Basics of Asset Management: Common Asset Management Challenges in Public Sector Entities. [Video]. YouTube. https://www.youtube.com/watch?v=p5NuPao4CA8

8.1: What is Asset Management (AM)?

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Asset management is a coordinated activity of an organization to realize value from assets. The activity can also refer to the application of the elements of the asset management system, the approach, the planning, the plans, and their implementation. (ISO 55000: 2014 standard)

Asset management (AM), as practised today, is a fundamentally new way of thinking about physical assets and how to use them to create value for the organization. Because AM is such a vast topic, it should come as no surprise that a number of AM strategies have been formed based on unique organizational practices or distinct personal understanding of individual specialists. However, we can say that AM is a strategic approach to maximizing the value of an organization's assets. Therefore, it represents one of the organization's critical, comprehensive, and proactive competitive advantage philosophies.

AM is a set of ideas that can help a company improve how it does business and makes decisions. It also helps a company improve the ways in which it processes, uses, and communicates data related to its infrastructure management. AM is largely concerned with how an organization allocates and uses resources, including money, people, skills, and information. It offers a consistent, integrated framework for planning, program formulation, and program delivery across the organization's various assets. Therefore, it is becoming a critical component of project management.

AM encourages the use of several quality standards within an organization's processes, such as evaluating all

options at each stage of a decision-making process, conducting project economic analysis from a long-term perspective, assessing trade-offs across initiatives, monitoring program effectiveness and system performance, and leveraging management and information systems throughout the AM cycle. All of these are critical aspects of the project management **life cycle**. AM is steered by policy objectives and goals. As such, it is goal-oriented, with explicit performance and accountability metrics.

It can also be stated that AM refers to the management of tangible and intangible project properties, which are typically the processes of managing and rearranging the project deliverables (i.e., outcomes). AM encompasses the classic project management area of version control, but in more recent times, it has also begun to cover new areas of project property control. Furthermore, in times of disruption and ongoing digital transformation, we would say that the AM process should encompass the whole project life cycle, beginning with design and procurement and continuing through operation and maintenance before finally being retired, resulting in even more project value.

Asset Management Strategy

Actions within the AM system and other organizational activities influence organizational strategy creation and implementation. Developing an **asset management strategy** is an ongoing activity dependent on the interplay between corporate or company plans and the actions of the organization in which they are implemented. To achieve sustained competitive advantage, strategy formulation should be viewed as an organizational capacity that can be cultivated at many levels within the organizational structure (Gordon, 1998). AM is thought to be a component of the organizational strategic management system and to play a role in the creation and execution of organizational strategies. As a result, any architecture for the asset management system should identify the system's role in creating and implementing a strategy.

The process of value creation is related to the performance of an **asset**. The performance output is determined in the production or operation process and depends on the capability of the asset throughout the project utilization phase. The capability and performance of assets during the utilization phase depend on the design procedures in the design phase. So, the effective execution of asset-related activities throughout the various life cycle stages of an asset is critical to a project's success.

Applied to any organization, AM is a strategic business model that demonstrates good asset ownership, effective asset management and service management, responsible stewardship, and long-term sustainability progress. However, there is a misconception that AM merely aims to collect and integrate current management systems and data. AM is, therefore, perceived to be a continuous process. However, it goes much further than that. The strategic value of AM lies in its ability to build on existing procedures and tools, as well as complement and expand current practice, all via a process of continual evaluation and development. This process results in the creation of an AM blueprint, which acts as a roadmap for improving business and service delivery under the supervision of a project manager.

Organizations employ specialized frameworks and guidelines for their assets, which are typically taken from the asset manufacturers' recommendations. Still, their overall management system is typically established experimentally via their own practice. As a result, there are various viewpoints on what "Total Asset Management Strategy" implies to each organization's structure. Therefore, we can state that the strategy is shaped around the complexity, design, and specific assets engaged in the organization.

For AM to contribute to an organization's success, important activities, connections, and procedures must be identified, formed, and managed inside the business. In other words, an AM strategy must be investigated, with fundamental AM procedures and enablers established as part of a comprehensive approach to achieving the organization's strategic goals (Clash & Delaney, 2000).

Projects are responsible for creating the assets that will be managed and for the enhancement and some upkeep of such assets. Therefore, the management of assets and the management of projects are intertwined

in many ways. It is, therefore, important that the project manager is involved in AM frameworks as early as possible to get familiar with all the required actions within AM.

Organizational departments have traditionally been responsible for actions connected to assets or life cycle processes, such as asset design, asset operation, and asset maintenance. Other asset management activities, such as measurement and analysis, planning, development, modification, and any investment work, are always carried out by relevant departments for the unique purposes of each department. Yet, the project manager should be a key stakeholder in these actions. Budgets are always stated, resources are always allocated, and information regarding the health and performance of assets is always collected in some form or another. Numerous departments within the business carry out these operations; however, they may not be integrated and maximized to achieve the firm's strategic objectives. It is here that project managers undertake an important task: integration.

To achieve the organizational strategy, the objective of this new discipline, known as AM, is to generate collaborative activities inside the organization's system, which are then carried out by the organization's employees and subsequently support the organization's strategy. However, if this is misguided, the strategic support to the organization can be jeopardized.

Researchers have produced an array of management system types relating to physical assets over the course of history. This range includes maintenance management, strategic AM, engineering AM, property AM, infrastructure AM, enterprise AM, and other commonly used words. As a result, AM is important to all sorts of industries and the assets engaged in those industries. Accordingly, AM systems should be tailored to the alignment, culture and commercial objectives of the individual company or sector in which they are used.

In the early phases of establishing an AM approach, there are typically many unknowns and assumptions that must be made to proceed. As a result, it is necessary to begin with a straightforward holistic (i.e., broad) strategy to generate early momentum and establish the foundations of understanding, information, and procedures in the organization. This initial effort may then be modified by the project manager and the project management team, adapted, and expanded in terms of depth of information and complexity with the use of reference texts, as well as other sources. **Exhibit 8.1** shows a holistic approach to AM strategy. Each process highlighted in Exhibit 8.1 identifies an asset management practice to be implemented. Some of these practices will be discussed in a later module.

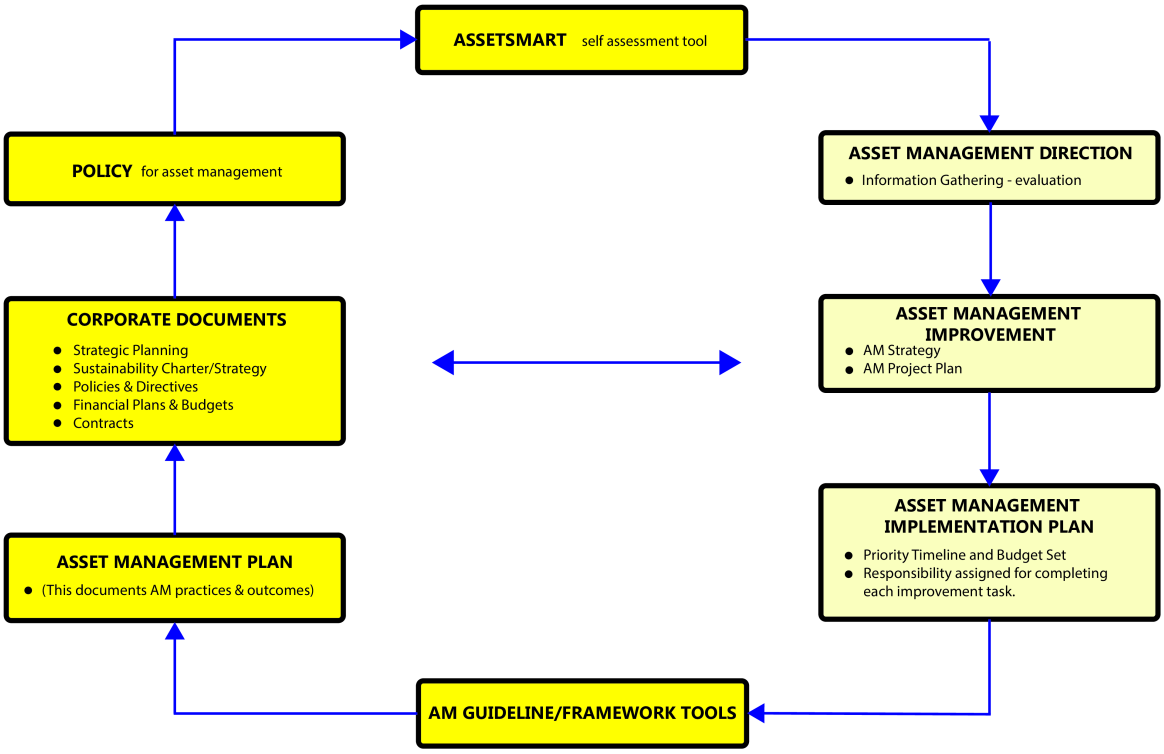

Exhibit 8.1: Asset Management (AM) strategy. [See image description].

Factors Influencing Inventory Management in the Public Sector

Inventory consists of goods owned and held for customer satisfaction. Inventory is necessary for any organization, although various costs accrue as a result of keeping too much inventory. Therefore, it is important for any organization to keep a good balance between the amount of inventory to keep at any one time to ensure that internal and external customers are satisfied without causing the organization to incur high inventory costs.

Both the public and private sectors must embrace good inventory management practices as a tool for enhancing the performance of the procurement process. For effective inventory management to be achieved, the government should put more emphasis on enforcing the procedures for conducting regular audits.

E-procurement in the public sector also increases transparency in procurement through the electronic publishing of tender notices and contract awards, enhancing accountability and reducing instances of corruption in inventory management.

Checkpoint 8.1

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=479#h5p-43

Image Description

Exhibit 8.1: The diagram displays a structured approach to asset management, outlined through a series of interconnected yellow rectangular boxes with black text and borders against a white background. Arrows denote the flow of processes and information. The process starts with "ASSETSMART (self-assessment tool)" at the top, leading right to "ASSET MANAGEMENT DIRECTION," which notes "Information Gathering – evaluation." This directs downward to "ASSET MANAGEMENT IMPROVEMENT," detailing "AM Strategy" and "AM Project Plan." Below it is "ASSET MANAGEMENT IMPLEMENTATION PLAN" stating "Priority Timeline and Budget Set" and "Responsibility assigned for completing each improvement task." On the left, "AM GUIDELINE/ FRAMEWORK TOOLS" connects to the "ASSET MANAGEMENT PLAN" mentioning "(This documents AM practices and outcomes)," which flows further to "CORPORATE DOCUMENTS" containing "Strategic Planning," "Sustainability Charter/Strategy," "Policies and Directives," "Financial Plans and Budgets," and "Contracts." Heading upwards, this connects to "POLICY for asset management." Blue arrows indicate the process flow between these elements.
[back]

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"Factors Influencing Inventory Management in Public Sector: A Case Study of Kajiado County Hospital" (2017) by Nurwin Fozia Rajab, Saad Okwiri, Oruru Sebastian & Faraj Yatundu in *Kabarak Journal of Research and*

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Exhibit 8.1 is adapted from Figure 1: AM Strategy from "Module 1. Definitions and Importance of Asset Management and Project Governance" in*A Manual for Project Governance and Asset Management*, copyright © 2022 by Carmen Reaiche and Samantha Papavasiliou, licensed under a Creative Commons Attribution 4.0 International License, except where otherwise noted. This rendition copyright © 2024 Conestoga College, CC BY-NC-SA 4.0.

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8.2: The Process of Managing an Asset

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In capital procurement, procurement officers choose the best option for meeting delivery needs in acquiring investments and assets. Public sector capital procurement principles must act as a guide for the entire process.

Principles of Capital Procurement for the Public Sector

Allocation and Management of Risk

Procurement in the government must be fair, open and transparent, demonstrating public service values and ethics. Every opportunity must be given for potential partners to participate in government business. When making decisions, qualified bidders are those that best meet the requirements of the tender.

Competition

Capital asset procurement opportunities must be tendered out in a transparent way using competitive processes. Reasonable exceptions may be made in urgent and unusual circumstances.

Value for Money and Protecting Public Interest

Seeking value for money in the management of assets and acquired capital services helps protect the public interest. Strategic decision-making optimizes the use of government spending. Capital asset life cycle management is controlled by monitoring direct and indirect costs of assets and services to ensure the cost-effectiveness and performance of the procurement.

Legal Considerations

Procurement must align with the law, including inter-governmental agreements and applicable trade agreements.

Practical Procurement: Scenarios and Solutions

Alex Johnson, the Chief Procurement Officer at GreenTech Solutions, faced a critical decision regarding the management of the company's aging fleet of delivery vehicles. The vehicles, essential for the timely delivery of GreenTech's eco-friendly products, were increasingly prone to breakdowns, leading to higher maintenance costs and delivery delays. Alex needed to determine the best approach to manage these assets effectively, ensuring operational efficiency and cost-effectiveness.

GreenTech Solutions, a mid-sized company with 200 employees, specializes in manufacturing and distributing eco-friendly home and garden products. Their product line includes solar-powered garden lights, compost bins, and water-saving irrigation systems. The company prides itself on its commitment to sustainability and innovation, catering to environmentally conscious consumers, businesses, and municipal governments. GreenTech generates revenue through direct sales to consumers via its e-commerce platform, partnerships with major retail chains, and bids on tender opportunities with local and regional municipal governments.

Alex considered three potential options to address the vehicle fleet issue. The first option was to invest in a new fleet of electric delivery vehicles. This option aligned with GreenTech's sustainability goals and promised lower long-term maintenance costs. However, the initial investment was substantial, and Alex needed to ensure it fit within the company's budget constraints.

The second option was to lease a fleet of vehicles. Leasing would reduce the upfront costs and

provide flexibility, allowing GreenTech to upgrade to newer models more frequently. However, leasing could result in higher long-term costs and potential restrictions on vehicle usage.

The third option was to implement a comprehensive maintenance and refurbishment program for the existing fleet. This approach would extend the life of the current vehicles and spread out the costs over time. However, it required a detailed analysis of the vehicles' current condition and the feasibility of ongoing maintenance.

Alex needed to evaluate these options considering the principles of capital asset life cycle management. This included assessing the direct and indirect costs, potential risks, and alignment with GreenTech's strategic goals. The decision was crucial for maintaining the company's operational efficiency and upholding its reputation for reliable, eco-friendly products.

Discussion Questions

1. Analyze the three options available to Alex using the principles of capital asset life cycle management. Which option would you recommend and why?
2. How can GreenTech Solutions ensure that its procurement process for the new fleet (if chosen) aligns with capital procurement principles such as fairness, transparency, and value for money?
3. Discuss the potential risks associated with each option and how Alex can mitigate these risks to protect GreenTech's interests.

Source: Scenario and questions created with the assistance of Microsoft Copilot.

Capital Asset Life Cycle Management

Capital asset procurement generally follows the same procurement process, with the focus shifting to managing the contract and monitoring the asset life cycle performance. It is possible to divide an asset's life cycle into four distinct stages. Let's look at these four stages.

Stage 1. Make a Plan

Based on an examination of current assets, planning can assist in determining the need for a particular item and the critical skill needed for the project. This is accomplished by implementing a management system that can analyze trends and data, allowing the decision-makers to determine the need for the asset and the value it offers to the organization's operations. The early stage of an asset's life cycle is critical for all stakeholders, from finance teams to operators. The choice to acquire an asset is based on the asset's ability to meet the demands of the organization and the needs of its projects, in addition to contributing to the company's operations and creating income.

Stage 2. Obtain the Asset

Identifying, evaluating and purchasing an asset is the next step in the asset's life cycle. In this process, the procurement officer ensures that enough research has been conducted to confirm that the asset is a critical

resource required to improve operations and support the successful deliverables of the procurement. This step will also consider the financial aspects of acquiring an item within the budget parameters established during the planning stage. Using a data management system after the asset has been procured and deployed permits it to be tracked throughout its full life cycle, allowing for greater efficiency and accountability.

Stage 3. Operations and Maintenance

Operation and maintenance is the most time-consuming part of an asset's life cycle. This stage describes how the asset will be used and managed, as well as any maintenance and repairs that may be required during its use. After being placed for its intended use inside the organization, the asset should improve operations while contributing to income generation. In addition, updates, patch fixes, licenses, and audits must be addressed immediately. During operation, an asset will be monitored and examined regularly for any performance concerns that may arise unexpectedly. This is the point at which maintenance and repairs become more frequent, and procurement officers are required to arrange for repairs.

As assets age and wear and tear grows, regular maintenance is required to extend the asset's life and worth as much as possible. Additionally, alterations and improvements are necessary to ensure assets are current with the constant technology changes and ongoing disruptive environments. Maintenance strategies are unique to each organization. Many favour a reactive maintenance method, while others prefer a predictive or preventive maintenance plan. Even so, each maintenance approach strives to achieve certain goals, such as:

- Keeping downtime to a minimum
- Keeping emergency repair expenditures to a minimum
- Increasing the uptime of equipment
- Extending the useful life of an asset to perform better than it did originally by identifying and addressing possible improvement areas.

Stage 4. Disposal of Waste

Finally, at the end of an asset's useful life, it is removed from service and either sold, repurposed, thrown away, or recycled, depending on the circumstances. Even though an asset has no commercial value at this point, it may need to be disposed of in an environmentally friendly manner. Depending on the circumstances, this procedure might include disassembling the item piece by piece or wiping it clean of all data. If, on the other hand, this sort of asset is still required for operating purposes, a replacement is planned, and the asset life cycle starts from the beginning.

Public Procurement Playbook

This video was created by Martin Kerr, Principal and Founder of Structured Change and Certified Fellow in Asset Management.

In every organization, it is essential to recognize and comprehend the interactions that occur among the primary roles involved in the process of asset management (AM). Martin Kerr describes the four responsibilities that influence the capability of achieving effective AM. The ideas of AM and change management are brought together under the umbrella of structured change to provide businesses with excellent AM over the long term.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=481#oembed-1

Source: Structured Change. (2017, June 12). The Main Roles in Asset Management. [Video]. YouTube. https://youtu.be/CWSZOqY8G5k

Checkpoint 8.2

An interactive H5P element has been excluded from this version of the text. You can view it online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=481#h5p-44

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8.3: Benefits and Drawbacks of Capital Asset Investment

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Benefits

There is no doubt that organizations that invest in capital receive a variety of rewards. However, not all advantages are associated with financial rewards. Asset monitoring in real-time provides an ongoing stream of data, encourages accountability, and, with the support of an appropriate data management system, helps keep planning and equipment maintenance on schedule and within budget.

As we know, nothing is flawless, and there will never be a truly ideal trade-off between performance, cost, and risk that can be identified. However, the strength of the AM approach is that it recognizes this imperfection and builds a continual feedback loop to alter the way assets are bought, managed, maintained, and disposed of to attain a reasonable approximation to optimal performance.

Other benefits include the following:

Recognition of Business Requirements

All asset management techniques recognize the variability in "optimal" conditions connected with the business environment and support logical decisions based on such aspects, whether or not they are explicitly stated.

Promote Best Practices

Adopting techniques such as systems engineering is implicit in standards such as ISO 55000 and explicitly stated in more general AM literature.

Support for Decision-making

The idea of the line of sight expressly demands that decision-makers at all levels are aware of both the business goals coming down from above and the asset performance, cost, and risk information flowing up from beneath them. Decision-makers are thus in a position to respond to the following questions:

- What kind of performance is being provided?
- Exactly what level of performance and value is desired?

Challenges

Unfortunately, not everything is perfect. AM presents a few difficulties. In today's corporate world, AM is a vital and critical component of any successful operation. AM guarantees that all assets are appropriately bought, operated, and managed per industry standards and specifications, as well as with company policies and procedures. At every stage of a project's lifecycle, from conception to completion, it is critical to ensure that asset management is properly structured and managed. However, issues faced by project managers who oversee the management, tracking, or simply monitoring of assets are numerous and varied. Here are some of the most common issues.

Choosing the Right Assets

Many business leaders are unaware of their company's organizational structure and strategy. In such circumstances, deciding what assets to acquire becomes more difficult. The asset procurement teams can make poor choices and spend money on new assets without properly comprehending the necessity for the assets in question. When acquiring new equipment and software, the procurement officer can only make informed decisions if they know what assets they have, who else has them, what is currently in use, and how old or expired existing assets are. It becomes a challenge to gather all this information if the organizational structure does not support the right communication and documentation processes required for this decision-making step.

Acquisition of Assets Not Under Control

A traditional asset strategy focused on procurement is frequently responsible for introducing additional ungoverned assets into the business. We call ungoverned assets shadow assets. These are assets that are deployed within a firm without the permission of the senior management or procurement department. This might result in the introduction of unchecked assets into the organization, resulting in increased expenditures and security and compliance difficulties. This is a common challenge for organizations lacking a procurement department or a formal project management unit.

Cross-Functional Assets

Managing assets across functional departments (i.e., marketing, IT, HR, Finance, etc.) is a significant problem for organizations that want to run efficiently. This is because the various departments desire to use assets in a way that makes sense for their particular internal structure and often neglect the demands of other departments. Assets are frequently borrowed or shared collaboratively by many departments, raising the likelihood of an operational disruption when an asset is required by more than one department but is already in use by another.

Public Sector: A Different Set of Challenges

We can see that the policies and processes of private sector organizations that practise asset management are well aligned. For example, the importance of AM to the organization's operations and profitability is clearly communicated throughout the organization and is aligned with encouraging highly effective management practices. However, there are different challenges for the public sector (i.e., government agencies and/or public organizations).

The nature of the organizational structure, administrative and financial environment, and the limits imposed by other authorities all contribute to the difficulty of applying AM concepts to the public sector. The following are some of the attributes of this environment that might make AM more difficult:

- Responsibilities for different areas of the public sector are dispersed among various government entities.
- Funding is frequently confined by prescriptive operations, restricting the freedom to allocate funds and often distributing these to what senior management perceives to be the most critical areas of need.
- Senior management does not often have access to adequate high-quality information that would help them undertake an analysis to assess asset trade-offs and make funding allocation decisions, making successful judgements regarding asset needs difficult.
- Systems and databases are frequently standalone and/or the result of many changing trial versions; often, they are cumbersome and outdated and require modernization. Such issues lead to poor system infrastructure and compound the challenges of system integration integrity, as well as the quality and timeliness of the data.

As a result of some of these issues, implementing capital purchases inside public sector organizations is prone to various difficulties.

Real Cases in Public Procurement: Learning from Experience

Retaining Organizational Knowledge in Thunder Bay

Issue: Thunder Bay wanted to address gaps in internal asset management knowledge and processes. An audit identified inefficiencies and redundancies due to the inconsistent use of information.

Background: With widespread information and knowledge retention gaps, the city of Thunder Bay found it necessary to revamp asset management across the organization. The city also sought to raise public awareness so citizens would be better able to provide informed input into financial and asset management planning; an initial goal was to obtain citizen input on service levels.

Outcome: A project team was created with managers from each area of the city to share approaches and develop plans. Communication resources were developed, and processes, decisions and asset register details were centralized.

The **asset management plan** now includes all assets within the municipal inventory that comply with the Tangible Capital Asset (TCA) policy. The Plan is divided into sections based on the eight major asset classes: Transportation, Drinking Water, Wastewater, Stormwater, Facilities, Fleet and Machinery, Equipment and Land Improvements.

Council members are more aware of the long-term, proactive nature of asset management and its connection to financial planning and community resilience.

Discussion Questions

1. Do you feel using this asset management plan will benefit all stakeholders?
2. Did collaboration across departments help address the issue?

Sources: Based on information from the City of Thunder Bay's Asset Management Plan. (Updated May 2024.) Retrieved on November 13, 2024. Case Study: Retaining Organizational Knowledge in Thunder Bay from the Green Municipal Fund. Retrieved on November 13, 2024.

Checkpoint

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=485#h5p-45

Attributions

8.4: Approaches to Project Governance

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When it comes to asset management, public organizations that use many projects to implement strategy, improve their operations, or develop new efficiencies must rely on project governance as their primary method of project administration.

Multi-projects are becoming increasingly popular, so the need for an approach to provide a clear administration and management structure is critical. Management literature has recognized the importance of structured, disciplined project management and the role governance has in creating value for organizations. Project governance is the mechanism that ensures that project choices are consistent with the organization's governance rules and processes and align with the organization's strategy. It also provides project managers and their teams with an organized framework for making choices, carrying out project procedures, and clearly defining their responsibilities throughout the project's life cycle (from conceptualization to completion). It also establishes communication channels and approaches within the organization and with the project team.

The project governance structure for government organizations is developed to ensure that projects are completed successfully and in accordance with the aims and goals of the public stakeholders. Once the framework is established, procurement officers can confidently follow this plan, knowing that they are tackling their project in the most efficient manner possible and in alignment with the government's goals.

Project governance helps to make the procedures that take place throughout the project life cycle more understandable. Project governance also helps clarify several critical issues, some shown in **Exhibit 8.2**.

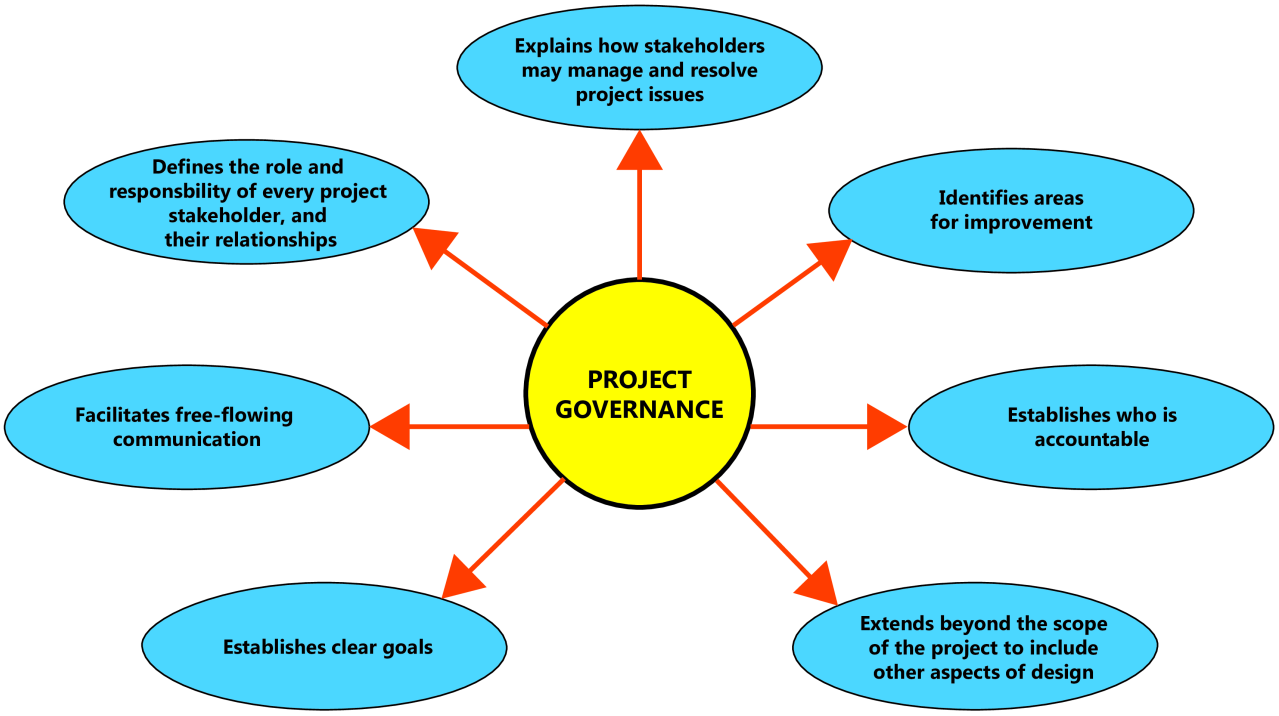

Exhibit 8.2: The Importance of Project Governance. [See image description].

Overall, excellent governance is a key facilitator of effective asset investment management and a critical component of successful procurement initiatives. Governance is often concerned with who makes choices, how decisions are made, and whether cooperation is enabled, resulting in the definition of the governance framework within which decisions are made. As the complexity of a project grows, the governance structure, resources, and organizational structure often grow in proportion to that complexity. Risk, organizational culture, and project maturity are all elements that influence the governance architecture.

The term "governance" is often used in conjunction with phrases such as government, governing, and control (Klakegg et al., 2008). When applied to public organizations, governance is a framework for ethical decision-making and transparent actions based on openness, accountability, and clearly defined responsibilities.

Checkpoint 8.4

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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Image Description

Exhibit 8.2: The image is a diagram with a central yellow circle labeled “Project Governance.” Radiating outward from this central circle are eight orange arrows pointing to blue ovals. Each oval contains text describing a specific aspect of project governance. The ovals are symmetrically arranged around the circle. Starting from the top and moving clockwise, the ovals are labeled as follows: “Explains how stakeholders may manage and resolve project issues,” “Identifies areas for improvement,” “Establishes who is accountable,” “Extends beyond the scope of the project to include other aspects of design,” “Establishes clear goals,” “Facilitates free-flowing communication,” and “Defines the role and responsibility of every project stakeholder, and their relationships.” [back]

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Chapter Review

Key Takeaways

- Asset management creates value within government spending, including investment planning, investments in property and necessary assets.
- The asset management process must follow the principles of public sector capital procurement.
- Strengthening the process of asset management is a crucial part of managing government spending.
- Governments establish systems for assessing their assets and planning capital investment needs.

Explore and Engage

Discussion Questions

1. How does asset management impact the public sector?
2. Why is planning an important step in asset management?
3. How are capital procurement opportunities tendered in the public sector?
4. Capital asset frameworks provide support with decision-making. How does this help proper asset management?

Active Learning

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=491#h5p-14

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CHAPTER 9: CONTRACT AND PROJECT MANAGEMENT IN PUBLIC BUYING

Introduction

Contracting out goods and services in the public sector is routine. This chapter discusses managing the contact process in public services from execution to reporting.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Explain the role of procurement contract administration in public buying.
2. List the variety of contracts available within the public buying environment.
3. Explain the key factors of quality to be managed in the course of public buying practices.
4. Apply current best practices to monitor and control the administration of contracts in public buying.

Public Procurement Playbook

Watch this video to learn more about contract management.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=497#oembed-1

Source: Procurement Tactics. (2023, September 5). Contract Management in Procurement Introduction. [Video]. YouTube. https://www.youtube.com/watch?v=NEpXh0HhOiI

9.1: Procurement Contract Administration

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Procurement management follows a logical order. First, you plan what you need to contract; then you plan how you'll do it. Next, you send out your contract requirements to potential suppliers via bid solicitation. Here, they can bid for the chance to work with you. You pick the best one, and then you sign the contract with them. Once the work begins, you monitor it to make sure that the contract is being followed. When the work is done, you close out the contract and fill out all the paperwork.

In this chapter, we will focus on contract management and the closeout phase of the procurement process. In managing the contract, the procurement officer's role will need to start with a plan for the whole project. Before doing anything else, you need to consider all the work you will contract out for your project. You will want to plan for any additional purchases and acquisitions. Here's where you take a close look at your needs to be sure that contracting is necessary. You figure out what kinds of contracts make sense for your project, and you try to define all of the parts of the project that will be contracted out.

Contract planning is where you plan out each individual contract for the project work. You work out how you'll manage the contract, what metrics it will need to meet to be considered successful, how you'll pick a seller, and how you'll administer the contract once the work is happening.

The procurement management plan details how the procurement process will be managed. It includes the following information:

- The types of contracts you plan to use and any metrics that will be used to measure the contractors' performance.
- The planned delivery dates for the work or products you are contracting.
- The company's standard documents you will use.
- The number of vendors or contractors involved and how they will be managed.
- How purchasing may impact the constraints and assumptions of the project plan.
- The coordination of purchasing lead times with the development of the project schedule.
- The identification of prequalified sellers (if known).

The procurement management plan, like all other management plans, becomes a subsidiary of the project management plan. Some tools and techniques you may use during the procurement planning stage include make-or-buy analysis and the definition of the contract type.

Make-or-Buy Analysis

A **make-or-buy analysis** helps you figure out whether or not you should be contracting the work or doing it yourself. It could also mean deciding whether to build a solution to your problem or buy one that is already available. Most of the same factors that help you make every other major project decision will help you with this one. How much does it cost to build it as opposed to buying it? How will this decision affect the scope of your project? How will it affect the project schedule? Do you have time to do the work and still meet your commitments? As you plan out what you will and won't contract, you must carefully think through your reasoning.

There are some resources (like heavy equipment) that your company can buy, rent, or lease, depending on the situation. You'll need to examine leasing-versus-buying costs and determine the best way forward.

Managing the Contracts

The contract type determines the level of effort and the skills needed to manage the contract. The detailed specification is developed in the planning procurement phase, and contract administration ensures compliance with these specifications. The procurement team ensures that the contractors bidding on the work have the skills and capacity to accomplish the work according to the project schedule, tracks the vendor's performance against the project needs, and supplies support and direction when needed. Procurement ensures the contract is in alignment with legal agreements and public procedures.

Items that take a long time to acquire—long-lead items—receive early attention from the procurement team. Examples of long-lead items are equipment that is designed and built specifically for the project, a curriculum that is created for training a new workforce, and a customized bioreactor for a biotech project. These items might require weeks, months, or years to develop and complete. Long-lead items are identified early to begin the procurement activities as soon as possible because those procured through the normal procurement cycle may cause delays in the project.

After the contract is awarded, the procurement team tracks the contractor's performance against the performance criteria in the contract and their contribution to the project's performance. Usually, contractors deliver a product or service that meets quality expectations and supports the project schedule. Typically, there are also one or two contractors that do not perform to project expectations. When monitoring performance, the contract can be reviewed and used to persuade the contractor to improve performance or be penalized.

Ongoing contract management is required to deal with non-performing contractors, and the project team must assess the method most likely to work in each situation.

Managing contractor performance on a project is as important to the overall project outcomes as the work performed by the project team.

Logistics and Expediting

Equipment and materials purchased for use on the project must be transported, inventoried, warehoused, and often secured. This area of expertise is called logistics. The procurement officer can manage the project's logistics or include them in the Request for Proposal (RFP) or Request for Quotation (RFQ). On international projects, materials may be imported, and the procurement team manages the customs process. On smaller projects, the parent company often provides logistical functions. On larger projects, these activities are typically contracted to companies specializing in logistical services. The procurement team will include logistical expertise on larger, more complex projects.

The project work often depends on materials procured for the project. The delivery of these materials influences the scheduling of the project, and often, some materials are needed earlier than normal procurement practices would deliver. For projects with longer lead items, the project schedule is included in the contracting plans, and contractors must explain how they will support the project schedule.

On large, complex projects, critical items might be scheduled for delivery after they are needed on the project. The procurement team then explores ideas with the contractor to expedite the manufacturing or transportation of the equipment or materials. The contract can often place a priority on the fabrication and delivery of the equipment to meet the project schedule. The project logistics team can also explore ways of shortening transportation times. For example, a project in Argentina flew in some critical equipment from Sweden rather than transporting the equipment by ship to save several weeks in transit. The logistics costs were higher, but the overall value to the project was greater.

Checkpoint 9.1

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=499#h5p-47

Attributions

9.2: Types of Procurement Contracts

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The contract award takes place after the bid closes, and the contract document will depend on the type of bid solicitation.

Contract Types

Understanding a little bit about the major kinds of contracts available for procurement is essential to choosing the one that creates the most fair and workable deal for the organization and the supplier. Some contracts are fixed price: no matter how much time or effort goes into them, the client always pays the same. Some contracts are cost-reimbursable, also called cost plus. This is where the seller charges the client for the cost of doing the work plus a fee or rate. The third major kind of contract is time and materials. That's where the client pays a rate for the time spent working on the project and also pays for all the materials used to do the work.

Public Procurement Playbook

Watch this video to learn more about the different types of contracts offered by the government to vendors and suppliers.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=501#oembed-1

Source: County Office Law. (2024, April 17). What Are the Different Types of Government Contracts. [Video]. YouTube. https://youtu.be/u3r9Bu2OaXk

Fixed-Price Contracts

A **fixed-price contract** is a legal agreement between the project organization and an entity (person or company) to provide goods or services to the project at an agreed-on price. The contract usually details the quality of the goods or services, the timing needed to support the project, and the price for delivering goods or services. There are several variations of the fixed-price contract. For commodities, goods, and services where the scope of work is very clear and not likely to change, the fixed-price contract offers a predictable cost. The responsibility for managing the work to meet the project's needs is focused on the contractor. The project team tracks the quality and progress of the project to ensure the contractors are meeting the project's needs. The risks associated with fixed-price contracts are the costs associated with project change. If a change occurs on a project that requires a change order from the contractor, the price of the change is typically very high. Even when the price for changes is included in the original contract, changes on a fixed-price contract will create higher total project costs than other forms of contracts because the majority of the cost risk is transferred to the contractor, and most contractors will add a contingency to the contract to cover their additional risk.

In **Exhibit 9.1** the cost to the client stays the same, but as more effort is exerted, the profit to the contractor goes down.

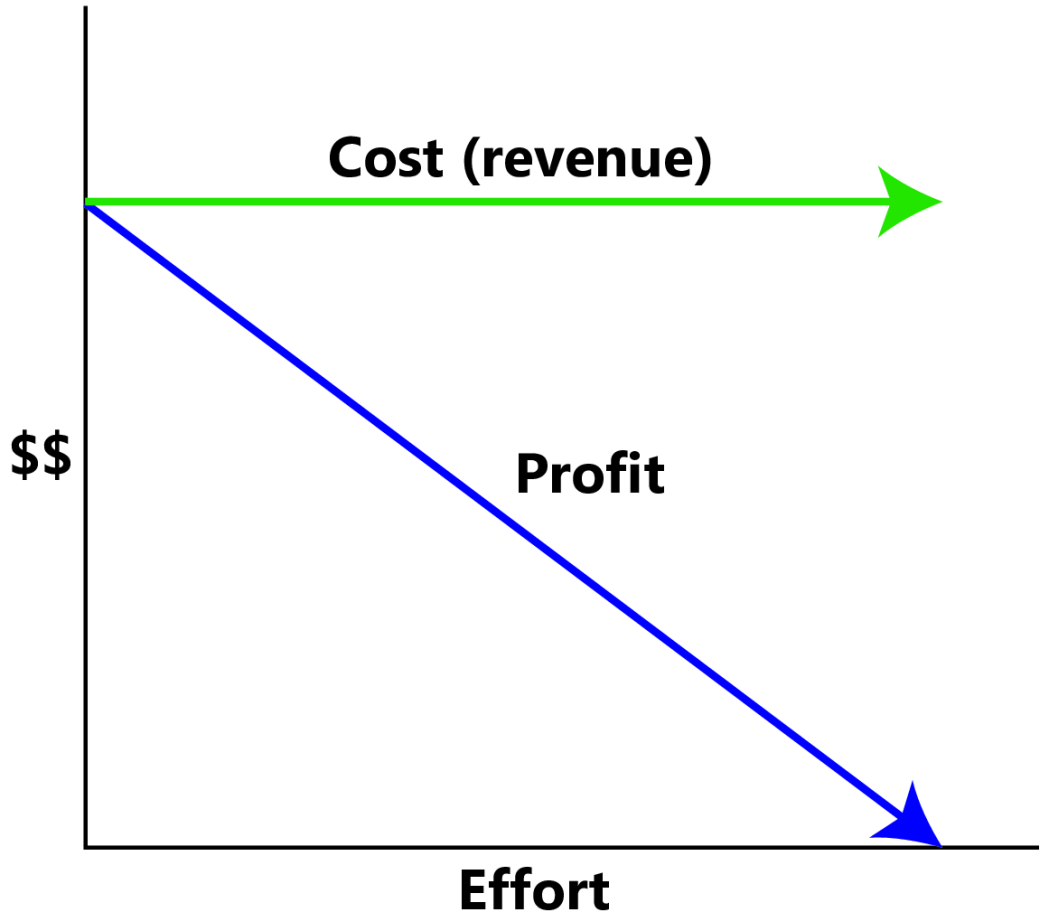

Exhibit 9.1: In a fixed-price contract the cost to the client is constant regardless of effort applied or delivery date. [See image description].

Fixed-price contracts require the availability of at least two or more suppliers with the qualifications and performance histories that ensure the needs of the project can be met. The other requirement is a scope of work that will most likely not change. Developing a clear scope of work based on good information, creating a list of highly qualified bidders, and developing a clear contract that reflects that scope of work are critical aspects of a good fixed-priced contract.

If the service provider is responsible for incorporating all costs, including profit, into the agreed-on price, it is a fixed-total-cost contract. The contractor assumes the risks for unexpected increases in labour and materials needed to provide the service or materials, and in the materials, and timeliness needed.

The fixed-price contract with price adjustment is used for unusually long projects that span years. The most common use of this type of contract is the inflation-adjusted price. In some countries, the value of the local currency can vary greatly in a few months, which affects the cost of local materials and labour. In periods of high inflation, the client assumes the risk of higher costs due to inflation, and the contract price is adjusted based on an inflation index. The volatility of certain commodities can also be accounted for in a price-adjustment contract. For example, if the price of oil significantly affects the costs of the project, the client can accept the

oil price volatility risk and include a provision in the contract that would allow the contract price to be adjusted based on a change in the price of oil.

The fixed-price contract with an incentive fee provides an incentive for performing the project above the established baseline in the contract. The contract might include an incentive for completing the work on an important milestone for the project. Often, contracts have a penalty clause if the work is not performed according to the contract. For example, if new software is not completed in time to support the implementation of training, the contract might penalize the software company by charging a daily amount for every day the software is late. This type of penalty is often used when a deliverable is critical to the project, and the delay will cost the project significant money.

If the service or materials can be measured in standard units, but the amount needed is not known accurately, the price per unit can be fixed—a fixed-unit-price contract. The project team assumes the responsibility of estimating the number of units used. If the estimate is inaccurate, the contract does not need to be changed, but the project will exceed the budgeted cost.

Table 9.1 shows the various fixed price contracts and their characteristics.

Table 9.1: Fixed price contracts and their characteristics

Type	Known Scope	Share of Risk	Incentive for Meeting Milestones	Predictability of Cost
Fixed total cost	Very high	All contractor	Low	Very high
Fixed unit price	High	Mostly project	Low	High
Fixed price with incentive fee	High	Mostly project	High	Medium-high
Fixed price with price adjustment	High	Mostly project	Low	Medium

Cost-Reimbursable Contracts

In a **cost-reimbursable contract**, the organization agrees to pay the contractor for the cost of performing the service or providing the goods. Cost-reimbursable contracts are also known as cost-plus contracts. Cost-reimbursable contracts are most often used when the scope of work or the costs for performing the work are not well known. The project uses a cost-reimbursable contract to pay the contractor for allowable expenses related to performing the work. Since the cost of the project is reimbursable, the contractor has much less risk associated with cost increases. When the costs of the work are not well known, a cost-reimbursable contract reduces the amount of money the bidders place in the bid to account for the risk associated with potential increases in costs. The contractor is also less motivated to find ways to reduce the cost of the project unless there are incentives for supporting the accomplishment of project goals.

Exhibit 9.2 shows that as efforts increase, costs to the client go up, but the contractor's profits stay the same.

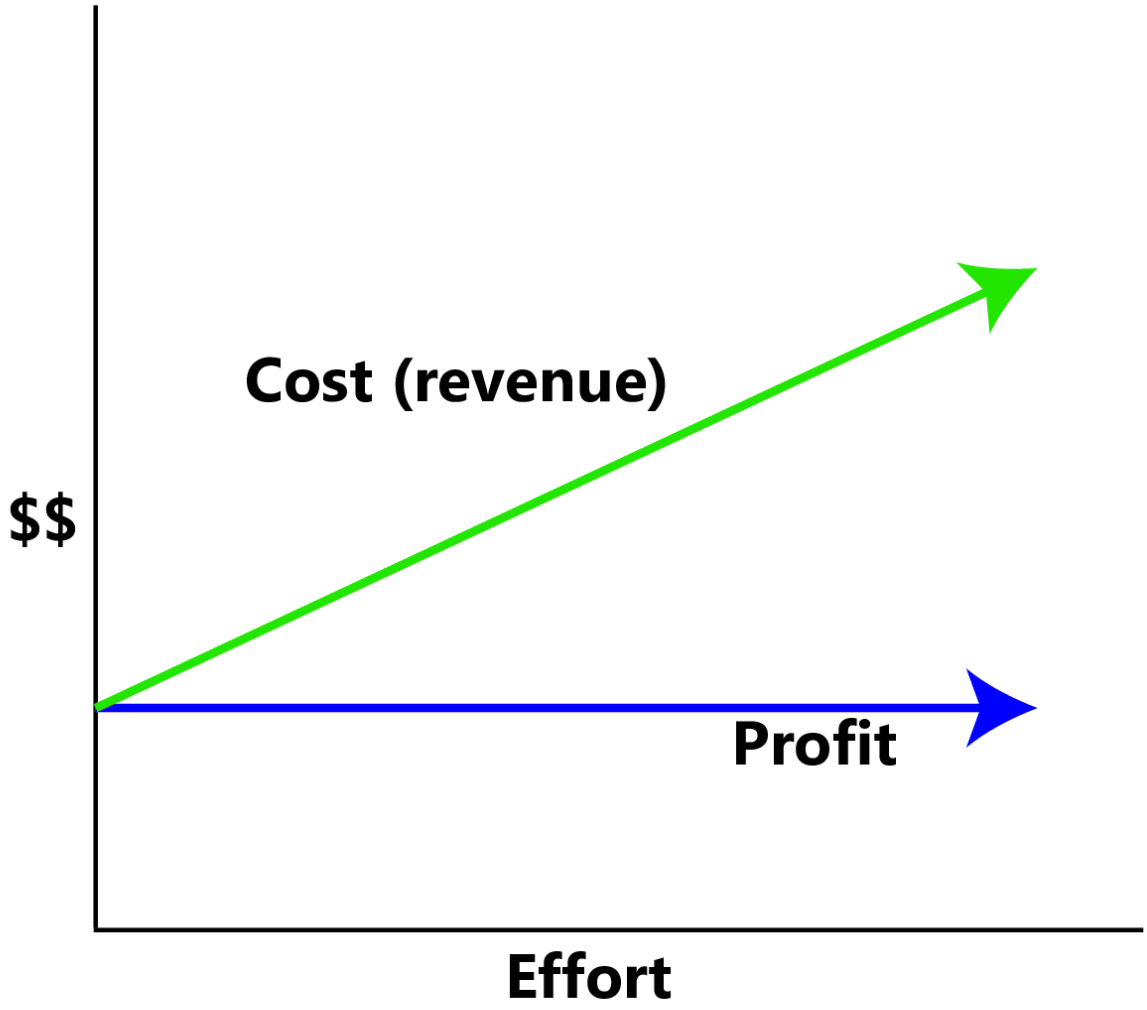

Exhibit 9.2: In a cost-reimbursable or cost-plus contract, the contractor is guaranteed a fee, but the client's costs can increase based on effort. [See image description].

Cost-reimbursable contracts require good documentation of the costs that occurred on the project to ensure that the contractor gets paid for all the work performed and to ensure that the organization is not paying for something that was not completed. The contractor is also paid an additional amount above the costs. There are several ways to compensate the contractor.

- A cost-reimbursable contract with a fixed fee provides the contractor with a fee, or profit amount, that is determined at the beginning of the contract and does not change.
- A cost-reimbursable contract with a percentage fee pays the contractor for costs plus a percentage of the costs, such as 5% of total allowable costs. The contractor is reimbursed for allowable costs and is paid a fee.
- A cost-reimbursable contract with an incentive fee is used to encourage performance in areas critical to

the project. Often, the contract attempts to motivate contractors to save or reduce project costs. Using the cost-reimbursable contract with an incentive fee is one way to motivate cost-reduction behaviours.

- A cost-reimbursable contract with an award fee reimburses the contractor for all allowable costs plus a fee that is based on performance criteria. The fee is typically based on goals or objectives that are more subjective. An amount of money is set aside for the contractor to earn through excellent performance, and the decision on how much to pay the contractor is left to the judgment of the project team. The amount is sufficient to motivate excellent performance.

Table 9.2 shows the various cost-reimbursable contracts and their characteristics.

Table 9.2: Cost-reimbursable contracts and their characteristics

Cost Reimbursable (CR)	Known Scope	Share of Risk	Incentive for Meeting Milestones	Predictability of Cost
CR with fixed fee	Medium	Mostly project	Low	Medium-high
CR with percentage fee	Medium	Mostly project	Low	Medium-high
CR with incentive fee	Medium	Mostly project	High	Medium
CR with award fee	Medium	Mostly project	High	Medium
Time and materials	Low	All project	Low	Low

Time and Materials Contract

On small activities with high uncertainty, the contractor might charge an hourly rate for labour, plus the cost of materials, plus a percentage of the total costs. This type of contract is called **time and materials (T&M) contract**. Time is usually contracted at an hourly rate, and the contractor usually submits time sheets and receipts for items purchased on the project. The project reimburses the contractor for the time spent based on the agreed-on rate and the actual cost of the materials. The fee is typically a percentage of the total cost.

Exhibit 9.3 shows that as costs to the client go up, so does the profit for the contractor.

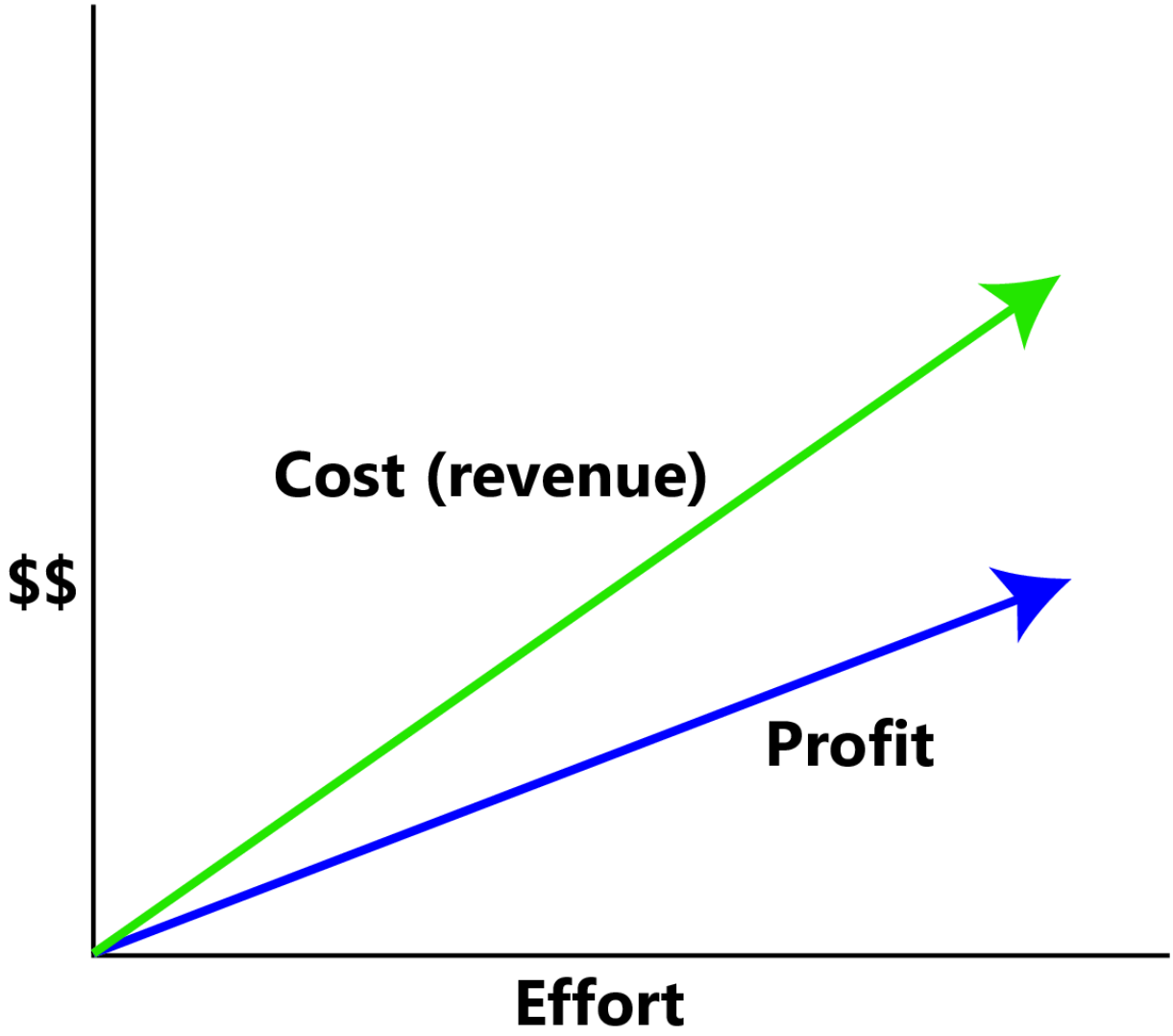

Exhibit 9.3: In a time-and-materials contract the profit to the contractor increases with increased effort, as does the cost to the client. [See image description].

T&M contracts are used on projects for work that is smaller in scope and has uncertainty or risk. The project, rather than the contractor, assumes the risk. Since the contractor will most likely include a contingency in the price of other types of contracts to cover the high risk, T&M contracts provide a lower total cost to the project.

To minimize the risk to the project, the contractor typically includes a not-to-exceed amount, which means the contract can only charge up to the agreed amount. The T&M contract allows adjustments to the project as more information is available. The final cost of the work is not known until sufficient information is available to complete a more accurate estimate.

Progress Payments and Change Management

Vendors and suppliers usually require payments during the life of the contract. On contracts that last several months, the contractor will incur significant costs and will want the project to pay for these costs as early as possible. Rather than wait until the end of the contract, a *schedule of payments* is typically developed as part of the contract and is connected to the completion of a defined amount of work or project milestones. These payments, made before the end of the project and based on the progress of the work, are called *progress payments*. For example, the contract might include a payment schedule that pays for the design of the curriculum, then the development of the curriculum, and then a final payment is made when the curriculum is completed and accepted. In this case, three payments would be made. There is a defined amount of work to be accomplished, a time frame for accomplishing that work, and a quality standard the work must achieve before the contractor is paid for the work.

Just as the project has a scope of work that defines what is included in the project and what work is outside the project, vendors and suppliers have a scope of work that defines what they will produce or supply to the company. (Partners typically share the project scope of work and may not have a separate scope of work.) Often, changes in the project require changes in the contractor's scope of work. How these changes will be managed during the life of the project is typically documented in the contract. Capturing these changes early, documenting what changed and how the change impacted the contract, and developing a change order (a change to the contract) is important to maintaining the progress of the project. Conflict among team members may arise when changes are not documented or when the team cannot agree on a change. Developing and implementing an effective change management process for contractors and key suppliers will minimize this conflict and the potential negative effect on the project.

Selecting the Contract Approach

The technical teams typically develop a description of the work that will be outsourced. From this information, the project management team answers the following questions:

- Is the required work or materials a commodity, customized product or service, or unique skill or relationship?
- What type of relationship is needed: supplier, vendor, or partnership?
- How should the supplier, vendor, or potential partner be approached: RFQ, RFP, or personal contact?
- How well known is the scope of work?
- What are the risks, and which party should assume which types of risk?
- Does the procurement of the service or goods affect activities on the project schedule's critical path, and how much **float** is there on those activities?
- How important is it to be sure of the cost in advance?

The procurement team uses the answers to the first three questions listed above to determine the approach to obtaining the goods or services and the remaining questions to determine what type of contract is most appropriate.

A key factor in selecting the contract approach is determining which party will take the most risk. The team determines the level of risk that the project team will manage and what risks will be transferred to the contractor. Typically, the project management team wants to manage the project risk. Still, in some cases, contractors have more expertise or control that enables them to better manage the risk associated with the contracted work.

Checkpoint 9.2

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=501#h5p-48

Image Descriptions

Exhibit 9.1: The image is a chart illustrating the relationship between Effort, Cost (revenue), and Profit. It features a simple line graph with a vertical and horizontal axis. The vertical axis is labeled with dollar signs "$$", representing monetary value. The horizontal axis is labeled "Effort," indicating the amount of work or resources expended. A green horizontal line near the top of the graph extends from the vertical axis and is labeled "Cost (revenue)." This line suggests a fixed or constant revenue level over time. A blue diagonal line labeled "Profit" starts near the top of the vertical axis and slopes downward to the right, showing a decline in profit as effort increases.
[back]

Exhibit 9.2: The image is a graph illustrating the relationship between effort, cost (revenue), and profit. The horizontal axis represents "Effort," and the vertical axis shows "$$," indicating monetary values. Two lines are depicted: a green line labeled "Cost (revenue)" that rises diagonally, suggesting that cost increases with effort, and a blue line labeled "Profit" that runs horizontally, implying constant profit regardless of effort. The green line has an upward arrow, and the blue line has a rightward arrow.
[back]

Exhibit 9.3: The image is a chart illustrating the relationship between effort, cost (revenue), and profit. The chart features two lines: a green line representing cost (revenue) and a blue line representing profit. Both lines originate from the same point at the bottom left of the graph, near an "Effort" axis (horizontal) and a "$$" axis (vertical) intersection. The green line ascends at a steeper angle than the blue line, indicating that as effort increases, cost rises more sharply compared to profit. This reflects a scenario of diminishing returns, where additional effort leads to higher costs that increase faster than profits.
[back]

Attributions

9.3: Contract Performance Quality

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Quality in PM

It's not enough to ensure a project gets done on time and under budget. You must make the right product to suit your stakeholders' needs. Quality means ensuring you build what you said you would and do it as efficiently as possible. And that means trying not to make too many mistakes and always keeping your project working toward the goal of creating the right product.

Everybody "knows" what quality is. However, how the word is used in everyday life is slightly different from how it is used in project management. Just like the **triple constraint** (scope, cost, and schedule), you manage the quality of a project by setting goals and taking measurements. That's why you must understand the quality levels your stakeholders believe are acceptable and ensure that your project meets those targets, just like it needs to meet their budget and schedule goals.

Customer satisfaction is about ensuring taxpayers are happy with what they get. When the team gathers requirements for the specification, they try to write down all of the things that the customers want in the product so that they know how to make them happy. Some requirements can be left unstated. Those are the ones that are implied by the customer's explicit needs. For example, some requirements are just common sense

(e.g., a product people hold can't be made from toxic chemicals that may kill them). It might not be stated, but it's definitely a requirement.

"Fitness to use" is about making sure that the product you build has the best design possible to fit the customer's needs. Which would you choose: a product that is beautifully designed, well constructed, solidly built, and all-around pleasant to look at but does not do what you need or a product that does what you want despite being ugly and hard to use? You'll always choose the product that fits your needs, even if it's seriously limited. That's why it's important that the product does what it is supposed to do and does it well. For example, you could pound in a nail with a screwdriver, but a hammer is a better fit for the job.

Conformance to requirements is the core of both customer satisfaction and fitness to use and is a measure of how well your product does what you intend. Above all, your product must do what you wrote down in your requirements document. Your requirements should consider what will satisfy your customer and the best design possible for the job. That means conforming to both stated and implied requirements.

Ultimately, your product's quality is judged by whether you built what you said you would build.

Quality planning focuses on taking all of the information available to you at the beginning of the project and figuring out how you will measure quality and prevent defects. Your company should have a quality policy that states how quality is measured across the organization. You should ensure your project follows the company policy and any government rules or regulations on planning quality for your project.

You need to plan which activities you will use to measure the quality of the project's product. And you'll need to think about the cost of all the quality-related activities you want to do. Then, you'll need to set some guidelines for what you will measure against. Finally, you'll need to design the tests you will run when the product is ready to be tested.

Quality and Grade

The International Organization for Standardization (ISO) defines quality as "the degree to which a set of inherent characteristics fulfill requirements." The requirements of a product or process can be categorized or given a *grade* that will provide a basis for comparison. The quality is determined by how well something meets its grade requirements.

For most people, quality also implies good value—getting your money's worth. For example, even low-grade products should still work as expected, be safe to use, and last a reasonable amount of time. Consider the following examples.

Example: Quality of Gasoline Grades

Petroleum refiners provide gasoline in several grades based on the octane rating because higher octane ratings are suitable for higher compression engines. Gasoline must not be contaminated with dirt or water, and the actual performance of the fuel must be close to its octane rating. A shipment of low-grade gasoline graded as 87 octane, free of water or other contaminants, would be of high quality, while a shipment of high-grade 93 octane gas contaminated with dirt would be of low quality.

Statistics

Determining how well products meet grade requirements is done by taking measurements and then interpreting those measurements. *Statistics*—the mathematical interpretation of numerical data—are useful when interpreting large numbers of measurements and are used to determine how well the product meets a specification when the same product is made repeatedly. Measurements made on product samples must be within *control limits*—the upper and lower extremes of allowable variation—and it is up to management to design a process that will consistently produce products between those limits.

Instructional designers often use statistics to determine the quality of their course designs. Student assessments are one way by which instructional designers can tell whether learning occurs within the control limits.

Example: Setting Control Limits

A petroleum refinery produces large quantities of fuel in several grades. Samples of the fuels are extracted and measured at regular intervals. If a fuel is supposed to have an 87-octane performance, samples of the fuel should produce test results close to that value. Many of the samples will have scores that are different from 87. The differences are due to random factors that are difficult or expensive to control. Most samples should be close to the 87 rating, and none should be too far off. The manufacturer has grades of 85 and 89, so they decided that none of the samples of the 87-octane fuel should be less than 86 or higher than 88.

Suppose a process is designed to produce a product of a certain size or other measured characteristic. In that case, it is impossible to control all the small factors that can cause the product to differ slightly from the desired measurement. Some of these factors will produce products with larger than desired measurements, and some will have the opposite effect. If several random factors affect the process, they tend to offset each other, and the most common results are near the middle of the range; this phenomenon is called the central limit theorem.

Suppose the range of possible measurement values is divided equally into subdivisions called bins. In that case, the measurements can be sorted, and the number of measurements that fall into each bin can be counted. The result is a frequency distribution that shows how many measurements fall into each bin. If the effects causing the differences are random and tend to offset each other, the frequency distribution is called a normal distribution, which resembles the shape of a bell with edges that flare out. The edges of a theoretical normal distribution curve get very close to zero but do not reach zero.

Example: Normal Distribution

A refinery's quality control manager measures many samples of 87 octane gasoline, sorts the measurements by their octane rating into bins that are 0.1 octane wide, and then counts the

number of measurements in each bin. Then, they create a frequency distribution chart of the data, as shown in **Exhibit 9.4**.

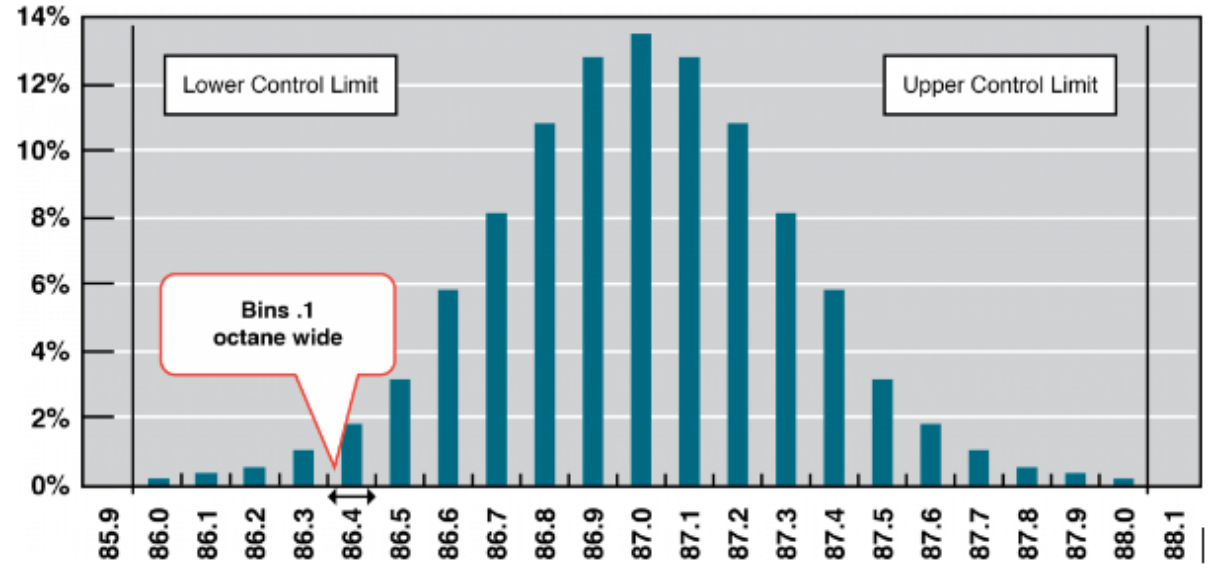

Exhibit 9.4: Normal Distribution of Measurements. [See image description.]

It is common to take samples—randomly selected subsets from the total population—and measure and compare their qualities since measuring the entire population would be cumbersome, if not impossible. Suppose the sample measurements are distributed equally above and below the centre of the distribution as they are in Exhibit 9.4. In that case, the average of those measurements is also the centre value that is called the mean and is represented in formulas by the lowercase Greek letter μ (pronounced mu). The difference in the measurements from the central value is called the sample standard deviation or the standard deviation.

The first step in calculating the standard deviation is subtracting each measurement from the central value (mean) and then squaring that difference. (Recall from your mathematics courses that squaring a number means multiplying it by itself, and the result is always positive.) The next step is to sum these squared values and divide by the number of values minus one. The last step is to take the square root. The result can be thought of as an average difference. (If you had used the usual method of taking an average, the positive and negative numbers would have summed to zero.) Mathematicians represent the standard deviation with the lowercase Greek letter ∑ (pronounced sigma). If all the elements of a group are measured instead of just a sample, it is called the population's standard deviation. In the second step, the sum of the squared values is divided by the total number of values.

Exhibit 9.4 shows that the most common measurements of octane rating are close to 87 and that the other measurements are distributed equally above and below 87. The shape of the distribution chart supports the central limit theorem's assumption that the factors affecting the octane rating are random and tend to offset each other, which is indicated by the symmetric shape. This distribution is a classic example of a normal distribution. The quality control manager noticed that none of the measurements were above 88 or below 86, so they were within control limits. She concluded that the process was working satisfactorily.

Example: Standard Deviation of Gasoline Samples

The refinery's quality control manager uses the standard deviation function in their spreadsheet program to find the standard deviation of the sample measurements and finds that for their data, the standard deviation is 0.3 octane. They mark the range on the frequency distribution chart to show the values that fall within one sigma (standard deviation) on either side of the mean **(Exhibit 9.5)**.

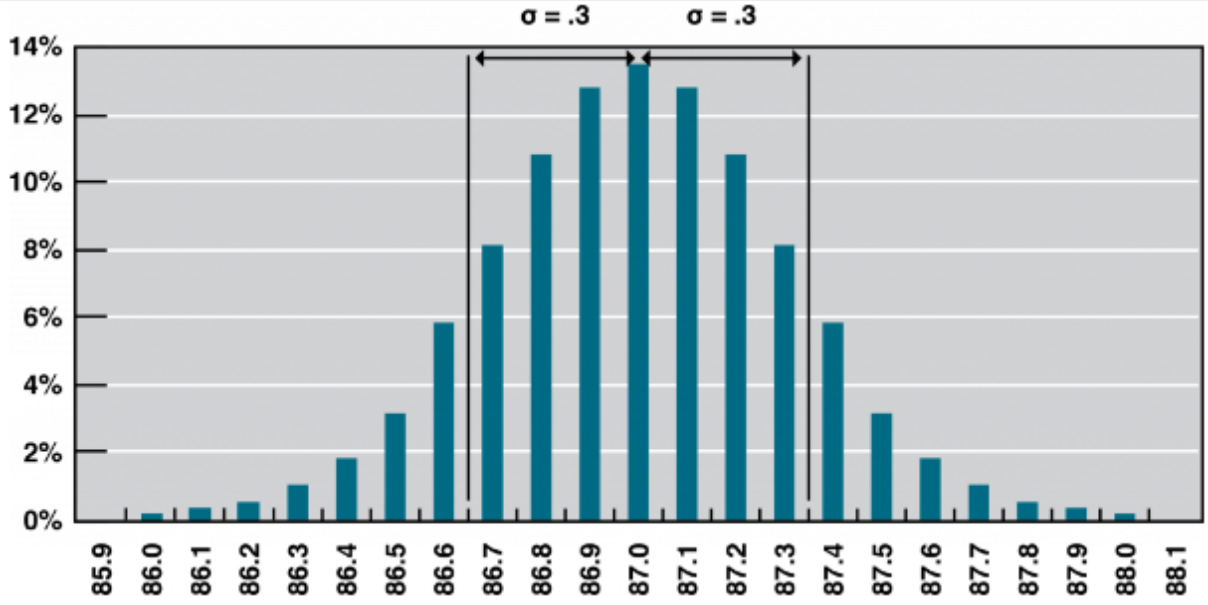

Exhibit 9.5: One Sigma Range. Most of the measurements are within 0.3 octane of 87. [See image description.]

For normal distributions, about 68.3% of the measurements fall within one standard deviation on either side of the mean. This is a useful rule of thumb for analyzing some types of data. Suppose the variation between measurements is caused by random factors that result in a normal distribution, and someone tells you the mean and the standard deviation. In that case, you know that a little over two-thirds of the measurements are within a standard deviation on either side of the mean. Because of the shape of the curve, the number of measurements within two standard deviations is 95.4%, and the number of measurements within three standard deviations is 99.7%.

For example, if someone said the average (mean) height for adult men in the United States is 178 cm (70 inches), and the standard deviation is about 8 cm (3 inches), you would know that 68% of the men in the United States are between 170 cm (67 inches) and 186 cm (73 inches) in height. You would also know that about 95% of adult men in the United States are between 162 cm (64 inches) and 194 cm (76 inches) tall and that almost all of them (99.7%) are between 154 cm (61 inches) and 202 cm (79 inches) tall. These figures are referred to as the 68-95-99.7 rule.

Quality Planning

High quality is achieved by planning for it rather than by reacting to problems after they are identified. Standards are chosen, and processes are put in place to achieve those standards.

Measurement Terminology

During the execution phase of the project, services and products are sampled and measured to determine if the quality is within control limits for the requirements and to analyze causes for variations. A separate quality control group often does this evaluation, and knowledge of a few process measurement terms is necessary to understand their reports. Several of these terms are similar, and knowing the distinction between them is valuable.

The quality plan specifies the control limits of the product or process; the size of the range between those limits is the tolerance. *Tolerances* are often written as the mean value, plus or minus the tolerance. The plus and minus signs are written together, ±.

> *Example: Tolerance in Gasoline Production*
>
> The petroleum refinery chose to set its control limits for 87-octane gasoline at 86 and 88-octane. The tolerance is 87 ± 1. Tools are selected that can measure the samples closely enough to determine if the measurements are within control limits and if they are showing a trend. Each measurement tool has its own tolerances.

The choice of tolerance directly affects the **cost of quality (COQ)**. In general, producing and measuring products with small tolerances costs more. The costs associated with making products with small tolerances for variation can be very high and not proportional to the gains. For example, suppose the cost of evaluating each screen as it is created in an online tutorial is greater than delivering the product and fixing any issues after the fact. In that case, the COQ may be too high, and the instructional designer will tolerate more defects in the design.

Defining and Meeting Client Expectations

Clients provide specifications for the project that must be met for the project to be successful. Recall that meeting project specifications is one definition of project success. Clients often have expectations that are more difficult to capture in a written specification. For example, one client will want to be invited to every meeting of the project and will then select the ones that seem most relevant. Another client will want to be invited only to project meetings that need client input. Inviting this client to every meeting will cause unnecessary frustration. Listening to the client and developing an understanding of the expectations that are not easily captured in specifications is important to meeting those expectations.

Project surveys can capture how the client perceives the project performance and provide the project team with useful data for meeting client expectations. Suppose the results of the surveys indicate that the client is

not pleased with some aspect of the project. In that case, the project team can explore the reasons for this perception with the client and develop recovery plans. The survey can also help define what is going well and what needs improvement.

Planning for quality is part of the initial planning process. The early scope, budget, and schedule estimates are used to identify processes, services, or products where the expected grade and quality should be specified. Risk analysis is used to determine which risks to the project could affect quality.

Planning and Control Techniques

Several different tools and techniques are available for planning and controlling the quality of a project. The extent to which these tools are used is determined by the project complexity and the client's quality management program. The following represents the quality planning tools available to the project manager.

Cost-benefit analysis is looking at how much your quality activities will cost versus how much you will gain from doing them. The costs are easy to measure; the effort and resources required to do them are like any other task on your schedule. Since quality activities don't actually produce a product, it is sometimes harder for people to measure the benefit. The main benefits are less reworking, higher productivity and efficiency, and more satisfaction from both the team and the customer.

Benchmarking means using the results of quality planning on other projects to set goals for your own. You might find that the last project in your company had 20% fewer defects than the one before it. You should want to learn from a project like that and put into practice any of the ideas they used to make such a great improvement. Benchmarks can give you some reference points for judging your project before starting the work.

Design of Experiments is the list of all the tests you will run on your product. It might list all the test procedures you'll do, the approaches you'll take, and even the tests themselves. (In the software world, this is called test planning.)

Cost of Quality is what you get when you add up the cost of all the prevention and inspection activities you will do on your project. It doesn't just include the testing. It includes any time spent writing standards, reviewing documents, meeting to analyze the root causes of defects, and reworking to fix the defects once the team finds them: in other words, absolutely everything you do to ensure quality on the project. Cost of quality can be a good number to check to determine whether your project is doing well or having trouble. Say your company tracks the cost of quality on all of its projects; then you could tell if you are spending more or less than has been spent on other projects to get your project up to quality standards.

Control Charts can be used to define acceptable limits. If some of the functions of a project are repetitive, statistical process controls can be used to identify trends and keep the processes within control limits. Part of the planning for controlling the quality of repetitive processes is to determine what the control limits are and how the process will be sampled.

Cause-and-effect diagrams can help in discovering problems. When control charts indicate an assignable cause for a variation, it is not always easy to identify the cause of a problem. Discussions intended to discover the cause can be facilitated using a cause-and-effect or fishbone diagram where participants are encouraged to identify possible causes of a defect.

Real Cases in Public Procurement: Learning from Experience

Oshawa (City) v. Brennan Paving Company Limited

Issue: Failure to comply with the conditions of the contract.

Background: Brennan Paving was contracted by the City of Oshawa to construct a street. Payment for materials was to be based on the weight of materials, and the engineer's certificate was a condition that had to precede payment. An engineer was contracted for the construction project. One of their duties was to certify payment certificates. Brennan Paving complied with the provisions of the contract. However, the engineer refused to certify the project using the materials by weight methodology and arrived at the amounts to be paid by his own calculation methods.

Outcome: The Supreme Court ruled that the engineer's refusal to verify the work as required by the contract meant he had relinquished his role. Consequently, the City of Oshawa was found to be in breach of contract. The court ruled in favour of Brennan Paving, releasing them from the requirement for the final verification and certificate.

The City of Oshawa appealed this decision. Its appeal was dismissed, but the verdict was altered slightly to deduct the value of excess asphalt supplied.

Discussion Questions

1. If the contract manager had been involved earlier, would things have ended up in court?
2. To what extent are parties bound by certificates that the contract does not clearly express?
3. Why is it so important to have clearly defined expectations?

Sources: Based on information from CanLII. (1954). *Oshawa (City) v. Brennan Paving Co.*, 1954 CanLII 20 (SCC), SCR 76. Retrieved from CanLII.

Checkpoint 9.3

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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Image Descriptions:

Exhibit 9.4: The image is a histogram representing the frequency distribution of octane values. The x-axis shows octane values ranging from 85.9 to 88.1, in increments of 0.1, while the y-axis displays the percentage frequency, ranging from 0% to 14%. Each bar represents a 0.1 octane range, and the height of each bar indicates the percentage of occurrences for that range. The distribution shows a peak frequency of about 13% between octane values 86.9 and 87.0. Two control limits are marked: the Lower Control Limit on the left and the Upper Control Limit on the right, indicating the acceptable range of octane values. Bars that lie beyond these limits suggest outliers or values potentially out of specification. A label is pointing to an interval on the x-axis highlighting the width of the octane bins as 0.1.
[back]

Exhibit 9.5: The image is a histogram displaying the distribution of octane values. The x-axis ranges from 85.9 to 88.1 in increments of 0.1 and represents octane values. The y-axis, labeled in percentages, ranges from 0% to 14%, indicating the relative frequency of each octane range. The histogram is symmetrical around the peak value at 87.0, which reaches the highest frequency of just below 14%. Each bar represents a 0.1 octane range, with the tallest bars centered around 87.0, showing a significant clustering of data around this value. The standard deviation, noted as $\sigma = 0.3$, is marked on either side of 87.0 with lines extending to 86.7 and 87.3. This suggests the normal distribution pattern is likely, with the proportions decreasing symmetrically as the values move away from the center.
[back]

Attribution

"9.3 Contract Performance Quality" is adapted from "Chapter 10: Project Quality and Control" in *Essentials*

9.4: Best Practices for Active Control

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Monitoring and Control

When setting up monitoring and controlling systems for a new project, it's essential to remember that not all projects are the same. What works for one project might not work for another, even if both seem similar. Also, the amount of monitoring and controlling required might vary depending on your experience. Suppose you've never worked on a particular type of project before. In that case, the work involved in setting up a reliable monitoring and controlling system will typically be much greater than the up-front work required for a project you've done many times before. For projects you repeat regularly, you'll typically have standard processes in place that will make it easy for you to keep an eye on the project's overall performance.

Exactly which items you need to monitor will vary from project to project and from one industry to another. But in any industry, you usually only need to monitor a handful of metrics. There's no need to over-complicate things. For example, when managing major construction projects for the Wisconsin Department of Transportation, Gary Whited focused on these major items:

- Schedule
- Cost/budget

- Issues specific to the project
- Risk

He also recommends monitoring the following:

- Quality
- Safety
- Production rates
- Quantities

In other projects, you will probably need to monitor different issues. But it's always a good idea to focus on information that can serve as early warnings, allowing you to change course if necessary. This typically includes the following:

- Current status of schedule and budget
- Expected cost to complete
- Expected date(s) of completion
- Current/expected problems, impacts, and urgency
- Causes for schedule/cost overruns

As Whited explains, the bottom line is this: "If it's important to the success of your project, you should be monitoring it" (Whited, 2014).

Note that measuring the percentage completed on individual tasks is useful in some industries where tasks play out over a long period. According to Dave Pagenkopf, the percent completion of individual tasks is meaningless in the IT world: "The task is either complete or not complete. At the project level, the percent complete may mean something. You really do need to know which tasks/features are 100% complete. However, sloppy progress reports can generate confusion on this point. 100% of the functions in a software product 80% complete is not the same as having 80% of the features 100% complete. A poorly designed progress report can make these look the same, when they most definitely are not." (pers. comm., November 13, 2017).

In addition to deciding what to monitor, you must decide how often to take a particular measurement. As a general rule, you should measure as often as you need to make meaningful course corrections. You'll need to monitor some items continuously; for others, a regular check-in is appropriate. Most projects include major milestones or phases that serve as a prime opportunity for monitoring important indicators. Gary Whited notes, "The most important thing is to monitor your project while there is still time to react. That's the reason for taking measurements in the first place" (Whited, 2014).

Change Control

When you find a problem, you can't just make a change because it may be too expensive or take too long. You will need to examine how it affects the triple constraint (time, cost, scope) and project quality. You will then have to determine if it is worth making the change. If you evaluate the impact of the change and find that it won't impact the project triple constraint, then you can make the change without going through change control. **Change control** is a set of procedures that lets you make changes in an organized way.

Any time you need to change your plan, you must start with a **change request**. This is a document that either you or the person making the request must complete. Any change to your project must be documented so you can figure out what needs to be done, by when, and by whom.

Once the change request is documented, it is submitted to a **change control board**. A change control board

is a group of people who consider changes for approval. Not every change control system has a board, but most do. The change request could also be submitted to the **project sponsor** or management for review and approval. Putting the recommended changes through change control will help you evaluate the impact and update all the necessary documents. Not all changes are approved, but if approved, you send them back to the team to put them in place.

The **implementation phase** uses the most project time and resources, so costs are usually the highest during this phase. Project managers also experience the greatest conflicts over schedules in this phase. As you monitor your project, you may find that the actual time it takes to do the scheduled work is longer than the planned time.

When you have to meet the date and are running behind, you can sometimes find ways to do activities more quickly by adding more resources to **critical path** tasks. That's called crashing. **Crashing** the schedule means adding resources or moving them around to align the project with the schedule. Crashing always costs more and doesn't always work. There's no way to crash a schedule without raising the project's overall cost. So, if the budget is fixed and you don't have any extra money to spend, you can't use this technique.

Sometimes, you've got two activities planned to occur in sequence, but you can do them simultaneously. This is called **fast-tracking** the project. On a software project, you might do both your user acceptance testing (UAT) and your functional testing simultaneously, for example. This is pretty risky. There's a good chance you might need to redo some of the work you have done concurrently. Crashing and fast-tracking are schedule compression tools. Managing a schedule change means keeping all your schedule documents current. That way, you will always be comparing your results to the correct plan.

After the deliverables have been physically constructed and accepted by the customer, a phase review is carried out to determine whether the project is complete and ready for closure.

Public Procurement Playbook

Watch this video to learn more about the work of a contract manager.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=507#oembed-1

Source: World of Procurement. (2022, August 19). The Truth About What a Contract Manager Is. [Video]. YouTube. https://www.youtube.com/watch?v=i6AYQ9AHw0k

Current Best Practices

Monitoring public sector contracts effectively involves setting clear expectations and regularly auditing against the performance guidelines. When the government and a supplier enter into a contract, both parties have legal obligations to meet its terms and conditions.

Contract lifecycle management holds suppliers accountable for satisfying the operational requirements of the Government and helps achieve the best value for the Canadian taxpayer.

Realizing Value from Contract Management

Essential Reading

You can realize value from contract management through improved efficiency, transparency, cost-effectiveness, and risk management.

Learn more by reading Innovation in contract management with UNIT4 by Sally Murdoch of Unit 4, licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

Practical Procurement: Scenarios and Solutions

Jordan Smith, the newly appointed Contract Manager at EcoBuild Inc., a mid-sized construction company specializing in sustainable building solutions, faced a significant challenge. EcoBuild had been growing rapidly, and with that growth came an increasing number of contracts with suppliers, subcontractors, and clients. Jordan's main task was to overhaul the company's contract management system to improve efficiency, cost-effectiveness, risk management, and transparency. This problem was crucial for Jordan because the current system was fragmented, leading to delays, errors, and increased costs, which ultimately affected the company's profitability and reputation.

EcoBuild Inc. employed around 200 people and offered a range of services, including residential and commercial construction, renovation, and consulting on sustainable building practices. The company prided itself on its commitment to environmental sustainability and innovation. EcoBuild's clients included private homeowners, businesses, and government agencies. The company generated revenue

through project contracts, consulting fees, and government grants for sustainable building projects. However, the lack of a streamlined contract management system was hindering its ability to scale efficiently and maintain its competitive edge.

Jordan identified three potential solutions to address the contract management issues. The first option was to centralize all contracts into a single digital repository. This would involve digitizing existing contracts and implementing contract management software that could store and organize all documents in one place. Centralizing contracts would make it easier to access, analyze, and refer to them, transforming them into a single source of truth about the company's supplier relationships.

The second option was to standardize the contract creation process by using pre-agreed clauses and templates. This would reduce the time needed to draft new contracts and ensure that risk management best practices were incorporated from the start. Standardization would also allow the team to negotiate and create contracts more confidently, knowing that they were using vetted and approved language.

The third option was to automate basic administrative processes, such as contract approvals, renewals, and performance monitoring. By moving to a digital strategy and incorporating a high degree of automation, EcoBuild could streamline its contract management system, reduce the need for human input, and minimize errors. Automation would enhance the speed and efficiency of the contract lifecycle, from creation to execution and monitoring.

Jordan also considered the importance of monitoring contract performance and compliance. Implementing a robust monitoring system would allow EcoBuild to track whether they were receiving the goods and services they were entitled to and fulfilling their commitments. This would involve setting up regular audits and performance reviews to ensure that all parties adhered to the contract terms.

The business problem of inefficient contract management was critical for EcoBuild to solve promptly. Addressing this issue would not only improve operational efficiency and reduce costs but also enhance the company's ability to manage risks and maintain transparency with its stakeholders. Solving this dilemma was essential for EcoBuild to continue its growth trajectory and uphold its reputation for sustainability and innovation.

Discussion Questions:

1. How can centralizing contracts improve efficiency and productivity at EcoBuild Inc.?
2. What are the potential cost savings from standardizing and automating contract management processes?
3. How does effective risk and compliance management contribute to the overall success of EcoBuild Inc.?

Source: Scenario and questions created with the assistance of Microsoft Copilot.

Essential Reading

Read Chapter 7 Public Sector Contracting by Wendy van der Valk in *Public Procurement: Theory, Practices and Tools* (2023) edited by Jolien Grandia, Leentje Volker, Palgrave Macmillan, licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

This chapter explains that contract design choices and characteristics of the relationship between public buyers and suppliers together shape how contracts are subsequently implemented and managed, determining the success of a project.

Checkpoint 9.4

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Attributions

Chapter Review

Key Takeaways

- Government procurement policy states that goods and services must be procured openly and fairly, ensuring efficiencies during the contract cycle.
- Effective procurement starts with selecting the best-performing supplier and choosing the right type of contract.
- Managing the quality of contract performance reduces the risks during the contract management phase.
- Monitoring public sector contracts effectively ensures continuous improvement in contract service quality.

Explore and Engage

Discussion Questions

1. List the reasons why contract management is important for achieving compliance and efficiency.
2. Briefly explain one contract type and where you would effectively use the chosen type.
3. With a focus on price, how does neglecting the quality of the performance impact the success of a contract?
4. What encompasses effective contract management in the public procurement process?

Active Learning

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=509#h5p-9

Recommended Readings and References

Recommended Readings

- “Chapter 7: Phase Three: Contract Administration” by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.
- “Chapter 8: Documentation and Reporting” by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.

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Whited, G. (2014, September). *Monitoring and control*. Recorded lecture with PowerPoint Presentation.

CHAPTER 10: RISKS AND LIABILITY

Introduction

Public procurement is a key function in the public sector. Therefore, the possibility of risks affecting public procurement can significantly affect the quality and quantity of public services governments can provide. This chapter reviews the wide range of risks, including both risks to the procurement process itself as well as broader risks to project or service delivery and how to mitigate them.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Explain the concept of risk.
2. Identify various challenges that must be anticipated in the public buying role.
3. Explore risk management strategies to mitigate risks associated with the supply chain and public buying.
4. Understand business risk from a legal perspective and apply a simple risk evaluation model.

Public Procurement Playbook

Watch this video to learn more about managing risk in the supply chain.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=635#oembed-1

Source: AIMS Education, UK. (2022, January 14). Supply Chain Risk Management Process: Analysis, Assessment & 7 Critical Risk Factors – AIMS UK. [Video]. YouTube. https://www.youtube.com/watch?v=7-jpmngs6aw

10.1: What is Risk?

Image by Oleksandr Pidvalnyi from Pixabay, used under the Pixabay Content License.

Intuitively, risk is the possibility that we will not get what we expect. To quantify risk, a good starting point would be to define the term more precisely. However, here, we stumble on a roadblock — even though we all have an intuitive understanding of risk, there is no single, universally accepted definition.

Definitions of risk are applied in different disciplines, such as economics and mathematics; however, the definitions used vary across and even within those disciplines. To complicate matters further, the definition could be context-specific. For example, the Risk and Insurance Management Society (RIMS), a global organization dedicated to risk management, defines **risk** as "uncertain future outcome(s) that can either improve or worsen one's position." In investments, risk can be defined as the likelihood that an investment's actual return will differ from the one expected. In the context of insurance, risk can be defined as the possibility of loss or injury.

For our purposes, we will use risk and uncertainty interchangeably. However, in his 1921 book *Risk, Uncertainty and Profit*, Professor Frank Knight distinguishes between risk and uncertainty depending on whether the objective probabilities are known. According to him, risk applies to situations where objective probabilities are known, while uncertainty applies to situations where the objective probabilities are unknown. Because, in the words of Prof. Knight, "true uncertainty is not susceptible to measurement," it is not easy to analyze uncertain

situations when the objective probabilities are not known. Consequently, we focus here on objective risk, i.e., quantifying risk using objective probabilities.

Eminent mathematicians such as Laplace, Jacob Bernoulli and Poincaré believed that we live in a deterministic world where there are definite causes for each effect; everything happens for a reason, and there is no such thing as luck. In such a cause-and-effect world, there is no place for games of chance as we would know exactly what outcome will occur when we throw a die or spin the wheel of a roulette. Knowing the causes, it is a simple matter of mathematical calculations to predict the future stock price or the value of life insurance. However, as we do not always know the underlying laws of nature, we tend to attribute outcomes to chance. In our world of limited knowledge of natural laws, Poincaré notes, "Chance is only the measure of our ignorance." (Poincaré in Bernstein, 1996, p. 200.)

Games of chance have existed since the dawn of civilization. The interest in gambling led to the probability theory's origin in 17th-century Renaissance Europe. A branch of mathematics, probability theory is a powerful tool for modelling risk and making predictions and decisions. We begin our study of risk by reviewing major concepts from probability theory that will enable us to define several measures of risk.

Measuring Risk

There are two different approaches to measuring risk:

1. Analytical or theoretical
2. Empirical or experimental

The theoretical approach is based on probability theory and formal mathematical reasoning. On the other hand, the empirical approach uses data from controlled or uncontrolled experiments. While for clarity, we discuss these two approaches separately, we are going to see that, ultimately, these two different approaches are mathematically equivalent. Empirical observations inform theoretical reasoning, and the empirical approach is based on theory.

Risk and Return

Although the **standard deviation** is a conventional measure of risk, it considers both positive and negative deviations from the mean. Would you be concerned about getting returns that are higher than expected? Probably not — your reward for taking a risk is the opportunity to get a return much higher than expected. Our concern is obtaining returns on investment that are lower than expected, so what we intuitively mean by risk is *downside risk*, the possibility that our return will turn out well below what we expect.

Quantifying Downside Risk

Standard deviation is an adequate measure of risk if the underlying distribution is normal; because the normal distribution is symmetric, the probability of observing a positive deviation from the mean is exactly equal to the probability of observing a negative deviation equal to 0.5. In other words, half of the time, we would observe negative deviations and half of the time, we would observe positive deviations from the mean. If you want a measure of the negative deviations from the mean for a normal distribution, you can simply divide the standard deviation by 2.

However, the standard deviation is not an adequate measure of risk if the underlying distribution is *not* normal. In such cases, other measures of the shape of a distribution, such as skewness and kurtosis, will be informative in assessing risk.

Subjective Probability

Economic models often assume that we know the objective probability of an uncertain event and risk can be defined through numerical probabilities. In reality, we rarely know the underlying, true distribution of uncertain events, and even then, we typically do not engage in data collection to estimate objective probabilities. In some cases, there is simply no data to estimate empirical probabilities, especially in the case of rare events such as natural disasters. In dealing with risk in our daily lives, we rely on our subjective judgments and beliefs about how likely an uncertain event is, and our beliefs are not necessarily expressible in numerical terms. **Subjective probability** refers to the likelihood an individual attributes to an event based on the individual's own experience or personal judgement. It differs from person to person.

The human tendency to overestimate our actual ability to perform a task successfully is termed overconfidence by cognitive psychologists. Studies show that people tend to be unrealistically optimistic about their health, believing themselves to be at a significantly lower risk for a wide range of physical diseases and health outcomes (e.g., cancer or heart disease) relative to their peers. Students, employers, and CEOs have been shown to routinely overestimate their performance. Generally, psychologists find a low correlation between our subjective beliefs about abilities and actual or objective performance.

Many factors affect subjective probability, such as age, gender, experience, and education. Often, we make decisions based on our subjective beliefs rather than objective probabilities, which has real economic consequences for us and society as a whole.

Risk and Insurance

How can we reduce or eliminate risk **ex-ante**? Financial markets offer different mechanisms that enable us to choose how much risk we want to bear and transfer the rest to an external party. Insurance is one such mechanism whereby the buyer of an insurance policy transfers some or all the risk to an insurer in exchange for regular payments commensurate with the risk involved and the insured loss.

Suppose, for example, that your house can be burglarized with some positive probability. You can transfer that risk to an insurance company by buying home insurance. The insurer bears the risk in exchange for regular payments called **premiums**. The premium that you pay on your insurance contract is the price of insurance. It is commensurate with the likelihood of your home being burglarized and the size of the loss. Notice that a risk transfer does not eradicate the risk. Your home can still get burglarized even if you have insurance. However, in that case, your insurance company will **indemnify** or compensate you depending on your loss and the contract agreement.

Risk transfer is one of the four major risk management strategies. The remaining three strategies are risk reduction, risk avoidance and risk acceptance. You can take an action to reduce a risk. For example, you can install a home security system to prevent your home from being burglarized. Sometimes, risk can be eliminated by choosing an appropriate course of action. For example, investing in the stock market is risky. You can eradicate this risk by choosing not to invest. If you do not take any action to mitigate risk, you accept it and will have to deal with its consequences when the risk occurs. Your best course of action will depend on the context, the potential loss, and your preferences.

The Risk Management Framework

Organizations use **risk management frameworks** (RMFs) to identify, assess, and manage risks. A risk management framework provides guidance and strategic decision-making in any management of risk.

The COSO Enterprise Risk Management Framework aims to help organizations understand risks and create a link between risk, strategy, and how a business performs.

ISO 31000 is an international standard that provides principles and guidelines for risk management. It outlines a comprehensive approach to identifying, analyzing, evaluating, treating, monitoring and communicating risks across an organization.

While organizations can use both frameworks, the ISO model contains a generic framework that many feel is easier to implement. The ISO 31000 RMF has three main elements:

- The *principles* guiding the risk management activities.
- The *risk management framework* — the operation of risk management across the organization.
- The **risk management process** — how are risks identified, analyzed and treated?

With a defined risk identification process, understanding the sources and causes of identified risk helps determine the level of risk and magnitude of risk treatment.

Checkpoint 10.1

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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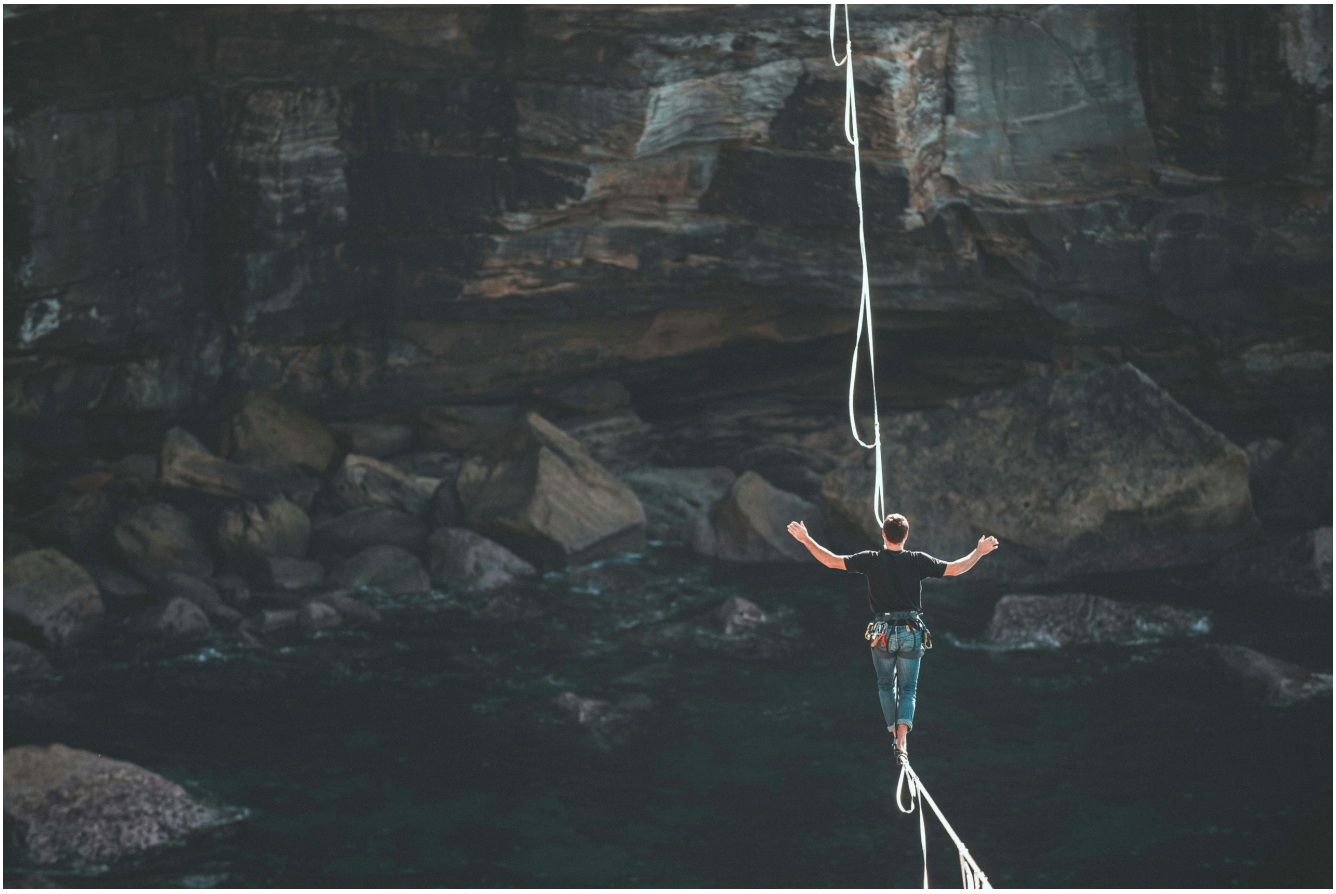
Attributions

10.2: Types of Risks and Disruptions



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Risk is the possibility of an event that can occur and affect the supply chain. There are different types of risks: external and internal, as well as distribution channel risks. These risks can be predictable, unpredictable, controllable, uncontrollable, technical, or non-technical. Some combine a few criteria, such as predictable and uncontrollable or unpredictable and uncontrollable. External risks are risks that the firm cannot control and often are difficult to influence. Such risks require a complex approach when it comes to identifying and mitigating them.

According to the FITT (2013), external risks can be predictable and uncontrollable. Such risks include cost fluctuations, market risks, inflation, and environmental, operational, and taxation risks. External risks can also be unpredictable and uncontrollable, such as natural hazards and sabotage, which are uncontrollable (FITT, 2013).

Internal risks are risks that the company can control, and they are technical and non-technical. These risks are controllable because the organization can eliminate or avoid them. For example, non-technical internal risks are human error, management delays, inappropriate procurement, or loss of profits (FITT, 2013). Non-technical risks are related to the interactions between stakeholders such as the public, government, regulatory partners, contractors, and communities. Technical internal risks consist of risks associated with technology and design issues. These risks impact the following parts of the organizational model of the global supply chain: value-

adding activities, supply chain stages, supporting environment, and end markets such as buyer, producer, or geographic market (Smorodinskaya et al., 2021).

Risks in the global supply chain significantly influence domestic and international companies and environmental organizations overall.

The most identified risks in the global value chain are politics, accidents, natural disasters, product integrity, physical supply security (theft), cybersecurity, financial supply chain, and performance risks (Supply Chain Risk, 2020, February 18).

Exhibit 10.1 categorizes and outlines the most common supply chain risks.

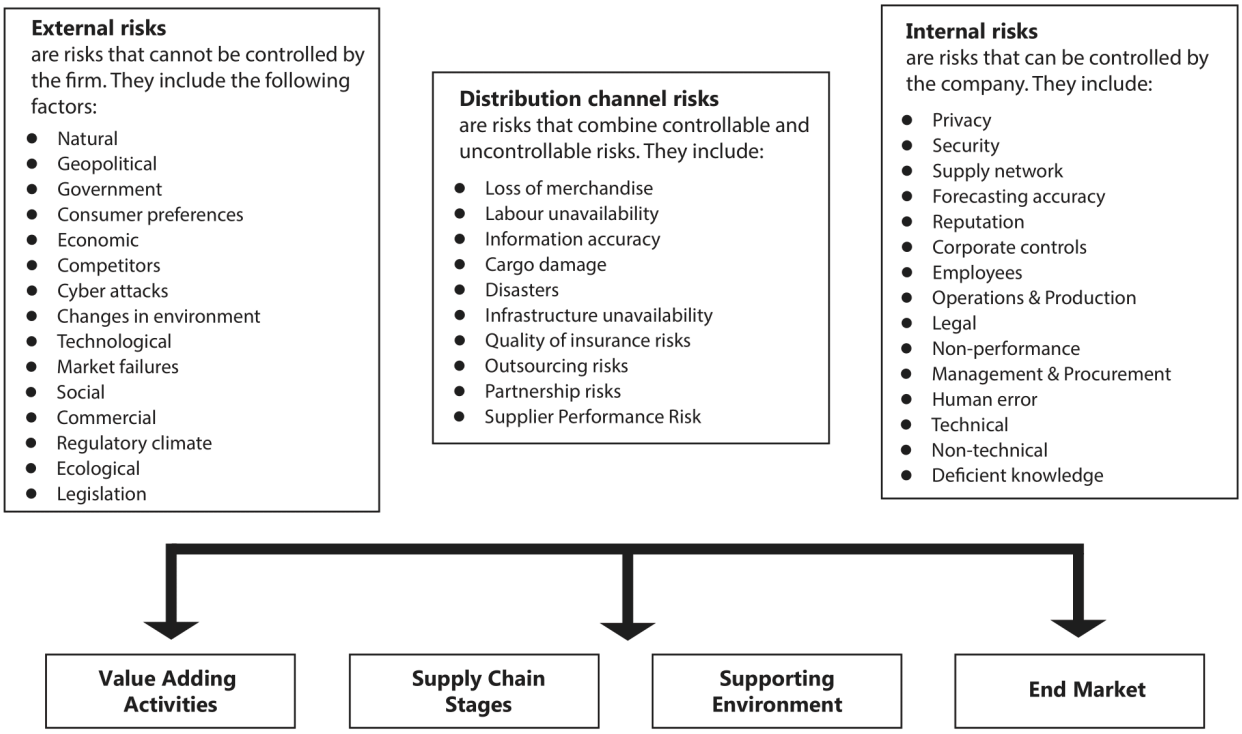

Exhibit 10.1: Supply Chain Risks. [See image description.]

Supply Chain Risks

Here is a clear explanation of Supply Chain Risk Management adapted from Amulya Gurtu & Jestin Johny's ***Supply Chain Risk Management: Literature Review***.

Risks cause disruption, which ripples through the network of the supply chains. Supply Chain Risk Management [SCRM] ensures the smooth functioning of supply chains. Risk can be labelled as

vulnerability, uncertainty, disruption, disaster, peril, or hazard. A lack of foresight about a likely disruption in a supply chain and its causes makes a supply chain vulnerable and the SCM leaders less effective.

SCRM can be divided into two broad approaches. The first is a comprehensive risk management approach, and the second is a focused approach to a specific disruption. These specific disruptions could be security, lead times, or terrorism. For instance, in 2007, a supplier for Mattel toys used lead-based paint without Mattel's knowledge. This caused disruptions in Mattel's supply chains. Mattel set up quality assurance centres at the suppliers' factories to avoid repeating the lead paint crisis. The supplier used lead-based paint to save small operational costs. The cost of disruption to Mattel was much more significant and could have been avoided.

Disruptions in supply chains are evolving to be more comprehensive and recurrent in the business environment. The scale and rate of risk events in the supply network are increasing. Disruptions determine the robustness of SCM in a company. Disruption events are described as when "the tornado hits, the bomb explodes, a supplier goes out of business, or the union begins a wildcat strike" (Sheffi & Rice, 2005). There are different types of risk identified by various academicians and practitioners from the field of SCM.

Some other parameters to classify risks in SCM are: (i) based on the sources of risk and mitigation strategies, (ii) as organizational risks, environmental risks, and network risks, (iii) demand and supply risks, (iv) industry and organizational risks, and (v) network risks.

An uncertain business environment causes supply chain risks. Uncertain business environments result from cyclical business behaviour, fluctuation in demands, or a disaster. Therefore, uncertainty may be seen as a risk that can disrupt supply chain performance. Some authors have categorized supply chain risks under operational, network, and external risks. Operational risks are due to a strategic re-engineering failure within the system. For example, a ferry named Moby Prince collided with a ship named Agip-Abruzzo in the Mediterranean Sea on 10 April 1991, causing a loss of 140 lives and 25,000 tons of oil. Network risks are derived from the supplier's layers of network based on the title, vendor strategies, and agreements between the supply chain network vendors.

Thirdly, external risks result from an organization's external environment, which poses a significant threat to the existing business environment. According to Silva and Reddy (2011), 73% of U.S. organizations suffered more than USD 1 billion in sales in the previous five years due to volatile disruptions in the business cycle, with the most recurrent disruption caused by unmanageable natural disasters. Such turmoil often immobilizes supply chains for an extended duration.

A lack of foresight in the organization can also cause disruptions. Disruptions can ripple through the global value chain, which causes vulnerability, uncertainty, and colossal loss of money. For example, during economic hardship, disturbances in the global value chain resulted in excessive costs for many organizations. In an online survey by Vanson Bourne for Interos in 2021, supply chain disruptions cost an average of USD 228 to businesses in the United States. (Interos, 2022.)

Risks in Public Procurement

Public procurement is highly vulnerable to **corruption**, given the complexity of procurement processes, the high degree of official discretion, and the close interaction between the public and private sectors (OECD, 2016). Interventions to prevent corruption in public procurement have focused on procedural standardization, strengthened transparency, reduced scope for discretion, and digitization in the procurement process.

Governance Risk Assessment System (GRAS)

The World Bank developed the Governance Risk Assessment System (GRAS), a tool that uses advanced data analytics to improve the detection of risks of fraud, corruption, and collusion in government contracting. GRAS increases the efficiency and effectiveness of audits and investigations by identifying a wide range of risk patterns.

The GRAS database is set up with a review of four main risk groups:

1. Procurement cycle
2. Collusion
3. Supplier characteristics
4. Political connections

Risk Group 1: Procurement Cycle

The risk group for the procurement cycle comprises indicators of corrupt and fraudulent behaviours in public procurement processes. These indicators capture risky behaviours in the three main phases of public procurement: tendering, award, and contract implementation. They indicate deliberate manipulation of public procurement to favour a particular supplier. While these indicators are highly relevant on their own, they are especially useful as they further support and strengthen indicators from risk groups 3 (supplier characteristics) and 4 (political connections)

Among the red flags in the non-competitive processes subgroup, the non-publication of call for tenders is one of the most widely used (Fazekas et al, 2016). This indicator is initially defined for each tender where a call for tender publication is either present (indicator value=1) or absent (indicator value=0). This red flag points at potential corruption because not publishing the call for tenders makes it less likely that eligible bidders notice the bidding opportunity, weakening competition and allowing the contracting body to more easily award the contract to a favoured and/or connected company. This pattern is especially indicative of risks if it happens repeatedly with the same company.

Risk Group 2: Collusion

The collusion risk group comprises indicators that signal collusive behaviour among bidders, such as cartels and bid-rigging practices. GRAS collusion indicators capture collusive outputs, such as coordinated bid prices or persistent losers in tenders, and the means by which companies may coordinate bidding, such as common shareholders or employees across supposedly competing firms. Collusive behaviours involving private actors, i.e. bidders, may take place without the participation of public sector actors (e.g. officials in a buying organization).

However, GRAS can identify if corruption and collusion take place together by simultaneously applying collusion and corruption-related red flags.

One of the price-based collusion indicators is **Benford's law**. Benford's law is a statistical rule commonly used in forensic accounting, election monitoring, and the study of economic crime, including collusion and corruption (Berger and Hill, 2015).

Another price-based indicator is **relative price**, that is, the awarded contract price divided by the initial estimation. The lower the relative price, the greater the savings that could be achieved by competition. Naturally, bid prices—hence contract prices—might be higher than the initial estimations, as budgeting for complex projects is difficult ex-ante. However, repeatedly high relative prices are unusual in an otherwise competitive market: either buyers repeatedly underestimate costs, which is unlikely, or bidders coordinate their bid prices.

Exhibit 10.2 provides an overview of the GRAS groups and the areas of risk covered by these groups.

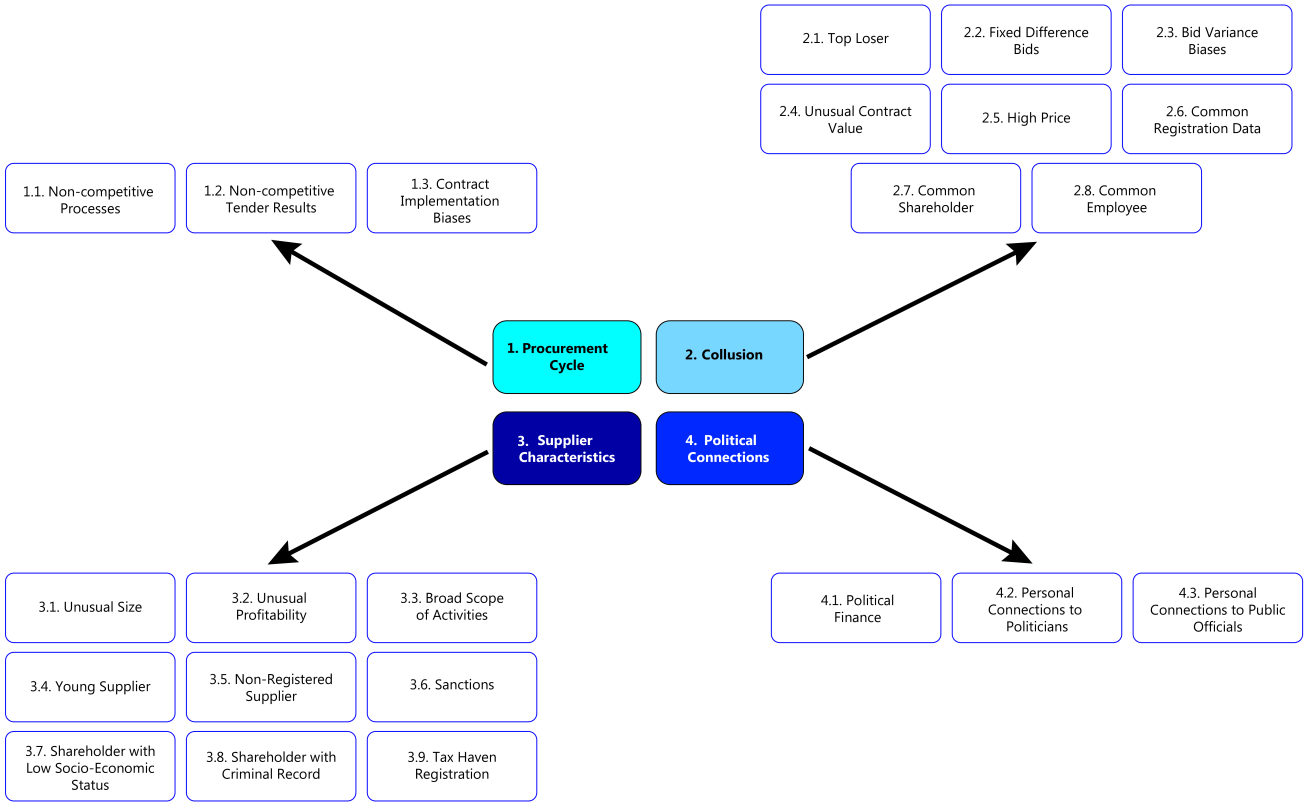

Exhibit 10.2: Overview of GRAS Risk Groups and Risk Areas Covered. [See image description.]

Risk Group 3: Supplier Characteristics

The risk group of Supplier characteristics comprises indicators for features of government suppliers that indicate likely fraudulent or corrupt behaviour. Suppliers participating in corrupt exchanges act as vehicles of rent extraction and distribution. Just as corrupt government contracting differs from competitive tendering and contract implementation, companies participating in corrupt exchanges are expected to differ from their peers in a number of key features. High-risk supplier characteristics are diverse. Nearly all indicators in this group require combining company and public procurement indicators and data; in some cases, indicators are based on linked datasets such as sanction or debarment lists. Most risk indicators in this group are directly

related to specific suppliers, with some related to specific individuals, such as shareholders, and then aggregated at the company level.

One of the most widely used red flags for suppliers is the registration of the supplier or one of its significant shareholders in a secrecy jurisdiction. We identify tax havens using the Financial Secrecy Index of the Tax Justice Network. Awarding a public contract to a company registered in a tax haven presents the risk that anonymous company ownership conceals a conflict of interest of a politically connected owner. Another related risk is the potential loss of tax revenue from the successful supplier through tax evasion or tax avoidance (Fazekas & Kocsis, 2020).

Risk Group 4: Political Connections

The risk group of political connections comprises indicators that capture the relational aspects of corruption, some point directly at conflict of interest while others represent organization-level relationships such as a company donating to a political party. Corruption in public procurement, due to its very nature, involves informal coordination between a range of public, i.e. politicians and bureaucrats, and private actors (Fazekas et al, 2018). Political connections can be demonstrated in a number of ways, such as through political finance, e.g., campaign donations, or personal connections, e.g., family ties.

Risk indicators in this risk group are initially assessed at the level of relations, which are then traced back to specific suppliers, for example, identifying a former politician employed by a government supplier. Among risk indicators surrounding political connections, one of the most widely studied and probably most relevant is the employment of top politicians by companies to gain government favours (Goldman et al., 2013). Former politicians can open doors for a future supplier, share insider information or facilitate bribery in return for contracts. Studies have found that suppliers' connections to political decision-makers increase their procurement revenue.

Building on the positive results of the GRAS pilot in Brazil, the World Bank seeks to promote implementation of the system in other countries and jurisdictions. Engagement with the government is an essential first step in GRAS implementation. Government agencies, in particular those responsible for anti-corruption, procurement, law enforcement and oversight, as well as public finances, are the obvious clients for a governance risk assessment tool. GRAS relies on public data collected and managed by governments; their buy-in is essential in securing data access and making efforts to improve data disclosure as part of a transparency agenda.

Real Cases in Public Procurement: Learning from Experience

Urban Forestry — Ensuring Value for Money for Tree Maintenance Services

Issue: In a report in April 2019, the Toronto Auditor General found that the City of Toronto failed to manage a contract with an estimated loss of productivity of $2.6 million per year in taxpayers' money.

Background: The City of Toronto assigns tree maintenance work to city staff members and local contractors. This involves pruning, watering, planting and tree removal. 62% of the sampled contractor logs found discrepancies between the hours claimed, the activity logs and the vehicle's GPS logs.

Daily logs are meant to provide proof that the service was completed, and the city pays according to the work hours reported on the log. The City's urban forestry vehicles do not have GPS, so this analysis was only completed on the contractors' crew.

According to the auditor general's report, 28 out of the 45 contractor crews sampled did just over 2.5 hours of productive work per day, posing the question, "What happens for the rest of the eight-hour day?" The report stated that the crews spent less time working on trees than documented and took extra breaks throughout the day.

The auditor general proposed 10 recommendations to help Urban Forestry improve its contract management and operational efficiency. The investigation followed in the wake of the death of a senior citizen who was struck and killed by a falling branch.

Outcome: In 2021, the council voted to look at new ways to improve arborist services with a review of internal processes and strengthened contract management. In 2023, a motion was approved to look at insourcing the entire service.

Discussion Questions:

1. Should the city stop hiring private companies and handle tasks internally?
2. How would vendor management support the compliance of urban forestry?
3. What suggestions do you have for this scenario?

Sources: Based on information from https://www.torontoauditor.ca/report/review-of-urban-forestry-ensuring-value-for-money-for-tree-maintenance-services/ and Review of Urban Forestry – Ensuring Value for Money for Tree Maintenance Services (toronto.ca)

Checkpoint 10.2

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=639#h5p-52

Image Descriptions

Exhibit 10.1: The image is a structured diagram categorizing various types of risks related to business or supply chain management. It divides risks into three main categories: External Risks, Distribution Channel Risks, and Internal Risks. Each category is presented within a framed box. The External Risks box lists factors such as natural, geopolitical, government, consumer preferences, economic, competitors, cyber attacks, changes in environment, technological, market failures, social, commercial, regulatory climate, ecological, and legislation. The Distribution Channel Risks box includes loss of merchandise, labour unavailability, information accuracy, cargo damage, disasters, infrastructure unavailability, quality of insurance risks, outsourcing risks, partnership risks, and supplier performance risk. The Internal Risks box identifies privacy, security, supply network, forecasting accuracy, reputation, corporate controls, employees, operations and production, legal, non-performance, management and procurement, human error, technical, non-technical, and deficient knowledge. Below these boxes, arrows point towards four business aspects: Value Adding Activities, Supply Chain Stages, Supporting Environment, and End Market, indicating the areas impacted by these risks.
[back]

Exhibit 10.2: The image depicts a framework diagram that outlines potential risk factors in procurement processes. At the center, four main coloured categories are displayed: “Procurement Cycle” in cyan, “Collusion” in light blue, “Supplier Characteristics” in dark blue, and “Political Connections” in navy blue. Arrows extend from each category to subcategories listed around the perimeter. Each subcategory is contained within a white rectangular box with a blue border. The subcategories for “Procurement Cycle” include: “1.1 Non-competitive Processes,” “1.2 Non-competitive Tender Results,” and “1.3 Contract Implementation Biases.” For “Collusion,” subcategories are: “2.1 Top Loser,” “2.2 Fixed Difference Bids,” “2.3 Bid Variance Biases,” “2.4 Unusual Contract Value,” “2.5 High Price,” “2.6 Common Registration Data,” “2.7 Common Shareholder,” and “2.8 Common Employee.” “Supplier Characteristics” subcategories include: “3.1 Unusual Size,” “3.2 Unusual Profitability,” “3.3 Broad Scope of Activities,” “3.4 Young Supplier,” “3.5 Non-Registered Supplier,” “3.6 Sanctions,” “3.7 Shareholder with Low Socio-Economic Status,” “3.8 Shareholder with Criminal Record,” and “3.9 Tax Haven Registration.” Finally, “Political Connections” contains the subcategories: “4.1 Political Finance,” “4.2 Personal Connections to Politicians,” and “4.3 Personal Connections to Public Officials.”
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Attributions

10.3: Risk Management Strategies to Mitigate the Supply Chain Vulnerability

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Risk Management

Here is a clear explanation of risk management adapted from Amulya Gurtu & Jestin Johny's *Supply Chain Risk Management: Literature Review* .

Risk management refers to the implementation of strategies and plans to manage supply chain networks through constant risk assessment. It reduces vulnerabilities to ensure resilience in supply chains. Not all supply chains have the same risks, but some risks are common. The risks are also specific to an area of business or the field of study. A supply chain is as strong as the most vulnerable member of the supply chain. Therefore, the longer a supply chain, the greater the risk of

failure of the supply chain. Supply chains have many players. A high number of players present risks. However, building a robust supply chain is expensive. Numerous research articles have suggested the need for robust supply chains due to the extent of the adverse effects of risk on a company's performance. A risk event is an indicator of a threat that disrupts a supply chain. Global supply chains have many challenges and greater risks. The dependence on an organization for parts has changed to a supply chain. This requires greater transparency and sharing of information among supply chain players.

"Risk management refers to strategies, methods, and supporting tools to identify and control risk to an acceptable level" (Alhawari et al. 2012). Risk management can also be referred to as a synchronized set of actions and approaches to direct an organization to minimize the risk for achieving organizational goals. Managing risks allows the decision-maker to understand and assess the impact of risk in a supply chain network. Controlling complexity leads to higher cost efficiency and reduces risks.

Risk detection plays a pivotal role before disruption occurs. Force majeure disruptions are challenging to manage but can be estimated through conscious risk assessment strategies, identifying risk indicators, and applying the principles of Total Quality Management (TQM) in sharing information among SCM partners. Corporations should have contingency plans in case of a disruptive event. Performance failures of a supply chain can be monitored through audits in an organization. Toyota has applied these principles in its supply chains and minimized the disruptions due to product recalls.

Strategies to control risk may be divided into seven categories: prevention, rescheduling, conjecture, numerical and economic, vertical integration, risk-sharing, and technology and security.

1. The prevention strategy is used when risks are linked with each product or its terrestrial markets or when close engagement with suppliers/customers is not possible. Divestiture of resources, delay of entry, or contributing to less ambiguous markets are examples of prevention strategies.
2. Flexibility and delay in spending are rescheduling strategies. Market demand, customization of products or services, input costs, product life cycle, and product modularity affect rescheduling.
3. Conjecture is the opposite of rescheduling, and decisions are made on the basis of projected or anticipated demand. Supply chain resources are leveraged to maximize competitive advantage.
4. Financial risks are addressed through numerical and economic approaches. The numerical approach is for a large population, e.g., insurance. The occurrence of an event for many people at the same time requires an economic approach.
5. Some risks incentivize vertical integration, which reduces risks through better supply and demand control. Examples of such incentives include opportunism and asset specificity, capacity constraints, and improved supplier–buyer power balance. Contracts with flexibility for possible changes due to environmental constraints reduce risks. Designing flexible contracts acts as a control mechanism.
6. Outsourcing or offshoring transfers SCM risks and helps to share such risks with suppliers.
7. Technology helps to detect nuclear, chemical, or biological hazards and reduces the risk of carrying such shipments.

Practical Procurement: Scenarios and Solutions

Remi Sanchez, the newly appointed Chief Procurement Officer at MetroCity Public Transport Authority (MPTA), faces a significant challenge. MPTA procures essential components for the city's extensive public transportation network, including buses, trains, and maintenance equipment. Remi recently discovered that several key suppliers are experiencing delivery delays due to geopolitical tensions, disrupting the supply chain. This problem is critical for Remi because any delay in procurement could lead to service interruptions, affecting thousands of daily commuters and tarnishing MPTA's reputation.

MPTA, a government agency with over 2,000 employees, manages the public transportation system for MetroCity, serving a population of over 5 million residents. The agency's primary revenue is ticket sales, government subsidies, and advertising. MPTA's operations depend heavily on a reliable supply chain to maintain and upgrade its fleet of vehicles and infrastructure. The agency works with various suppliers, from local manufacturers to international corporations, making it vulnerable to various risks, including political instability, natural disasters, and economic fluctuations.

Remi has several options to address the supply chain vulnerabilities. The first option is to diversify the supplier base by identifying and contracting with additional suppliers from different geographical regions, including more local suppliers. This strategy could reduce dependency on any single supplier and mitigate the risk of disruptions. However, it may increase procurement costs and require additional resources for supplier management.

The second option is to implement a robust risk assessment and monitoring system. Remi can identify potential risks early and develop contingency plans using advanced analytics and real-time data. This approach aligns with Total Quality Management (TQM) principles and emphasizes continuous improvement and proactive risk management. While this option could enhance MPTA's resilience, it requires significant investment in technology and training.

The third option is to establish strategic partnerships with key suppliers. MPTA can improve transparency and collaboration within the supply chain by fostering closer relationships and sharing information. This strategy involves negotiating long-term contracts with suppliers, which could provide stability and predictability. However, it may limit MPTA's flexibility to switch suppliers in response to changing market conditions.

Remi must decide which strategy to pursue to ensure the resilience of MPTA's supply chain. The decision is urgent because any further delays could lead to severe service disruptions, impacting the city's economy and the daily lives of its residents.

Discussion Questions

1. What are the potential benefits and drawbacks of diversifying MPTA's supplier base? How can this strategy mitigate supply chain risks?
2. How can implementing a risk assessment and monitoring system enhance MPTA's supply chain

resilience? What are the key components of such a system?

3. In what ways can strategic partnerships with key suppliers improve supply chain transparency and collaboration? What are the potential risks associated with this approach?

Source: Scenario and questions created with the assistance of Microsoft Copilot.

Effective Risk Management Processes

Risk Management Framework

As discussed earlier, a defined risk management framework (RMF) outlines the strategic decision-making and management of the effect of uncertainty on the possibility of an organization achieving its objectives.

A risk management framework provides a structure for the management of risk. Further it ensures that the risk management process is integrated into the overall business and governance strategy of an organization.

The risk management cycle is part of the risk management framework and outlines the steps needed to manage risks.

Risk Management Cycle

Companies need to use an effective risk management process that consists of the following steps: identifying, assessing, responding, communicating, and monitoring risks in the global value chain. The process is the so-called risk management cycle. The risk management cycle is a tool for helping companies in various industries recognize potential risks and then manage risks at all levels. The most comprehensive risk management cycle was created by the Government of Canada (2016). The risk management cycle helps organizations to choose "the best course of action under uncertainty" (Government of Canada, 2016). The cycle includes the following steps: identify, assess, respond, communicate, and monitor risks (Government of Canada (2016). It is a systematic, proactive, and ongoing process that equips organizations to be more effective, high-performers, and build confidence when companies face uncertainty (Government of Canada, 2016).

Identifying Risk

Identifying risk in the global value chain is the initial step in the risk management process. In this step, the organization has to identify as many risks as possible and share them with every stakeholder and third party. Next, identify warning signs of risks by creating questions, for example, is our new technology proven and mature for the global value chain? Why does the organization have significant gaps between partners and information? Why does the organization not have a mitigation or contingency plan? (FITT, 2021)

The organization should share the mitigation plan, expectations, and tools with stakeholders, partners, and staff. According to the Government of Canada (2016), there are several techniques and tools available for identifying risks, such as checklists, workshops, and risk assessment forms (Government of Canada (2016).

In addition, identification activities have to be provided by the staff, such as identifying people who should be involved in identifying risk roles, documenting identified risks, and determining what type of information should be collected and recorded (Government of Canada, 2016).

Assessing Risk

Assessing risk includes analyzing and prioritizing steps (Government of Canada, 2016). The scope of the risk has to be determined by the assigned person. Also, determine the factors about the severity of this risk and how this risk has affected businesses in the past. The likelihood and the impact of an event are the significant parts of this step. The organization should take into account both impact and probability. Probability is how often the event has occurred in the past. For assessing risks, companies should characterize, evaluate, and prioritize risks to support the chosen decision. This action will help the organization to manage risk in the future. There are a variety of assessments that can help assess risk: qualitative, quantitative, and semi-quantitative.

- Quantitative assessment consists of numerical risk criteria such as numbers which can be counted or measured.
- Qualitative assessment is based on the qualitative descriptions of risks, such as characteristics or information that cannot be counted.
- Semi-quantitative assessment combines quantitative and qualitative data.

After getting information, risks have to be measured and ranked. The top priority risks have the highest probability and greatest impacts (FITT, 2021). There are some specially designed tables for the purpose of assessing risk.

Responding to Risk

According to the Government of Canada (2016), this step includes selecting and implementing measures to counter the risk. Several mitigation strategies can be used when responding to the threat: accepting, reducing, avoiding, monitoring, and transferring risks (Government of Canada, 2016).

- Accepting risk is the same as risk retention, and an organization accepts a particular risk because it is not worth spending money to mitigate it. Acceptance is the most common approach for smaller risks in the global value chain.
- Risks can be reduced through control or prevention. Installing security systems, burglar alarms, and protective equipment are common approaches to minimizing risks.
- The avoidance strategy applies to organizations that want to eliminate as many challenges and potential risk sources as possible. This strategy is not acceptable for all hazards and can be mitigated by creating policies, procedures, training etc. For example, if a country is politically unstable, the company can avoid the political risk by not expanding to that country.
- Monitoring risks is an ongoing process within the global value chain.
- Companies can transfer risks to an insurance company by purchasing an insurance policy. Also, risk may be transferred to a third party, who will be responsible for consequences and losses.

Communicating Risk

The Government of Canada (2016) describes this step as the risk management process of communicating and reporting information about risks to a particular department. The communication process must be internally between employees and externally between clients, stakeholders, and third parties. An integral part of communication is providing enough information to make the right decision (Government of Canada, 2016).

Monitoring Risk

Regular review of risk information and mitigation plans is an ongoing process for the global value chain. Reviewing risk responses to ensure that the plan is implemented effectively and efficiently is an essential part of the cycle because it helps to identify and execute improvements or new opportunities. (Government of Canada, 2016).

Exhibit 10.3 provides a visual representation of the Risk Management Cycle.

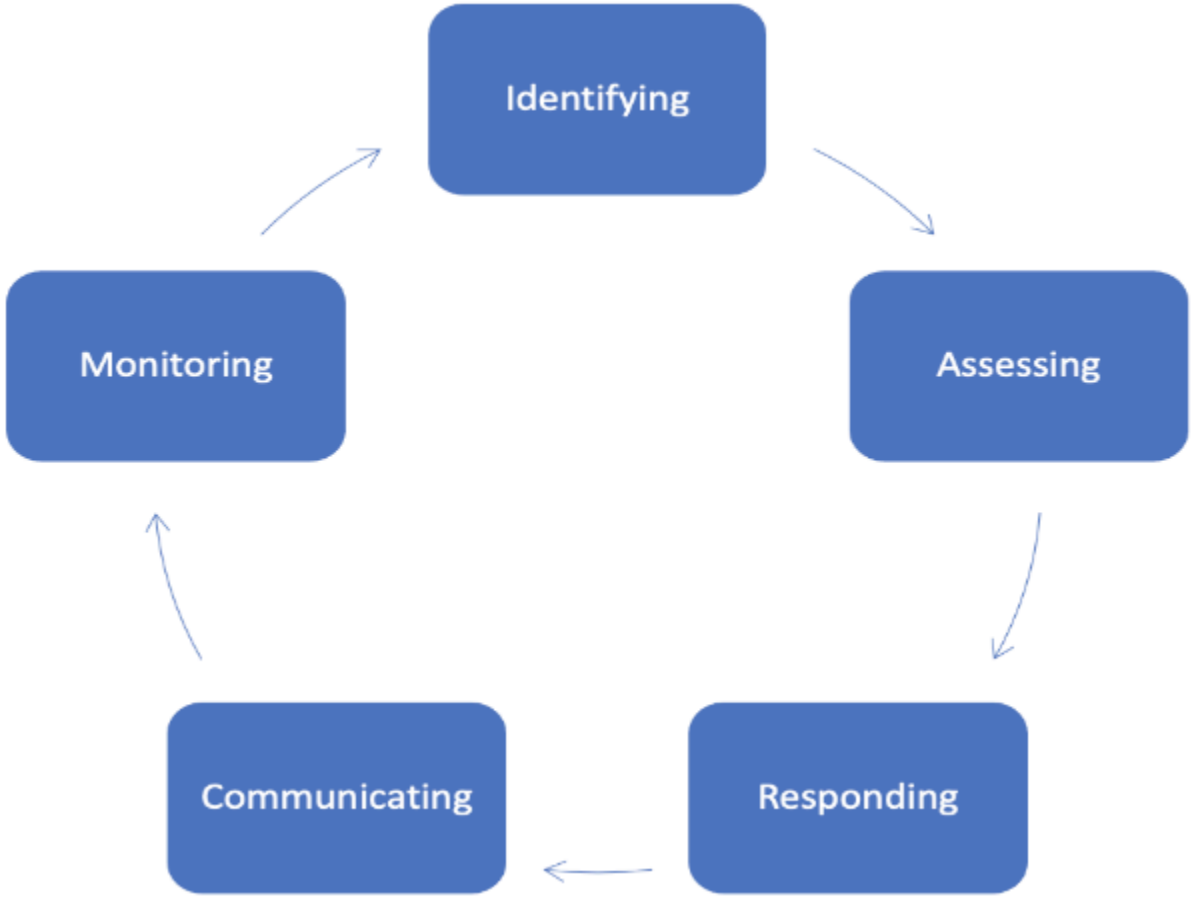

Exhibit 10.3: Risk Management Cycle. [See image description.]

We will now review some of the steps in the risk management cycle in greater detail.

Risk Evaluation or Assessment

After the potential risks have been identified, the project team evaluates each risk based on the probability that a risk event will occur and the potential loss associated with the risk. Not all risks are equal. Some risk events are more likely to happen than others, and the cost of a risk can vary greatly. Evaluating risks for the probability of occurrence and the severity of impact or the potential loss to the project is the next step in the risk management process.

Having criteria to determine high-impact risks can help narrow the focus on a few critical risks that require mitigation. For example, suppose high-impact risks are those that could increase the project costs by 5% of the budget. Only a few potential risk events meet these criteria. These are the critical few potential risk events that the project management team should focus on when developing a project risk mitigation or management plan. Risk evaluation is about developing an understanding of which potential risks have the greatest possibility of occurring and can have the greatest negative impact on the project **(see Exhibit 10.4).** These become the critical few risk events that need to be planned for.

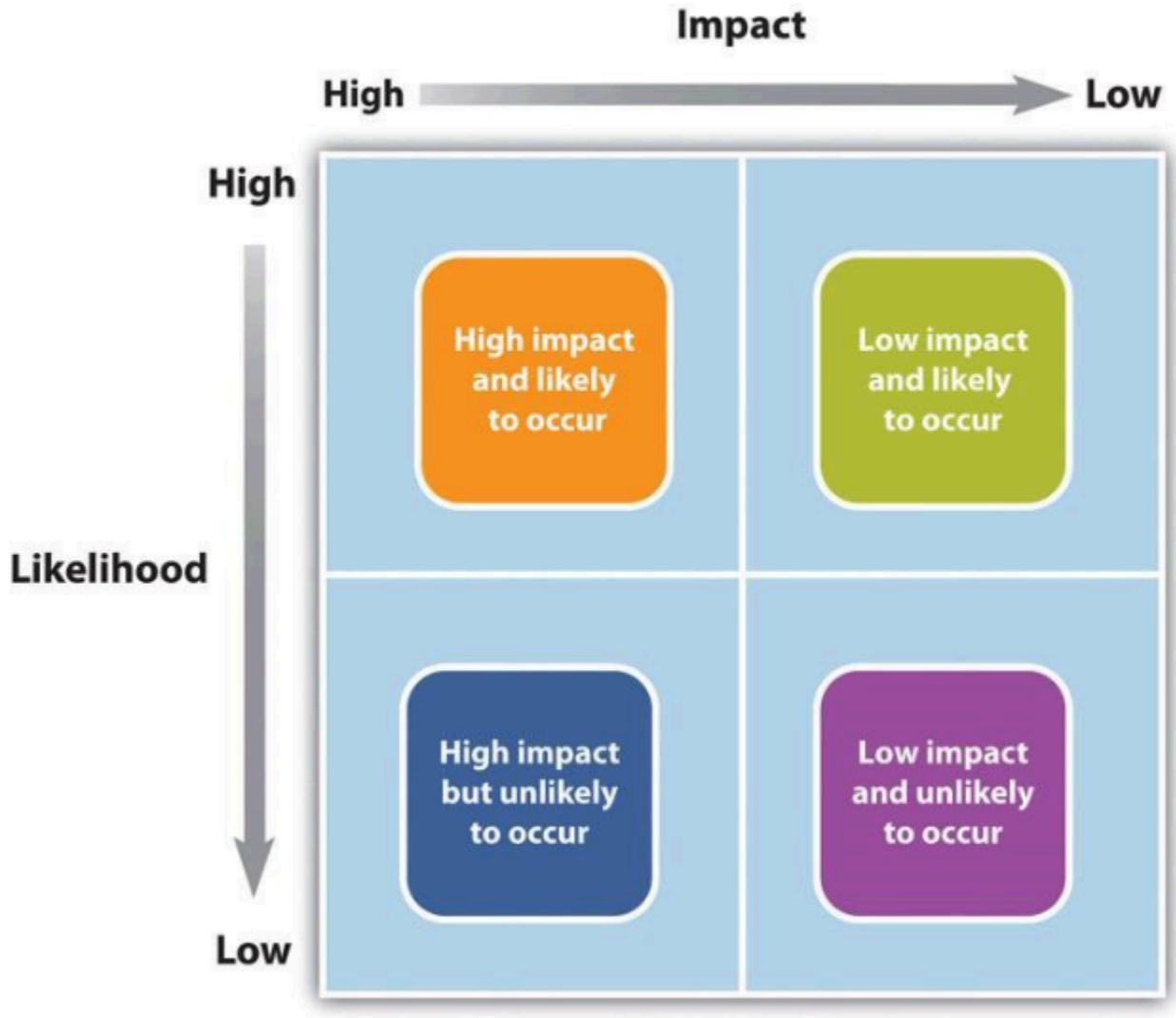

Exhibit 10.4: Risk and Impact. [See image description.]

There is a positive correlation between project risk and project complexity, i.e., both increase or decrease together. A project with new and emerging technology will have a high-complexity rating and a correspondingly high risk. The project management team will assign the appropriate resources to the technology managers to ensure the accomplishment of project goals. The more complex the technology, the more resources the technology manager typically needs to meet project goals, and each of those resources could face unexpected problems.

Risk evaluation often occurs in a workshop setting. Building on the identification of the risks, each risk event is analyzed to determine the likelihood of occurrence and the potential cost if it did occur. The likelihood and impact are rated high, medium, or low. A risk mitigation plan addresses items that are rated high on both likelihood and impact.

Example: Risk Analysis of Equipment Delivery

A project team analyzed the risk of some important equipment not arriving on time for the project. The team identified three pieces of equipment that were critical to the project and would significantly increase costs if they arrived late. One of the vendors, who was selected to deliver an important piece of equipment, had a history of being late on other projects. The vendor was good and often took on more work than it could deliver on time. This risk event (the identified equipment arriving late) was rated as having a high likelihood of occurring with a corresponding high impact on the project. The other two pieces of equipment had potentially a high impact on the project but had a low probability of occurring.

Not all project managers conduct a formal risk assessment on a project. One reason, as found by David Parker and Alison Mobey in their phenomenological study of project managers, was a low understanding of the tools and benefits of a structured analysis of project risks (2004). The lack of formal risk management tools was also seen as a barrier to implementing a risk management program. The project manager's personality and management style also play into risk preparation levels. Some project managers are more proactive and develop elaborate risk management programs for their projects. Other managers are reactive and are more confident in their ability to handle unexpected events when they occur. Yet others are risk averse and prefer to be optimistic and not consider risks or avoid taking risks whenever possible.

On projects with a low-complexity profile, the project manager may informally track items considered risk items. On more complex projects, the project management team may develop a list of items perceived as higher risk and track them during project reviews. On projects of even greater complexity, the process for evaluating risk is more formal, with a risk assessment meeting or series of meetings during the life of the project to assess risks at different phases of the project. On highly complex projects, an outside expert may be included in the risk assessment process, and the risk assessment plan may take a more prominent place in the project implementation plan.

On complex projects, statistical models are sometimes used to evaluate risk because there are too many different possible combinations of risks to calculate them one at a time. One example of the statistical model used on projects is the Monte Carlo simulation, which simulates a possible range of outcomes by trying many different combinations of risks based on their likelihood. The output from a Monte Carlo simulation provides the project team with the probability of an event occurring within a range and for combinations of events. For example, the typical output from a Monte Carlo simulation may indicate a 10% chance that one of the three important pieces of equipment will be late and that the weather will also be unusually bad after the equipment arrives.

Risk Mitigation

After the risk has been identified and evaluated, the project team develops a risk mitigation plan, which is a plan to reduce the impact of an unexpected event. The project team mitigates risks in various ways:

- Risk avoidance
- Risk sharing
- Risk reduction
- Risk transfer

Each of these mitigation techniques can be an effective tool in reducing individual risks and the risk profile of the project. The risk mitigation plan captures the risk mitigation approach for each identified risk event and the actions the project management team will take to reduce or eliminate the risk.

Risk avoidance usually involves developing an alternative strategy that has a higher probability of success but usually at a higher cost associated with accomplishing a project task. A common risk avoidance technique is to use proven and existing technologies rather than adopt new techniques, even though the new techniques may show promise of better performance or lower costs. A project team may choose a vendor with a proven track record over a new vendor that is providing significant price incentives to avoid the risk of working with a new vendor. The project team that requires drug testing for team members is practising risk avoidance by avoiding damage done by someone under the influence of drugs.

Risk sharing involves partnering with others to share responsibility for risky activities. Many organizations that work on international projects will reduce political, legal, labour, and other risk types associated with international projects by developing a joint venture with a company located in that country. Partnering with another company to share the risk associated with a portion of the project is advantageous when the other company has the expertise and experience the project team does not have. If a risk event does occur, then the partnering company absorbs some or all of the negative impact of the event. The company will also derive some of the profit or benefit gained by a successful project.

Risk reduction is an investment of funds to reduce the risk associated with a project. For international projects, companies will often purchase a currency rate guarantee to reduce the risk associated with fluctuations in the currency exchange rate. A project manager may hire an expert to review a project's technical plans or cost estimates to increase confidence in that plan and reduce the project risk. Assigning highly skilled project personnel to manage high-risk activities is another risk-reduction method. Experts managing a high-risk activity can often predict problems and find solutions that prevent the activities from having a negative impact on the project. Some companies reduce risk by forbidding key executives or technology experts to travel on the same airplane.

Risk transfer is a risk reduction method that shifts the risk from the project to another party. The purchase of insurance on certain items is a risk-transfer method. The risk is transferred from the project to the insurance company. A construction project in the Caribbean may purchase hurricane insurance that would cover the cost of a hurricane damaging the construction site. The purchase of insurance is usually in areas outside the control of the project team. Weather, political unrest, and labour strikes are examples of events that can significantly impact the project and that are outside the control of the project team.

Contingency Plan

The project risk plan balances the cost of implementing mitigating measures against the benefit to the project. The project team often develops an alternative method for accomplishing a project goal when a risk event has

been identified that may frustrate the accomplishment of that goal. These plans are called contingency plans. The risk of a truck drivers' strike may be mitigated with a contingency plan that uses a train to transport the needed equipment for the project. If a critical piece of equipment is late, the impact on the schedule can be mitigated by changing the schedule to accommodate a late equipment delivery.

Contingency funds are funds set aside by the project team to address unforeseen events that cause the project costs to increase. Projects with a high-risk profile will typically have a large contingency budget. Although the amount of contingency allocated in the project budget is a function of the risks identified in the risk analysis process, contingency is typically managed as one line item in the project budget.

Some project managers allocate the contingency budget to the items in the budget with high risk rather than developing one line item for contingencies. This approach allows the project team to track contingency expenses against the risk plan. This approach also allocates the responsibility to manage the risk budget to the managers responsible for those line items. The availability of contingency funds in the line item budget may also increase the use of contingency funds to solve problems rather than finding alternative, less costly solutions. Most project managers, especially on more complex projects, manage contingency funds at the project level, with the approval of the project manager required before contingency funds can be used.

Public Procurement Playbook

Watch this video to learn more about risk management.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=643#oembed-1

Source: Skill Dynamics. (2012, Sep 14.) Risk Management: The Method – Procurement Training – Purchasing Skills. Video. YouTube. https://youtu.be/baI_exaDjiI?si=115F0uzNxZpP3xtQ

Checkpoint 10.3

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=643#h5p-53

Image Description

Exhibit 10.3: The image depicts a risk management cycle consisting of five stages arranged in a circular flow, indicating a continuous process. Each stage is represented by a rounded rectangle with text inside, connected by arrows showing the cycle's direction. Starting from the top, the stages are as follows: "Identifying" is at the top center, followed by "Assessing" to the right. Below "Assessing" is "Responding," and to the left of it is "Communicating." Finally, "Monitoring" is located in the top left, completing the cycle back to "Identifying." The arrows indicate a clockwise motion, emphasizing the iterative nature of the process.
[back]

Exhibit 10.4: The image depicts a risk assessment matrix designed to categorize risks based on their impact and likelihood. The matrix is composed of four quadrants within a square grid, each representing a different risk priority level. The horizontal axis is labeled "Impact," increasing from left (High) to right (Low). The vertical axis is labeled "Likelihood," decreasing from top (High) to bottom (Low).

In the top-left quadrant, an orange square represents high impact and likely to occur risks. The top-right quadrant is green, indicating low impact yet likely to occur risks. The bottom-left quadrant is blue, symbolizing high impact but unlikely risks, while the bottom-right quadrant is purple, for low impact and unlikely risks.
[back]

Attributions

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10.4: Legal and Practical Risks

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An Approach to Evaluating Risk

Businesses regularly face a range and variety of risks with gradations of variable severity and frequency. Some risks are minor and easily managed or mitigated while others may entail undesirable conditions and outcomes.

Measuring and evaluating risk is a multi-step process due to the variety of factors that must be considered to accurately assess the potential risks (gains and losses) associated with any given situation. These factors include the likelihood of an event occurring, the potential impact of the event, the ability to mitigate the risks, and the ability to transfer the risks to a third party. Measuring risk involves a thorough analysis of the legal consequences and related elements that contribute to the overall risk profile of a situation. Financial decision-making requires that we evaluate severity levels based on what an individual or a firm can comfortably accept (attitudes toward risk or risk appetite).

Risk and Consequence

Risky actions and activities can lead to a variety of legal consequences. Civil cases involve private disputes between individuals or organizations and are usually resolved by awarding monetary damages, but in some cases, they could involve criminal penalties. A criminal case involves a governmental decision—whether provincial or federal—to prosecute a defendant (a person or organization) for violating society's laws. The penalties assessed in the case may include imprisonment, financial compensation, loss of license or other sanctions.

In both civil and criminal actions, attorney fees may be expensive, regardless of the outcome of the matter. On the civil side, courts can also impose injunctions (an order to perform or not perform a specific action), and if the financial consequences are severe enough, a firm might risk bankruptcy.

Bankruptcy law governs the rights of creditors and insolvent debtors who cannot pay their debts. In broadest terms, bankruptcy deals with the seizure of the debtor's assets and their distribution to the debtor's various creditors. In bankruptcy, the firm might be liquidated or reorganized. This is explored in greater detail in a later section of this resource.

Typical Risk Attitudes

Different people and companies may view the legal risks described above very differently. For instance, some individuals do not mind the prospect of personal bankruptcy and some companies are structured to sustain substantial risk. Others view the prospect of being sued with trepidation. In other words, different people and firms have different attitudes toward the risk-return trade-off.

People are **risk averse** when they avoid risks, preferring as much security and certainty as reasonably affordable to lower their discomfort level. They may be willing to pay extra to have the security of knowing that unpleasant risks would be removed from their lives. Economists and risk management professionals consider most people to be risk averse.

A **risk seeker** is a person who hopes to maximize the value of investments by taking higher risks. Much like a gambler, a risk seeker is someone who will accept risk to access greater rewards despite limited probability and unfavourable odds.

A person or entity is said to be **risk neutral** when risk preference lies between these two extremes. Risk-neutral individuals will not pay extra to have the risk transferred to someone else, nor will they pay to engage in a risky endeavour. Economists consider most widely held or publicly traded corporations as making decisions in a risk-neutral manner since their shareholders can diversify away risk—to take actions that seemingly are not related or have opposite effects or to invest in many possible unrelated products or entities such that the impact of any one event decreases the overall risk.

A Model for Evaluating Legal Risk

This section seeks to provide a simple, non-mathematical model for evaluating legal risk. A "model" is a simplified framework for evaluating a real-life situation. It is not intended to capture all the nuances involved in a particular choice, but it may be useful to decision-makers. The model presented here relies on simple categorization of the likelihood of an event, the consequences of that event, and the decisionmaker's approach to evaluating risk.

The initial step is to evaluate the likelihood of the event to determine if it is "low" (unlikely), "medium" (somewhat likely), or "high" (very likely). For example, you might think of a low-probability event as one that

rarely occurs in a cohort of similar companies, a medium-probability event as one that has occurred several times in the last year for similar companies, and a high-probability event as one that will almost certainly result in litigation.

Next, categorize the severity of the outcome as "slight," "manageable," or "severe." For modeling purposes, a slight outcome is one that would not harm the financial health of the company in a significant way. An example might be a somewhat frivolous lawsuit, which is settled as a "nuisance suit" for a few thousand dollars. A manageable outcome is one that would generate discussion among managers about a possible loss, such as a small business having to potentially pay the medical bills for a customer who is injured in an accident caused by the company's negligence. This kind of outcome might worry managers but does not risk the future of the business. A severe outcome is one that risks bankruptcy, criminal charges, or other substantial long-term consequences for the firm.

Finally, identify the attitude towards risk. Is the firm risk-averse, risk-neutral, or risk-seeking? In our model, the attitude toward risk forms the shaded "danger zone" in the grid, dividing causes of little from significant concern. The more risk-averse the individual or firm, the farther up and to the left we shift the dividing line, and the more risk-seeking the firm, the farther lower and to the right we shift the line. An extremely risk-averse firm would avoid even low-probability severe events (as shown in **Exhibit 10.5(a)**), while an extremely risk-seeking firm might avoid only high-probability severe events (as shown in **Exhibit 10.5(b)**).

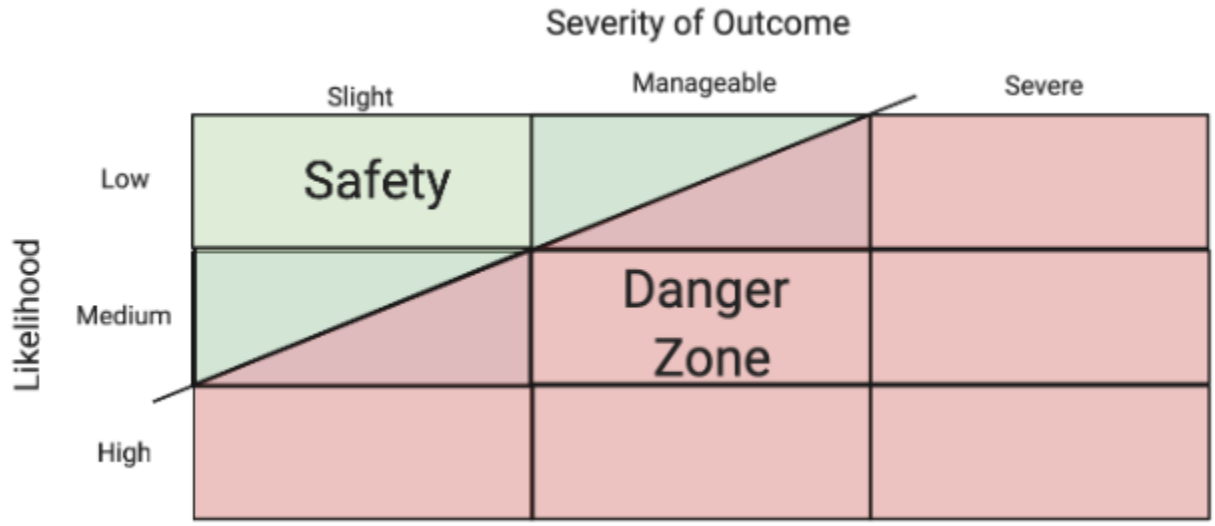

Exhibit 10.5(a): A highly risk-averse firm avoids the possibility of severe legal outcomes. [See image description.]

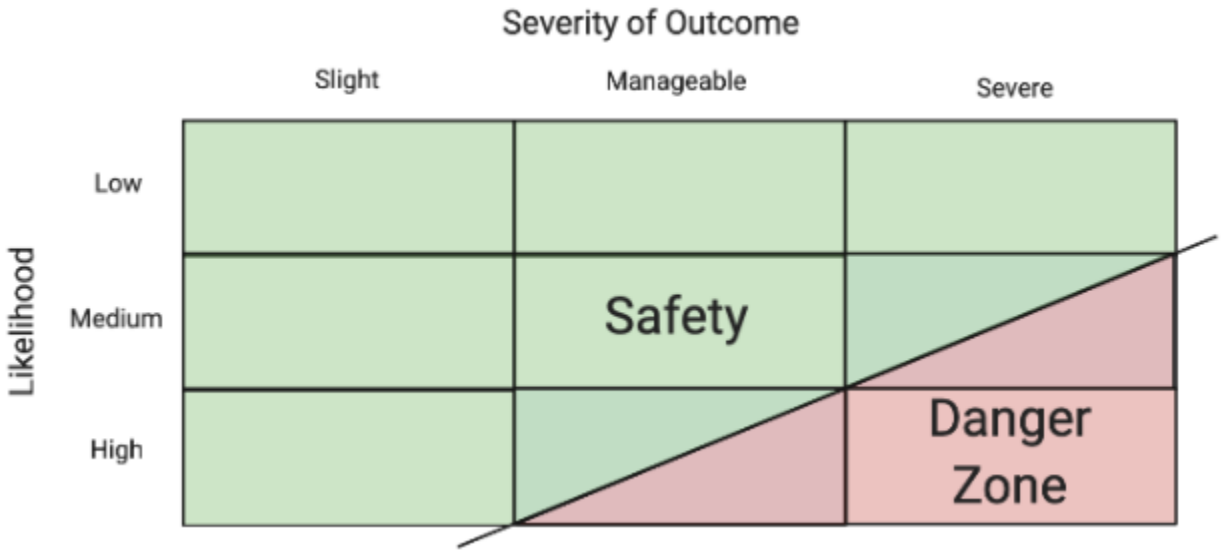

Exhibit 10.5(b): A risk-seeking firm might avoid only the most likely and severe legal consequences. [See image description.]

Applying this model might look something like the following. We (1) classify the risk tolerance of the firm, (2) then the likelihood of the legal event, and (3) the severity of the consequence. Finally, (4) we analyze how those three interact and offer a conclusion: Is this a high-risk decision in the legal danger zone or a low-risk decision in the zone of safety?

Suppose a ride-sharing firm was considering whether to expand to a city that has somewhat hostile regulations for ridesharing. However, the consequences for entering the market and losing a legal challenge are simply to withdraw or pay an insubstantial fine. Let's apply the model:

- We might thus classify this firm as *risk-seeking* based on its past attitude towards the law and the potential rewards at stake.
- As the new market appears hostile, the likelihood of legal challenge is assessed to be medium or high.
- Relative to the size of the firm, a modest fine is a small consequence. We might then classify the severity of the outcome as low.
- Although the likelihood of legal action is medium to high, the potential consequence is slight.
- This decision is likely a low-risk legal decision within the legal safety zone for the firm. They might also be classified as *risk-neutral* because the company finds it advantageous to engage in legally risky behaviour.

Organizations seek to reduce the legal risks they have identified and assessed. Reducing legal risk exposure may be referred to as risk mitigation. It is worthwhile to highlight some potential methods to mitigate legal risk which may be overlooked or undervalued. These methods include the following:

Insurance

Both individuals and businesses have significant needs for various types of insurance to provide protection for health care, for their property, and for legal claims made against them by others. Insurance allows individuals to pay a certain amount today to avoid uncertain losses in the future.

Businesses face a host of risks that could result in substantial liabilities. Many types of policies are available,

including policies for owners, landlords, and tenants (covering liability incurred on the premises); for manufacturers and contractors (for liability incurred on all premises); for a company's products and completed operations (for liability that results from warranties on products or injuries caused by products); for owners and contractors (protective liability for damages caused by independent contractors engaged by the insured); and for contractual liability (for failure to abide by performances required by specific contracts). Depending on the business context, insurance may be required by law, or it may be a viable risk management application that businesses should consider and review regularly.

Regulatory Review

Many firms find it worthwhile to preemptively hire an attorney to review a product for regulatory and litigation risk before launching it. For a fee, a specialized attorney can examine the product and provide a report on potential regulatory violations and lawsuit risks. Many firms might be surprised at the substantially increased risk of litigation based on innocuous statements on packaging, for instance.

Limitation and Exclusion Clauses

The use of liability waivers, exclusion clauses, hardship clauses (force majeure), warning labels, caution signs, safety rails, and related activities can help prevent litigation. Liability waivers may reduce litigation risk by requiring that individuals specifically agree they will not sue in case of injury during an activity as long as such limitation and exclusion clauses are not contrary to public policy or are unconscionable. Physical safeguards against injury can help reduce the probability of potential negligence lawsuits by preventing injury in the first place. Businesses that practice prudent preemptive **tort defence** can lower their legal risks substantially.

Knowing the Law

Another way to reduce legal risk is to be familiar with the law. An attorney will not always be around to consult, or it may be cost-prohibitive to use their services at times. The law is vast and complicated, but many legal concepts foundational to business are easy to understand.

The more one knows about the law, the easier it is to avoid compromising legal situations, be conversant with those who can offer legal counsel, and make decisions that balance legal and ethical interests with other strategic concerns.

Approaching law from a risk management approach is crucial to evaluate the legal environment of business.

Evaluating legal risk requires understanding the likelihood of legal action, the severity of the consequences, and the risk tolerance level of the company. Even low-probability legal events can be so severe that risk-averse firms may take action to avoid them, while even high-probability legal events may not bother risk-seeking firms.

Preemptively avoiding **tort liability** (employing smart contracting principles) and enacting safety messaging and protocols can help to avoid business risks. Insurance against legal claims can also reduce uncertainty at a price.

Public Procurement Playbook

Watch this video to learn more about contracts and issues in the procurement process.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=647#oembed-1

Source: Skill Dynamics. (2012, March 5). Legal Course: Contracts and Issues in Procurement. [Video]. YouTube. https://www.youtube.com/watch?v=p1kHJ0Pj6M0

Alternative Dispute Resolution (ADR) Processes for Mitigating Risk

Negotiation

We frequently engage in negotiations as we go about our daily activities, often without being consciously aware that we are doing so. Negotiation can be simple, e.g., two friends deciding on a place to eat dinner, or complex, e.g., governments of several nations trying to establish import and export quotas across multiple industries. When a formal proceeding is started in the court system, alternative dispute resolution (ADR), or ways of solving an issue with the intent to avoid litigation, may be employed. Negotiation is often the first step used in ADR. While there are other forms of alternative dispute resolution, negotiation is considered the simplest because it does not require outside parties. A Government of Canada webpage defines 'negotiation" as: "...a discussion between at least two parties that leads to an outcome of a certain issue."[1]

This is an uncomplicated definition that captures a fundamental feature of negotiation — it is undertaken with the intention of leading to an outcome. There are several ways of thinking about negotiation, including how many parties are involved. For example, if two small business owners find themselves in a disagreement over property lines, they will frequently engage in **dyadic negotiation**. Put simply, dyadic negotiation involves

1. Government of Canada. (n.d.). Win-win negotiations. Canada.ca. Retrieved November 20, 2024, from https://www.canada.ca/en/heritage-information-network/services/intellectual-property-copyright/guide-developing-digital-licensing-agreement-strategy/win-win-negotiations.html

two individuals interacting with one another to resolve a dispute. If a third neighbour overhears the dispute and believes one or both of them are wrong about the property line, then **group negotiation** could ensue. Group negotiation involves more than two individuals or parties, and by its very nature, it is often more complex, time-consuming, and challenging to resolve.

While dyadic and group negotiations may involve different dynamics, one of the most important aspects of any negotiation, regardless of the number of negotiators, is the objective. Negotiation experts recognize two major goals of negotiation: relational and outcome. **Relational goals** are focused on building, maintaining, or repairing a partnership, connection, or rapport with another party. **Outcome goals**, on the other hand, concentrate on achieving certain end results. The goal of any negotiation is influenced by numerous factors, such as whether there will be contact with the other party in the future. For example, when a business negotiates with a supply company that it intends to do business with soon, it will try to focus on "win-win" solutions that provide the most value for each party. In contrast, if an interaction is of a one-time nature, that same company might approach a supplier with a "win-lose" mentality, viewing its objective as maximizing its own value at the expense of the other party's value. This approach is referred to as **zero-sum negotiation** and is considered a "hard" negotiating style. Zero-sum negotiation is based on the notion that there is a "fixed pie," and the larger the slice that one party receives, the smaller the slice the other party will receive. Win-win approaches to negotiation are sometimes referred to as integrative, while win-lose approaches are called distributive.

Negotiation Style

Everyone has a different way of approaching negotiation, depending on the circumstance and the person's personality. However, the Thomas-Kilmann Conflict Mode Instrument (TKI) is a questionnaire that provides a systematic framework for categorizing five broad negotiation styles. It is closely associated with work done by conflict resolution experts Dean Pruitt and Jeffrey Rubin. These styles are often considered in terms of the level of self-interest instead of how other negotiators feel. These five general negotiation styles include:

Forcing

If a party has high concern for itself and low concern for the other party, it may adopt a competitive approach that only takes into account the outcomes it desires. This negotiation style is most prone to zero-sum thinking. For example, a car dealership that tries to give each customer as little as possible for his or her trade-in vehicle would be applying a forcing negotiation approach. While the party using the forcing approach is only considering its own self-interests, this negotiating style often undermines the party's long-term success. For example, in the car dealership example, if customers feel they have not received a fair trade-in value after the sale, they may leave negative reviews, will not refer their friends and family to that dealership and will not return to it when the time comes to buy another car.

Collaborating

If a party has high concern and care for itself and the other party, it will often employ a collaborative negotiation style that seeks maximum gain for both. In this negotiating style, parties recognize that acting in their mutual interests may create greater value and synergies.

Compromising

A compromising negotiation approach will occur when parties share concerns for themselves and the other party. While it is not always possible to collaborate, parties can often find certain points that are more important to one than the other and, in that way, find ways to isolate what is most important to each party.

Avoiding

When a party has low concern for itself and the other party, it will often try to avoid negotiation completely.

Yielding

Finally, when a party has low self-concern and high concern for the other party, it will yield to demands that may not be in its best interest. As with avoidance techniques, it is important to ask why the party has low self-concern. It may be due to an unfair power differential between the two parties that has caused the weaker party to feel it is futile to represent its own interests.

Exhibit 10.6 illustrates why negotiation is often fraught with ethical issues.

Exhibit 10.6: Concern for self versus others leads to the differences in negotiating styles. [See image description.]

Limitations to Negotiation

In a negotiation, there is no neutral third party to ensure that rules are followed, that the negotiation strategy is

fair (the parties involved may have unequal bargaining power), or that the overall outcome is sound. Moreover, any party can walk away whenever it wishes. There is no guarantee of realizing an intended outcome.

Mediation

Mediation is a method of dispute resolution that relies on an impartial third-party decision-maker, known as a mediator, to settle a dispute. While requirements vary by location or jurisdiction, a mediator is someone who has been trained in conflict resolution, though they may not have any expertise in the subject matter that is being disputed. Mediation is a form of dispute resolution. It is often undertaken because it can help disagreeing parties avoid the time-consuming and expensive procedures involved in court litigation. Courts will often recommend that a plaintiff, or the party initiating a lawsuit, and a defendant, or the party that is accused of wrongdoing, attempt mediation before proceeding to trial. This recommendation is especially true for issues that are filed in small claims courts, where judges attempt to streamline dispute resolution.

For businesses, the savings associated with mediation can be substantial. Mediation is distinguished by its focus on solutions. Instead of focusing on discoveries, testimonies, and expert witnesses to assess what has happened in the past, it is future-oriented. Mediators focus on generating approaches to disputes that overcome obstacles to settlement.

Benefits of Mediation

Successful mediators work to immediately establish a personal rapport with the disputing parties. They often have a short time to interact with the parties and work to position themselves as trustworthy facilitators. The mediator's conflict resolution skills are critical in guiding the parties toward reaching a resolution. Benefits of mediation include:

Confidentiality

Since court proceedings become a matter of public record, it can be advantageous to use mediation to preserve anonymity. This aspect can be especially important when dealing with sensitive matters, where one or both parties feel it is best to keep the situation private. Discussions during a mediation are not admissible as evidence if the parties proceed to litigation.

Creativity

Mediators are trained to find ways to resolve disputes and may apply outside-the-box thinking to suggest a resolution that the parties had not considered. Since disagreeing parties can be feeling emotionally contentious toward one another, they may not be able to consider other solutions. In addition, a skilled mediator may be able to recognize cultural differences between the parties that are influencing the parties' ability to reach a compromise, and thus leverage this awareness to create a novel solution.

Control

When a case goes to trial, both parties give up a certain degree of control over the outcome. A judge may come up with a solution to which neither party is in favour. In contrast, mediation gives the disputing parties

opportunities to find common ground on their own terms before relinquishing control to outside forces. Parties often enter into a legally binding contract that embodies the terms of the resolution immediately after a successful mediation. Therefore, the terms of the mediation can become binding if they are reduced to a contract.

Arbritation

According to the Government of Canada "Dispute Resolution Reference Guide:" "Arbitration is perhaps the most widely known dispute resolution process. Like litigation, arbitration utilizes an adversarial approach that requires a neutral party to render a decision." (https://justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/06.html).

Arbitration is overseen by a neutral arbitrator or an individual who is responsible for deciding on how to resolve a dispute and who can decide on an award or a course of action that the arbiter believes is fair, given the situation. An award can be a monetary payment that one party must pay to the other; however, awards need not always be financial in nature. An award may require that one business stop engaging in a certain practice that is deemed unfair to the other business. As distinguished from mediation, in which the mediator simply serves as a facilitator who is attempting to help the disagreeing parties reach an agreement, an arbitrator acts more like a judge in a court trial and often has legal expertise, although they may or may not have subject matter expertise. Many arbitrators are current or retired lawyers and judges.

Types of Arbitration Agreements

Parties can enter into either voluntary or involuntary arbitration. In voluntary arbitration, the disputing parties have decided, of their own accord, to seek arbitration as a way to potentially settle their dispute. Depending on provincial laws (each province and territory in Canada has its own separate arbitration legislation) and the nature of the dispute, disagreeing parties may have to attempt arbitration before resorting to litigation; this requirement is known as involuntary arbitration because it is forced upon them by an outside party.

Arbitration can be either binding or non-binding. In **binding arbitration**, the decision of the arbitrator(s) is final, and except in rare circumstances, neither party can appeal the decision through the court system. In **non-binding arbitration**, the arbitrator's award can be considered a recommendation; it is only finalized if both parties agree that it is an acceptable solution. Having a neutral party assess the situation may help disputants to rethink and reassess their positions and reach a future compromise.

Issues Covered by Arbitration Agreements

There are many instances in which arbitration agreements may prove helpful as a form of alternative dispute resolution. While arbitration can be useful for resolving family law matters, such as divorce, custody, and child support issues, in the domain of business law, it has three major applications:

Labour

Arbitration has often been used to resolve labour disputes through interest arbitration and grievance arbitration. **Interest arbitration** addresses disagreements about the terms to be included in a new contract, e.g., workers of a union want their break time increased from 15 to 25 minutes. In contrast, **grievance arbitration**

covers disputes about the implementation of existing agreements. In the example previously given, if the workers felt they were being forced to work through their 15-minute break, they might engage in this type of arbitration to resolve the matter.

Business Transactions

Whenever two parties conduct business transactions, there is potential for misunderstandings and mistakes. Both business-to-business transactions and business-to-consumer transactions can potentially be solved through arbitration. Any individual or business who is unhappy with a business transaction can attempt arbitration.

Property Disputes

Businesses can have various types of property disputes. These might include disagreements over physical property, e.g., deciding where one property ends and another begins, or intellectual property, e.g., trade secrets, inventions, and artistic works.

Civil Disputes

Typically, **civil disputes**, as opposed to criminal matters, attempt to use arbitration as a means of dispute resolution. While definitions can vary across jurisdictions, a civil matter is generally one that is brought when one party has a grievance against another party and seeks monetary damages. In contrast, in a criminal matter, a government pursues an individual or group for violating laws meant to establish the best interests of the public.

Ethics of Commercial Arbitration Clauses

Going to court to solve a dispute is a costly endeavour, and for large companies, it is possible to incur millions of dollars in legal expenses. While arbitration is meant to be a form of dispute resolution that helps disagreeing parties find a low-cost, time-efficient solution, it has become increasingly important to question whose expenses are being lowered, and to what effect. Many consumer advocates are fighting against what are known as forced-arbitration clauses, in which consumers agree to settle all disputes through arbitration, effectively waiving their right to sue a company in court. Some of these forced arbitration clauses cause the other party to forfeit their right to appeal an arbitration decision or participate in any kind of class action lawsuit, in which individuals who have a similar issue sue as one collective group.

Arbitration Procedures

When parties enter into arbitration, certain procedures are followed, although not all arbitration agreements have the same procedures. It depends on the types of agreements made in advance by the disputing parties. Typically, the initial step identifies the number of arbitrators needed, along with how they will be chosen. Parties that enter into willing arbitration may have more control over this decision, while those that do so unwillingly may have a limited pool of arbitrators from which to choose. In the case of willing arbitration, parties may decide to have three arbitrators, one chosen by each of the disputants and the third chosen by the elected arbitrators. Next, a timeline is established, and evidence is presented by both parties. Since arbitration is less formal than

court proceedings, the evidence phase typically goes faster than it would in a courtroom setting. Finally, the arbitrator will decide and inform the parties in writing of the award.

Judicial Enforcement of Arbitration Awards

While it might seem that the party that is awarded a settlement by an arbitrator has reason to be relieved that the matter is resolved, sometimes this decision represents just one more step toward actually receiving the award. While a party may honour the award and voluntarily comply, this outcome is not always the case. In cases where the other party does not comply, the next step is to petition the court to enforce the arbitrator's decision. This task can be accomplished by numerous mechanisms, depending on the governing laws.

Checkpoint 10.4

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=647#h5p-54

Image Descriptions

Exhibit 10.5(a): The image is a risk assessment matrix divided into a grid with three columns and three rows. The horizontal axis is labeled "Severity of Outcome" with categories "Slight," "Manageable," and "Severe." The vertical axis is labeled "Likelihood" with levels "Low," "Medium," and "High." The matrix features two distinct zones: a green "Safety" zone and a red "Danger Zone." The "Safety" zone appears in the top left, covering low likelihood with slight and manageable outcomes and extending partially into medium likelihood with slight outcomes. The "Danger Zone" covers all high likelihood risks and extends into medium likelihood with manageable and severe outcomes, as well as low likelihood with severe outcomes. A diagonal line separates these two zones, highlighting the transition from acceptable to urgent risks. The matrix indicates a tendency toward a risk-averse firm that avoids most risks.
[back]

Exhibit 10.5(b): The image is a risk assessment matrix with a two-dimensional grid. The horizontal axis is labeled "Severity of Outcome" with three categories: Slight, Manageable, and Severe. The vertical axis is labeled "Likelihood" and is divided into Low, Medium, and High categories. The matrix is predominantly shaded green, representing the Safety Zone, covering most of the left side and extending slightly towards the right. It includes

areas with risks of low to medium likelihood and slight to manageable severity. The bottom right section is shaded pink, denoting the Danger Zone, which includes risks that are highly likely and have high severity. A diagonal line separates the green Safety Zone from the pink Danger Zone, extending from the top of the Severe severity of outcome column through the manageable column and ending at the high likelihood square. The alignment suggests an emphasis on avoiding only those risks that have the possibility of severe outcomes.
[back]

Exhibit 10.6: The image is a diagram depicting the Thomas-Kilmann Conflict Model Instrument (TKI) model. It features a coordinate plane with two axes: "Concern for Self" on the horizontal axis and "Concern for Others" on the vertical axis. Both axes range from "Low" to "High." There are five blue circles placed strategically within the plane to represent different conflict-handling styles. Starting from the top-left corner and moving clockwise, the circles are labeled: "Yielding," "Collaborating," "Forcing," "Avoiding," and "Compromising."
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Attributions

Chapter Review

Key Takeaways

- Risks are anything that can negatively impact the goals of an organization.
- Understanding internal and external risks helps to maintain supply efficiency and reliability.
- Planning for potential risks allows an organization to address them quickly and effectively if they arise.
- Public procurement must ensure compliance with local, federal and international regulations; strategies for the resolution of potential legal challenges is key.

Explore and Engage

Discussion Questions

1. Why is understanding business risk important in public procurement?
2. Are all types of risk financial? Why or why not?
3. Why is the timing of a risk response so important?
4. Different approaches are used in dispute resolution. Summarize one method and give an example where you would use this method.

Active Learning

An interactive H5P element has been excluded from this version of the text. You can view it

online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=651#h5p-10

Recommended Readings and References

Recommended Readings

"Chapter 7: Phase Three: Contract Administration" by Jack T. Pitzer and Khai V. Thai from *Introduction to Public Procurement* (3rd edition). (2009). NIGP.

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CHAPTER 11: ETHICS, PROFESSIONALISM, AND CORPORATE SOCIAL RESPONSIBILITY

Introduction

Public procurement is full of complex processes involving significant responsibility with the spending of public funds. As stewards of public funds, governments have a responsibility to strengthen integrity throughout their procurement processes. In this chapter, we learn about integrity and professionalism in public procurement.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Understand what business ethics are and how they apply to public procurement.
2. Analyze different types of unethical behaviour in purchasing.
3. Understand the role of professional standards and codes of conduct.
4. Understand corporate social responsibility (CSR) and procurement practices.
5. Explain the importance of planning and managing sustainable procurement practices.

Public Procurement Playbook

Watch this video to learn more about ethical procurement practices.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=568#oembed-1

Source: Skill Dynamics (2021, April 13). Procurement Ethics. [Video]. YouTube. https://www.youtube.com/watch?v=hK46OJVegJQ

11.1 Business Ethics

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Doing good business requires attention to **ethics** as well as law. Understanding the long-standing perspectives on ethics helps sort out the ethical issues we face as individuals and businesses. Each business needs to create or maintain a culture of ethical excellence, where there is ongoing dialogue not only about the best technical practices but also about the company's ethical principles and practices. A firm that has purpose and passion beyond profitability is best poised to meet the needs of diverse stakeholders and can best position itself for long-term, sustainable success for shareholders and other stakeholders as well.

Businesses must establish a clear set of values that promote ethical practices and social responsibility. In today's business climate, companies are increasingly under scrutiny by private citizens. A company that builds its foundation on sound principles will have a better chance of staying competitive in a volatile market.

Ethics consists of the values and principles that guide and influence the ways in which we interact with others. From a business perspective, ethical standards signal to customers, clients, employees, investors, and other stakeholders the conduct and behaviours the organization expects, supports, and endorses. Stephen M. Byars explains:

> Ethics consists of the standards of behaviour to which we hold ourselves in our personal and professional lives. It establishes the levels of honesty, empathy, trustworthiness and other virtues by which we hope to identify our behaviour and public reputation. Ethics are the standards of behaviour to which we

> hold ourselves accountable in our personal and professional lives. Laws and regulations set the minimal standards by which society lives out those ethical norms. Because laws are minimal standards, it is not uncommon for an act to be legal but generally deemed unethical. The fact is that law and ethics are not always the same. Always, however, they are in dialogue, and each informs the other.
>
> – S.M Byars and K. Stanberry

For many people, it is far from easy to recognize an ethical problem and know how to proceed. Even when a clear process exists to report an ethical issue, a perceived lack of support within an organization or business may discourage disclosure. Reporting an ethical breach can have implications beyond the immediate and obvious ones, so it can be difficult to understand the full consequences of a particular decision, which may make people uneasy and reluctant to act. Add to this the complexity and variability within organizations, where individuals and groups of employees vary in their motivations, loyalties, commitments, and values, and it becomes evident that unambiguous processes and internal support are important elements for creating and maintaining business ethics. There is no universally accepted way to develop an organization where employees feel valued, respected, and supported, where the actions of leaders are explicit, and where all the employees feel loyal and accountable to one another, so exploring and applying processes and practices that work well within the context of the business is essential.

Three considerations should be kept in mind:

1. Although morals and ethics are not precisely measurable, people generally react similarly to what actions or conduct can rightly be called ethical or moral.
2. It is generally the case that people appreciate and need ethical codes, practices and perspectives.
3. Saying that someone or some organization is law-abiding does not mean the same as saying a person or company is ethical. Laws should be ethical and principled, but this is not always true.

Business ethics are foundational for building a successful organization. If an organization is built on socially responsible values, it will be stronger than one built on profit alone. More than just a positive reputation, the core ethics of a business dictate how every decision, process, and procedure will take place. Promotion of and adherence to ethical codes of conduct should be embedded in and expressed through organizational culture and the way in which business is conducted both internally and externally.

How Do Law and Ethics Differ?

There is a difference between legal compliance and moral excellence. Business ethicists have talked for years about the intersection of law and ethics. Simply put, what is legal is not necessarily ethical. Conversely, what is ethical is not necessarily legal. Many legal maneuvers are not all that ethical; the well-used phrase “legal loophole” suggests as much.

Here are two propositions about business and ethics. Consider whether they strike you as true or whether you would need to know more in order to make a judgment.

Proposition 1:

Individuals and organizations have reputations. (For an individual, moral reputation is often tied to others' perceptions of his or her character: Is the individual honest, diligent, reliable, fair, and caring? An organization's reputation is built on the **goodwill** that suppliers, customers, the community, and employees feel toward it.

Although an organization is not a person in the usual sense, people's goodwill about the organization is based on similar perceptional impressions and indicators.

Proposition 2:

The goodwill of an organization is, to a great extent, based on its actions and whether the actions are viewed in a positive light. This goodwill is usually specifically counted in the sale of a business as an asset that the buyer pays for. While placing a monetary value on goodwill is difficult, a firm's good reputation generally calls for a higher evaluation in the final accounting before the sale. Legal troubles or a reputation for having legal troubles will only lessen the price for a business. It will even lessen the value of the company's stock as negative legal news comes to the public's attention.

Another reason to think about ethics in connection with law is that the laws themselves are meant to express some moral view. If there are legal prohibitions against cheating an organization, it is because people (legislators or their agents) have collectively decided that cheating an organization is wrong. Thus, the law provides some important cues as to what society regards as right or wrong.

Finally, important policy issues that face society are often resolved through law, but it is important to understand the moral perspectives that underlie public debate. Some ethical perspectives focus on rights, some on social utility, some on virtue or character, and some on social justice.

People consciously (or, more often, unconsciously) adopt one or more of these perspectives, and even if they completely agree on the facts with an opponent, they may not change their views. Fundamentally, the difference comes down to incompatible moral perspectives and a clash of basic values. Understanding the varied moral perspectives and values in public policy debates is a clarifying benefit in following or participating in these important discussions.

Why Should an Individual or a Business Entity Be Ethical?

The usual answer is that ethics is good business. In the long run, businesses that pay attention to ethics and law do better; customers view them more favourably. However, this is a difficult claim to measure scientifically

because “the long run” is an indistinct period of time and because there are as yet no generally accepted criteria by which ethical excellence can be measured. In addition, life is still lived in the short run, and there are many occasions when something short of perfect conduct is much more profitable.

Maximizing profits while being legally compliant is not a very inspiring goal for a business. People in an organization need some quality or excellence to strive for. Organizations have often learned that in the long term, they do not satisfy the market, the shareholders, the suppliers, or the community by focusing on pushing the edge of what is legal or looking for loopholes in the law that would help create short-term financial gain. Legal compliance is not the same as acting ethically. Your reputation, individually or organizationally, depends on how others regard your actions. Goodwill is challenging to measure or quantify, but it is a significant factor in business relationships and can best be protected by acting ethically.

An Ethical Decision Model: Josephson’s Core Values Model

When confronted by a decision that involves ethical judgment, Michael Josephson (founder of the *Joseph and Edna Josephson Institute of Ethics*) advises asking as many questions as necessary to obtain a full view of the relevant facts.

Then, assuming you have all the needed information, the decision process is as follows:

1. Identify the stakeholders (who might gain or lose based on the decisions being considered).
2. Identify several likely or reasonable decisions that could be made.
3. Assess which stakeholders gain or lose with each decision.
4. Determine which decision satisfies the greatest number of core values.
5. If no decision satisfies the greatest number of core values, try to determine which decision delivers the greatest good to the various stakeholders. Identifying who (or what group) is the most important stakeholder and why is often helpful.

The Core Values

Here are the core values and their subcomponents developed by the *Josephson Institute of Ethics*.

- *Trustworthiness:* Be honest; be sincere and forthright; don’t deceive, mislead, or be tricky with the truth; don’t cheat or steal; and don’t betray trust. Demonstrate integrity—stand up for what you believe, walk the walk and talk the talk, be what you seem to be, and show commitment and courage. Be loyal—stand by your family, friends, co-workers, community, and nation; be discreet with information that comes into your hands; do not spread rumours or engage in harmful gossip; do not violate your principles to win friendship or approval; do not ask a friend to do something wrong. Keep promises—keep your word, honour your commitments, and pay your debts; return what you borrow.
- *Respect:* Judge people on their merits, not their appearance; be courteous, polite, appreciative, and accepting of differences; respect others’ right to make decisions about their own lives; don’t abuse, demean, mistreat anyone; don’t use, manipulate, exploit, or take advantage of others.
- *Responsibility:* Be accountable—think about the consequences for yourself and others likely to be affected

before you act; be reliable; perform your duties; take responsibility for the consequences of your choices; set a good example and do not make excuses or take credit for other people's work.
- *Pursue excellence:* Do your best, don't quit easily, persevere, be diligent, and make all you do worthy of pride. Exercise self-restraint—be disciplined and know the difference between what you have a right to do and what is right to do.
- *Fairness:* Treat all people fairly; be open-minded; listen; consider opposing viewpoints; be consistent; use only appropriate considerations; do not let personal feelings improperly interfere with decisions; do not take unfair advantage of mistakes; do not take more than your fair share.
- *Caring:* Show you care about others through kindness, caring, sharing, compassion, and empathy; treat others the way you want to be treated; don't be selfish, mean, cruel, or insensitive to others' feelings.
- *Citizenship:* Act with integrity; do your share, respect authority, stay informed, vote, protect your neighbours, pay taxes, be charitable, help your community, protect the environment, and conserve resources.

When individuals and organizations confront ethical problems, the core values decision model offered by Josephson generally works well (1) to clarify the gains and losses of the various stakeholders, which then raises ethical awareness on the part of the decision maker and (2) to provide a reliable guide as to what the most ethical decision would be. Step 5 in the decision process is unnecessary in nine out of ten cases.

That said, it does not follow that students (or managers) would necessarily act according to the results of the core values decision process. There are many psychological pressures and organizational constraints that place limits on people both individually and in organizations. These pressures and constraints tend to compromise ideals or the most ethical solutions for individuals and organizations. For a business, one essential problem is that ethics can cost the organization money or resources, at least in the short term. Doing the most ethical thing will often appear to be something that fails to maximize profits in the short term or may seem pointless because if you or your organization acts ethically, others will not. Society will be no better off, anyway.

Indigenous Ethics and Values

Indigenous ethics focuses on trust and community — connecting to and valuing environmental, social, spiritual, and ancestral relationships. While there is much diversity among Indigenous Peoples and Nations, Indigenous ethics resonate with the values of honour, trust, honesty, and humility; they reflect a commitment to the collective and embody a respectful relationship with the natural world.

Ethical thinking begins at birth in Indigenous communities, with storytelling as the primary learning process. Storytelling guides behaviour and solidifies belonging and responsibility to the family, community, and larger world. Through stories, a child develops an identity and learns about moral responsibility. Through stories, the community articulates and embraces its shared valued system or mindset. Ethical thinking emerges from a community's customs, teachings, and ideals.

Indigenous teachings involve caring for one another, collective decision-making, and sustainability. All are based on a value system within the Anishinaabe seven grandfather sacred teachings. The sacred teachings of respect, bravery, honesty, humility, truth, wisdom, and love are significant guidelines that resonate in most Indigenous cultures. The teachings are represented by seven sacred animals, each having a special gift to help the people understand and maintain a connection to the land and each other. The values embodied in the teachings, coupled with storytelling and articulated through Indigenous language, reinforce Indigenous ways of being and doing. In other words, fortifying ethical thinking lends itself to ethical practice.

Analogously, the story of an organization is embedded in the culture of the organization, and it is that story that defines organizational norms and commitment to ethical practice and standards.

Why Is Corporate Ethics So Important in Business?

Few subjects are more contentious or important than the role of business in society, particularly whether corporations have social responsibilities distinct from maximizing shareholder value. While the phrase "business ethics" is not oxymoronic (i.e., a contradiction in terms), there is plenty of evidence that businesspeople and firms seek to look out primarily for themselves. However, business organizations ignore the ethical and social expectations of consumers, employees, the media, nongovernment organizations (NGOs), government officials, and socially responsible investors at their peril. Legal compliance alone no longer serves the long-term interests of many companies, who find that sustainable profitability requires thinking about people, the planet, and profits.

Business ethics may seem subjective, but it comes down to acceptable levels of behaviour for everyone who makes up the organization. This behaviour must start at the top with responsible actions demonstrated by leadership. By doing so, leaders create and embody a set of rules and behaviours that are to be followed by others in the company. These rules and behaviours can be based on the deep values that the company has concerning the quality of products and services, the commitment to customers, or how the organization gives something back to the community. The more a company lives by its ethical practices, the more likely it is to be successful.

Anna Spooner, who writes for *LovetoKnow,* shares tips on evaluating whether an organization is creating ethical practices by determining the impact of each practice. Some examples include:

- **Executive compensation rates during employee layoffs.** Let us say a company is struggling during an economic downturn and must lay off a portion of its workforce. Does the company's CEO take their annual raise or pay cut when others lose their jobs? One could say that taking a raise is unethical because the CEO should also sacrifice some pay for the company's good.
- **Fair compensation for employees.** Paying employees minimum or just above minimum wage is not always fair compensation. In most regions, the cost of living has not been adjusted in years, meaning people are surviving on less money. Ethics can make a difference here.

Ethical business practices, guided by a corporate set of standards, can have many positive outcomes, including improvement in recruitment and retention, better relationships with customers, and positive public relations.

On the other hand, unethical business behaviours can have a negative impact on any business. Even if an unethical decision is made by a single member of the executive team, it can have far-reaching repercussions.

Some possible results of unethical business actions may include:

- **Poor company reputation.** In an increasingly transparent world, unethical decisions made by businesspeople become permanent stains on the company. Social networks have become sounding boards for anything deemed unethical or politically incorrect, and everyone from disgruntled employees to dissatisfied customers can rate companies on public company review websites.
- **Negative employee relations.** If employees continually see a discrepancy between what's expected of them and how leadership behaves, this contrast can create serious problems in the management of employees. Some employees may become disengaged, while others will stop working as hard. After all, if the same rules do not apply to everyone, why even bother? The downside to negative employee relations is that the company becomes less productive, less responsive to customers, and less profitable.
- **Recruitment and retention problems.** Once a company has developed a negative reputation, it can be difficult to recruit new talent, let alone retain the talent that's already there. Disengaged employees who grow tired of inconsistent standards and lack of commitment to fair, equitable, and inclusive practices will leave. This attrition can impact customers, who have to deal with less experienced and less interested employees who are overworked and frustrated.

- **Lost organizational credibility.** Customers are savvy enough to follow what is going on from an ethics standpoint. If they hear of a problem, they begin to question the actions of every person at the company. For example, if a board member accepts expensive gifts from clients in exchange for favourable pricing of materials, this situation could set off major alarms for other customers and even vendors. The company can expect to lose business if this unethical behaviour continues.

As you can see, poor ethics can quickly spiral downward, destroying every aspect of the business and making it very difficult to compete. Every business must pay attention to ethical standards and continually remind employees at all levels that their behaviour impacts the entire organization.

Establishing a Code of Conduct

To educate and guide others in the organization, a set of ethics, or a **code of conduct**, should be developed and distributed. A good code of conduct is a working document that can be updated and shared as needed. Many companies include this document in their employee manual, while others use a secure intranet to display this information. No matter where or how it is accessed, employees need to be educated about the code of conduct and refer to it regularly, beginning from their first day on the job.

What to Do When Something Goes Wrong

It should be noted that along with a code of conduct, there needs to be a clear **whistleblower policy** in which violators are identified and action is taken. This process should be handled with complete confidentiality and sensitivity to the company and all parties involved. Retaliation should never be tolerated when it comes to ethics violations. The company should have a step-by-step plan of action for dealing with ethics problems at all levels, up to and including the company's executive leadership. A third-party investigative firm can be used to handle such matters to remove the burden and influence that internal resources may have.

Supporting Ethical Behaviour or Practices in Purchasing

Organizations have a variety of ways to promote ethical behaviour and practices. If the organization is quite large, its goal is to develop a corporate code of ethics to guide each department, and all employees must see that the ethics program is driven by management. The organization's culture dictates the codes of ethics and codes of conduct, and all employees must be aware of and act in full accordance with policies and procedures.

Means of Supporting Ethical Behaviour in Purchasing

Top management must work to establish a culture that reinforces ethical behaviour and does not tolerate ethical lapses. Executive management must also lead by example and not look the other way or, worst of all, act unethically themselves. When employees do act unethically, management should respond appropriately. This can include taking direct and immediate disciplinary action against such employees.

Companies should also develop written corporate and supplier codes of conduct that clearly describe how buyers and suppliers are expected to act ethically. These codes should be distributed to internal participants

and suppliers. They are distributed to suppliers because suppliers are also expected to abide by the codes of conduct in such documents. Organizations are encouraged to develop and enforce policies supporting ethical principles and standards.

The following are additional examples of how companies can support ethical behaviour among their procurement employees:

- Organizations have corporate compliance programs and training that are mandatory for employees.
- Buying organizations may choose to rotate procurement personnel to avoid buyers becoming too comfortable with specific groups of suppliers.
- A beneficial way to promote ethical behaviour is to designate a corporate ombudsman who investigates and attempts to resolve complaints, problems, and concerns.

Professional Principles and Standards of Ethical Conduct

The various supply chain professional organizations in Canada and around the world have developed their own code of ethics for professionals in the supply chain field. Please visit the links below to review various codes of ethics for the following professional organizations:

- Supply Chain Canada Code of Ethics for Professionals in the field of Supply Chain Management [opens a PDF file]
- Ontario Public Buyers Association Code of Ethics [opens a PDF file]
- Institute for Supply Management Ethics Book [opens a PDF file]
- Association for Supply Chain Management (ASCM) Code of Ethics [opens a PDF file]

Policies developed and followed by companies must be well understood and enforceable. The ethics policies, in particular, should be shared with employees, including those outside the supply department and suppliers. Additionally, training must be ongoing and comprehensive. The codes of conduct must clearly state the repercussions of unethical behaviour and should be closely linked with company actions. This might be accomplished by linking unethical behaviour to, for example, disciplinary action that ranges from reprimands to termination where necessary.

Public Service Ethics

Public services are essential to fulfill the basic needs of every community. As customers, the public hopes to receive professional performance from the public service provider. One form of professionalism is good ethics in public services.

Public Service Ethics Paradigm

Professional public services are based on the accountability and responsibility of service providers, namely government officials. Its characteristics are as follows:

1. Prevents the repetition of requirements from other related work units/government agencies.
2. The procedure is carried out in a simple, fast, precise, uncomplicated manner that is easy to understand and implement.
3. The implementation of public services can be completed within a predetermined period.
4. Adaptive and responsive to the demands, desires, and aspirations of the community being served.
5. There is clarity and certainty in the following areas of public services.

    - Service requirements, both technical and administrative.
    - Professional work units and authorized officials.
    - Details of service fees/tariffs and payment procedures.
    - Schedule of service completion time.

Ethical Hierarchy

Public service has four levels of ethics.

1. Personal ethics or morals, namely the influence of parents, religious beliefs, culture, customs, and past experiences.
2. Professional ethics is a set of norms or rules that guide the behaviour of certain professions.
3. Organizational ethics is a set of formal and informal rules and norms that guide the behaviour and actions of the members of the organization concerned.
4. Social ethics, namely the norms that guide the behaviour and actions of community members so that the integrity of groups and community members is always maintained.

Aside from being based on the constitution and legal regulations, every bureaucrat's actions must also follow moral and ethical principles accepted by the public as norms and professional social behaviour.

Implications for Public Service Ethics

The presence of a code of ethics serves as a control tool for the behaviour of employees or officials at work. In this context, what is more important is that the code of ethics is not just a formality but also assesses the level of implementation in reality. Ideally, based on the evaluation of the implementation, the code of ethics can be developed or revised following the demands of changing times.

Ethical Maturity and Autonomy

Bureaucrats must study norms and ethics that are universal because they serve as guides to attitudes and

behaviour. However, these norms and ethics are sometimes tied to the situation, so bureaucrats must be good at deciding for themselves. Acting this way shows ethical maturity.

Sometimes, we also allow ourselves to put the interests of specific individuals or groups first without regard to the context of where we work or are located. Putting people or ethnicity first is a dishonourable act when applied in the context of a public organization that requires equal treatment for all.

Checkpoint 11.1

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=570#h5p-55

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11.2: Unethical Behaviour

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Ethics, according to Merriam-Webster (2015), are about the fairness, justness, rightness, or wrongness of an action. They are the set of moral principles or values that guide our behaviour. Ethical behaviour plays a significant role in procurement because procurement influences and controls significant financial resources by awarding purchase contracts. This may result in unscrupulous sellers trying to gain an unfair advantage over buyers by offering kickbacks or other financial incentives.

One of the challenges surrounding ethics is that no international agreement exists about what constitutes ethical behaviour on a global scale. For example, according to the *Greek Reporter*, the Greek Parliament declared that the traditional method of passing bribes in small envelopes may not be unlawful because they are a way of expressing gratitude for favours (Onti, 2013, para. 1). However, passing bribes in small envelopes could result in a jail sentence in many countries.

Types of Unethical Behaviour in Purchasing

Organizations can manage ethical behaviour in their workplaces by creating an ethics management program and using corporate governance to train their employees on their expected behaviour. These organizations cannot condone unethical behaviour; however, different forms of unethical behaviour still exist due to the constantly growing demand for low-cost products, competition, availability of counterfeit products, etc. Here are a few examples of the types of unethical buying that exist in procurement.

Personal Buying

This situation arises when buyers or purchasing departments purchase goods or services for personal rather than organizational needs. Examples include purchasing gym memberships for employees, potentially creating conflicts of interest. The rules in this area may differ in certain companies, but most have a zero-tolerance approach to this practice.

Financial Conflicts of Interest

Awarding business based on personal financial gain is an ethical violation. This, in effect, means that business is awarded to suppliers not on merit but for the financial gain of the buyer. Examples include taking direct bribes and awarding business to companies based solely on their ownership by close family members. Many companies' employees write an annual statement declaring that neither they nor their family members have financial interests in entities that do business with the company or clearly declare any such relationships that exist.

Accepting Supplier Favours

This category involves the acceptance of gifts and favours from suppliers. Examples include dinners, golf outings, free travel, tickets to sporting events, and even cash. A major problem with supplier favours is that their objective is to get buyers to make a purchase decision based on factors other than the merits of the supplier's performance. Procurement professionals need to understand the specific rules and regulations in place regarding supplier favours.

Sharp Practices

This is a broad category of behaviours that are designed to trick or deceive suppliers, often with lies or misinformation. The following are examples of **sharp practices**:

- Soliciting bids from unqualified suppliers to drive prices lower.
- Exaggerating purchase volumes to receive a lower cost per unit, then ordering lower volumes.
- Expecting suppliers to perform services but not compensating them for doing so.
- Taking advantage of suppliers in financial distress.

Reciprocity

This behaviour gives preferential treatment to suppliers who are also customers of the buying company. **Reciprocity** could also be present when buyers maintain that they will not do business with suppliers unless they purchase the buyers' products in return.

Public Procurement Playbook

Watch this video to see what one company defines as unethical behaviour and their best practices to prevent it.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=572#oembed-1

Source: MCMCTV. (2017, November 9). *Procurement code of ethics* [Video]. YouTube. https://youtu.be/24Gi70W5HjA

Fraud and Corruption

Procurement and contract management under public investments are particularly vulnerable to fraud and corruption. This vulnerability is primarily due to the large amounts of money involved and the difficulties, at times, in effectively supervising a large number of contracts. In addition to procurement, vulnerabilities in contract and financial management are common. The schemes one often encounters occur in the following areas:

- ***Procurement:*** Corrupt payments to government officials and steering of contracts to favoured bidders; **collusion** among bidders in obtaining contracts; and submission of fraudulent bids intended to circumvent the competitive bidding process.
- ***Contract management:*** Fraudulent implementation, including misrepresentation of work, goods and services as having been delivered according to specifications.
- ***Financial management:*** Embezzlement of project funds through fictitious invoices and the diversion of funds/assets.

Why Is It Important to Fight Fraud and Corruption?

Recovery of illicit payments often leads to incomplete or unsound public investment outcomes. Since bribe-paying firms must find a way to recover these illicit payments and, where possible, increase profits, they will often resort to defrauding the project, thereby threatening its effectiveness. Audits have uncovered a number of methods that private firms have used to recover these costs:

- Charges for goods, works, and services are inflated.
- Goods and services are invoiced but never delivered (or quantities greatly reduced).
- Contract specifications are not met, resulting in substandard work or hazardous conditions.
- Products are substituted for inferior, less expensive and lower quality material than specified in contracts.
- For consulting contracts, the project is billed for the cost of senior consultants when lower-paid employees are performing the work or the project is billed for "ghost employees."

Moreover, competition is reduced in a corruption-prone environment. More competent firms that refuse to make illicit payments have no chance to win contracts, leaving less capable companies to win contracts at higher prices and deliver lower quality.

How Does a Corruption Scheme in Procurement Work?

A corruption scheme often involves more than one type of misconduct. A corrupt scheme in procurement often begins with a demand for or offer of payment, followed by bid rigging and finally, fraud to cover up the scheme:

- ***Demand for payment:*** A government official demands a bribe or kickback from a firm or individual, or a firm or individual offers a bribe in exchange for a contract award. In most cases, the corrupt official will permit the bribe payer to inflate the price to cover the bribe and preserve its profits.
- ***Bid rigging:*** To ensure that the contract will be awarded to the bribe-paying firm (whose prices are now inflated to cover the cost of the bribe), government officials manipulate the bidding process to exclude other (presumably cheaper) competitors.
- ***Fraud:*** To recover the cost of the bribe and to exploit the corrupt relationship, the firm, usually with the knowledge and complicity of government officials, inflates prices, bills for work not performed, fails to meet contract specifications or delivers substandard products during implementation. This often requires further payments to corrupt inspectors or auditors.

How Can Corruption Be Detected?

This section highlights the red flags for each procurement action leading up to the contract award, as well as related fraud and corruption schemes.

Procurement Plan

The Procurement Plan should be scrutinized for the justification of items, procurement methods, review thresholds, and possible contract splitting. The plan should include agreements on the contract packages for

procuring the identified goods, works, services, and consulting services, as well as the methods for procuring them. It should also list the respective timetables for the various procurement activities.

Suggestions

- Compare the procurement plan with the procurement schedule of the investment tender to identify any inconsistencies.
- Check whether the procurement method used aligned with the approved plan.

Advertisement

Advertisements can be manipulated to exclude bidders. To inform as many qualified bidders as possible, national law may require advertising for all large consultancy and international competitive bidding contracts. For national competitive bidding, the procurement action should be advertised in a widely circulated national or official gazette or on a free and open-access website for a reasonable time. Advertisements can be manipulated by limiting the circulation of the request for expressions of interest.

Suggestions

- Review past advertisements in similar procurements to identify and possibly follow up on any red flags.
- Encourage the procuring agency to keep a file of actual newspapers showing the advertisements and date of publication.

Bidding Documents

Bidding documents must be prepared for each proposed procurement action. The bidding documents, issued by the public agency or department, inform potential bidders how bids should be prepared, the evaluation criteria, and the contract requirements. In providing inadequate or erroneous information for the preparation of bids, corrupt officials may effectively exclude qualified bidders.

Suggestions

- Review bidding documents for red flags and ensure that audit rights and contractual remedies are included as appropriate.
- Ensure that the specifications, Bill of Quantities (BOQ), and Terms of References (TORs) for large-value and high-risk contracts are reviewed by an independent expert and that they are not altered at a later time without the agency's approval.

Short-Listing and Prequalification

Short-listing and prequalification processes can be used to exclude qualified competitive bidders. For contracts requiring prequalification, prior review by agency staff should be mandatory for all documentation and proposals related to the pre-qualification process. The same holds for the short-listing of firms for large consultancy contracts.

Suggestions

- Ensure the prequalification or expression of interest contains sufficient information for the prospective companies to determine their eligibility.

- Assess the qualifications criteria used for short-listing to determine whether they align with the contract requirements.
- Review the prequalification and short-list evaluation report to ensure that the short-listed companies or firms have the required expertise.
- Review the reasons for the rejection of the submitted expression of interest.
- Check whether any indicators of hidden interests (use of shell companies) exist.

The exclusion of qualified bidders could ensure that only the preferred bidder, in whose bidding a government or project official may have a hidden interest, will submit a bid that fulfills the requirements.

Suggestions

- Review the pre- and post-qualification criteria carefully to ensure they align with the contract requirements.
- Review the Bid Evaluation Report (BER) and ensure detailed justifications are presented for the rejection of submitted bids, especially the lowest-priced bid.
- Ensure that the agency has established controls for the submission, opening, and evaluation of bids and that compliance is monitored and results reported.
- Follow up on any complaints received during the bidding process.

Pre-Bid Conference

Pre-bid conferences can be used to facilitate unbalanced bidding. Pre-bid conferences and site visits are often scheduled during the bidding period to clarify any ambiguities or discrepancies in the documents and to give potential bidders information on the bidding process and the government's expectations. The pre-bid conference is usually followed by a clarification letter or modifications to the issued bidding documents, which must then be sent to all the companies that bought the bidding documents. However, government officials may refrain from sharing timely, sufficient or correct information with all the bidders in order to give an unfair advantage to the favoured bidder.

Suggestions

- Review pre-bid conference documentation for (i) signed attendance lists in comparison to the list of sold bidding documents or short-listed companies and (ii) minutes containing a record of questions and responses and verify that answers have been distributed to all companies having purchased the bidding documents.
- Verify that changes to the bidding documents have been made following the conference.

Bid Submission

Corrupt procurement staff may accept late bids, tamper with bids, or exclude valid bids. Bids must be received by the agency prior to the date and time indicated in the bidding documents. Corrupt project staff may (i) accept late bids submitted by favoured bidders with inside information about prices from other bidders; (ii) tamper with the bids received, e.g., by discarding elements of the bid in order to disqualify the bidder; or (iii) exclude bidders by denying access to drop-off points or by failing to open bids.

Suggestions

- Ensure that the procurement staff understand the procedures for the bid submission process and assist in

establishing clear and transparent procedures, including:

- Ensuring that the bids are received by staff who are not otherwise involved in the procurement process.
- Maintaining a secure box where bids can be securely dropped off without opening the box and thus giving access to the other bidders.
- Keeping submitted bids in a safe with limited access and appropriate controls.
- Bringing all bids submitted to the bid opening ceremony at the same time.

Bid Opening

A key risk in the bid opening phase is the manipulation of bid prices. The bid opening must be conducted in public at the address, date and time specified in the bidding documents. The bids should be opened immediately after the bid submission time. Various tactics may be used to steer contracts to favoured bidders, e.g., the price read aloud for the favoured bidder does not match the actual bid price or a "new" price is later written into the bid.

Suggestions

- Ensure the project procurement officer is aware of the appropriate bid opening procedures, including:
  - Ensure control of the bid opening and keep minutes of the opening.
  - Check attendance sheets for names and signatures of all bidder representatives (including printed names).
  - Verify that each bid was sealed and accompanied by a bid security, if required, utilizing the assistance of a randomly selected representative.

Bid Evaluation Committee

Inadequate technical competency of the BEC could pose a corruption risk. Bid Evaluation Committees (BECs) review and evaluate the submitted bids and recommend to which company the contract should be awarded. The BEC has wide discretion in excluding bidders and can abuse this authority as part of a corrupt scheme. On occasion, government officials purchase positions on the BEC to influence decision-making.

Suggestions

- Ensure BEC members are selected in accordance with the established procedures.
- Ensure the responsible procurement officer is available to the BEC to answer any procedural questions.
- Confirm the BEC has the necessary technical expertise to evaluate the bids.
- Verify that BEC members sign an affidavit stating that they do not have a conflict of interest in performing their duty, such as current or past affiliation with any of the bidders.

Bid Evaluation Report

Questionable evaluation and unusual bid patterns may emerge in the Bid Evaluation Report (BER). After the completion of the evaluation process, the Bid Evaluation Committee should present its BER to the implementing agency, which describes the results and the process by which the BEC evaluates the bids received. The BER may include a number of indicators of bid rigging, e.g., questionable disqualifications and unusual bid patterns.

Suggestions

- Review and compare the bids submitted with the BER and each other.
- Review the BER for justifications for the rejection of submitted bids and the recommendation for award.
- Review the BER with the issued bidding documents for any inconsistencies.
- Review the signed copies of all the scoring tables used by the BEC members for any inconsistencies.
- Review the timeframe of the evaluation process.
- Verify that the number of submitted bids is equal to or less than the number of bidding documents sold.
- Compare the BER with the minutes of the bid opening to ensure that the bid values, number of bids, and bid securities are the same.

Draft Contract

Questionable deviations from the bidding documents may signal fraud to benefit a contractor or government official. Regardless of which procurement schedule is used, the terms and conditions of a contract cannot, without the contracting agency's prior approval, materially differ from those on which bids or proposals were asked.

Contract Delivery

Scheme: Failure to meet contract terms. Firms may deliberately fail to comply with contract requirements. The contractor will attempt to conceal such actions often by falsifying or forging supporting documentation and billing for the work as if it were done in accordance with specifications. In many cases, the contractors must bribe inspection or project personnel to accept the substandard goods or works, or supervision agents are coerced to approve substandard work. Listed below are common frauds committed by companies failing to meet their contractual obligations.

- ***Product substitution:*** Contractors may substitute inferior and often cheaper products than those specified in the contract.
- ***Deviation from specifications:*** Companies may seek to deviate from their contractual obligations. In one case, the Terms of Reference (TOR) of a consulting firm required that it analyze various cost estimation packages and recommend three options. The firm failed to do so, recommending only its own solution. In civil works, contractors may seek to reduce the thickness of a road surface, fail to sufficiently compact the soil, and avoid costs by vibrating the cement, resulting in air pockets and reducing the road's load-bearing capacity and width.
- ***Substandard work:*** Failure to exercise key controls, lack of independent oversight, and bribery of the supervision agent are the main elements allowing for this type of scheme.
- ***Failure to deliver:*** Contractors sometimes leave project sites without completing the civil works they have committed to. In other cases, the training, equipment and consultant reports are not delivered at all.

Suggestions

- Require independent annual technical, financial, and procurement audits for high-risk investments.
- Expand the audit scope to include transaction testing and fraud detection.
- Include unannounced site visits by independent technical experts during the supervision missions.
- Institute contract management training for project officials.

- Check, as part of a procurement and financial management review, specifically the controls regarding:
  - Contract management — payment listings by contract/contractor
  - Duplicate payment control
  - Certification of goods and services received
- Conduct annual procurement post reviews and ensure follow-up on the findings.
- Institute strong complaints handling procedures and publicize the procedures.

Contract Changes

Scheme: Abuse of contract amendments and change orders. Contract amendments and change orders usually represent legitimate modifications to the signed contracts. However, they can be abused. A common scheme involves collusion between a favoured contractor and project officials to award a contract to the contractor at a low price, followed promptly by one or a series of change orders (often just below the change order no-objection threshold of 15% of the original contract value).

Suggestions

- Evaluate change order requests, analyze them for legitimacy and request supporting documents, as appropriate, before approval.
- Verify the physical existence of key goods, works, and services outputs during supervision. Reviews can confirm:
  - Consistency between work completion certifications and implementation progress
  - Adequacy of supporting documentation
  - Legitimacy of officers certifying goods and services received
  - Timely asset registration

Real Cases in Public Procurement: Learning from Experience

$1.3M Fraud With Equipment Parts at Shearwater Military Base in Nova Scotia

Issue: In September 2019, the Nova Scotia Supreme Court found that two government employees, along with a supplier operating under different companies, conspired to defraud the government through a long-running contract-splitting and bid-rigging scheme.

Background: The case began with the procurement of equipment parts to support heating facility maintenance at the Shearwater military base in Nova Scotia. The purchasing clerk responsible for ordering parts repeatedly divided the required equipment parts into small orders, or "contract-splitting," so that the procurements never reached the contract value that would require an open

tendering process. This allowed the purchasing clerk to direct all of the invitations to companies controlled by the same supplier, who then submitted multiple bids under different companies, or "cover bidding," to ensure that it would win the contract, even if the supplier bid inflated prices.

This resulted in hundreds of contracts being given to the same supplier, often at inflated prices. In turn, that supplier gave one of the government employees his company bank card so that the government employee could make repeat cash withdrawals.

Outcome: The Court found that the purchasing officer engaged in intentional blindness to allow the bid-rigging scheme to continue over a prolonged period and had facilitated that scheme through his daily contract-splitting practices. The Court found all three defendants guilty of fraud and found that the supplier had bribed the government employees.

Discussion Questions

1. How can artificial contract-splitting be flagged before the contract is awarded?
2. Did this weakness uncover anything amiss in the public procurement process?
3. Who do you feel was initially unethical in this case?

Source: Based on information from R. v. Ross and Dawson, 2019 NSSC 275 (CanLII)

Checkpoint 11.3

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Fraud and Corruption Awareness Handbook: A Handbook for Civil Servants Involved in Public Procurement,

11.3: Professional Codes and Standards of Conduct in Public Procurement

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In the public procurement sector, a code of conduct is essential for buyers and vendors to ensure that procurement activities are conducted ethically, transparently, and fairly. This framework helps maintain public trust and confidence in the procurement process by setting clear expectations and standards of behaviour.

Below, we will discuss the codes and standards of conduct prescribed by the Government of Canada for employees and purchasers associated with Public Services and Procurement Canada (PSPC) and vendors who provide services to federal, provincial, and municipal agencies in Canada.

Essential Reading

Code of Conduct and Standards of Conduct for PSPC Employees

The code of conduct for Public Services and Procurement Canada (PSPC) employees outlines the ethical framework and standards expected of all personnel. This code is designed to ensure that employees act with integrity, respect, and professionalism in their roles, thereby maintaining public trust and upholding the department's values.

The following are the four fundamental values that guide PSPC employees:

1. Respect
2. Integrity
3. Excellence
4. Leadership

The Values and Ethics Code for the Public Sector (VECPS) is a code of conduct that applies to all PSPC employees, regardless of their position or location and outlines the values and expected behaviors for all public servants in Canada. It emphasizes the importance of:

- Respect for Democracy
- Respect for People
- Integrity
- Stewardship
- Excellence

To learn more about PSPC's values and standards of conduct read "Chapter 2: PSPC Values and Standards of Conduct." Code of conduct | Public Services and Procurement Canada – Canada.ca

To learn more about the VECPs visit Values and Ethics Code for the Public Sector- Canada.ca.

Essential Reading

Code of Conduct for Procurement

The Code of Conduct for Procurement establishes the expectations and obligations for vendors and their sub-contractors who engage in procurement activities with the Government of Canada. It aims to ensure that procurement processes are conducted openly, fairly, and transparently, thereby maintaining the confidence of both the vendor community and the Canadian public.

According to the code of conduct, vendors are supposed to

- Perform their duties in good faith
- Avoid conflict of interest
- Protect the environment by providing goods and services that reduce environmental impact
- Ensure a respectful work environment
- Uphold international human rights and labour standards
- Respect the rights of Indigenous people
- Ensure that their supply chains are free of human trafficking, forced labour and child labour.

To learn more about the Code of Conduct for vendors read Code of Conduct for Procurement – Canada.ca.

Checkpoint 11.3

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https://ecampusontario.pressbooks.pub/publicprocurement/?p=578#h5p-69

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11.4: Corporate Social Responsibility (CSR)

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Over the last few decades, there has been a movement throughout the global business community to improve the world through more intelligent use of resources and giving back to communities. This movement is called **corporate social responsibility (CSR)**. The concept is catching on at companies that range in size from small startups to large Fortune 500 corporations. In the following section, you will learn what social responsibility is and how it is a win-win for businesses and consumers.

What Is Corporate Responsibility and Where Did it Originate?

Corporate responsibility refers to the idea that a business is given the opportunity and privilege to make the world a better place. This process can happen through a variety of methods, including the donation of funds, volunteerism, and the implementation of environmentally friendly policies. It is up to each organization to determine the best way to demonstrate social responsibility.

Corporate social responsibility (CSR) has become a popular way for companies to improve their image while promoting the causes they believe in. Corporate social responsibility may involve focusing on the immediate community in which a company does business. However, some organizations take it a step further and focus on

more widespread global issues. For example, the shoe company TOMS has created a mission to make sure that every boy and girl in underprivileged countries has proper footwear. Blake Mycoskie, CEO of TOMS, has created a complete business model around social responsibility. Not stopping at shoes, the company now also helps bring fresh water to communities and make birth safer for babies in developing nations.

The popularity of corporate social responsibility has only increased as millennials and Generation Z employees enter the workforce. Employees in these generations often care deeply about making a difference in the world in which they work. Whether they are buying products from brands that give back or promoting a similar activity in their own place of employment, the youngest of the workforce are making corporate social responsibility a priority.

Corporate social responsibility is not a new construct. One could go back hundreds of years and find examples of corporate philanthropy and social support. However, the earliest published book about the topic is *Corporate Responsibility of the Businessman*, published in 1953. This book introduced the concept of companies giving back as a form of investment in the future. This idea came from a generation that had survived some of the hardest times in our world and wanted to make it a better place for generations to come.

How Does Corporate Responsibility Benefit a Business?

There are many ways that corporate social responsibility can benefit a business and its objectives. Aside from being able to promote causes that are closely connected to the values of the company, a business can improve its reputation exponentially.

The benefits of corporate social responsibility include many direct and indirect effects. Based on research from the Kellogg School of Management at Northwestern University, these can include:

- ***Improved perception by investors:*** If a company reports corporate social responsibility spending that exceeds investors' expectations, this dollar amount is a sign that the company is in good financial standing. This perception results in positive stock returns and increased confidence by investors.
- ***Enhanced performance for going green:*** Researchers have found that when companies focus on eco-friendly efforts, the positive impact on operational performance heading into the second year is remarkable. Those that expand their efforts in more complex ways and in collaboration with industry standard-setting associations (such as LEED) or other eco-friendly companies increase their performance even more.
- ***Contracting for success****:* In companies that tie their CEO's salary to corporate social responsibility results, also known as contracting, the impact is felt even more. The company's value increases while the business's bottom line is maintained.
- ***The benevolent halo effect:*** When consumers realize that an organization is socially responsible, its image becomes more positive. Customers perceive the company and its products differently because they expect a better experience.
- ***Consistency of efforts and partnerships:*** Researchers also found that socially responsible organizations were consistent with staying focused on the issues that mattered most to their employees and customers. A higher level of consistency of efforts prompted better results. There are some other benefits of being a socially responsible company. These may happen due to internal factors and how closely matched the efforts are to the culture.
- ***Talent attraction:*** Many companies offer employees paid time off to participate in volunteer activities, including travel to other nations. Corporate social responsibility is often used as a recruitment tool to attract people who care about giving back to their communities and making changes that impact the world.
- ***Consumer influence:*** A major benefit of engaging in corporate social responsibility efforts is that

consumers regularly check in with their favourite brands to see what they are doing, and they are influenced to make purchases so they can be part of this community. With the process of posting messages on social networks, entire movements can take off via the support of loyal consumers.

Archie Carroll's Corporate Social Responsibility (CSR) Pyramid

Archie Carroll is an influential scholar who is known for creating the Corporate Social Responsibility Pyramid. Carroll's four-part definition of CSR was originally stated as follows:

> Corporate social responsibility encompasses the economic, legal, ethical, and discretionary (philanthropic) expectations that society has of organizations at a given point in time. This set of four responsibilities creates a foundation or infrastructure that helps to delineate in some detail and to frame or characterize the nature of businesses' responsibilities to the society of which it is a part.

This CSR definition forms a conceptual framework that includes the economic, legal, ethical, and philanthropic or discretionary expectations that society places on businesses at a given point in time. In terms of understanding each type of responsibility, it could be said that economic responsibility is "required" of business by society; the legal responsibility also is "required" of business by society; the ethical responsibility is "expected" of business by society; and the philanthropic responsibility is "expected/desired" of business by society. As time passes, what exactly each of these four categories means may also change or evolve.

The four-part definition of CSR was originally published in 1979. In 1991, Carroll extracted the four-part definition and recast it in the form of a CSR pyramid **(see Exhibit 11.1)**. The purpose of the pyramid was to single out the definitional aspect of CSR and to illustrate the building block nature of the four-part framework. The pyramid was selected as a geometric design because it is simple, intuitive, and built to withstand the test of time.

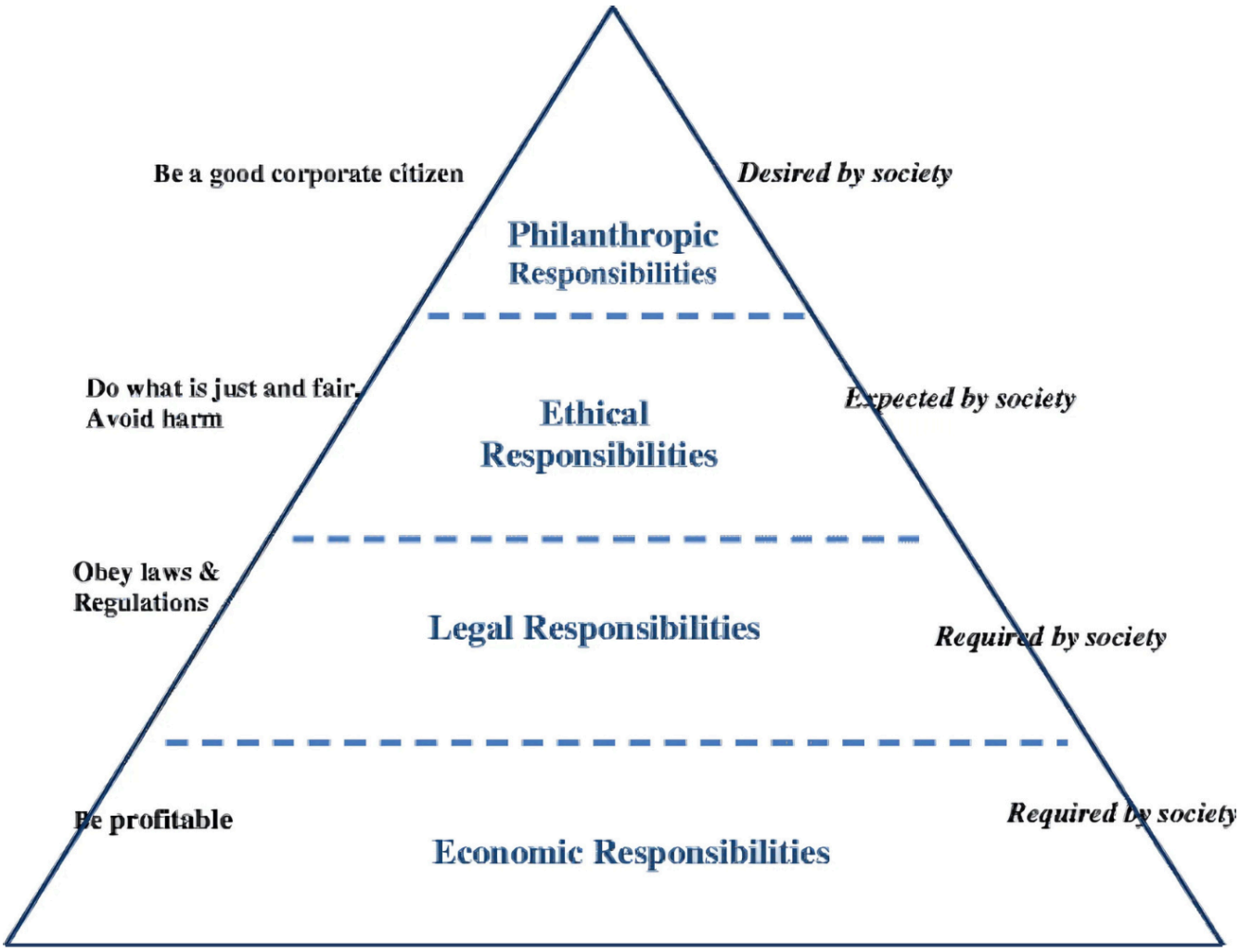

Exhibit 11.1: Carroll's Pyramid of Corporate Social Responsibility. [See image description.]

Consequently, economic responsibility was placed at the base of the pyramid because it is a foundational requirement in business. Just as the footings of a building must be strong to support the entire edifice, sustained profitability must be strong to support society's other expectations of enterprises. The point here is that the infrastructure of CSR is built upon the premise of an economically sound and sustainable business.

The Pyramid of CSR is intended to be seen from a stakeholder perspective wherein the focus is on the whole not the different parts. The CSR pyramid holds that firms should engage in decisions, actions, policies and practices that simultaneously fulfill the four component parts. The pyramid should not be interpreted to mean that business is expected to fulfill its social responsibilities in some sequential, hierarchical fashion, starting at

the base. Rather, business is expected to fulfill all responsibilities simultaneously. The positioning or ordering of the four categories of responsibility strives to portray the fundamental or basic nature of these four categories to a business's existence in society. As said before, economic and legal responsibilities are required; ethical and philanthropic responsibilities are expected and desired. The representation being portrayed, therefore, is that the total social responsibility of business entails the concurrent fulfillment of the firm's economic, legal, ethical, and philanthropic responsibilities. Stated in the form of an equation, it would read as follows:

Economic Responsibilities + Legal responsibilities + Ethical Responsibilities + Philanthropic Responsibilities = Total Corporate Social Responsibility.

Stated in more practical and managerial terms, the CSR-driven firm should strive to make a profit, obey the law, engage in ethical practices and be a good corporate citizen. When seen in this way, the pyramid is viewed as a unified or integrated whole.

The Financial Impact of the Triple Bottom Line

When examining the value of corporate social responsibility, one must understand the concept of the triple bottom line (TBL), which essentially measures the sustainability of an organization's social responsibility efforts. The term includes three dimensions of a giving business—profits, people, and the planet. Without one of these factors, there cannot be a balance. According to economist Andrew Savitz, the triple bottom line "captures the essence of sustainability by measuring the impact of an organization's activities on the world … including both its profitability and shareholder values and its social, human and environmental capital."

The challenge with the TBL model is that while profits can be measured in dollars, and people can be measured in numbers, it can be difficult to measure the impact of social responsibility. Some argue that this task is dependent upon what is being measured. For example, if one is saving the rainforest, a reasonable unit of measurement could be acreage. Progress toward protecting this resource could be recorded as how many fewer acres have been forested and how many native (people) communities have been saved as a result of the intervention.

Another example could be a social cause, such as creating housing for single parents in poverty-stricken neighbourhoods in a specific city. The impact can be felt in terms of the additional housing that is created (built or rehabbed from existing homes) and the value that this effort brings to the neighbourhood. The number of people helped can be measured. The city's rate of homelessness can be measured as it is reduced. Then, there are other equally important results of social responsibility that can be considered, such as the reduced rate of crime in areas with homeowners, and an increase in employment for those who own the homes. These indirect benefits have an impact on the company because it can eventually hire people from these areas of the city.

Businesses must be continually mindful of the image that they project to the world and be sure to align their corporate social responsibility campaigns with their culture. An authentic cause backed by all is far better than one dreamt up purely for the sake of marketing.

Checkpoint 11.4

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=580#h5p-57

Image Description

Exhibit 11.1: The image displays a pyramid structure that represents the Corporate Social Responsibility (CSR) model. The pyramid is divided into four horizontal layers, each labeled with a type of responsibility. From bottom to top, the layers are: Economic Responsibilities, Legal Responsibilities, Ethical Responsibilities, and Philanthropic Responsibilities. Each layer is separated by a blue dashed line. The Economic Responsibilities layer at the base emphasizes the requirement for businesses to be profitable and is marked as "Required by society." Above it, the Legal Responsibilities layer requires businesses to obey laws and regulations, also noted as "Required by society." The Ethical Responsibilities layer suggests that companies should do what is just and fair, recognized as "Expected by society." The topmost layer, Philanthropic Responsibilities, highlights the importance of being a good corporate citizen, labeled as "Desired by society." The text alongside these layers denotes the progression of societal expectations from required to desired.
[back]

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"Carroll's Corporate Social Responsibility Pyramid" from *Fundamentals of Canadian Business*, Canadian Edition by Business Faculty from Ontario Colleges and eCampusOntario Program Managers, licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License, except where otherwise noted.

Exhibit 11.1 is taken from "Carroll's Corporate Social Responsibility Pyramid" from *Fundamentals of Canadian*

11.5: Sustainable Procurement Practices

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Social responsibility and business ethics are usually regarded as the same concepts. However, social responsibility is one aspect of business ethics. The awareness of social responsibility began with increased public consciousness about the role of businesses and their ethical practices in society. These are the actions of firms that contribute to social welfare, which are classified as corporate social responsibility (CSR). Big corporations make CSR an important element of their strategic management plan and a legitimate business function with the role of corporate social performance, socially responsible investing, and global corporate citizenship (McWilliams, 2015).

Public Procurement Playbook

Watch this video to get a basic understanding of sustainable sourcing.

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Source: Henkel. (2021, March 29). *100% responsible sourcing at Henkel* [Video]. YouTube. https://youtu.be/krzCa0synL8

Sustainable Procurement

The ultimate goal of public procurement is serving the public's needs, so it's good news that governments have been leaders in the field of sustainable procurement, which emphasizes goods and services that minimize environmental impacts while also taking into account social considerations, such as eradicating poverty, reducing hazardous wastes, and protecting human rights (Kjöllerström, 2008). The *Public Procurement as a Tool for Promoting More Sustainable Consumption and Production Patterns* [opens a PDF file] report, published by the United Nations, is an excellent introduction to the topic of sustainable procurement in the public sector.

Although sustainable procurement is primarily associated with public procurement, private organizations have made significant strides in this area as well. Motivations for going green in the private sector vary. However, one recurring theme is that customers and employees see sustainable companies as more prestigious and so are proud to be associated with them (Network for Business Sustainability, 2013). Indeed, many companies find that recruiting top-notch employees depends on cultivating a reputation as an organization focused on sustainability. This is particularly true for millennials, who "want to work for companies that project values that align with their own," with environmental sustainability "gaining ground as a key value for the younger generation" (Dubois, 2011, para. 2). This was one major motivation behind the ongoing transformation of Ford's Dearborn, Michigan headquarters, a massive DBOOM project which you can read about in the Ford Motor Company: Dearborn Research and Engineering Campus Central Energy Plant report from the US Department of Energy.

Public Procurement: Scenarios and Solutions

Huan Li, the Chief Procurement Officer at the Department of Public Services in the city of Bramfield, faces a significant challenge. Huan's department procures goods and services for various government entities, including schools, hospitals, and municipal offices. Recently, the city council mandated that all procurement practices must align with sustainable procurement principles to minimize environmental impact and promote social responsibility. Huan understands the importance of this directive but is concerned about the practical implications and potential cost increases. Huan must develop a strategy that balances sustainability with budget constraints and operational efficiency.

The Department of Public Services in Bramfield employs over 200 staff members and manages an annual procurement budget of $150 million. The department procures a wide range of products and services, from office supplies and IT equipment to construction services and medical supplies. The citizens of Bramfield, who benefit from these services, expect high-quality and reliable public services. The department's procurement process involves competitive bidding, vendor evaluations, and contract management to ensure transparency and fairness. Huan's team works closely with various government entities to understand their needs and ensure the timely delivery of goods and services.

Huan has identified three potential strategies to address the city council's mandate. The first option is implementing a comprehensive sustainable procurement policy with strict environmental and social criteria for all suppliers. This approach would involve extensive training for procurement staff and suppliers and regular audits to ensure compliance. The second option is to focus on a phased approach, starting with high-impact categories such as construction and IT equipment and gradually expanding to other areas. This would allow the department to manage the transition more effectively and learn from initial implementations. The third option is to collaborate with other municipalities and form a consortium to leverage collective buying power and share best practices in sustainable procurement. This could help reduce costs and increase the impact of sustainable initiatives.

Huan is aware that each option has its advantages and challenges. Implementing a comprehensive policy could lead to significant improvements in sustainability but may face resistance from suppliers and require substantial resources. A phased approach might be more manageable but could delay the overall impact. Forming a consortium could provide valuable support and cost savings but would require coordination and alignment with other municipalities. Huan needs to decide which strategy to pursue to meet the city council's mandate and ensure the long-term sustainability of Bramfield's procurement practices.

Discussion Questions:

1. What are the potential benefits and challenges of implementing a comprehensive sustainable procurement policy in Bramfield?
2. How could a phased approach to sustainable procurement help manage the transition, and what are the potential drawbacks of this strategy?

3. In what ways could forming a consortium with other municipalities enhance Greenfield's sustainable procurement efforts, and what obstacles might arise from this collaboration?

Source: Scenario and questions created with the assistance of Microsoft Copilot.

Checkpoint 11.5

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Chapter Review

Key Takeaways

- Moral principles guide behaviour in financial decision-making, which is necessary for the public sector.
- Procurement professionals must understand codes of ethics pertaining to their specific businesses and ensure that this information flows down to employees and is also communicated to the supplier network.
- Procurement professionals including purchasing agents, vendors, and sub-contractors must understand and abide by the codes of ethics.
- Learning about the common challenges to ethical procurement helps inculcate awareness of proper business conduct.
- Procurement professionals must also contribute to social welfare and ensure they are investing in socially responsible suppliers and promote global corporate citizenship.
- Sustainable procurement must be practiced to minimize environmental impacts while also taking social considerations into account.

Explore and Engage

Discussion Questions

1. Why must vendors and public procurement purchasers abide by a code of ethics?
2. Where are public investments most vulnerable to fraud and corruption?
3. Public procurement contributes to the overall CSR strategy; give an example of how this is accomplished using one of the CSR initiatives.
4. Provide an example of sustainable procurement.

Active Learning

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CHAPTER 12: FUTURE TRENDS IN PUBLIC PROCUREMENT

Introduction

Public procurement is full of complex processes involving significant responsibility with the spending of public funds. As stewards of public funds, governments are responsible for strengthening integrity throughout their procurement processes. In this chapter, we learn about future trends in public procurement, highlighting technological advancements, sustainable supply chains, data-driven strategic changes, and the evolving landscape of organizational collaborations and public-private partnerships.

Learning Objectives

Upon successful completion of this chapter, you will be able to:

1. Identify opportunities supporting public procurement using technology and process improvements.
2. Explore the role of a sustainable supply chain within governments and non-governmental organizations.
3. Understand the connection between data analytics and strategic change in public procurement.
4. Explore the shift with organizational collaborations and public-private partnerships.

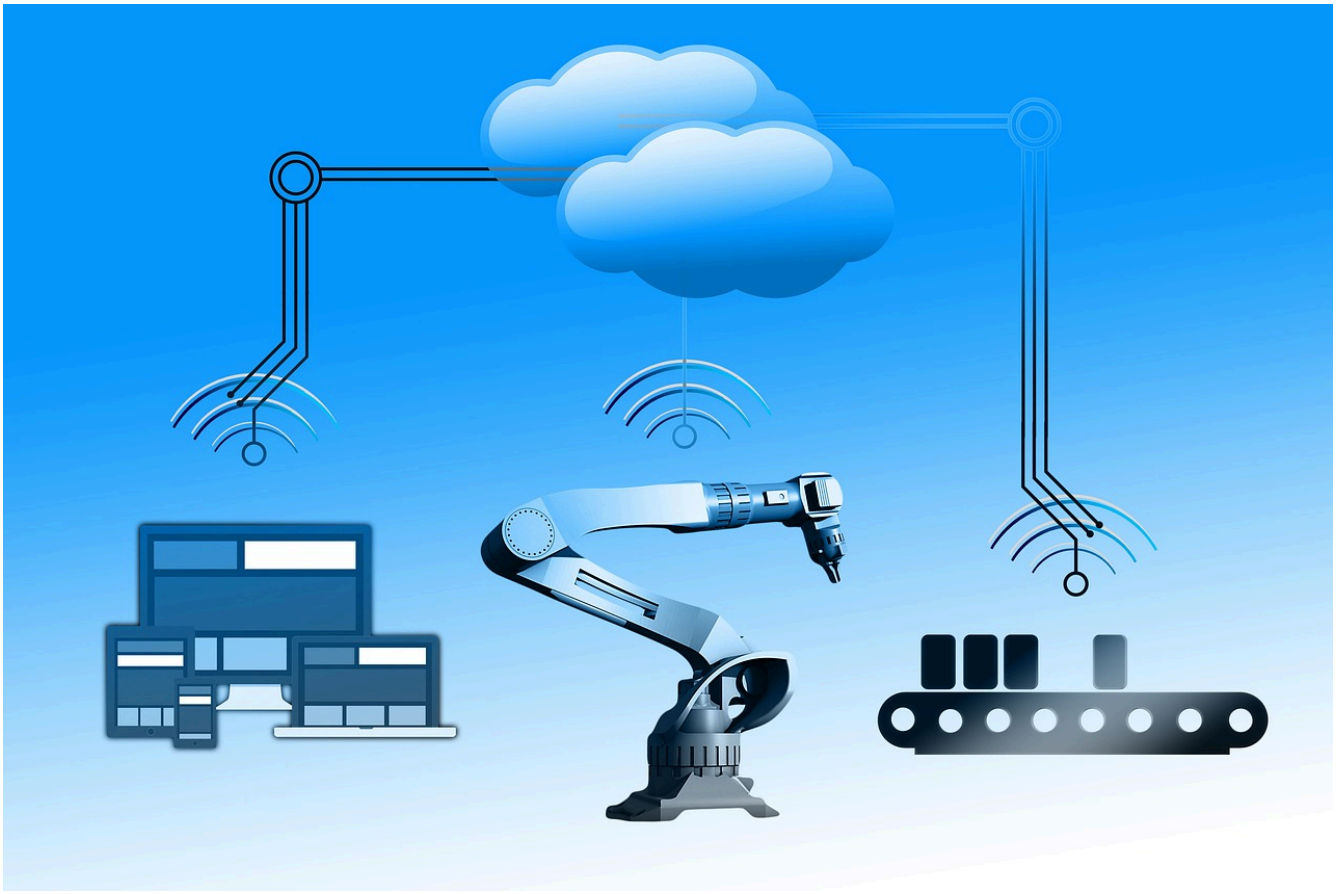
Public Procurement Playbook

Watch this video to learn more about current trends in procurement.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=598#oembed-1

Source: EU Growth. (2020, February 25). Emerging Technologies in Public Procurement. [Video]. YouTube. https://youtu.be/1Do2o7py02U?si=voEPZ2XOaxVkRSfK

12.1: The Role of IT and Process Improvements in Public Procurement



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Significant technological advancements in public procurement have occurred due to the adoption of multiple digital database technologies and e-procurement systems. A few examples of Information and Communication Technology (ICT) or Information Technology (IT) include Big Data, Blockchain Technology (BT), the Internet of Things (IoT), robots, cloud computing, transactions, hardware, internet access, communications technology and so forth.

Technological Advancements

For a clear understanding of technological advancements in procurement, read the following material adapted from the article *The Supply Chain Management Revolution* by Agarwal, Shiralkar, Aaher, and Jawade (2021).

Companies nowadays aim to enhance their performance in the industry in terms of adaptability, cost, traceability, trust, reduction in delays, and variety. Thus, supply chain management has now become a cause of concern due to the ever-increasing customer demands in terms of value, quality, etc. To satisfy and adapt to changing customer expectations and needs, the following are some of the technological advancements in supply chain management.

Blockchain

In recent times, blockchain has mostly been associated with cryptocurrency or digital money, such as Bitcoin, Dogecoin, Ripple, etc. However, in practice, blockchain applications are not limited only to cryptocurrencies or finance. Blockchain is a decentralized digital ledger. Ledgers are used to keep a record of important things, such as finances or other things. Blockchain is nothing but a database or, in other words, a collection of information stored on a computer system. The blockchain is a collection of blocks or nodes. These nodes are connected, and all the transactions are stored throughout the network. If there is a new transaction or if there is even a slight change in any of the transactions, then it gets verified immediately through the consensus of the nodes. Information cannot be altered, added, or removed without this consensus. This makes blockchain quite tamper-proof. In a supply chain, this kind of system (decentralization) may provide a much better foundation of trust as well as benefits due to the absence of a centralized authority. Similarly, blockchain could be used to record activity logs, ownership of assets, etc. Further, Blockchain also makes an immense contribution to the supply chain, as it ensures information continuity and traceability. This is due to its irrevocable and immutable nature, which helps to share important information among stakeholders so that products and information can be tracked without risk. In addition, blockchain's transparency makes it easy to access large amounts of data generated in the supply chain. This also increases the visibility of the supply chain. Thus, blockchain in SCM can be a game-changer in the supply chain domain.

Internet of Things (IoT)

The **Internet of Things (IoT)** is used to connect various devices through a network in order to sense and collect data around the world on the Internet to process intelligent applications with the aid of embedded systems, artificial intelligence (AI), various software and sensors. In this network of connected devices, each has a unique identity and will work harmoniously with others. The role of the IoT platform for an organization is to enable devices/objects to observe, recognize, and understand situations and surroundings without relying on human help. Devices connected through the Internet of Things can transmit data between themselves, devoid of interaction. A traditional supply chain faces many challenges, like lack of visibility, lack of flexibility, lack of trust and security among stakeholders, and many more. Integration of IOT in the supply value chain network may help solve many of the challenges that traditional networks face. IOT helps improve the efficiency of supply chain networks by connecting links between information flow and material flow

at various stages of the supply chain network. For instance, if we consider the automotive supply chain, the main goal of the manufacturing plant is to deliver the parts at the right time and to maintain an optimum inventory. This is only possible if there is good coordination amongst third-party logistics, transportation organizations, and multiple tiers of suppliers. These coordination processes are often enhanced by making use of IoT-integrated blockchain systems. Such a system utilizes smart IoT sensors and numerous smart devices, which can track the location/whereabouts of parts and their quantity along with all the other useful information in real time. This advancement has led to various improvements and benefits for the manufacturing supply chain, such as improvements in material and information flow, tracking systems for goods, and better-planned production schedules. Similarly, the suppliers also greatly benefit from this as they experience a reduction of faulty orders, improved inventory and inventory level, reduced warehousing costs, etc.

The above explanation was in the context of incoming logistic services to the plant. Next, we will consider the benefits of IoT in the supply chain of outbound distribution services. The main goal of the manufacturing plant is to distribute outbound vehicles to all dealers and importers at the right time while effectively coordinating many third-party logistics and transportation companies. All of this can be achieved using the IoT-integrated blockchain system. As mentioned earlier, the system uses IoT sensors and many smart devices that can be used to track vehicle location and other important details in real time. This improvement leads to many benefits to the manufacturing plant itself. This means that the system can achieve just-in-time logistics, improvement in inventory controls, and a reduction in damaged vehicles. At the same time, dealers and importers also get the benefit of getting a lead time reduction in build-to-order vehicles and a reduction in warehouse costs. Thus, we can say that the integration of the Internet of Things and blockchain can eliminate problems and make the system more efficient and trustworthy.

Big Data

Nowadays, enormous amounts of data are generated every day. It has been predicted that the amount of data collected will keep increasing in the coming years in this digital era. Hence, the term Big Data has been coined. The world generated/created more than 1ZB of data in the year 2010 and 7ZB of data per year by 2014. The main reason for such an enormous rise in data is due to the diverse devices employed in the industrial enterprise of global supply chain networks, which include smartphones, computers, devices, and sensors. All of this data gives rise to new possibilities for obtaining more value. We can hence define **Big Data** as extremely large sets of data or fast-growing amounts of data from different sources that present industrial organizations with a variety of storage and analysis opportunities. Big data in the supply chain promises a very positive impact as supply chains will be able to make more strategic and data-oriented decisions. Big data serves as an instrument to analyze supply chain risks and measure supplier performance with extremely high accuracy. Big data also enables the organization to identify and focus on credible areas for optimization. Big data can be utilized by organizations in various ways to optimize their supply chains, such as by using big data to predict crime, i.e., making the supply chain secure and transparent. Further data can also be used to plan an efficient operational shift to achieve appropriate staffing for maximum output and good process quality. Big data in the supply chain can also avoid out-of-stock conditions and increase customer satisfaction. Customer retention analysis can also be carried out using big data to maintain good customer relations and to increase customer trust. Creation of new business models or products becomes easy by using big data

analysis along with an expansion of existing product lines. Even with all these benefits of big data, it still seems to be a relatively unexplored asset that industries can use if they have the correct tools and technologies.

Potential Benefits of Technology

Technology brings several benefits, including enhanced process efficiency through automation, reduced manual errors, and improved transparency. Technology integration is crucial for balancing the dual objectives of efficiency and effectiveness in various industry and government sectors. Some examples include the following:

1. In the healthcare industry, technology has improved patient care through electronic health records (EHRs) and telemedicine, allowing for better patient monitoring and access to medical services.
2. In education, digital learning platforms and tools have revolutionized how students learn, making education more accessible and personalized.
3. The use of e-procurement systems in business has streamlined supply chain management, reducing costs and increasing efficiency.

Technology fosters innovation, improves communication, and facilitates better decision-making processes. These advancements contribute to productivity and competitiveness, making technology an indispensable tool in modern organizational and educational settings (Anjum & Khan, 2024).

Checkpoint 12.1

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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Attributions

12.2: Sustainable Procurement

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The Circular Economy

The European Union and the national governments of many countries and businesses worldwide have promoted the concept of the so-called circular economy (CE) (Korhonen et al., 2018). According to the European Commission, 600 billion euros can be saved within the manufacturing sector alone in the EU after transitioning to this type of economy. As an example, Finland's national economy can earn 2.5 billion euros through a circular economy, and the global economy is estimated to benefit by 1,000 billion US dollars annually (Korhonen et al., 2018). China was the first country to adopt the circular economy in 2008.

The circular economy encourages practices to minimize the negative impact on the environment and simultaneously stimulate businesses to find new opportunities (Korhonen et al., 2018). A circular economy suggests the following solutions to reduce adverse environmental effects: remanufacturing, repair, reuse, refurbishment, disposal, cascading, upgrading, and recycling. Authors of the academic article "Circular Economy: The Concept and its Limitations" (2018) have proposed the current concept of the circular economy with its inner circles.

The circular economy has two cycles — the technical cycle and the biological cycle. The inner or concentric circles of the technical cycle of the circular economy focus on maximizing the value of products through

processes like reuse, repair, refurbishing, and remanufacturing. These processes retain more value compared to recycling, which is less preferred as it often reduces products to basic materials. By prioritizing these inner loops, we extend product lifespans and reduce waste, fostering a more *sustainable* economy. In the biological cycle of the circular economy system, the nutrients from biodegradable materials are returned to Earth to regenerate nature.

The circular economy is a win-win-win option for sustainable development because it contributes to economic, social, and environmental dimensions of sustainable development (Korhonen et al., 2018).

Public Procurement Playbook

Watch this explanation of the inner circles of the circular economy using a diagrammatic representation. This diagram is often referred to as the butterfly diagram.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=607#oembed-1

Source: Ellen MacArthur Foundation. (2017, March 27). Butterfly Diagram Animation. [Video]. YouTube. https://youtu.be/Lc-FQvPO89Y

Role of Governments in Sustainable Supply Chains

As primary regulators and policymakers, governments have a profound influence on the direction and practices of supply chains. Their interventions, ranging from stringent regulations to incentivizing sustainable practices, can either facilitate or hinder the adoption of sustainable measures by businesses. By leveraging their legislative and economic powers, governments can set the tone for responsible business conduct, ensuring that supply chains not only contribute to economic growth but also uphold environmental and social standards. A government's role toward ensuring sustainable supply chains could include the following:

Regulation and Policies

Governments play a pivotal role in shaping the landscape of sustainable supply chains through the formulation and enforcement of regulations and policies. This is the primary role of governments in driving sustainable

supply chains. These regulations can range from environmental standards to labour practices, ensuring that businesses operate within a framework that prioritizes sustainability.

The Uyghur Forced Labor Prevention Act (UFLPA) is a testament to the power of governmental regulations in influencing supply chain practices. This act, aimed at preventing forced labour in the Xinjiang region of China, has posed significant compliance challenges for businesses. Companies have had to revise their procurement plans and ensure transparency in their supply chains to comply with this act, thereby emphasizing the role of government policies in driving sustainable practices.

Incentives and Tariffs

Governments can also influence sustainable supply chains through incentives and tariffs. Incentives serve three primary roles:

1. Increase the supply of a product.
2. Drive the adoption of new technologies.
3. Support the industrialization of specific zones. (On the other hand, tariffs can redirect procurement away from certain countries and support local manufacturing. However, the overall impact of incentives and tariffs on sustainability is debatable.)

Examples of the Use of Tariffs

- The Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act in the US has spurred massive investments in the semiconductor industry, showcasing how incentives can boost the supply of critical products.
- The European Union's approval of a €2.8 billion renewable energy scheme in Germany exemplifies how incentives can drive the adoption of sustainable technologies.
- China's "Go West" policy is an initiative aimed at developing its western regions, demonstrating the role of incentives in zonal development.
- The tariffs imposed by the USA on China have forced companies to alter their supply chains to avoid tariff-laden countries, emphasizing the role of tariffs in shaping global supply chains

Public Procurement

Public procurement, the process by which governments and state-owned enterprises purchase goods and services, represents a significant portion of a country's GDP. In the United States, for instance, government procurement amounts to nearly $2 trillion annually. This massive scale gives governments substantial leverage in influencing supply chain practices. By setting criteria for their suppliers, governments can enforce sustainable practices, dictate who they will procure from, and even shape the broader market dynamics.

- The Buy American Act mandates the U.S. government to prefer U.S.-made products in its purchases, thereby influencing domestic production and supply chains.
- The Federal Supplier Climate Risks and Resilience Rule requires suppliers to the U.S. government to report greenhouse gas emissions and climate-related risks, ensuring that the government's vast procurement power supports environmentally responsible businesses.

Transparency Requirements

Transparency in supply chains is crucial for sustainability. Governments can mandate businesses to disclose information about their suppliers, their locations, and their practices. This not only ensures ethical practices but also builds trust with consumers.

The UK's Modern Slavery Act is a prime example of the transparency requirements that are in action. In 2016, 51 new prosecutions were initiated under this act, which mandates companies with a U.K. footprint and earnings over £36 million to annually publish a statement detailing their efforts to address modern slavery within their supply chain. This act has not only increased transparency but has also held companies accountable for their supply chain practices.

Collaboration

Governments often collaborate with businesses, NGOs, and other stakeholders to promote sustainable supply chains. Through partnerships, governments can pool resources, share knowledge, and drive collective action toward sustainability.

A classic example of collaboration is the various global climate accords, where nations come together to set collective targets for reducing carbon emissions. These accords often require businesses to adopt greener supply chain practices, showcasing the power of collaborative efforts in driving sustainability.

Role of Non-Governmental Organizations (NGOs) in Sustainable Development

In the realm of sustainability, NGOs have demonstrated their ability to significantly influence business practices. A notable example is Greenpeace's campaign against Nestlé in 2010. Greenpeace released a video highlighting the link between Nestlé's use of palm oil in its products and deforestation in Indonesia, which threatened the habitat of orangutans. The video went viral, leading to a massive public outcry. As a result, Nestlé committed to sourcing only sustainably produced palm oil by 2015, showcasing the power of NGO-led campaigns in driving corporate change.

NGOs, through their advocacy, research, and public campaigns, can spotlight unsustainable business practices and push companies toward more responsible actions. Their role is not just limited to "naming and shaming;" many NGOs collaborate with businesses to develop sustainable solutions, provide expertise, and co-create sustainability standards.

There are hundreds of NGOs globally working towards implementing sustainable supply chains. Broadly, these can be categorized into three types: issue-driven, buyer-driven, and seller-driven organizations.

Issue-Centric NGOs: Greenpeace

Issue-centric NGOs, such as Greenpeace, are laser-focused on specific environmental or social issues. Their primary mission is to raise awareness about these issues and compel businesses to enact policy changes that address them. By spotlighting unsustainable practices and their consequences, they exert pressure on corporations to adopt more sustainable strategies. For instance, Greenpeace's campaigns against Nestlé's palm oil sourcing and Shell's Arctic drilling plans have not only brought about immediate corporate change but have

also raised broader awareness about environmental issues. Through their targeted campaigns, issue-centric NGOs ensure that pressing environmental and social concerns are addressed at the corporate level.

Demand-Centric NGOs: The Sustainability Consortium (TSC)

Demand-centric NGOs, like The Sustainability Consortium (TSC), are primarily formed by large manufacturers and retailers who are closer to consumer demand. Their main objective is to integrate sustainability into the core of business operations, reflecting the demands and expectations of the modern consumer. TSC, for instance, provides a platform for businesses like Amazon, BASF, and Walmart to collaborate and understand the environmental, social, and economic impacts of their products. By creating standardized metrics and methodologies, TSC enables these businesses to benchmark their performance, identify areas for improvement, and implement more sustainable practices. Their work ensures that sustainability becomes an integral part of business strategy and operations, directly responding to consumer demand for more sustainable products.

Supplier-Centric NGOs

Supplier-centric NGOs such as Fair Trade organizations, represent the interests of suppliers, especially those in specific parts of the world producing agricultural and other products. Their focus is on ensuring that these suppliers adopt sustainable practices and receive fair compensation for their products. They set rigorous social, economic, and environmental standards and ensure compliance through regular audits and certifications. The Fair Trade label informs consumers about the ethical and sustainable origins of products, ensuring better conditions for producers. Their work strikes a balance between environmental sustainability, social justice, and economic viability, ensuring that suppliers in developing regions are not left behind in the global push for sustainability.

As business students, irrespective of your chosen major, understanding the roles and impacts of these NGOs is paramount. In today's interconnected global economy, businesses are not isolated entities but are part of a complex web of stakeholders, including NGOs. These organizations play a pivotal role in shaping public opinion, influencing consumer behaviour, and even driving regulatory changes. Their activities can directly impact a company's reputation, operational strategies, and bottom line. Moreover, as future business leaders, managers, or entrepreneurs, you may find yourselves collaborating with, responding to, or even challenging the initiatives of these NGOs. A comprehensive understanding of their objectives, methods, and influence equips you with the knowledge to navigate these interactions effectively, ensuring that your business decisions are profitable, socially responsible, and environmentally sustainable.

Governments and Supply Chain Sustainability

Governments play a crucial role in enforcing sustainability within supply chains. They can compel businesses to align their practices with environmental protection, social responsibility, and economic **equity** through legislation and regulation. Tables 12.1 and 12.2 summarize some of the most important laws in the USA and EU that drive sustainability and describe how these laws impact supply chain management.

Europe

Table 12.1: Laws that impact supply chain management in Europe.

Law/Policy	Description and Impact on Supply Chain Management
European Green Deal	Aims to make the EU climate-neutral by 2050. Encourages businesses to adopt greener practices, such as reducing emissions and waste.
Water Framework Directive	Ensures all aquatic ecosystems meet 'good status' by 2027. Requires industries to monitor and control water pollution.
Birds Directive and Habitats Directive	Protects wildlife and natural habitats. It may require changes in sourcing and production methods.
Environmental Crime Directive	It makes environmental offences criminal across the EU. Forces businesses to comply with environmental regulations.

USA

Table 12.2: Laws that impact supply chain management in the USA.

Law/Policy	Description and Impact on Supply Chain Management
Clean Air Act (CAA)	Regulates air emissions. Requires industries to control air pollution.
Clean Water Act (CWA)	Regulates the discharge of pollutants into U.S. waters. Requires industries to control water pollution.
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund)	Addresses hazardous waste sites. Holds businesses responsible for waste disposal.
Toxic Substances Control Act (TSCA)	Regulates new or existing chemicals. Requires compliance with chemical regulations.
Energy Independence and Security Act (EISA)	Aims to improve energy efficiency. Encourages businesses to adopt energy-efficient practices.

Examples of Implementations

European Green Deal: Companies like Unilever have committed to reducing their carbon footprint, affecting their entire supply chain from sourcing to distribution.

Clean Air Act (USA): Automobile manufacturers such as General Motors have adapted their production processes to comply with emission standards.

Water Framework Directive (EU): Beverage companies must ensure compliance with this directive in water management.

Toxic Substances Control Act (USA): Chemical companies like Dow must comply with regulations on chemical usage.

While governments play a pivotal role in compelling businesses to modify their policies, non-governmental organizations (NGOs) are equally influential. Through various means, these NGOs can shape policies and drive businesses towards sustainable practices, often filling gaps where governmental oversight might be limited or absent.

Essential Reading

Read "Chapter 2: Procurement and Purchasing policies for Social Value by Governments in Canada," by Rachel LaForest and Annie Luk in *Selling Social: Procurement, Purchasing, and Social Enterprises* (2023) edited by Jennifer Sumner, Andrea Chan, Annie Luk and Jack Quarter, University of Toronto Press, licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

This reading takes a look at policies around corporate social responsibility (CSR) in governments throughout Canada. It looks at how social benefits are inserted into public procurement policies and how Canada is changing government policy documents to meet CSR requirements.

Checkpoint 12.2

An interactive H5P element has been excluded from this version of the text. You can view it online here:
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Attribution

12.3 Data-Driven Analytics

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The move away from tactical thinking is shifting government procurement with data-driven decision-making. Public procurement teams use data to anticipate spending patterns, supplier performance, and market trends.

Big Data

Big data and data analytics are new paradigms in public administration practices. When implemented accurately, it produces positive public administration results in efficacy, efficiency, and citizen satisfaction (Arnaboldi & Azzone, 2020). These advantages result from a considerable increase in decision-making accuracy, a rapid internal ‘‘information task’’ performance, and a significant decrease in the running costs of the decision-making process (Bright & Margetts, 2016). This is made possible by digitizing various aspects of human life and applying information technology (IT) developments, specifically for public administration. In big data methods, large amounts of data are processed based on reasoning by robust IT to gather the information that aids public administration in effectively performing its tasks (Klievink et al., 2017)

The term ‘‘big data’’ refers to collecting large amounts of data from several sources, including human input data, process data from sensors, and various monitoring systems (Desouza & Jacob, 2017). Data is being gathered at an unprecedented rate (Lee, 2020). Massive volumes of data have facilitated substantial innovation in the public and private sectors (Suominen & Hajikhani, 2021). The world is on the verge of creating a broad

utility of big data and analytics, similar to companies like Google and Amazon, which are constantly innovating consumer services. Businesses are promoting this shift because of the shift in the size of the Industrial Revolution (Khurshid et al., 2019b). However, when it comes to employing big data and data analytics in decision-making, public policy lags due to a lack of acceptance and several problems that limit the utility of these technologies (Giest, 2017).

Data availability and innovative approaches are being increasingly understood in the public and corporate sectors (Wahyunengseh & Hastjarjo, 2021). Several public administrations have implemented big data strategies or policies. In terms of efficiency and effectiveness, big data and the strategies for using them are emerging phenomena in the management landscape that provide excellent outcomes (Kandt & Batty, 2021). A private sector example is the insurance provider Aviva (Maciejewski, 2017), which created a smartphone big data app that accurately records customers' driving patterns. Previous statistics are employed to precisely determine a driver's risk; hence, cautious drivers pay less for insurance compared to reckless drivers. Big data opportunities in public administration are comparable to those in private-sector businesses (Visvizi et al., 2021)

To utilize big data in the public sector, the concerned authority must have data science-related knowledge and abilities (Spence, 2021). This includes software-based modelling, statistics, data management, data exploration, algorithmic machine learning, data product formatting, and computer programming. Additionally, the public sector needs a strategy tailored to the general public goals, objectives, and policies. Big data have immense potential in public administration and for the public interest, irrespective of the required labour (Suominen & Hajikhani, 2021). New techniques of big data analysis can help governments better understand the behaviour of their constituents and enhance public services (Goyal et al., 2022).

Data-Driven Public Policy Implementation

Better Supervision—Detecting Irregularities

Big data technologies can assist in finding irregularities, a critical component of a public monitoring system. A public authority monitors a certain region, looks for behavioural anomalies, and takes supervisory action if irregularities are identified. The advantages of big data may be easily demonstrated in this domain. Big data are being used here in a variety of ways, including creating the broadest collection of data resources feasible to serve as the foundation for analysis and reasoning, creating digital models of irregularities, and applying the models to massive data sets, that is, having a computer filter the data, based on the models of abnormalities. This method results in the computer system choosing and presenting the facts that adhere to an applied irregularity model. The data analysis makes it possible to link any discovered abnormality to a specific entity. Before the official administrative procedure begins, big data approaches are applied in supervisory administration at the analytical level. At this point, big data enables an authority to identify the circumstances and organizations that may have broken the law. It allows them to prepare supervisory action based on the vast information available. However, the supervisory action is carried out through conventional administrative methods, such as on-site inspection. This reduces the risks associated with automated processes (Guenduez et al., 2020). Large data allow abnormalities to be successfully and quickly discovered and assist in predictive and behavioural analytics, which can indicate the possibility of irregularities even before they occur. In actuality, the application of suitable models may detect abnormalities with a probability of up to 95%. An example is using big data to identify tax evasion and other abnormalities. The British Connect system, used by the British HM Revenue and Customs Office, is an example of successful big data analysis for this purpose. The effectiveness and efficiency of the public body increased dramatically with the use of big data. This illustrates that similar results can be attained in public administration as a whole (Xu & Liu, 2022).

Better Regulation—Promoting Awareness and Feedback

Big data techniques enable public bodies to track and manage areas in real time or with a negligible delay. As a result, the authority has access to a wide range of information for decision-making, which helps it accomplish its regulatory goals (Maciejewski, 2017). The ‘‘physics’’ of exploiting big data revolves around amassing pertinent data as rapidly as feasible. The information must be presented in a helpful way for regulatory purposes. The regulatory authority can use this method to comprehend the functioning of the people and systems and decide on necessary regulatory actions. In addition, it is possible to include automatic notifications for particular situations in big data systems designed for regulatory purposes. When a reaction is required, these notifications alert a decision-maker regarding previously established occurrences. Additionally, if an administrative policy is not operating properly, it is feasible to monitor its impact and make the required modifications. This implies that large data usage can spot abnormalities as well. Regulated situations, however, require monitoring systemic abnormalities rather than individual ones. It could draw attention to compliant circumstances; however, other elements are crucial to the regulator (Shah et al., 2021). Public entities employing big data obtain more favourable results and advantages. Big data aid in establishing and implementing stronger regulatory policies by bolstering the information intake for evidence-based decision-making and offering quick feedback on policy effects (Casanovas et al., 2017)

Public Service Delivery—Offering Particular Products or Services

Big data techniques have major advantages for government agencies that supply public services, improving the quality of their delivery (Vydra & Klievink, 2019). This results from feedback and inputs about the ‘‘clients,’’ their requirements, and their behaviour. Modern ideas of a ‘‘smart’’ city result from the widespread use of big data for urban public functions (Miljand, 2020). When a wide range of public services are provided in a way that closely satisfies consumer demands and is done so logically and effectively due to the widespread use of information technologies, particularly ‘‘big data’’ and ‘‘internet of things,’’ the city is considered ‘‘smart’’ (Kandt & Batty, 2021). This is true for all types of public services, including fire protection, social housing, social allowances, and public highways, as well as for public electricity and water networks, grids, and other infrastructure. Big data in these public tasks encourage (a) customer behaviour analysis to better understand demands and provide public services in line with needs, (b) checking applicants’ eligibility for public benefits, such as allowances, and spotting fraud, and (c) better functioning of service provider’s operations.

Policy Feedback

Big data techniques can be applied to sentiment analysis to learn public opinion about the policies. Feedback regarding policies or individual decisions is a distinct field of big data application. It enables quick action from government agencies. In addition, big data may be used to forecast public sentiment about potential government actions. Text analytics acquire and analyze internet data for sentiment analysis, including information from tweets, really simple syndication (RSS) feeds, social media, and mobile applications. The monitoring and social media analysis tool Vizie was created by the Commonwealth Scientific and Industrial Research Organization (CSIRO) (Maciejewski, 2017). To stop the spread of misinformation, for example, this program may use fresh social media material and instantly alert the authorities about the changes that may require their attention.

Challenges of Implementing a Data-Driven Policy

Government agencies need to be aware of data security and privacy. Some governments have open data rules that may result in massive data disasters if terrorists or parties with entrenched interests utilize the information (Sarker et al., 2018). Hence, government organizations must closely monitor this security concern. It must protect the privacy of citizen data since it is utilized to make decisions, catch criminals, lessen corruption, and promote social welfare (Ge & Wang, 2019). Before implementing big data technologies, a secure system needs to be developed. Government organizations use big data analytics to make decisions quickly. It must be flawless and delivered on time for immediate use. Certain government organizations preserve data flow and accessibility by using standardized formats and metadata (van der Voort et al., 2019). Many countries today have open data policies, which make data sets accessible to the general public. Collaboration between multiple agencies is aided; however, privacy policies must be followed. A steady stream of accurate, available, discoverable, and useable data is needed for smart governance (Sarker et al., 2018). **Table 12.3** provides an overview of the challenges of data-driven public policy.

Table 12.3: Major Challenges of Data-Driven Public Policy

Major Challenges	Description	Sources
Security and privacy challenges	The government is dedicated to maintaining citizens' security and privacy. Government agencies have clear guidelines and stringent rules regarding this purpose. However, the public must trust government institutions as safe depositions.	Giest (2017), Klievink et al. (2017), Sarker et al. (2018)
Data sharing challenges	Data has three fundamental qualities—discoverability, usability and accessibility. Readily available knowledge is a key component for achieving a sustainable economy. The government must follow privacy laws while collecting/acquiring, using and maintaining data. Big data analytics are used by government organizations to make quick decisions. These must be flawless and delivered on time to be of immediate use.	Taylor and Schroeder (2015), Klievink et al. (2017), Kiggins (2018), Mavriki and Karyda (2020)
Technology-related challenges	Big data technology is currently used in every industry. The development of technology has made it feasible to manage, store, and analyze a large amount of data. Big data deployment in the public sector for data collection, analysis, and storage requires enhanced hardware and software systems. Related difficulties and challenges must be appropriately controlled for government agencies to benefit from the technology.	Lavertu (2016), Klievink et al. (2017), Poel et al. (2018). Suominen and Hajikhani (2021)
Skill-related challenges	Big data management requires a team of skilled employees. There is a dearth of data scientists in this field since it demands a broad understanding of several other fields. To avoid data disasters, government agencies must hire people who can manage the data appropriately. However, the scarcity of skilled data scientists inside government bodies may deter them from implementing this technology.	Taylor and Schroeder (2015), Hochtl et al. (2016). Klievink et al. (2017)
Data modelling challenges	There is shortage of compatible data models for data representation and discipline-specific element expression. The representation and query of data provenance and contextual information, languages for managing data uncertainty, and languages for describing and querying data quality information require simultaneous improvement.	Panagiotopoulos et al. (2017), Studinka and Guenduez (2018), Khurshid et al. (2019)
Data management challenges	It is important to provide high-quality, cost-effective, reliable preservation and access to data and protect its privacy, security, and intellectual property rights. In addition, it is important to maintain data search and discovery across sources and connect the data sets from various domains to create open-linked data spaces (unstructured or semi-structured). Big data sets may be too large to be efficiently handled by a single computer, making data and task parallelization necessary. As a result, different data formats or labels must be used for the same items, and distinct data input procedures and vocabularies must be reconciled.	Hotchl et al. (2016). Klievink et al. (2017), Gregory and Halff (2020), Suominen and Hajikhani (2021)
Data services and tools challenges	A majority of scientific disciplines lack suitable data analytics tools to enable research across all stages. As a result, scientists fail to be as prolific as they need to be. This highlights the urgent need to develop ICT tools capable of cleaning, analyzing, and visualizing massive volumes of data and data tools and policies to ensure cross-fertilization and collaboration among disciplines and scientific fields.	Taylor and Schroeder (2015), Giest (2017), Gregory and Halff (2020)

Practical Procurement: Scenarios and Solutions

Ishrat Jan, the head of the Procurement Analytics Division at a provincial public procurement agency, faced a significant challenge. The agency was responsible for overseeing the procurement of goods

and services for various government departments, ensuring transparency, efficiency, and compliance with regulations. Recently, Ishrat had been tasked with addressing a growing concern: the detection and prevention of procurement irregularities. This issue was critical as it directly impacted public trust and the efficient use of taxpayer money. Ishrat knew that leveraging data analytics could be the key to solving this problem, but the path forward was not entirely clear.

The agency was a large organization with over 500 employees, responsible for procuring a wide range of products and services, from office supplies to large-scale infrastructure projects. The agency served millions of citizens, ensuring public services were delivered effectively and efficiently. The procurement process involved multiple stages: needs assessment, supplier selection, contract management, and performance evaluation. Each stage generated vast amounts of data, which, if analyzed correctly, could provide valuable insights into potential irregularities and areas for improvement. The agency had recently invested in a big data platform, but its full potential had yet to be realized.

Ishrat considered several options to address the issue of procurement irregularities. The first option was to implement a comprehensive data analytics system that could monitor procurement activities in real time. This system would use big data techniques to identify anomalies and flag suspicious activities for further investigation. By creating digital models of irregularities and applying them to the procurement data, the system could help detect potential issues early and reduce the risk of fraud and inefficiency.

The second option was to enhance the existing regulatory framework by incorporating feedback mechanisms and automatic notifications. This approach would involve setting up a system that could track the impact of procurement policies and provide real-time feedback to decision-makers. If any irregularities or inefficiencies were detected, the system would alert the relevant authorities, allowing them to take corrective action promptly. This option would help identify issues and continuously improve the procurement process based on data-driven insights.

The third option was to focus on improving public service delivery by using data analytics to better understand the needs and behaviours of citizens. By analyzing data on service usage and feedback, the agency could tailor its procurement strategies to better meet the demands of the public. This approach would involve collaborating with other government agencies and stakeholders to ensure that the procurement process was aligned with the broader goals of public service delivery. It would also help identify areas where resources could be allocated more effectively, leading to better outcomes for citizens.

Ishrat knew that each option had its own set of advantages and challenges. Implementing a real-time monitoring system would require significant investment in technology and training, but it could provide immediate benefits in detecting and preventing irregularities. Enhancing the regulatory framework would improve transparency and accountability, but it might be challenging to integrate with existing systems and processes. Focusing on public service delivery would align procurement with citizen needs, but it would require extensive collaboration and coordination with other agencies.

The business problem Ishrat faced was critical for the agency and the broader public sector. Addressing procurement irregularities was essential for maintaining public trust and ensuring the efficient use of resources. Solving this dilemma promptly was crucial, as delays could lead to further inefficiencies and potential scandals. Ishrat needed to carefully consider the options and develop a strategic plan that leveraged data analytics to drive meaningful change in public procurement.

Discussion Questions:

1. How can big data techniques be used to identify and prevent procurement irregularities in public procurement?
2. What are the potential benefits and challenges of implementing a real-time monitoring system for procurement activities?
3. How can data analytics improve public service delivery and align procurement strategies with citizen needs?

Source: Scenario and questions created with the assistance of Microsoft Copilot.

Lean Management Practices

The application of lean practices has been growing in the public sector. Public sector organizations, pressured and required to improve their services to society, also need to adopt new and flexible management models.

The lean approach is based on five principles:

1. Specify **Value**: Identifying what adds value to your business is hard. Customers define value in terms of specific products and services they are willing to pay for.
2. Identify the **Value Stream**: The Value Stream is the series of individual processes that connect to create the valuable goods or services an organization produces for its customers. The process of mapping the Value Stream is designed to view the big, macro picture so executives can make strategic decisions as part of an extended organizational transformation effort.
3. Make **Value Flow** Continuous: The best way to have a continuous flow of material and information is to eliminate the waste in the supply chain process. Having eliminated waste makes the remaining value-creating steps flow.
4. Let Customers **Pull** Value: Organizations work in two ways: Push and Pull. Traditional organizations used to work on Push Systems whereby whatever they produced was made available for consumers to use. This no longer works in today's market; rather, a customer's pull cascades all the way to the lowest level supplier, enabling just-in-time production.
5. Pursue Perfection: Adding value and eliminating non-value-added steps is a never-ending process. With consumers' changing needs and demands, companies need to look into the processes repeatedly to ensure perfection.

Value Stream

The emergence of waste in supply chain activities directly impacts the availability of goods to the final consumers. One of the best ways to manage waste is to apply a lean approach with the value stream mapping technique.

As cited by Adrianto & Kholil (2015) in the article by Amrina & Fitrahaj (2020), Lean is an approach to identifying and eliminating waste or non-value-added activities through continuous improvement. Eight things cause waste (Helleno et al., 2017):

1. Overproduction (excessive production)
2. Unnecessary inventory (inventory that is not needed)
3. Defect (defective product)
4. Unnecessary motion (movements that do not add value)
5. Excessive transportation (excessive material or product movement)
6. Inappropriate processing (inappropriate process)
7. Waiting (waiting time)
8. Unutilized talent (an ability that is not utilized) (Amrina & Fitrahaj, 2020).

In the lean concept, waste can be removed through 12 techniques, one of which is value stream mapping (Amrina & Zagloel, 2019). As cited by Firdaus (2018) in the article by Amrina and Fitrahaj (2020), **value stream mapping (VSM)** is a method used to visualize waste in a complete process. VSM maps the process flow, information flow and material flow. By mapping current conditions, VSM helps decision-makers identify activities that do not add value.

Mapping the value-added processes within the supply chain is useful for management because it aligns stakeholders from multiple departments on the needs of the customer and the demands of the supplier. It's also an effective tool for illustrating a product's overall supply chain to various audiences.

Building a Value Stream Map

The **Value Stream Map** is a visual way to identify steps involved in the supply chain process and their relationship. It makes decision-makers see value-added and non-value-added activities clearly by drawing the whole process from upstream to downstream on paper. "To create flow, you need a vision. Mapping helps you see and focus on flow with a vision of an ideal or improved state (Rother & Shook, 2018). **Exhibit 12.1** shows an example of how the Value Stream Map looks.

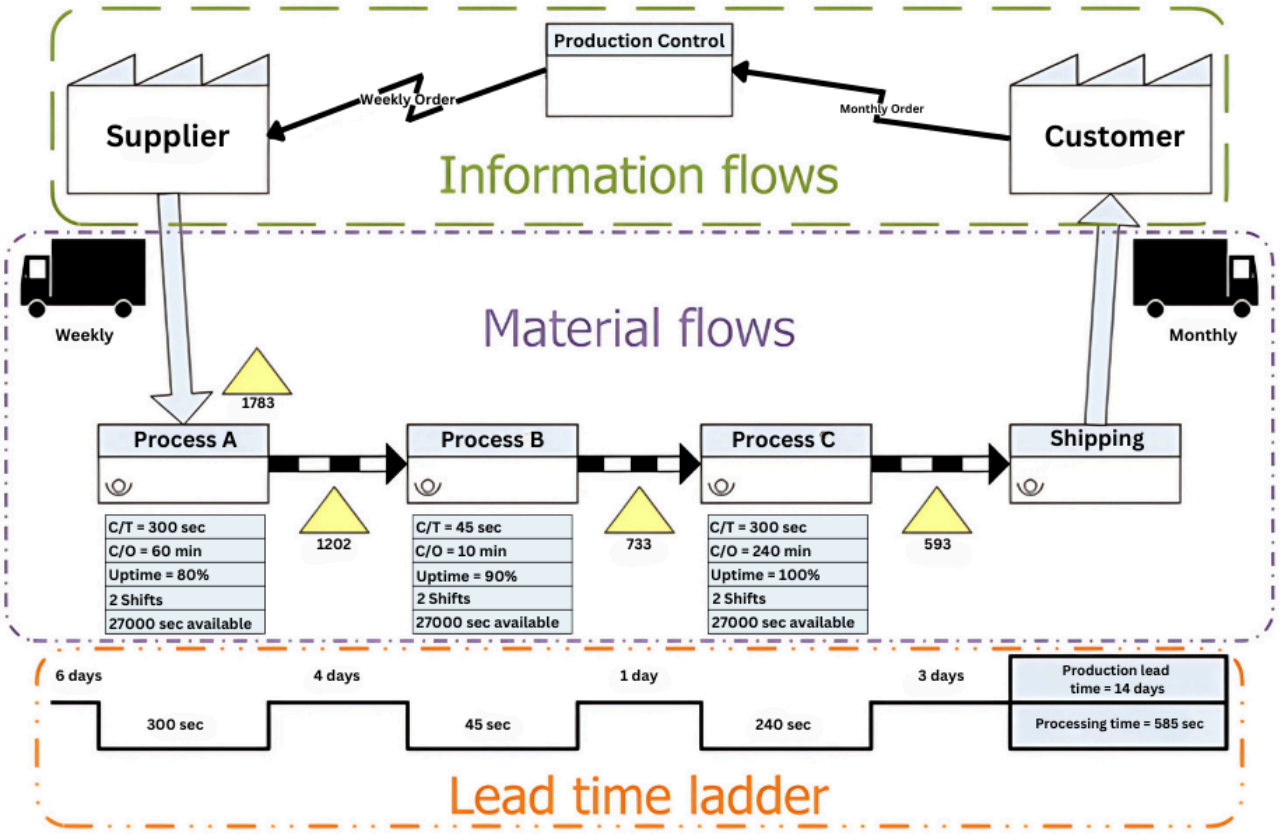

Exhibit 12.1: Overview of a production process. [See image description.]

As shown in Exhibit 12.1, Value Stream Maps are divided into three sections — Information Flows, Material Flows and Lead Time Ladder. Let's look into these sections:

1. *Information Flows:* Information flow is located at the top half of the map and is drawn from right to left, starting with customers indicating the pull value principle. A narrow line is used to present the flow of information between customer and company and then company and supplier.
2. *Material Flow:* Material Flow is located in the center of the map and is drawn from left to right. It provides valuable information to decision-makers and includes activities such as identifying different processes along with a few statistics such as **cycle time, changeover time, uptime, batch sizes, working time** and **scrap rate**. The icons used at this stage are very important as they represent the clear flow of material. This section highlights the waste a company creates in terms of holding over or under inventory. **It is important to note that material movement is pushed by the producer and not pulled by the consumer.**
3. *Lead Time Ladder:* The bottom part is the simplest and is extremely important. It indicates the length each process takes in the value chain.

The shorter your production lead time, the shorter the time between paying for raw materials and getting paid for products made from those materials. A shorter production lead time will lead to an increase in the number of **inventory turns**, a measure with which you may be more familiar (Rother & Shook, 2018).

Once the current information, material flow, and lead time calculation are complete, companies tend to reach a current state map, which all the stakeholders and company representatives analyze to highlight waste and its

sources. These wastes are eliminated by implementing a **future-state map**, which is the final stage of the value stream mapping process.

Checkpoint 12.3

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=613#h5p-61

Image Description

Exhibit 12.1: The image illustrates a flowchart representing a supply chain process. The chart is divided into three main sections: “Information flows” at the top, “Material flows” in the middle, followed by a “Lead time ladder” at the bottom.

In the “Information flows” section, there is an arrow pointing from Production Control” to “Supplier” labeled “Weekly Order” and another arrow from “Customer” to “Production Control” labeled “Monthly Order.”

The “Material flows” section shows a sequential flow from left to right. It starts with a truck icon labeled “Weekly” pointing to “Process A,” followed by arrows leading to “Process B,” “Process C,” and ending with “Shipping,” which is connected to another truck labeled “Monthly.” Each process box contains performance metrics: processing time (C/T), change over time (C/O), uptime percentage, number of shifts, and available seconds.

The bottom section, “Lead time ladder,” details the time allocation for each segment of the production process: “Process A” takes 6 days, “Process B” takes 4 days, “Process C” takes 1 day, and “Shipping” takes 3 days. The total “Production lead time” sums up to 14 days, with “Processing time” being 585 seconds.

Top Section (Information Flows): A triangular flow is shown with arrows indicating information moving from Production Control to the Supplier and Customer. Suppliers get weekly orders, while the Customer receives monthly orders.

Middle Section (Material Flows): The flow of materials is shown through four phases: Process A, Process B, Process C, and Shipping. Each phase has a detailed listing of cycle time, changeover time, uptime percentage, and other operational details. Materials start at Process A with 1783 units, transitioning through stages with counts like 1202 units between A and B, ending at 593 units ready for shipping.

Bottom Section (Lead Time Ladder): Illustrates the lead time for each process. Each step lists days and seconds, starting with 6 days for Process A, decreasing through the stages down to 3 days for Shipping. The

total production lead time is 14 days and the total processing time is 585 seconds.
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Attributions

12.4: Collaboration and Partnerships

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Another trend in public procurement is the adoption of collaborative procurement strategies.

Public-Private Partnerships

Public-private partnerships (PPP) represent an approach to procuring government materials and services that is radically different from traditional public procurement. It moves beyond the client-supplier relationship when the government hires private companies to supply assets or services. PPP is a partnership between the public and private sectors to achieve a solution and deliver an infrastructure service over the long term. It combines the strength of the public sector's mandate to deliver services and its role as regulator and coordinator of public functions with the private sector's focus on profitability and commercial efficiency.

Transparent, competitive selection of the private partner is fundamental to providing a level playing field, foreseeable processes and the best price, terms and conditions for the government. Instead of proposing a single model, it takes the elements that will together make up an effective custom PPP framework for each partnership. Successful PPP frameworks have clear, well-understood and documented policies. The PPP policy

must clarify to stakeholders (public and private) how the government wants to undertake PPPs. The policy should include:

- Purpose of the PPP policy: vision, mission and goals
- Definition of PPP projects
- Identification of responsibilities amongst government entities
- The different stages of the project at which government approval must be sought
- Conditions for the allocation of government support or liabilities.

Exhibit 12.2 provides an overview of each stage of a public-private partnership project.

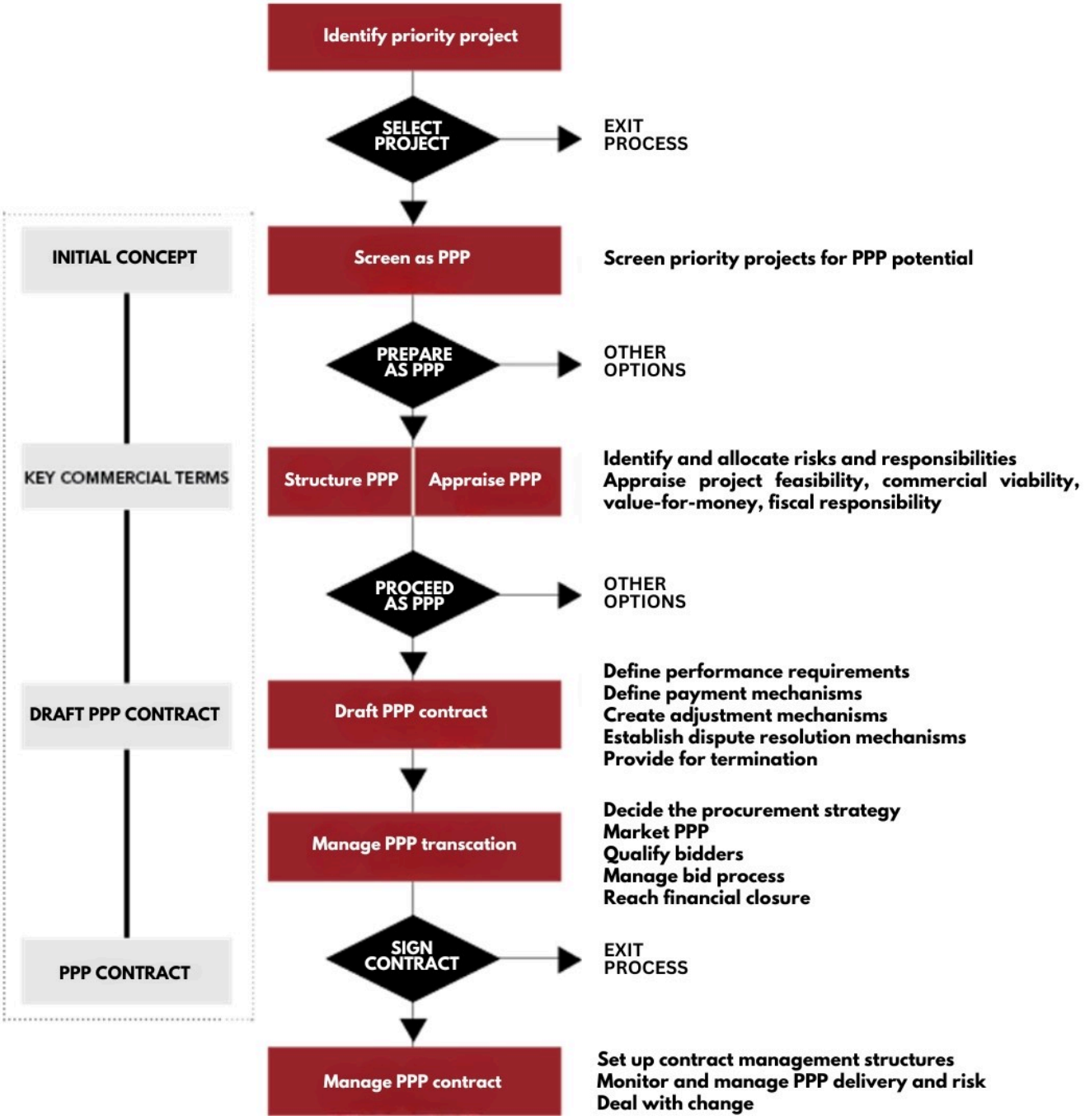

Exhibit 12.2: An overview of each stage of a public-private partnership (PPP) project through the project life cycle. [See image description.]

Collaborative Initiatives

Collaborative implementation arrangements such as consultative in-house service delivery, contracting-out, commissioning, co-management, co-production and certification represent alternative arrangements through which collaboration can be introduced directly in policy implementation and public service delivery (Kekez et al., 2018).

Collaborative arrangements can only be effective if the government can create meaningful opportunities for interaction and mobilize different stakeholders to invest energy, resources and knowledge in the collaborative production of public services (Kekez et al., 2018). While most on-the-ground modes do not always attain their highest potential, the success of collaborative arrangements is highly dependent on these political competencies, which enable governments to mobilize and maneuver the meaningful contribution of non-governmental stakeholders to the implementation process.

However, while the success of all collaborative modes of service delivery is linked to political capacities, each collaborative arrangement has a need for a certain critical analytical or managerial capability which serves as its own "Achilles Heel" (Kekez et al., 2018). That is, as set out in Table 12.2, they each need at least one specific capacity, which, if missing, means they are unlikely to function as intended and will generate policy failures rather than the successes wished upon them.

Table 12.2: Modes of collaboration on the dimensions and levels of policy and governance capacity

Resource Level Skill Dimension	Individual Capabilities	Organizational Capabilities	System Capabilities
Analytical Competencies	Policy Analytical Capacity **CONTRACTING-OUT** Domain knowledge and analytical skills as a base for effective negotiation and administration of contracts.	Organizational Information Capacities **COMMISSIONING** Appropriate alignment of budget and other policy inputs with outputs and outcomes.	Knowledge System Capacity **CONSULTATION** Institutions and opportunities for knowledge generation, mobilization and use.
Managerial Competencies	Managerial Expertise Capacity **CO-PRODUCTION** Motivation and ability of service providers to engage in creation of knowledge and quality together with citizens, networks and communities.	Administrative Resource Capacity **CO-MANAGEMENT** Management of partnerships embedded in the trust, social capital and reciprocity between involved organizations.	Accountability and Responsibility System Capacity **CERTIFICATION** State regulation and transparent adjudicative system ensuring that trust and system-level legitimacy of third-party certifiers is maintained.
Political Competencies (Required by all service delivery arrangements involving collaboration)	Political Acumen Capacity Judgment about when and how to bring in the interactivity in the service delivery process.	Organizational Political Capacity Framing conditions and milestones for joint action and empowering public managers to facilitate collaboration.	Political-Economic System Capacity Government enjoys trust from the society in large and is able to mobilize actors and resources.

Source: Adapted from Kekez, Howlett and Ramesh (2018).

Finally, even though it features minimal government participation, certification still requires state regulatory and managerial capabilities in gaining and maintaining community acceptance of third-party certifiers and in keeping certifiers honest and accountable. In this mode of collaboration, legitimacy and trust are key aspects of the certifying organizations and predictors of the the success of voluntary certification arrangements (Bernstein and Cashore 2007; Kekez et al., 2018). While the assistance of skillful governmental officials and strategists is crucial for building legitimacy and authority of third-party certifiers, trust between the public and certifiers and between the certifiers, certified companies and governments can be maintained only if certification standards are supported by functional accountability and adjudicative systems. Concerns about second-class regulation or corrupt standards can easily undermine years of work building up a certified brand (Zelli et al., 2017).

Procurement Playbook

Watch this video to get a better overview of the Canadian Collaboration Procurement Initiative.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://ecampusontario.pressbooks.pub/publicprocurement/?p=618#oembed-1

Source: Public Services and Procurement Canada (2023, Aug 2). Buying Together: Overview of the Canadian Collaborative Procurement Initiative. [Video]. YouTube.

Real Cases in Public Procurement: Learning from Experience

Expanded Participation in Group Buying in Canada

Issue: The Canadian Collaborative Procurement Initiative (CCPI) pilot project was launched in 2022.

Background: Cooperative Purchasing or Group Buying is an arrangement where multiple organizations combine their buying requirements to enhance their purchasing power, creating volume discounts. This joint spending practice has been used in the private sector for years. It was recorded in 1945 when a group of farmers could not meet their individual needs, so they grouped together to create a stronger whole. Cooperative purchasing is increasing in Canada, with multiple government organizations pooling their buying power and purchasing from the same pre-existing contract. A competitive solicitation will first be released to establish these contracts, and then more than one award can be made for a single requirement from multiple buyers.

Cooperative purchasing is now spread across all levels of government in Canada. At the federal level, PSPC created the Canadian Collaborative Procurement Initiative (CCPI), an agreement through which provincial and territorial governments and municipalities, academic institutions, schools and hospitals

(MASH sector entities) can use existing federal procurement tools to purchase commonly used goods and services at reduced costs.

Outcome: The group buying project now allows participants to share their needs. Other regions can assist in developing the strategic addition of commodities on offer. The CCPI has increased the standardization of procurement data history and created best practices with reporting requirements.

Discussion Questions

1. How will growing group buying in the public sector change the procurement processes?
2. Will this create any challenges with ethical business practices?

Source: Based on information from: https://www.canada.ca/en/public-services-procurement/services/acquisitions/collaborative-procurement-opportunities-governments-other-eligible-organizations.html

Checkpoint 12.4

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=618#h5p-62

Image Description

Exhibit 12.2: The image depicts a flowchart outlining the production process of a Public-Private Partnership (PPP) project. It is organized into several sequential stages alongside descriptive text, highlighting decision-making points and actions required throughout the process. The left side lists four main stages: Initial Concept, Key Commercial Terms, Draft PPP Contract, and PPP Contract. The right contains a detailed, step-by-step breakdown for each stage with a mixture of rectangular and diamond shapes, indicating actions and decision points.

The process begins with “Identify priority project” in a burgundy rectangle, leading to “Select Project” within a diamond shape, with options to either continue or “Exit Process.” Each subsequent stage follows a similar pattern: screening, preparing, structuring, appraising, drafting, managing, and signing contracts. At each decision point, there are arrows indicating alternative options or continuation.

Next to some stages, tasks are listed, providing specific instructions for each process phase.

Overall, the diagram visually structures the PPP progression from the initial concept through contractual completion, emphasizing key decision junctures and actions.

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Attribution

Chapter Review

Key Takeaways

- Digital transformation is a prominent trend in the supply chain management, including SCM in the public sector.
- Sustainability and social responsibility help achieve broader sector sustainability goals and promote a circular economy.
- Public procurement is used to enhance future implementation and success of processes.
- The added value of collaboration enables knowledge sharing, industry best practices and effective delivery of procurements.

Explore and Engage

Discussion Questions

1. Implementing technology and designing processes can be challenging. What is the key to successful implementation of effective IT solutions?
2. Why are governments enforcing sustainability in public procurement regulations and policies?
3. Data analytics enhances decision-making; list two benefits and two challenges with data-driven public procurement.
4. The increasing trend of partnerships and collaboration provides value in the public sector, why can collaboration pose a risk to a government?

Active Learning

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://ecampusontario.pressbooks.pub/publicprocurement/?p=622#h5p-70

Recommended Readings and References

Recommended Readings

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- The power of public procurement in the transition to a circular economy copyright © 2021 by A. McLennan & B. K. Schleemann from *Facts Reports*.
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Glossary

Accountability

Standards to support public oversight of expenditures and compliance with public procedures, ethical perceptions, and information policies.

Acts

Legislations that are passed by a legislative body.

Actual Authority

The authority of an agent that derives from either express or implied agreement.

Administrative Justice

Rules created and applied by those having governmental powers.

Agency

The relationship that exists when one person or party (the principal) engages another (the agent) to act for them.

Agent

A person who is authorized to act in place of another.

Apparent Authority

Authority that a third party reasonably believes an agent has based on the third party's dealings with the principal.

Artificial Intelligence Procurement Assistant (AIPA)

A system co-developed with Solita, a Finnish software company to leverage Large Language Models (LLMs) and sophisticated data analytics to enhance the assessment of procurement call bids and funding opportunities.

Asset

An object, or entity that has potential or actual value to a company.

Asset Management (AM)

A coordinated activity by an organization to realize value from assets.

Asset Management Strategy

A strategic plan for the management of an organization's assets that will be utilized to fulfil the organization's or corporation's objectives.

Authority

The right or permission to act legally on another's behalf. In general, authority can be either actual or apparent.

Benchmarking

Using the results of quality planning on other projects to set goals for your own.

Benford's Law

A statistical rule commonly used in forensic accounting, election monitoring, and the study of economic crime, including collusion and corruption.

Bid Rigging

To ensure that the contract will be awarded to the bribe-paying firm (whose prices are now inflated to cover the cost of the bribe), government officials manipulate the bidding process to exclude other (presumably cheaper) competitors.

Bid Security

Security required from suppliers by the procuring entity to secure the fulfillment of obligations. Examples include bank guarantees etc.

Bidding Documents

A document provided by a procuring entity to bidders and indicating the form in which they are to submit their bids

Big Data

Extremely large sets of data or fast growing amounts of data from different sources that present industrial organizations with a variety of analysis opportunities.

Binding Arbitration

The submission of a dispute to a neutral party who hears the case and makes a decision. Arbitration takes the place of a trial before a judge or jury.

Blockchain

A digital bridge allowing parties to securely track goods, automate tasks, and potentially reduce fraud.

Books of Authorities

Early legal textbooks that can be easily referenced as an authority in a court of law.

Broker

A person who receives a commission to enter into contracts with third parties on behalf of a principal.

Business Agent

A person who has general power involving the exercise of judgment and discretion, such as a manager or officer.

Business Ethics

The area of applied ethics that focuses on real-world situations and the context and the environment in which transactions occur.

Capital Movements

The transfer of capital between countries, either by companies or individuals.

Case Law or Contract Law

Rules that make agreements binding and, therefore, facilitate planning and the enforcement of expectations.

Cause of Action

A legal claim that can be brought before a court of law to seek a remedy for a wrong or injury that has been suffered.

Change Control

A set of procedures that lets you make changes in an organized way.

Change Control Board

A group of people who consider changes for approval.

Change Request

Also called change control request (CCR), is a document containing a call for an adjustment by either party on changes or revisions to the scope of work.

Civil Law

The system of law that deals with private relations within a community. It is most prevalent in Europe and is also the legal system used in Quebec.

Code of Conduct

A set of guidelines and principles that outline the expected behaviour and ethical standards within an organization.

Collusion

An arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

Common Law

The body or collection of judge-made law as recorded in judgments.

Competitive Bidding

A common procurement practice that involves inviting multiple vendors to bid for the same material, product, or service per the business's requirements.

Contract Lifecycle Management

The process of tracking and managing every aspect of a contract for its performance, compliance, and other success factors through every stage of the document's lifecycle.

Corporate Social Responsibility (CSR)

A business model that helps a company be socially accountable to itself, its stakeholders, and the public.

Corruption

An act that involves promising, proposing or giving any undue advantage to a person performing a public function for themselves or any other person, in return for acting or omitting to act in a certain way.

Cost of Quality (COQ)

What you get when you add up the cost of all the prevention and inspection activities you are going to do on your project.

Cost-Plus Buying

A purchasing procedure commonly used in many industries, including large food chains.

Cost-Reimbursable Contract

A contract where an organization agrees to pay the contractor for the cost of performing the service or providing the goods most often used when the scope of work or the costs for performing the work are not well known.

Countervailing Measure

Action taken by the importing country, usually in the form of increased duties to offset subsidies given to producers or exporters in the exporting country.

Court of Appeal

The Court of Appeal hears both civil and criminal appeals from decisions of Ontario's two trial courts, the Superior Court of Justice (including the Divisional Court) and the Ontario Court of Justice. Appeal is the process of arguing to a higher court that a court decision is wrong.

Crashing

Adding resources or moving them around to align the project with the schedule.

Critical Path

A project management technique for planning, scheduling, and managing the tasks necessary to complete a project from start to finish

Demand for Payment

A government official demands a bribe or kickback from a firm or individual, or a firm or individual offers a bribe, in exchange for a contract award. In most cases, the corrupt official will permit the bribe payer to inflate the price to cover the bribe and preserve its profits.

Disclosed Principal

Principal whose identity is revealed by the agent to a third party.

Duty to Consult

A procedural duty that guarantees a process and not a particular result.

Dyadic Negotiation

Two individuals interacting with one another to resolve a dispute.

e-procurement Systems

Systems that allow for purchasing and selling supplies, equipment, works, and services through a web interface or other networked system instead of paper-based processes.

Economic Intergration

An arrangement among nations to reduce or eliminate trade barriers and coordinate monetary and fiscal policies.

Encumbrances

A claim against a good by someone other than the person representing or claiming ownership.

Equity

When each individual or group of people is given resources or opportunities that take into account the imbalance in social systems.

Ethics

The code of moral principles and values that governs the behaviours of a person or group with respect to what is right or wrong.

Ex-ante

An uncertainty about the value of a variable before a process has taken place, the estimate of this variable is called 'ex-ante'.

Execution

The stage in the procurement plan where the execution of the procurement procedure is initiated.

Express Authority

Authority given by an express agreement, either verbally or in writing.

Factor

A person who receives and sells goods or property for a commission.

Fair Procurement

Implies that procurement remains impartial, free from discrimination, and complies with laws and policies.

Fast-Tracking

Two activities planned to occur in sequence, but completed simultaneously.

Federal Courts

The court that deals with some types of litigation involving the federal government.

Fiduciary Relationship

A relationship in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship.

First-Tier Suppliers

Suppliers that directly provide goods or services to government entities, ensuring compliance and quality.

Fixed-Price Contract

A legal agreement between the organization/project and an entity (person or company) to provide goods or services to the organization/project at an agreed-on price.

Float

The time involved during an activity that can be postponed without delaying the overall project.

Forwarding Agent

A person who receives and ships goods for a principal.

Future-State Map

Document showing how things should work in order to gain the best competitive advantage.

General Agents

People who have the authority to transact all the principal's business of a particular kind or in a particular place.

Good Title

Legal and unencumbered claim to a property.

Goods

Tangible items purchased to support organizational operations.

Goodwill

An intangible long-term asset that generates value for a company over a number of years

Grievance Arbitration

A final and binding process to resolve disputes about the interpretation of an agreement during the life of that agreement.

Group Negotiation

Involves more than two individuals or parties to resolve a dispute.

Hansard

The official record of debates in Canada.

Implementation Phase

The phase that involves putting the project plan into action.

Implied Authority

Authority granted to the agent as a result of the principal's conduct.

Indemnify

To compensate a person for damages or losses they have incurred or will incur related to a specified accident, incident, or event.

Interest Arbitration

Interest arbitration is a type of arbitration that is used to resolve collective bargaining disputes.

Internet of Things (IoT)

Used to connect various devices through a network in order to sense and collect data around the world on the Internet to process various intelligent applications with the aid of embedded systems, artificial intelligence (AI), various software and sensors.

Inventory Turns

The inventory turnover is a measure of the number of times inventory is sold or used in a time period.

Joint Procurement

The process of collaborating with other departments or organizations to combine purchasing activities.

Life Cycle

The phases involved in the management of an asset. These vary across industries.

Make-or-Buy Analysis

An analysis technique used to decide whether to make the product in-house or outsource it.

Mixed Legal Systems

This category includes political entities where two or more systems apply cumulatively or interactively, but also entities where there is a juxtaposition of systems as a result of more or less clearly defined fields of application.

Most Favoured Nation

A clause that requires a country that provides trade concessions to one county to grant similar favourable trading terms to other countries that it trades with.

Non-Binding Arbitration

That which is commonly employed in simple conflicts where both parties only need guidance.

Notice of Intent

A legal, written paper that warns you that if you do not take a certain action by a certain time, the person or agency who wrote the letter will take action against you legally.

Outcome Goals

Concentrate on achieving certain end results. The goal of any negotiation is influenced by numerous factors.

Outsourcing

The process or a situation when the company employs a third-party provider or organization to do some work instead of using its staff or resources.

Partially Disclosed Principal

A principal whose existence, but not actual identity, is revealed by the agent to a third party.

Plurilateral Agreements

A multi-national legal or trade agreement between countries.

Precedence

A court decision that is considered an authority for deciding subsequent cases involving identical or similar facts or similar legal issues.

Premiums

The difference between the face value or par value of a security and its market price when the latter is greater compared to the discount.

Principal

A person who authorizes another to act as an agent.

Private Law

Governs the relationship between individuals rather than between people and the state.

Procedural Law

A set of rules that govern the enforcement of the rights and obligations established by substantive law. It is the body of law that outlines the procedures for filing a lawsuit, such as filing a complaint and serving notice on the defendant. It also governs the rules for discovery, hearings, and appeals.

Procurement

The strategic process of sourcing and acquiring goods and services for operations.

Procurement Life Cycle

The procurement life cycle starts with the need assessment by the procuring entity and ends with the execution of the contract.

Procurement Management

One of the elements within a supply chain that primarily focuses on the sourcing and purchasing of goods and services.

Project Sponsor

An individual who offers financial resources to fund a project.

Public Governance

Governance refers to the formal and informal arrangements that determine how public decisions are made and how public actions are carried out, from the perspective of maintaining a country's constitutional values in the face of changing problems, actors and environments (OECD, 2005).

Public Law

Refers to the relationship between the state and the people within it and includes constitutional laws, criminal laws, and administrative laws.

Public Procurement

The government's process of purchasing goods, services, and works from suppliers.

Pull

Value for customers is maximized when it is created in response to real demand and a continuous and uninterrupted flow.

Ratification

That which occurs when a disclosed principal adopts or confirms a contract entered into on his or her behalf by an agent.

Reciprocity

Behaviour that gives preferential treatment to suppliers who are also customers of the buying company.

Regulatory Framework

The framework that comprises all public procurement laws and regulations, legal texts of general application, binding judicial decisions and administrative rulings in connection with public procurement.

Relational Goals

Goals focused on building, maintaining, or repairing a partnership, connection, or rapport with another party.

Relative Price

The awarded contract price divided by the initial estimation.

Religious Law

Religious law includes ethical and moral codes taught by religious traditions.

Restorative Justice Circles

A dialogical community-based healing process focusing on an offender's obligation to repair harms that they have created or actioned.

Risk

The probability of adverse or beneficial events, following a known probability distribution. The International Organization for Standardization (ISO) defines risk as the effect of uncertainty on objectives.

Risk Averse

Someone who avoid risks, preferring as much security and certainty as reasonably affordable to lower their discomfort level.

Risk Avoidance

A strategy that involves the eradication of hazardous activities that can negatively impact an organization or its holdings. This strategy has a higher probability of success but usually comes at a higher cost.

Risk Management

An entity's management system designed to (a) identify, understand, and assess potential risks and opportunities (and their interdependence) that may affect the entity, and (b) manage those risks and opportunities to be within its risk appetite, so as to provide proper disclosure and reasonable assurance regarding the achievement of entity objectives.

Risk Management Frameworks

A framework that aims to strike the proper balance between risk and opportunity, protecting the organization without hindering its growth.

Risk Management Process

The process of identifying, assessing and controlling financial, legal, strategic and security risks to an organization's capital and earnings.

Risk Neutral

Someone who will not pay extra to have the risk transferred to someone else, nor will they pay to engage in a risky endeavour.

Risk Reduction

Measures to reduce the risk associated with a project often through the investment of funds or allocation of risky tasks to highly trained personnel.

Risk Seeker

Someone who will accept risk to access greater rewards despite limited probability and unfavourable odds.

Risk Sharing

Partnering with others to share responsibility for risky activities.

Risk Transfer

Risk reduction method that shifts the risk from the project to another party.

Rule of Law

The principle of the Rule of Law ensures everyone, even leaders, must obey the law.

Rules of Origin

The criteria needed to determine the national source of a product.

Sale of Goods Act

A set of rules that regulate transactions involving the sale of goods in Canada.

Self-Government Agreements

Self-government agreements outline provisions whereby Indigenous groups can govern their own affairs. These agreements address aspects like the structure of the new government and its relationship with other governments, new funding arrangements and the relationship of laws between jurisdictions.

Services

Intangible tasks procured from external vendors to meet organizational needs and goals.

Sharp Practices

A pejorative phrase to describe sneaky or cunning behavior that is technically within the rules of the law but borders on being unethical.

Social Procurement

Using existing purchasing practices to help shape inclusive, vibrant and healthy communities.

Solicitation

The act of offering, or attempting to purchase, goods and/or services.

Sourcing

Activities that revolve around identifying and assessing potential suppliers that offer the best value.

Special Agents

People who only have the authority to conduct a particular transaction or to perform a specific act.

Standard Deviation

A measure of how much the realizations of a random variable are dispersed around its mean.

Subjective Probability

The probability of something happening based on an individual's own experience or personal judgment.

Substantive Law

A body of legal rules that define and govern individual rights and obligations and are enforceable by the courts. It includes laws that establish the rights and obligations of citizens, such as property law, contract law, and family law. Substantive law also includes criminal law, which defines and prescribes punishments for criminal offences.

Supply Chain

A set of organizations directly linked by one or more of the upstream and downstream flows of products, services, finances, and information from a source to a customer.

Supply Chain Management (SCM)

The control of materials, information, and finances as they move from supplier to manufacturer to wholesaler to retailer to consumer.

Supreme Court

The final court for appeals in the country.

Time and Materials (T&M) Contract

An agreement where one party pays another party for all material and labour costs on a project.

Tort Defence

Employing smart contracting principles and protocols that help to avoid business risks.

Tort Liability

To be held accountable for wrong actions (other than under contract.)

Traditional or Customary Law

The set of customs, practices and beliefs that are accepted as obligatory rules of conduct by a community.

Transfer of Title

Change of property ownership from the seller to the buyer.

Transparency

The quality that ensures open, accessible, and timely information about procurement processes.

Tribunals

Independent bodies that provide dispute-resolution services in various areas and are usually established by legislation.

Triple Constraint

A project management concept that says every project operates within the boundaries of scope, time, and cost.

Undisclosed Principal

A principal whose identity is kept secret by the agent.

Value

Identifying areas that add benefit to a business.

Value Flow

The elimination of waste that makes the remaining value-creating steps flow.

Value Stream

The set of actions that must take place to add value for a customer from the initial request through realization of value by the customer.

Value Stream Map

A visual way to identify steps involved in the supply chain process and their relationship.

Value Stream Mapping (VSM)

A method used to visualize waste in a complete process. VSM maps the flow of process, information, and material.

Whistleblower Policy

Policy for protecting individuals who report activities believed to be illegal, dishonest, unethical, or otherwise improper.

Zero-Sum Negotiation

The tendency to view a negotiation as purely distributive; what one side wins, the other side loses.