

WHEN THINGS GO WRONG IN PROCUREMENT

Five tips on what to do

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Over the course of the last decade, a lot has changed in public procurement. Among other developments, international organizations have gotten more involved in public procurement policy, creating toolkits (think O.E.C.D in Paris), and standardizing how procurement is integrated in national strategic plans and development projects (e.g., World Bank programs, and that of other regional and international financial institutions). There's also been a big push for procurement legislation to be implemented in evolving and emerging markets, ensuring greater transparency of government spending. In addition, the private sector has found itself more involved in public-private partnerships, and procurement rules have evolved to accommodate this growing trend. Despite these efforts, one area still lacks sufficient guidance: what to do when things go *wrong* in procurement! This article will share 5 tips on how to manage public procurement difficulties when the policies and guidelines fall short. The objective is to avoid or limit potential occurrences that may adversely affect the execution of procurement processes, while maintaining that the expected result must be in conformity with applicable laws, regulations and procedures.

1. Classify problems based impact

Begin by consulting the internal policies and procedures for procurement, and take note of language related to *complaints, protests, challenges or errors*.

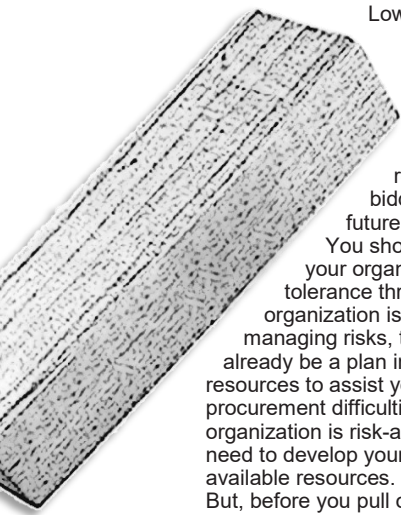
Once you identify whether a principle of procurement or an organizational policy has been violated, you must attempt to classify the impact of the problem.

Procurement problems can have either a high, medium, or low impact on the outcome of the process.

High impact problems typically affect mandatory aspects of a procurement process and often lead to cancellation.

Medium impact errors, may result in a high risk of failure of some aspect of the procurement and can lead to a flawed or failed procurement process. Low impact problems, may be signalled by a disgruntled bidder through a written complaint, or even a formal bid protest, but often lack evidence.

“When the principle of fairness, equal treatment, and due process are violated, they can taint the credibility of the entire process”



Low impact issues frequently result in “paused” procurement proceedings, reputational damage, or reluctance of potential bidders to respond to future opportunities.

You should have a pulse on your organization’s risk tolerance thresholds. If your organization is comfortable managing risks, then there may already be a plan in place outlining the resources to assist you in managing procurement difficulties. However, if the organization is risk-averse, then you will need to develop your own plan, pooling all available resources. But, before you pull out all the stops, assessing the impact helps to categorize the problem by understanding the procurement risk, then applying practical measures to mitigate.

2. Separate ethical issues from operational ones

Literature on integrity in public procurement tends to focus on conflict of interest, fraud and corruption. Other than advice on disclosure, recusal, or reporting on these incidences, little additional guidance is provided to procurement professionals, unless they’ve received specialized training. Certainly society has a vested interest in ensuring that public funds are used for their intended purpose, not only because we all benefit when the funds are used for the public good, but also because those funds come from us; the tax-paying public. It is therefore critical that ethical concerns in public procurement be managed apart from operational challenges. When the principles of fairness, equal treatment, and due process are violated, they can taint the credibility of the entire process, and that of involved public procurement officials to a degree resulting in termination of employment. Worse yet, integrity matters can lead to criminal liability.

Fortunately, there are tools and mechanisms specifically designed to address ethical dilemmas including: ethics codes; declaration and waiver forms; internal and accounting controls; segregation of duties; and access to ethics officers, among other options.

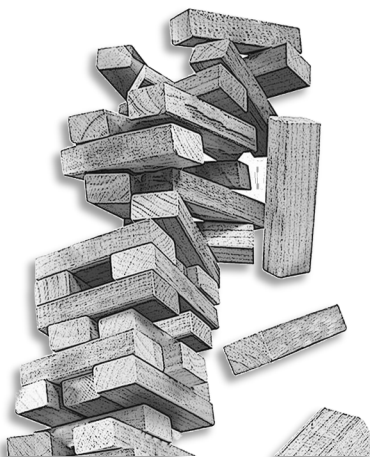
All of the above should be implemented vigorously from the top to bottom of the public procurement hierarchy to avoid even the appearance of impropriety.

3. Keep and follow a procurement audit trail

An audit trail is documentary evidence of the sequence of activities that have affected, at any given time, a specific procurement procedure. It ensures there is an internal control environment that supports a transparent procurement process.

In procurement, the audit trail consists of two main categories:

- A. Information about the actual data generated; it’s the who, what, where, what kind, and how many documentation of the procurement process; and



- B. Information about how data was analysed (e.g., notes kept by evaluators, information flows in committee, identifying who will be responsible for what, etc.).

Procurement professionals should be informed of the scope of the audit, which would provide a window on the risk areas requiring special attention in any procurement organization. Procurement errors tend to revolve around *completeness, timeliness, and accuracy* of processes. Resulting recommendations often point to areas for improvement in procurement planning, tools, training, monitoring and reporting, and staffing resources. Pay particular attention to those.

4. Integrate other resources across your organization

Procurement challenges whether in the form of bid protests, professional error in the process, failure to adhere to the terms of the solicitation, or the like, should not be managed in a silo by the procurement department. Going it alone is not an option!

Team effort is particularly necessary when managing public procurement spend. A good team scenario would involve four to five staff, including:

- i) the manager of the affected department;
- ii) the procurement professional in charge of the process in question;
- iii) a legal procurement expert who can explain the legal implications for the organization and enforce the organization’s legal strategy, including who can bring a challenge, under what rules, in what forum, and potential legal consequences;

- iv) a subject matter expert (on call) who can provide specific information on the product or service being procured, including market conditions; and
- v) a financial or accounting member who understands the budget lines of the organization and keeps tabs on potential expenditure linked to the procurement error or challenge.

5. Seek external expert guidance

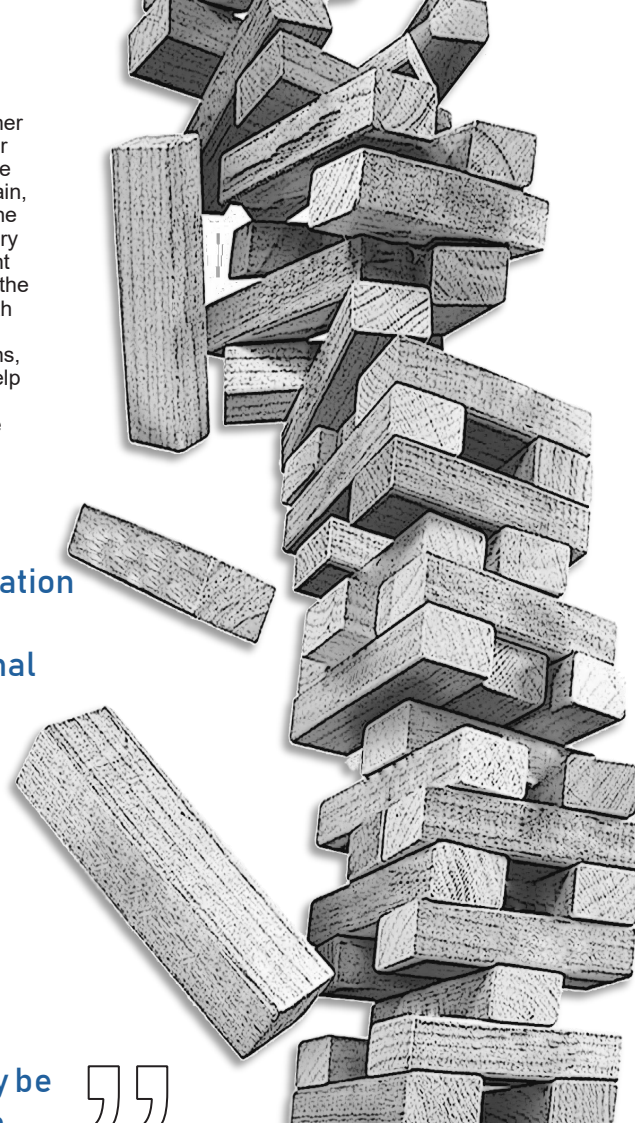
Best efforts should be made to resolve the matter internally, however, sometimes, the internal resources are insufficient. If your organization permits seeking external assistance, and there are no available in-house "experts" with the experience to assist, then external resources may be the best option.

In addition to international agency guidelines, other tools to explore include:

- i. national laws, with associated guidelines on how to manage procurement issues;
- ii. specialty firms for procurement professionals, offering on-line consultations; and
- iii. local, national, and international trade associations which offer case studies, "thought" pieces, and news-setting precedent from procurement experiences gathered from global sources. Many professional associations also offer webinars and chats with other procurement professionals, which allow anonymity, while offering a chance to share experiences and seek guidance to facilitate answers to the most difficult of procurement problems.

In the end, whether in procurement or any other field, experience is your most important ally. The more experience we gain, the more we develop the competencies necessary to manage procurement challenges, along with the confidence to do so with ease. Each challenge brings important lessons, and each lesson will help you overcome new obstacles the next time things go wrong in procurement.

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