

# Anti-Corruption Law Program

## Protecting Procurement Systems from Abuse – Government and Private Sector Approaches

Friday, Feb 26<sup>th</sup>, 2021 | 9 - 11:00am  
Virtual Event

*Moderator:*



Dr. Daniela Chimisso dos  
Santos Principal Consultant,  
Invenient Solutions Consulting  
Inc.

*Panelists:*



David Hubner  
VP, Infrastructure BC



Joe Ringwald  
President, Geocomp  
International  
Consulting



John Singleton, QC  
Partner, Singleton Reynolds  
LLP



Neill Stansbury  
Co-founder & Director,  
Global Infrastructure Anti-  
Corruption Centre



Paul Townsend  
Principal,  
Townsend Risk  
Advisory



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CRIMINAL JUSTICE POLICY

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# Integrity in Procurement: Key Principles

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Neill Stansbury

Co-founder and Director: GIACC

Chairman: ISO 37001 Project Committee

ACLP

26<sup>th</sup> February 2021

[www.giaccentre.org](http://www.giaccentre.org)

## About GIACC

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- The **Global Infrastructure Anti-Corruption Centre (GIACC)** is an international, independent, not-for-profit organisation, founded in 2008, whose objective is to promote the implementation of anti-corruption measures as an integral part of government, corporate and project management.
- The **GIACC Resource Centre** provides, free of charge, on-line information, advice and tools designed to help organisations and individuals in the public and private sector understand, prevent and deal with corruption. [www.giaccentre.org](http://www.giaccentre.org)
- GIACC is based in the UK but works internationally. It has national affiliates in Colombia, Italy, Germany, Tunisia, Zambia and Zimbabwe, and has formed anti-corruption alliances with two international organisations, three regional organisations, and 18 national organisations in 15 countries. Under these Alliances, GIACC and these organisations agree to work together to promote the implementation of anti-corruption measures.

## Integrity in Procurement: Key Principles (1)

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|---------------------------|--|
| 1. Impartiality           | 9. Integrity commitments                 |
| 2. Minimise discretion    | 10. Disclosure / No conflict of interest |
| 3. Clarity                | 11. Independent monitoring               |
| 4. Competition            | 12. Ability to challenge                 |
| 5. Competence             | 13. Reporting                            |
| 6. Separation of function | 14. Accountability                       |
| 7. Level of approval      | 15. Transparency                         |
| 8. Number of approvals    | 16. Records                              |

## Integrity in Procurement: Key Principles (2)

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1. **Impartiality:** Decisions as to design, specification, pre-qualification, tender invitation, evaluation of bids, and selection of winning bid should all be made on an arms-length objective basis without undue favour being provided to any party.
2. **Minimise discretion:** Discretion in evaluation should as far as possible be minimised by the use of objective bid criteria.
3. **Clarity:** All aspects of the procurement requirements, design, specification and contract should be complete, clear, well defined and unambiguous.
4. **Competition:** The procurement process should maximise competition.
  - a) As far as reasonable, bids should be selected from as wide a range of appropriately qualified bidders as possible.
  - b) In the event that bidders are pre-qualified prior to bid so as to ensure that bids are only received from bidders with the necessary qualifications, then the ability to apply for pre-qualification should be open to as wide a range of bidders as possible.

## Integrity in Procurement: Key Principles (3)

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### 5. Competence:

- a) All those involved in the design, evaluation and approval process on behalf of the procuring entity should be appropriately trained, and be competent to perform their function.
- b) All bidders should be competent to perform the contract, in terms of their experience, and their financial, technical, management and personnel resources.

### 6. Separation of function: As far as possible functions at the procuring entity should be separated. Therefore, those who are involved in selecting a winning bidder during a procurement process should not as far as possible be involved in the:

- a) preparation of the design and specification for the bid
- b) approving work undertaken by the winning bidder
- c) approving payment to the winning bidder.

## Integrity in Procurement: Key Principles (4)

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### **7. Level of approval:**

- a) The seniority of the persons approving any element of the procurement process on behalf of the procuring entity (e.g. design, pre-qualification, invitation to bid, selection of winning bidder) should be appropriate to the value and risk of the relevant process.
- b) Higher value or risk processes should require the approval of a more senior person.
- c) Very high value or risk processes should require the approval of the top management body (e.g. the Board).

### **8. Number of approvals:**

- a) The number of persons approving any element of the procurement process (e.g. design, pre-qualification, invitation to bid, selection of winning bidder) should be appropriate to the value and risk of the relevant process.
- b) Higher value or risk processes should require the approval of more than one person.



## Integrity in Procurement: Key Principles (5)

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### 9. Integrity commitments:

- a) All persons involved in the procurement process, whether on behalf of the procuring entity or the bidders, should be required to comply with appropriate integrity commitments (e.g. a code of conduct, or contractual commitments).
- b) Under these commitments, all parties agree to behave lawfully and with integrity (e.g. no dishonesty, bribery, fraud, cartels etc).
- c) Any breach of this commitment by personnel of the procuring entity can lead to disciplinary action, e.g. termination of contract and criminal action.
- d) Any breach of this commitment by bidders can lead to e.g. disqualification from the bid process and criminal action.
- e) All bidders for public sector contracts over a reasonable value threshold should be required to provide third party certification of their compliance with ISO 37001 as a pre-qualification requirement.



## Integrity in Procurement: Key Principles (6)

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### **10. Disclosure / no conflict of interest:**

- a) All persons involved in the procurement process, whether on behalf of the procuring entity or the bidders, should be required to make full disclosure in writing to the procuring entity of any matters which could pose a conflict of interest.
- b) All bidders should provide disclosure to the procuring entity of their beneficial owners.
- c) Any conflict of interest should be appropriately dealt with. As far as possible, no-one with a conflict of interest should be entitled to participate in the relevant process.

**11. Independent monitoring:** All public sector procurement processes above a specified bid value should be monitored by an independent person of appropriate skill, who is authorised to have full access to the records, offices, sites and personnel of all parties, and who is required to report suspicions of corrupt conduct to the authorities.

**12. Ability to challenge:** Any bidder who feels that they have been treated unfairly or in breach of bid requirements should be entitled to complain to the procuring entity, and their complaint should be appropriately investigated and dealt with promptly and impartially.

## Integrity in Procurement: Key Principles (7)

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- 13. Reporting:** The procuring entity should maintain and publicise a reporting system under which any person who believes that there has been any corruption or breach of procurement requirements can report their concerns openly, confidentially or anonymously.
- 14. Accountability:** The procuring entity should investigate all reports or discovered incidences of corruption or breach of procurement requirements, and should take appropriate remedial action if such incidences are proven.
- 15. Transparency:** All public sector procuring entities should fully disclose to the public all elements of the procurement process, including design, specification, identity of bidders, prices, contract terms and all other key aspects of the bids, bid evaluation, and bid award.
- 16. Records:** All processes and decisions should be in writing, and should be retained securely as a permanent record.

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# Integrity in Procurement: Key Principles

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End of Presentation

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# PROCUREMENT IS MORE THAN PRICE

Joseph Ringwald  
Geocomp International Consulting Ltd.

ACLP: Protecting Procurement Systems from Abuse  
26 February 2021

# Not Just Price!

- ❑ **Scope** - expect changes
- ❑ **QAQC** - product and/or services
- ❑ **Timelines** - delivery of products, services and information
- ❑ **Relationships** - stuff happens; how do parties handle challenges?

## **All the above are vulnerable to corruption**

- ❑ **From Within** – employees, vulnerable systems and policies, lack of enforcement, etc
- ❑ **From Without** – vendors, competitors, government, expeditors, etc

# Nothing is Foolproof

- ❑ **Conduct **thorough** due diligence**
  - ❑ All levels of the jurisdiction, culture along supply chain, people/companies potentially involved, etc – not just a financial/investment risk analysis
- ❑ **Expect illicit knocks on the door**
  - ❑ “Trust in Allah but tie up your camel” (Middle East Proverb)
- ❑ **Remedy system**
  - ❑ Ability to detect and correct procurement issues including corruption
  - ❑ Include “Write Off”

# Everyone has a Price

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- ❑ **Do I have something that someone wants?**
- ❑ **What's my price?**

**Consider these with respect to procurement**



# Corruption Continuum



**Gateways to corruption may include:**

- Culture / Tolerance
- Addiction / Enabling
- A cookie / Lighting a cigarette

# Procurement Vulnerabilities

## Procurement may include:

- ❑ **Construction** - contracting, construction management, etc
- ❑ **Services** - consultants, caterers, security, ***maintenance***, communications, electronics
- ❑ **Equipment** - fixed, mobile, office, field, etc
- ❑ **Materials** - parts, consumables, etc particularly critical to business operations
- ❑ **Expediting** - local, regional, international and transit infrastructure/operations

# Corporate Culture

- ❑ **Critical to procurement and investment integrity**
- ❑ **Begins Top-Down and finishes Bottom-Up**
  - ▣ including ability to hold to account upwards
- ❑ **Actions speak more than words**
  - ▣ enforce and reinforce as the company evolves
- ❑ **Corporate Governance versus Project Governance**
  - ▣ policies and culture at corporate and project levels will differ but must be complementary e.g., CSR/SLO



# Presentation to the Anti-Corruption Law Program

## Protecting Procurement Systems from Abuse

David Hubner, Vice President Transportation and Utilities

February 26, 2021

# Who We Are



Infrastructure BC supports the public sector by working with owners to deliver complex public infrastructure in an evolving world.



Projects have generated significant benefits for taxpayers



Serve public sector clients on fee for service basis (hourly rates)



Service integrator (with advisory firms) – 39 employees



Stakeholder outreach  
Consistent dialogue with industry associations, stakeholders and market



Out of entity engagements

# Relationship Review Process

In the bidding community

- Start early on a Project
- Looking at specific projects and across concurrent projects
- Conflict of interest adjudicator role

During evaluation

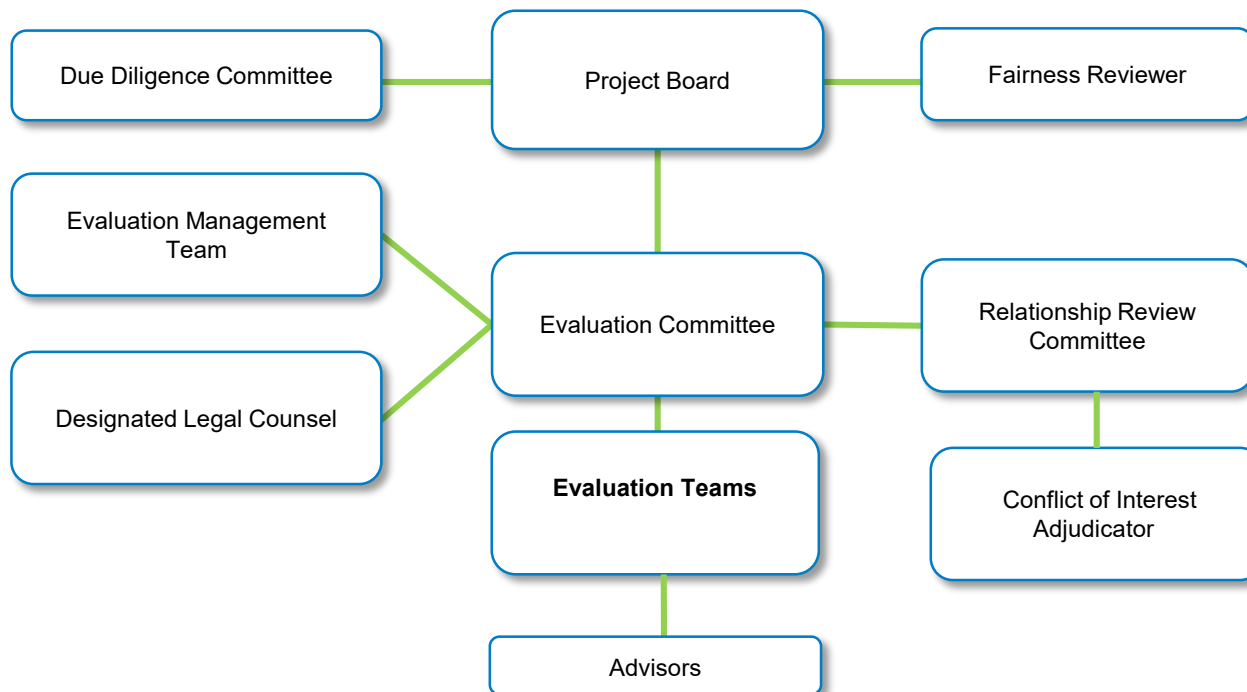
- Disclosure and review by anyone involved in the process

# Evaluation Guiding Principles

Principle	Demonstrated by/Attribute
Transparency	Evaluation process governed by, and consistent with, procurement documents, and thereby transparent
Fairness	Evaluation process is conducted without bias toward any Respondent.
Confidentiality	Evaluation is strictly confidential.
Consensus decisions	Evaluation decisions are reached by consensus.
One definitive record	One definitive record of the evaluation results prepared by the Evaluation Committee.



# Formal Process



# Evaluator Education and Orientation

Every evaluation has an orientation to educate participants on:

- Evaluation principles
- Roles and responsibilities

During evaluation

- Relationship disclosure and review update at each stage

# Evaluation Debriefs

- All market participants can have a debrief
- Goal in debrief to be transparent with criteria/submission/evaluation
- Taken up consistently

# How You Can Stay in Touch with Us



Infrastructure BC  
LinkedIn



Infrastructure BC Website  
& email (database signup)

[www.infrastructurebc.com](http://www.infrastructurebc.com)

# Contact

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Vice President, Transportation and Utilities

Email

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# THE ROLE OF FAIRNESS MONITOR IN THE PREVENTION OF CORRUPTION IN THE PUBLIC PROCUREMENT PROCESS

Presented to GIACC Gathering

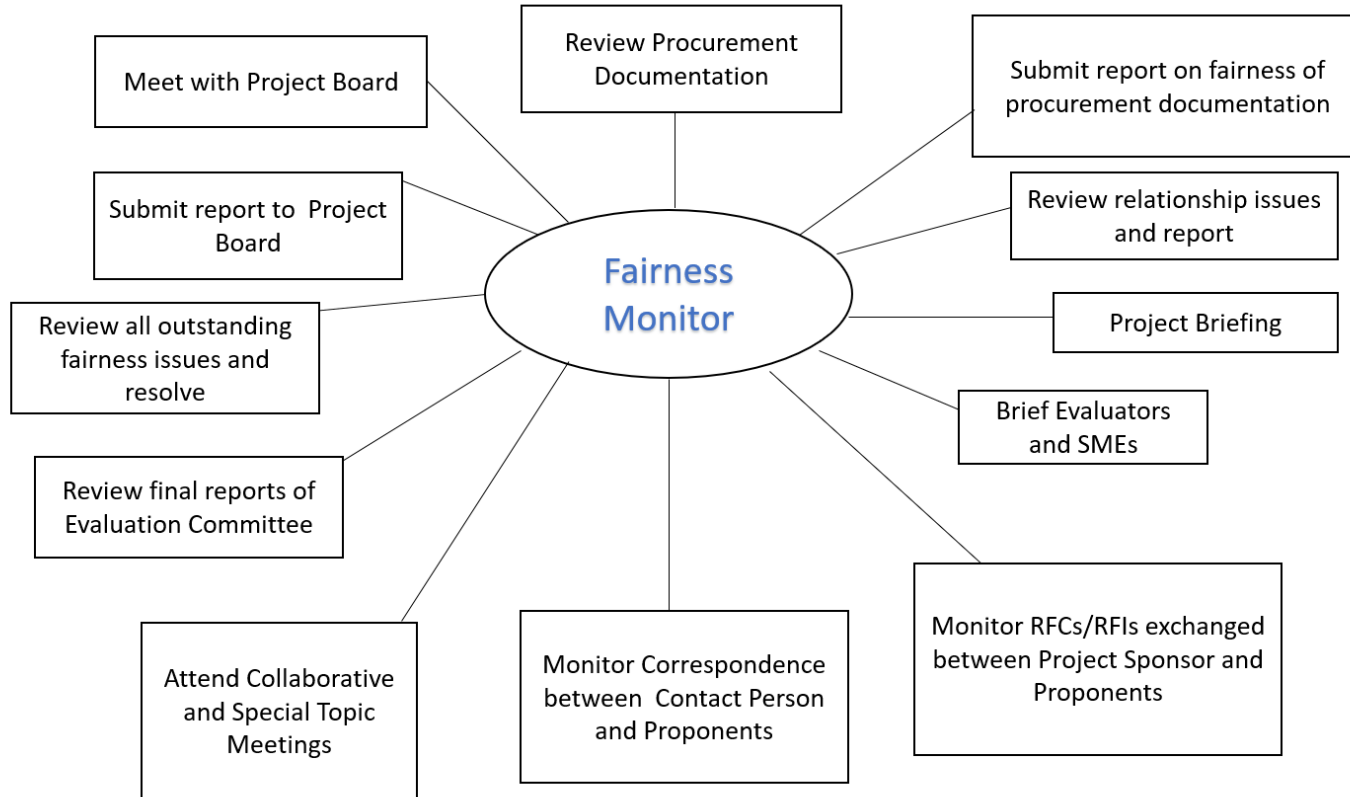


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- Managing Partner
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[singleton.com](http://singleton.com)



## THE FAIRNESS CLOCK





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# What are the Touchstones of Fairness?

1. Transparency
2. No collusion
3. No lobbying
4. Confidentiality
5. No relational conflicts
6. No financial conflicts
7. Consistency
8. No bias
9. Equal treatment

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# How is Fairness Monitored

1. Clear, comprehensive Rules of Procurement
2. Adherence to Rules
3. Clear, comprehensive Evaluation Guidelines
4. Adherence to Guidelines
5. Objective Evaluation
6. Due diligence

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# The Important Features of Monitoring of the Procurement Process

1. The skill of the Fairness Monitor
2. Project Briefing
3. RFQ/RFP
4. Collaborative Meetings
5. Dispute Resolution
6. Special Topic Meetings
7. Evaluation Meetings
8. Project Board meeting
9. Monitor correspondence
10. Debriefs

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# Potential Consequences if Fairness Not Monitored

1. Disqualifying Proponent
2. Cancellation of Process
3. Injunctive Relief
4. Damages
  1. Cost of the Procurement
  2. Delay
  3. Loss of Profits
  4. Loss of Opportunity



**SINGLETON  
REYNOLDS**

# Develop Procurement Policy & Procedures

- Consistently Applied
- Covers All Areas
- Clearly Laid Out
- Communicated
- Consequences for Non-Compliance

# Due Diligence or Know Your Counterparty (KYC)

- Risk Assessment
- Procedures for each risk level
- Questionnaire
- Follow up procedures
- Ongoing DD / Monitoring
- M&A processes



# Gifts & Entertainment Policy

- Develop/ Communicate Policy
- Audit for Compliance / Discipline
- Transparency
- Keep a Registry
- Engage Middle Management

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In collaboration with:



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SCHOOL OF LAW  
THE UNIVERSITY OF BRITISH COLUMBIA

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# Internal Controls / Auditing

- Consider Cyber Crime
- Ensure Segregation of Duties
- Audit Controls for Efficacy

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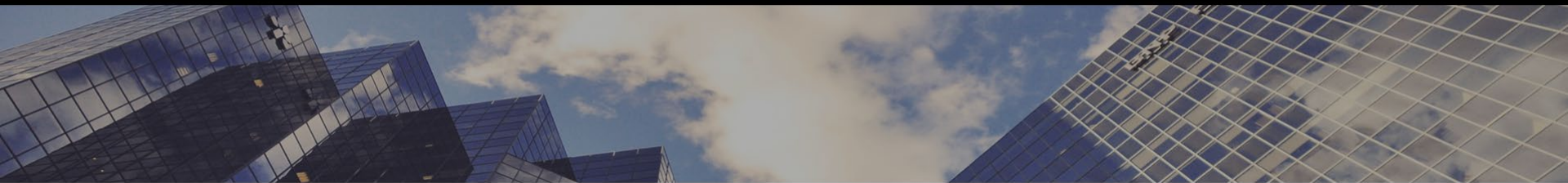
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# Communicate, Communicate, Communicate

- Hotline is Valuable
- Tone From Top/Middle
- Procurement Policy / Ethics Knowledge
- What are Red Flags?
- What are linked regulations?



# Q&A

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# THANK YOU

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