



HOW CAN GOOD ROAD PROJECT PREPARATION HELP CURB DOWN CORRUPTION

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ABSTRACT

This paper is presented in the name of the Confederation of International Contractors' Associations (CICA) [1].

CICA holds the view that good project preparation, particularly in the field of road projects, is in the interest of the project itself and eventually benefits all stakeholders, including road authorities, the public at large, as well as the contractors and consultants involved.

In its recent work, PIARC's Technical Committee 1.1 (TC 1.1) outlined how good project preparation can help make the project acceptable to citizens and meet the deadlines and budgets : "Well-prepared projects reduce project risks, right from the development stage, which are indicators of possible corruption such as poor material quality, delays, cost overruns and possible unethical behaviour associated with ensuing change orders".

This paper focuses specifically on one additional benefit drawn from good road project preparation, namely on how it can help curb down fraud and corruption, by reducing technical uncertainties and ensuing opportunities for possible change orders and unethical behaviour, by adopting adequate procurement strategy in order to improve competition and by informing interested stakeholders and civil society about the justification and accurate definition of the project.

1. INTRODUCTION

In their discussions with Multilateral Development Banks (MDBs) for the last decade, CICA had numerous opportunities to outline how good project preparation could be a powerful tool in particular to help combat fraud and corruption.

CICA was especially keen to contribute this point of view after the World Bank published, in 2011, their report on "Curbing Fraud, Corruption, and Collusion in the Roads Sector" [2]. In CICA's view, this report somehow failed to identify good project preparation as a key measure in the fight against corruption.

With this concern, CICA approached both the World Road Association (PIARC) and the International Federation of Consulting Engineers [3] (FIDIC) with a view to establishing a joint working group aimed at defining best practices regarding road project preparation. The concept has been approved in principle by all three organizations, under the name of WPP ("Well-Prepared Project"), but still remains to enter into its implementation phase. It

has been agreed by all three organizations that the rationale behind this joint work should be the interest of the project, not the interest of one specific party.

CICA finds itself encouraged in this endeavour by the fact that the "WPP concept" has been since taken over by a number of international organizations, such as the G20 [4] and the IMF [5].

While good project preparation can bring huge benefits in the global interest of the project, notably by ensuring that deadlines and budgets will be met, this paper focuses only on the benefits that can be achieved with respect to fraud and corruption issues.

We will first focus on the preparation of the technical elements of the project, typically those that are included in tender documents for road works.

We will then move on to project delivery strategy, and consider how adequate strategies can help reduce risks associated with fraud and corruption.

Finally, we will discuss how sharing project related information can help civil society to better understand road projects and play an important role in curbing down fraud and corruption. For this final section, we will draw on the findings of PIARC's Technical Committee 1.1 on "Performance of Transport Administrations".

2. TECHNICAL DETAILS OF THE PROJECT

The idea behind the WPP concept is that the better a project is prepared, the lower the risk of its implementation being fraught with poor quality, delays, cost overruns and possible unethical behaviour.

Good design studies are a must. Whereas the nature of road works makes it almost impossible to anticipate everything that will occur during project implementation, the technical details of the project and the documents issued during the tender phase should be as accurate as possible, in order to avoid any uncertainty or ambiguity during implementation. Inaccuracies always lead to discussions, possible change orders or variations, and these may become additional opportunities for fraud and corruption.

For instance, it is not uncommon to find in the tender documents for road works in developing countries huge discrepancies between the technical specifications for aggregates and the actual quality of materials available in the country. In one particular case, the tender documents suggested three possible quarries where adequate aggregates should have been available : the first one was nowhere to be found, the second one was used up and the third one could not provide the specified quality. The World Bank report [2] has identified the supply of substandard materials as a frequent example of fraud. While there is no denying that such fraudulent practices exist, there is a kind of chicken and egg problem here, if preliminary studies and tender documents fail to address the issue of whether suitable materials are available at reasonable distance and cost.

It is easy to understand that such discrepancies or ambiguities in tender documents are open doors to unethical behaviours from any stakeholder, be it the road administration, the supervising engineer or the contractor, always having in mind that bribes can either be proposed by one party or solicited by another one.

The limited scope of this paper does not allow to make an exhaustive review of all technical issues that need due consideration in design studies. That may well be a task for the WPP task group. In addition to the above-mentioned materials issue, let us just mention some of the most frequent problems CICA has identified in MDB-financed projects :

- space needed for the worksite and site installation is too small or not taken into account at all. Often, the contractor then needs to obtain additional permits for right-of-way, and incurs additional costs, delays, but also possibly undue solicitations;
- all too often, the scale of road layouts provided in tender documents is not adequate. It does not allow contractors to bid with full knowledge of the requirements; even more so, it does not allow the public to get a good understanding of the project. This is particularly regrettable as regards what is often considered by road engineers as "details", but may make a big difference for nearby residents, such as water drainage, kerbs, footpaths, etc.;
- some structures are often considered as standard with a design based on standard bridge or culvert layouts, sometimes paid on a lumpsum basis. While this is current practice for really standard structures, this is not acceptable when specific design should be carried out. In one case of a road project in an African country, a new road crossed several waterways; inadequate layout scale, absence of specific topographical and geotechnical studies, absence of bridge design (bridge decks in tender documents were simply "hanging" under the vertical alignment of the project), all this led to protracted claims of the contractor; while no specific fraud or corruption was reported in this case, it is all too clear that such improper design is an open door to possible unethical behaviour from either party;
- finally, one should not overlook the fact that design studies are the basis for project cost evaluation and budget allocation. Incomplete design studies often lead to poor project cost estimates and insufficient budgets. In such case, and when it appears at bid opening that the forecast budget is too low, the road authority is faced with the dilemma of either modifying the project and retendering (with associated delays and uncertainties), or negotiating with the lowest bidder, e.g. by cutting back or eliminating certain items of work. The latter solution was clearly considered as abnormal by the Court of Auditors of the European Union in their analysis of road works financed by the European Development Fund [6]. Whereas the Court was silent on the issues of fraud and corruption in their report, it is clear that any such negotiation may give rise to opportunities for unethical behaviour.

The bottom line here is that poor project preparation is often indicative of weaknesses and lack of professionalism within the road authority. Not only are contractors quick to spot inconsistencies and ambiguities in tender documents, they will try and find how to make the most of them, and this will often take the route of variations and change orders, with associated risks of corruption.

3. PROJECT DELIVERY STRATEGY

It is not sufficient to pay due attention to the preparation of the technical components of the project, it is also essential to understand the "business" of contract procurement, and how to minimize risks of fraud and corruption associated with the procurement process.

In their report [2], the World Bank's Integrity Vice-Presidency (INT) investigated 29 cases from 25 projects that were opened on the basis of complaints received. In doing so, they naturally focused on wrongdoing by contractors, and therefore failed to identify the

possible relationship between project preparation and such wrongdoing. Because the report has analyzed in depth collusion in road tenders as well as fraud and corruption in contract implementation, and made some recommendations on how to *detect* collusion and fraud, we would like to suggest some ways to *prevent* the same, by providing some specific examples.

3.1. Permits and agreements

A number of permits and agreements are usually needed before the works can actually start on the site. Not all of them are the direct responsibility of the road authority. For example, we can mention fiscal agreements, release of right-of-way, permits for borrow pits, permits for relocation of utilities, environmental and archaeological permits, etc.

CICA's recommendation is that all legal permits needed should be obtained and/or facilitated by the road authority before commencement of the works.

Needless to say, letting the contractor obtain such permits after commencement date places him in an uncomfortable situation because he has to fight against time and therefore may be faced with petty, or not so petty, corruption if he wants to secure the permits in time. Even worse, in some cases, the responsibility of obtaining such permits is intentionally placed on the contractor, since he is supposed to have a "wider room for manoeuvre" to handle the issue than the road authority.

Such practices are clearly not acceptable. The rationale here is that the contractor should be entrusted with what he knows best, i.e. perform the works, and not have to compensate the possible shortcomings of the road administration.

3.2. Abnormally Low Tenders (ALTs)

The issue of "Abnormally Low Tenders" has long been flagged by contractors, without much success until recently.

The issue is that some contractors are bidding at aggressively low prices, with the hope that they will be selected as the lowest bidder, and then will be able to compensate their low bid by various means, including harassing the Employer with claims (not friendly, but legal) or proposing some kind of illegal arrangement.

While MDBs and many administrations have long denied that this was an issue, there are some noticeable changes under way. The European Bank for Reconstruction and Development (EBRD) has recognized the issue, based on their experience that excessively low bids often led, if not to fraud and corruption, at least to poor project implementation, delays and possibly contract termination, which is definitely not in the interest of the project. The issue is now on the agenda of MDB Heads of Procurement, and it is also being considered by bilateral development agencies and administrations in European countries. Although it is a complex issue, there are a couple of remedies that could be considered, namely :

- Road administrations should not consider the lowest price as the only criteria to select a bidder, but at least have the right to assess whether a low bid is justified or not, subject to a strict procedure of clarification with the bidder, and in case the bid is deemed abnormally low, have the possibility to reject the bid;
- a helpful tool in this process could be to request that bidders provide with their bid a detailed breakdown of their unit prices (according to manpower, equipment,

materials), with a view to helping in the detection of abnormal bids (i.e. priced below cost). An additional advantage of this request would be that these breakdowns could serve as a solid basis for justifying possible additional prices or price variations in case of change orders.

While these proposals are certainly not a panacea to solve a complex issue, the rationale behind them is the same : road authorities should develop professional attitudes to demonstrate their willingness to get the best value for money and deter contractors to submit hazardous bids with the hope that they will make good their losses, by all means.

3.3. Public-Private Partnerships (PPPs)

PPPs are much touted today, both in industrialized and developing countries. At the time this paper is written, the 3rd UN Conference on Financing for Development has just come up with an outcome document that states : "We recognize that both public and private investment have key roles to play in infrastructure financing, including through development banks, development finance institutions and tools and mechanisms such as public-private partnerships" [7]. So PPPs are likely to develop even more in the future.

Tenders for road PPPs pose however specific problems :

- costs incurred by bidders for tender preparation are huge, often in the range of several million € or USD; it is therefore impossible to admit a large number of bidders, and typically, the number of bidders is limited to 3 to 4;
- it is therefore important for the road authority to provide the right incentives for contractors to bid, namely (i) clearly set up not only one PPP project, but a pipeline of projects, so that bidders consider that they might have additional chances if they are unsuccessful on one bid; and (ii) accept to compensate unsuccessful bidders for at least part of their bid costs.

Failure to establish such a compensation system would not encourage bidders to tap their internal resources to find innovative and winning solutions.

4. THE ROLE OF CIVIL SOCIETY

This section relies on the work performed by TC 1.1 during the last cycle. As mentioned in the introduction of their report :

"[There is a] general perception, supported by Transparency International's surveys, that public contracting is a corrupt industry. Major road infrastructure projects generally involve many role players [...] . This expansive supply chain provides opportunity for collusion, bribery and such other corrupt activity. [...] Very often, the institutional integrity of the authority is under scrutiny and threat. [...] In such a scenario, the road authority not only needs to maintain an ethical and efficient business model run on good governance principles, but also needs to unquestionably project the same to its stakeholders."

There are two main recommendations there : (i) first, maintaining an ethical and efficient business, which implies professionalism and good project preparation, as outlined above; and (ii) second, communicating with the public at large and the various stakeholders to bring more transparency in project design and implementation.

Regarding the last point, it is important here to flag the CoST (Construction Sector Transparency) initiative [8]. CoST is a country centred multi-stakeholder initiative designed to promote transparency and accountability in publicly financed construction. This initiative has been endorsed by a number of Civil society as well as Private sector organizations.

Similarly, the World Bank has engaged in the Open Contracting (OC) program, which aims to promote open contracting in the roads sector, by "supporting the many stakeholders in disclosing more contracts, making contracting information accessible and user-friendly for citizens, monitoring the award and execution of contracts, and ensuring that citizens' contracting concerns are addressed by governments and companies in a meaningful way" [9]. One example often mentioned by World Bank staff is a road that should have been built with a width of 7m according to the contract, but the contractor made it fraudulently only 5m wide. Better knowledge of the project by residents would make this kind of wrongdoing impossible.

5. CONCLUSION

Well-prepared projects reduce project risks, right from the development stage, which are indicators of possible corruption such as poor material quality, delays, cost overruns and possible unethical behaviour associated with ensuing change orders. Any uncertainty or ambiguity in the design and procurement process may be an open door to fraud and/or corruption.

Poor project preparation by the Employer may give consultants and contractors the feeling of a lack of professionalism and the temptation to exploit the Employer's alleged weakness for their own profit, sometimes in a dishonest and unfair way.

In this respect, good project preparation implies not only an accurate definition of the project's technical details, but also a project delivery strategy adapted to the specifics of the country and the project, as well as reaching out to all stakeholders to inform them in an adequate manner.

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